

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,¹
Petitioner

v.
DODOTS LICENSING SOLUTIONS LLC,
Patent Owner.

IPR2023-00621 (Patent 8,020,083 B1)
IPR2023-00701 (Patent 8,510,407 B1)
IPR2023-00756 (Patent 9,369,545 B2)

Record of Oral Hearing
Held: July 12, 2024

Before GRACE KARAFFA OBERMANN, KEVIN C. TROCK,
AMBER L. HAGY, and SHARON FENICK, Administrative Patent Judges.

¹ The Board joined Apple Inc. as a party (Petitioner) to these proceedings in IPR2024-00143, IPR2024-00144, and IPR2024-00145.

IPR2023-00621 (Patent 8,020,083 B1)
IPR2023-00701 (Patent 8,510,407 B1)
IPR2023-00756 (Patent 9,369,545 B2)

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The above-entitled matter came on for hearing Monday,
July 12, 2024, commencing at 1:00 p.m. EDT, via videoconference.

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

1:00 p.m.

JUDGE FENICK: Good day, everyone. We are convened today for oral arguments in IPR 2023-00621, which challenges claims of U.S. Patent 8,020,083 B1; in IPR 2023-00701, which challenges claims of U.S. Patent 8,510,407 B1; and in IPR 2023-00756, which challenges claims of U.S. Patent 9,369,545 B2. Petitioner is Samsung Electronics Co., Ltd., and Patent Owner is DoDots Licensing Solutions LLC.

We've granted joinder of three proceedings to these cases, one to each case. These are IPR 2024-00143, -144, and -145. In each case, Apple has been joined to the Petitioner, subject to limitations on participation as outlined in the Institution Decisions in those proceedings.

I'm Judge Fenick. Also appearing remotely are my colleagues, Judge Trock, Judge Obermann, and Judge Hagy. Three of us are on the panel in each proceeding. Judges Hagy, Trock, and myself for IPR 2023-00621 and 00701, and Judges Obermann, Trock, and myself for IPR 2023-00756.

We're holding a joint hearing because of overlapping issues in these cases. However, the decision in each case will be for the panel in that case alone. Because this is a joint hearing, we'll understand that your arguments will relate to all cases, except if you specifically state otherwise. So please make it clear if your arguments relate only to certain claims, certain patents, certain cases.

I want to start by emphasizing that our primary concern is your right to be heard. If at any time during the proceedings there are technical difficulties that undermine your ability to adequately argue your case, please

1 let us know if you can or disconnect and reconnect to the Webex. Let the
2 panel know where you dropped off. And I know you have phone numbers to
3 help you reconnect if you need to. And we will try and rewind and start the
4 proceeding from when you had an issue.

5 For the benefit of judges, opposing counsel and the court reporter,
6 please identify yourself when you begin your argument. Speak clearly into
7 your microphone. Please mute and don't speak when others are speaking.
8 And if you could please identify specific slide numbers when referring to the
9 demonstratives.

10 We've not received any notice from either party that there's any
11 confidential information that will be discussed or disclosed. There is a
12 public line and third parties may be virtually attending this hearing. So if
13 you plan to divulge any confidential information, you need to inform the
14 panel so we can wall off third parties for that portion of the hearing.

15 As per the hearing orders in these proceedings, each party has 75
16 minutes total time to argue their cases. Petitioner has the ultimate burden of
17 establishing unpatentability. Therefore, Petitioner will open the hearing by
18 presenting its case as presented in the petitions regarding the alleged
19 unpatentability of the challenged claims.

20 The Petitioner may reserve rebuttal time no more than half of its total
21 argument time. Thereafter, the Patent Owner will respond to Petitioner's
22 arguments. Patent Owner may also reserve time for rebuttal time of no more
23 than half the total argument time to respond to any Petitioner rebuttal.

24 In order to ensure that we have a clear record, after the hearing is
25 over, we'll all stay on, and please take a pause so the court reporter can ask

1 any questions they have regarding spelling.

2 We ask parties hold any objections regarding opposing party's
3 arguments until it is their time to talk. We won't take any objections during
4 a party's argument and you have to wait until it is your time to note any
5 objections. I'll keep a clock and I'll inform the parties when they have five
6 minutes left in the portion of time that they reserved.

7 So, if we can get started with appearances for both sides, starting with
8 the Petitioner, please.

9 MR. RENNER: Thank you, Your Honor. This is Karl Renner from
10 Fish & Richardson, and I'm joined in the room by colleagues Hyun Jin In
11 and Chris Von Gunten. And I'm joined online with colleague Jeremy
12 Monaldo.

13 There was someone attempting and hoping to attend and had indicated
14 they're hung up there. I don't know if the public line is generally working or
15 not, but I wanted to pass that along.

16 JUDGE FENICK: My understanding is the public line is working.
17 I'm not sure if we can have our hearing staff let us know that they've heard
18 this and that they're working on it. That would be great. I'll send them a
19 message also.

20 MR. RENNER: Thank you, Your Honor.

21 JUDGE FENICK: Sorry. One second.

22 (Pause.)

23 JUDGE FENICK: Okay. Our staff says the public line is working, so
24 you can ask them to try again.

25 MR. RENNER: Will do. I'll pass that along. Thank you for

1 confirming.

2 JUDGE FENICK: Okay, thank you. And, Mr. Renner, will you be
3 making the arguments in these proceedings?

4 MR. RENNER: Yes, Your Honor, although Hyun Jin In will take
5 some of the argument time as well. We'll both be here in this room, though,
6 and so we'll be on our end (audio interference).

7 JUDGE FENICK: Okay, thank you.

8 MR. RENNER: Thank you.

9 JUDGE FENICK: Can I hear now who's on the line for Patent
10 Owner?

11 MR. REYNOLDS: Yes, Your Honor. Steve Reynolds, representing
12 DoDots Licensing Solutions. And with me are my partners, Ron Daignault
13 and Richard Juang.

14 JUDGE FENICK: Thank you, Mr. Reynolds. Will you be presenting
15 today?

16 MR. REYNOLDS: Yes.

17 JUDGE FENICK: Thank you. Are there any questions or issues that
18 the parties would like to raise before we begin? Starting with the Petitioner?

19 MR. RENNER: No, Your Honor. Thank you.

20 JUDGE FENICK: Mr. Reynolds?

21 MR. REYNOLDS: No, I don't think so. We advised the Board of a
22 request to file some errata sheets, but that relates to briefing. So I don't
23 know that we necessarily have to address it today.

24 JUDGE FENICK: Okay, thank you. Yeah, we received that. And I
25 think that it seems like an uncontroversial request. So we'll look into it. Mr.

1 Renner, would you like to reserve time for rebuttal?

2 MR. RENNER: Yes, Your Honor, I'd like to reserve 15 minutes.

3 JUDGE FENICK: That means you have 60 minutes for your
4 preliminary portion. And please feel free to begin when you're ready.
5 Thank you.

6 MR. RENNER: All right. Great. Good afternoon, Your Honors, and
7 may it please the Board. Slides 2 and 3 of our demonstratives. I assume you
8 have those. I could project if not. But it's Slides 2 and 3 of the
9 demonstratives. They show the grounds that are at issue in the case. And
10 Slide 4 lists the issues that have been raised in general.

11 There's another Slide 28 that additionally lists more minor issues. But
12 this is the bulk of the issues that we generally are talking about. There are a
13 lot of slides here and most probably provide backup and support for
14 questions or rebuttal that we may get to or may not. But our intent is to
15 focus on maybe three or four issues.

16 My colleague Hyun Jin In, as mentioned, would be presenting on and
17 fielding questions with respect to the Shimada based grounds. I'll be
18 presenting on the Brown based grounds and secondary considerations.

19 One more table setting, and that is that the treatment of the Brown
20 based grounds. I plan to lead that off with really an address of what Brown
21 is and how the combinations come together. As the record has developed,
22 there seems to be some misunderstanding or some differences in
23 understanding and what the petition had brought forward. I want to make
24 sure we're very clear on that.

25 I'll try to field the issues as they come. And any questions, of course,

1 as I move through those and unless there's a different way that you wanted
2 me to handle this. I'll be proceeding in that direction.

3 Slide 6, please. If we go to Slide 6, you'll see the two of the three
4 patents that are at issue in the case. Not terribly informative. Just a
5 summary slide as is Slide 7. So let's move to Slide 8 where we see the first
6 of three slides devoted to demonstrable or representative claims in the case.

7 This shows the claim 1 of '083. And I want to take the moment to
8 look at this together to make sure that we're seeing the claim as it frames so
9 much of the conversation, of course. So briefly, claim 8 recites a client
10 device. That device has an electronic storage. And that storage includes
11 network information monitor templates, NIM templates, if you will, but
12 network information monitor templates. That's a monitor network
13 information.

14 They define network information monitors NIMS, which would be
15 like think of widgets, a NIM and a NIM template are subject to construction.
16 And we'll talk about that right after introducing this claim.

17 The NIM template is said to comprise a content reference. And that
18 has in it or comprises a network location at which the content it's looking for
19 can be accessed. And definitions for GUI for the NIM is what does it look
20 like? What's it going to present as that lacks control of any manual
21 navigating by the network? So it's not a browser. It's just a window, if you
22 will, frame, and then a definition.

23 That definition includes a frame within which that content is received
24 from the network location and it can be displayed as well as frame
25 characteristics. Instructions are also contemplated by the by the claim.

1 Those are just getting the NIM to request and receive and generate content.

2 And then an electronic display is where it would put the content and you

3 have processors to perform what's going on.

4 So the claims through the patents have a lot of commonality. We'll
5 leave it at this one if you have questions about them and I'll move us to Slide
6 11, where you'll see the first of the two limitations that were subject to
7 construction in the case.

8 This is the NIM term and this term came into play you may have
9 noticed because of the Lenovo proceedings involved in these patents. This
10 is where first, there were proposals for construing this term as well as NIM
11 template. We just adopted when demonstrating satisfaction and
12 obviousness, the constructions from that proceeding. So these really came
13 from the Patent Owner back in the day. And the prior was so close. We just
14 went ahead and mapped it without introducing controversy over that.

15 The construction actually is a fully configurable frame with one or
16 more controls through which content is presented to the user. That is what a
17 NIM is, that object that sits on the desktop. The other object, the pair, if you
18 will, Slide 12 shows you NIM template and gives you access to the
19 construction for that term. The only other term that's subject to construction
20 in the case. And it is, as you recall, the object that defines the NIM.

21 So it gives you the parameters, if you will, to make sure you know the
22 GUI and where to go and look for content in the NIM. It is said to be a data
23 structure that defines the characteristics of the NIM, including the NIM
24 frame view and control characteristics. And that, importantly, per the
25 Federal Circuit who looked at this claim term and only this claim term, that

1 excludes executable applications compiled code. And so it was subject to
2 the Federal Circuit review. And this is the claim construction resolved.

3 With that introduction, I would go right into the Brown reference and
4 start down that path. Any questions about the constructions and whatnot at
5 this point?

6 JUDGE FENICK: I mean, I think you're going to address fully
7 configurable and data structure issues that were raised by Patent Owner.

8 MR. RENNER: Yes, happy to do that. We have a module you may
9 know for those. I'm happy to take a turn to those as soon as we're finished
10 with the combination, if that works. So I'll probably talk about them during
11 the conversation of the combination as well, to some extent. But a fuller
12 treatment will happen after. Thank you, Your Honor.

13 Slide 14, we have Brown. This is an introduction to Brown. It's a
14 method of creating a composite desktop. And it's built from web content
15 retrieved from the websites. The composite is shown right here on the figure
16 that's shown here, 3A. It has three components that are shown on this figure,
17 a static, web-based and active component.

18 The static in the middle is just an image. The web-based to the right
19 is actually a web page. And then the top is what's called an active, which
20 has a stock ticker. So you have a subscription to content that keeps coming
21 in for the stock ticker that continues to evolve.

22 Notice that none of these present as a browser, despite their enabling
23 display and access to web content. They just don't present as a browser.
24 And in a sense, they, like NIMS, are fully configurable frames. And we'll
25 talk again more about that per your question. With one or more controls

1 enabling the scrolling, sizing, moving, for instance, through which content
2 can be presented to the user.

3 Columns 11 and 12 of Brown, which we'll see in a second, they
4 describe the markup code HTML that Brown tells us is responsible for
5 defining these particular widgets or desktop items that is consistent with, we
6 believe, the NIM template and its desktop components.

7 Slide 15 is where you find a clip of content from brown's
8 specification. And it is that code that I just mentioned. We tried to color
9 code in so that the green is the green, blue is the blue and red is the red. This
10 and the Figure 3A corresponding items that are on the display.

11 And in fact, what we see here is the code. It's not very long, but it's
12 code that shows you the various different things that the code in HTML
13 language, markup language, is able to provide the user configurability for.
14 And it's apparent from this code in these segments that Brown does describe
15 this as HTML markup code. That's not really in question.

16 Also apparent that these code segments, they lay out and they define
17 the parameters and set up that, populating the desktop components in 3A.

18 Looking at the green one just by way of example, again, to make sure
19 we're all familiar with the same content as we're moving through things. It
20 corresponds to that static component, and that's the one that showed you just
21 a picture. It was a GIF file, I think, or it is a PDF file, but it's a static file.
22 And it demonstrates that the component is static, but that the code segment
23 really enabling the full configuration of that frame that it defines, as well as
24 the controls and content, is anything but static.

25 If you look at lines 6 and 8, for instance, in that green text, what you'd

1 find is references to an HTML item, something that's well-known in HTML
2 vernacular. It's an IMG tag, and that's for an object, an image object. You'll
3 see other of those code segments specify a different image object, the point
4 being that's configurable itself. It enables designation, of course, of a JPG
5 file, which is identified there. It's JPG and the location of that image, that
6 object, the JPG file, the content.

7 It also, at line 8, tells us you can subscribe, again, to content, and we'll
8 see that done with respect to the red item, the active item. Code line 7, I
9 know this is detailed, but code line 7, it shows you one of the configurability
10 is to resizable, is what it's there to show you. It's quite important to our
11 dispute in some of the items we have here.

12 Resizable speaks to whether or not you can resize, whether or not you
13 can control and configure with resize. And you're setting a parameter there,
14 an X and a Y. If reading this, you'll find that what that's to do is to limit
15 whether you can resize in the X or the Y, and I guess if you use both
16 dimensions or not.

17 It's the enabling of that, and that itself is a characteristic of the control
18 that you could otherwise or do, according to this resizable item. That is for
19 each of the three. Most of these are common to the three different segments.

20 Code line 9. We'll stop there just for a moment and get on with it, and
21 that is going to show you various different frame and view settings. You can
22 see sizing there. You can see resizing there. You can see is it going to be
23 transparent or not. These are the kinds of things where you're going to set
24 the outer perimeters of the frame, as well as control what you can see in the
25 frame.

1 And so we think these inform concepts that we'll talk about later as it
2 relates to frame and view configuration settings that are settable. You know,
3 they're informal. And some of this is described, I think, quite nicely in
4 Column 12, 44 to 60 of Brown.

5 When we look at the blue and the red code segments, they're very
6 similar as noted. They have a couple notable differences, however. And,
7 one, both specify this iframe tab, which is a different HTML tab. And,
8 again, it's just getting to the point where they're allowing the user and then
9 the iframe or the code segment to define what it's looking for, what kind of
10 image, as well as where that image is.

11 Slide 16 shows us a little more in detail that red item, the active code
12 segment. And it focuses on that because it shows us the CDF file that
13 enables you, and Brown enables you to subscribe to content that's remote.

14 Here it's allowing the user to configure its template, its code, to focus
15 attention on a CDF file, where it's going to -- CDF is not something that was
16 created by this author. It's something they reference, a Microsoft document
17 internal to the disclosure because it's well-known technology. And what you
18 do is you identify the item.

19 And, after that, there's a request that goes out, content comes back.
20 But that content keeps coming back. You have a continued subscribed to
21 stream of information after that. And that's how they accomplish what is a
22 stock ticker, if you will, in that 3A red box which is comparable, we'll find,
23 to something that's talked about in Wecker. They also contemplate CDF.

24 I'll look at the -- just another word on the resizing, the XY. You
25 might wonder, how does that get done? And the specification of Brown is

1 not silent on that. It tells us about an ActiveX control that's engaged or
2 disengaged through this parameter. It describes that.

3 If you look at Column 10, lines 12-15, for instance, it tells us an API
4 provides a way of specifying the initial position and size of the desktop
5 component and indicating whether the desktop component can be resized,
6 either in the X direction or the Y direction. It also shows some more code
7 on this. Who knew? In Column 9, lines 30-45, it gives you more detail
8 there, if that's helpful. Although that detail, I don't know if it's as useful.

9 Slide 17 shows us a little more in Brown, and that is how do you
10 actually -- how does this happen? How does this HTML code become the
11 active agents that are on the screen? And where did it come from, for that
12 matter? And this slide shows you the guts behind it, frankly.

13 Registry 208 to the right is said to store data that is retrieved with
14 respect to any given item that you want to have show up and stream into one
15 of these windows. That data is then converted by the middle item, 206, the
16 Active Desktop shell. It's converted by that into HTML code. That's a com
17 module. And it's used to actually grab that data, turn it into HTML code,
18 and store that code in the thing that's above 208, the desktop.htt.

19 So I've gotten from data that I identified, using one of those location
20 identifiers that you saw in that code, to HTML code like the code segments
21 that you're actually seeing in Columns 11 and 12.

22 And then the HTML viewer 212, it generates the composite desktop,
23 the one that we looked at in Figure 3A that has the different -- whatever
24 items are identified in those different code segments, it's going to generate
25 them in a composite desktop with them.

1 A shell UI is shown at the bottom. That is a mechanism by which you
2 would grab or identify locations for sources of content from which data
3 would be grabbed and put into the registry 208 for processing just
4 mentioned. And there's a couple of examples in the specification of that.

5 There's 406, Figure 4 if you look at it. I don't have a slide on it. I
6 should have put one in. But if you look at 406 on the middle bottom of it,
7 there is an icon that has the words add to Active Desktop. So what you're
8 seeing there is navigation to a place remote from the local place, a place and
9 an option being given to the user to add this to the local desktop.

10 That's going to inspire the activity we've talked about where the user,
11 the UI comes in, grabs data, pushes it to the registry, processes the HTML,
12 and then shows it through the viewer to the desktop. 706 is similar.

13 In Figure 7, there's another far higher level process that's described,
14 and it's described without the structure. It's described just with the
15 methodology. There they have one of the boxes, store new components in
16 data registry, and it's referring to the registry 208. So here again, brown's
17 giving you hints on how you get that updated.

18 Regardless, Figure 2 is clear. They're HTML code segments for the
19 desktop items. Those are generated and they are stored, and they're
20 consistent with what's over in Columns 11 and 12. They're HTML and
21 they're flexible. And from Brown, that's what we think is obvious.

22 It's to generate distinct HTML code segments that define various
23 display content and to control information for each of those to generate the
24 multiple desktop components of the type you see in Figure 3A with size,
25 location, resizing ability, content type, content location, the subscription, all of

1 these unbounded and flexible enabling fully configurable frames.

2 JUDGE FENICK: All right. So you mentioned -- sorry. Mr. Renner,
3 your position is that because there's a variety of things that these frames can
4 -- how they can be presented, that they're fully configurable? Can you go
5 again into the fully configurable portion?

6 MR. RENNER: I can. I'll preview and I'll say yes in a sense, it is that
7 the NIM itself is fully configurable. And so you need to have code that
8 would enable configurability of it. And so we've got the frames
9 configurable, the viewable content on it's configurable, the content that's
10 within it and being displayed by it is configurable. And so we think that that
11 would do the job.

12 But we're -- but there's -- do keep in mind that it's a fully configurable
13 frame. So the claim doesn't require all of that. We're going to look at the
14 claim. And we think maybe we have a little bit of a dispute on what the
15 claim -- it's what the construction means of the of the claim. We should go
16 to --

17 JUDGE FENICK: So you talked a little bit about that -- so, Mr.
18 Renner, you talked a little bit, when I asked about the fully configurable
19 frame, you talked a little bit about the content that's being displayed by
20 Brown's desktop component. Is that part of your argument for full
21 configurability, or is it just based on the kind of the frame and what the
22 frame -- any controls in the frame?

23 MR. RENNER: Let's move to fully configurable, if you're okay with
24 that. It sounds like that's on your mind. I'd like to make sure I'm meeting
25 you where you are, where it's helpful. If I go to the Slide 48, we will -- I

1 would like to tackle this maybe in a greater -- because there are questions as
2 to exactly what has to be fully configurable. I want to make sure that you
3 hear from us on that as well as what the content of the configuration is. Is
4 that fair?

5 JUDGE FENICK: Fair.

6 MR. RENNER: So when we think about what is subject to full
7 configuration, Slide 47 shows you the construction again that was subject to
8 the earlier proceeding. And it's this construction of NIM, not NIM template,
9 mind you. So this one is not the one that is endorsed by the Federal Circuit.
10 But nevertheless, it says that a NIM, which does occur in the claim, would
11 be a fully configurable frame. And then with one or more controls through
12 which content is presented to the user.

13 So you'll hear from us that our view is that the words fully
14 configurable should modify frame and not further. I'd like to maybe explore
15 that a minute and then we'll talk a little about developer, too, because there
16 was a dispute over whether a developer needs to take part in the full
17 development, fully configurable development, which we would disagree
18 with.

19 So if I go to Slide 50, please. You can see the fully configurable
20 frames would be rendered obvious, we believe, by Brown or with Wecker.
21 And based on the desktop component frames. So here you see Slide 50 clips
22 from Brown, lower left clip from Brown 7 21 to 26, and that's position and
23 resize. And then you got lower right clip 12 61 to 67, which would be
24 position again.

25 We think that by changing or making configurable the position and

1 the size that you have, in fact, given full configuration to the frame. And
2 that's what the claim construction would require. Not more.

3 Slide 15 also told us about this a little bit. Lines of code, you'll recall
4 from brown's Columns, 11 to 12 code segment. They showed us in lines 7,
5 11 and 15, the resizing that we're talking about as part of what this control
6 would be. And lines 11, 6 -- sorry, Column 11, lines 6 -- sorry, lines 11 in
7 code lines 6, 9, 10, 13 and 14 and 17.

8 These have frame size and characteristics also identified. And those
9 are all part of the HTML code that the user gets to define and redefine and
10 fully configure. So the frame we think is fully configurable. I'd like to
11 move the controls, but is that -- do you have questions on that?

12 JUDGE FENICK: Not for me, thank you.

13 MR. RENNER: Sure. And then we move on to what is our controls
14 fully configurable. Do you need to have controls fully configurable? And
15 we believe that the claim itself doesn't require that fully controllable -- fully
16 controllable controls are just not required by the NIM is said to have fully
17 controllable frames with one or more controls.

18 The frames themselves are not subject, therefore, to the fully
19 controllable language. It's the language chosen by the Patent Owner. We
20 don't believe it creates that limitation, nor do we think that that should be a
21 limitation. And if we're going to construe the construction, which is always
22 a little tricky, we would we would submit that requiring this would demand
23 reading out disclosed embodiments. Appendix A was an appendix to the
24 '083 patent, for instance.

25 In Slide 49, you can see some of it shows an example where zero

1 control tags exist. And in this example, there is, therefore, no fully
2 configurable control. So reading the claim to require that control has to be
3 fully configurable would be something that doesn't account for all the
4 embodiments.

5 The same is true when considering the technical overview of the
6 product identified by DoDots in advancing its secondary considerations.
7 You'll recall that it said that the claims of the patents were fully embodied in
8 the products that it would have identified. In Slide 49, again they'd
9 identified a control window showing no controls. So in the same way, if
10 that's what fully embodies their claim, then the claim really can't require
11 fully configurable control.

12 And regardless, we think Brown would meet it at code line 7, 11, 15,
13 the X, Y configurability, the resizing. We think that would be a fully
14 configurable setting on resizing. And so similarly, 7, 29 to 45. And they
15 focus on describing the configurable parameters relating to the size. They're
16 resizing the desktop.

17 Now I'd return to Slide 47. And we look at maybe even the third part
18 of that claim. Not to belabor too much, but the is it fully configurable
19 content? Because that's the third piece of it. And we think also, much like
20 the last conversation, that that's not appropriate here either. That fully
21 configurable content is not what is required when you look at the claim
22 limitation as construed here, which of course, further attenuates that it's
23 through which impassive voice content is presented to the user.

24 So to extend fully configurable as a requirement, the content we think
25 is not part of this. And the passive reference pretty much ends that. But

1 further, we think yet again that the construction is of a construction and fully
2 configured is really not recited in the claim. It's really just this claim
3 construction. At some point, we probably we would believe that's a bridge
4 too far. And yet again, met by Brown nonetheless.

5 Brown enables unbounding selection of content location. And it
6 enables subscription to that content. So we think that they even had required
7 fully configuration or configurable. It would apply and render obvious the
8 claim.

9 The last thing I'd say on fully configurable, I guess, is about the
10 construction that the Patent Owner had offered where they construction.
11 However, they offered an argument that this eliminates the Brown reference
12 because the -- this is slide again, 48, the DoDots argument that fully
13 configurable requires frames, controls and content, which we've just
14 dispelled controls and content to be wholly defined by a Dot developer.

15 There are several problems, we believe, with limiting this term to
16 wholly developed by a Dot developer. First, even if the full configuration
17 were somehow justified as a requirement for wholly defined by developer,
18 as mentioned a moment ago, it wouldn't apply to controls and content for
19 sure. But second, the fully configurable doesn't justify construction, much
20 less a requirement for a developer definition.

21 If you look again, what is claimed is network information monitor.
22 There's nothing foreclosing the perspective of a user versus or otherwise
23 with respect to a developer, not even a mention of developer.

24 And so we would look also at the construction, which was initiated by
25 DoDots where they actually offered a fully configurable frame with one or

1 more controls through which content again, not to mention a developer here,
2 nothing forecloses any particular perspectives again, or to limit the
3 configurability of the user, the developer or the combination of two for that
4 matter.

5 Not surprisingly, as this is consistent, we think with the specification,
6 which aspire to use the user of the NIMS, one of the user of the NIMS, to be
7 able to have a flexible approach and flexibility of accomplishing goals in the
8 user environment that was not bound by browser controls, which are starting
9 to sound a lot like more developers controls.

10 Even considering construction of the construction here and the plain
11 meaning of the terms in question, we think are not ambiguous and they're
12 fully configurable means what it says. These words aren't hard to -- we don't
13 think to understand.

14 And DoDots doesn't justify departure from plain meaning if you were
15 to think of them as words that need a constructing nor disavow disclaimer.
16 And we think Thorner, I guess, would apply to suggest there's no need to
17 further inject detail into a construction they offered originally.

18 And if you did construe one last, which is would be that you think it's
19 unjustified for several other reasons, which is the first the patents use
20 permissive and exemplary language. And that's now we're looking at the
21 clips on the bottom of Slide 48. You can see these were clips of instances
22 where developer was referenced, but you can see these clips make very clear
23 that the author thinks of these as optional, not the kinds of things that were
24 demanded.

25 So even if you were inclined to try to think about who might be

1 required, we don't think the specification sets us up for defining the term in
2 this way.

3 As for Brown, we think Brown deploys -- we think that certainly it
4 does not exclude Brown of our own user who deploys a new user desktop
5 environment, nor from the party who develops that to make it. We think the
6 claim is open and more HTML code examples by Brown aren't limited, but
7 are instead designed to offer the user that experience we talked about earlier,
8 which is said by Brown to be free of browser constraints in terms of limited
9 controls and branding.

10 And the same we think is obviously true to start with the freedom in
11 the developer, because if you don't have freedom at the developer level, you
12 won't have it at the user level. So that's all logically, we believe, to be tied
13 together and not bind. This is anything other than fully configurable. But
14 I'm happy to pause there and take questions or return to Wecker.

15 Okay. If I could move you maybe then to Slide 18, we'll kind of
16 continue on with Wecker. And there was the question I think you'd
17 mentioned, I just want to make sure I'll keep track of it. And if you would
18 like, I can go to it now as well. It might be helpful to you, but it was the
19 question of data structures, I think. Maybe I'll just go ahead and do that now
20 and then I'll return to Wecker after that.

21 Slide 41 is where we'll find that just to make sure I'm getting your
22 information is in time. One second, please. Okay. Yes, Slide 42, really.
23 The NIM template was the foundation for data structures. So now this is a
24 situation that's slightly different than the last. Here we had the Federal
25 Circuit confirm the construction that will be subject to the conversation and

1 the question of what is the data structure, how does it apply.

2 When reading it, NIM template, a data structure that defines the
3 characteristics of a NIM, including the NIM frame view and control
4 characteristics, and that excludes excludable applications, compiled code.
5 DoDots, we believe, seeks to exclude Brown by construing within its earlier
6 construction that term data structure as excluding HTML. More particularly,
7 they advance that a data structure is a way of organizing and storing data in a
8 computer so that it can be accessed and used effectively.

9 It refers, they say, to a logical or mathematical representation of data,
10 as well as the implementation in a computer program. So these are the terms
11 they're seeking to use to interpret or construe. I'm not sure which, but when
12 we get there, use to evaluate the words data structure.

13 You're going to hear us say that we submit that's a lot of detail that is
14 not in the construction of the claim term that they're now seeking to construe
15 or interpret. And we don't think that that's appropriate nor is it viable. And
16 frankly, we do believe, nevertheless, it's probably met by Brown in terms of
17 obviousness in any event. But let's go through the bases that I could.

18 With this, DoDots is yet again, we think, urging that these features
19 from unclaimed portions of the specification are used to unjustly inject into
20 the claims information that wasn't put in the claims and wasn't even put into
21 the construction by the Patent Owner. We, on that basis alone, ask that we
22 don't honor that argument in that way.

23 This time, they seek to further limit the portion of a construction that
24 it proposed in the Lenovo cases again. And in doing so, they focus on the
25 terms data and the term structure, getting back to basics. And those terms,

1 much like I said in the last, they're just not ambiguous. They're not
2 ambiguous alone or not ambiguous together.

3 Again per Thorner, we want to see something that is warranting the
4 need to construe when construing and adding limitations from the
5 specification here. I would submit that just doesn't exist. Unlike NIM, who
6 knows what an NIM is? Well, now we know, but it's -- that that's
7 construable. This, we're not there. We don't believe -- we don't think
8 they've made a case for that. They haven't shown disclaimer, disavowal or
9 even definition. Nothing to have us walk away from the plain meaning of
10 these words.

11 And as to their evidence, they have a single screen grab really from an
12 unauthenticated independent website. It's not even prior art and it's from the
13 present day. And simply, we'd say DoDots has not established that its
14 definition is indicative of what a POSITA would have thought at the time of
15 the critical date. Rather, it's we think clear. It's simply a circumstance.

16 The Patent Owner is unhappy with the breadth of the claim and of the
17 construction that they earlier had tendered. And amendments is a better tool
18 to handle that kind of an issue than injecting limitations. So we would
19 submit and ask the Board to deny furthering the narrowing of this claim
20 term.

21 But if we go to Slide 43, please. As to Brown, the terms are
22 demonstrated, we think obvious by Brown's disclosure of HTML. And in
23 general, HTML is structured markup. Brown generally is HTML and
24 includes data. Remember, it was generated from 208. If you recall how
25 Brown actually describes itself, it says you put data in 208. You then use the

1 engine essentially to turn that data into HTML code. So you're not losing
2 that data. That data actually goes into a structured markup language,
3 HTML, and is now in its form.

4 So Brown's HTML instructions are generated from that data stored in
5 the registry. And most tellingly, we think DoDots offered HTML as an
6 example within the disclosure embodiments that it has in its own
7 specification. You look at their patents, 803, for instance, Column 8, 36-45,
8 it discloses that the HTML is a suitable form for NIM template. And
9 likewise, Column 13, lines 10-13, they even cite the Microsoft publication
10 on DHTML in support of this.

11 And we offered testimony from Dr. Greenspun to reinforce this at
12 paragraph 58. Where he says it's clipped at center here, he says that
13 DoDots's arguments, they can't be reconciled with their own patent as the
14 record is without evidence of any meaningful difference between the
15 relevant aspects of the two languages.

16 We think that speaks both to the construction and the satisfaction of it.
17 As for the construction, it demonstrates that DoDots urge is a construction
18 that would have you exclude its own disclosed embodiments, which is
19 always a danger. And as to the satisfaction by Brown and its combinations,
20 DoDots disclosure confirms that it's at least obvious that the claimed NIM
21 template and distributed data structure featured by Brown's HTML
22 instructions are obvious in view of them.

23 So we think the record is relevant testimony as well and
24 complementary corroborating evidence. And so Slide 44 helps us with that.
25 It shows us the relevant testimony from, for instance, Dr. Greenspun. It was

1 offered that HTML documents are a tree of elements, he calls them, as he's
2 explaining this. He says that a POSITA would have known to be a
3 fundamental data structure. That's what they know about this tree of
4 elements. That's at Exhibit 1026, paragraph 60.

5 He was corroborated twice over. I think is interesting. The first was
6 with respect to an HTML standard that was cited, Exhibit 1040, page 20.
7 There it says an HTML document is a tree of elements. That's where he got
8 that. In his Exhibit 1020 -- sorry, 2016, it was also cited, we think it
9 corroborates him. It says that a data structure can include nonlinear data
10 structures, for example, a tree.

11 So we think it's without dispute that HTML is structured and we think
12 that it's created, Brown says it's created from the data that was in 208. And
13 as such the data goes into a structure. So a data structure is, in fact, what we
14 think we have in Brown with its HTML.

15 Your Honor, did I confuse or leave anything open that you'd like to
16 have me kind of speak to?

17 JUDGE FENICK: Not for me, thank you.

18 MR. RENNER: Of course. If we go back then maybe to Wecker.
19 Let's get to slide, I think it was 18. Slide 18. So we just finished talking
20 about Brown and what it does. So why Wecker? So first, if I took you back
21 to the tables, you would see that several of the patents and most of the
22 claims in them are addressed by Brown. We've used Brown and Brown
23 without Wecker. So I just wanted to make sure that didn't get lost on
24 anyone. That was purposeful.

25 Brown, after all, has that element 406, Figure 4, as well as the

1 reference in Figure 7 to another element, both of which -- 406 and 706, both
2 of which really harken back to the UI that was talked about in Figure 2 as
3 means of when you point at a remote destination, you can get data relating to
4 it that is fed into that registry and used in part to create those code segments
5 that were at Columns 11 and 12, ultimately deleting the desktop items.

6 So I mentioned that because it's actually speaking to reaching out and
7 getting remote contact. But it kind of ends there. It leaves your imagination.
8 How do you do that? Or what does it look like from the other side, for
9 instance? And it doesn't use the word template. I think it's pretty clear code
10 segment is template as, you know, that's what the template is created from.
11 But it doesn't use the word. So the magic word isn't there.

12 And we just thought it would be better to have a complementary
13 reference like Wecker. And that's really where we went to find that it found
14 it. It looks at it kind of from the other side. It says, I've got content
15 providers. And those content providers, they're able to develop and to make
16 available mobile channels. And those mobile channels can be I'll use the
17 word subscribe to just to make it easy.

18 And since it does use CDF as one of the things that describes it, it's
19 actually within its disclosure. But it's not as limited as that. It's just saying I
20 have content providers and they want to provide a channel. They want to
21 provide content, make it available, make it easily available to parties who
22 seek to identify them, who do identify them.

23 And so, it's kind of waiting. And when it receives one of those, here's
24 where it really gets interesting. 1998 is when Wecker's disclosure comes
25 into play, which is ironically the same time as the Brown reference. But at

1 that time, you may recall bandwidth was really a valuable resource and it
2 was a resource of very limited scarce. When we were all doing dial up and,
3 you know, the sound of the funny little telephone interface, it took a few
4 minutes.

5 And so everyone was looking for ways to get content down from
6 remote locations in an efficient way.

7 Well, Wecker, it proposed a way. Here it is. It's a technology that
8 says I've got content providers that want to make their channels available.
9 And, hey, I've got a great idea. I'm going to make it so that we can separate
10 the template that would be used to display and to receive and actually
11 perceive my data from the content itself. And it thinks that's smart because
12 you're not going to change the template that's there to view and all those
13 settings very often.

14 But the content itself, that might be very heavy. That might be
15 drivable. It might be a variety of things, but it's very separate in the way that
16 it would live. And I don't want to resend those GUI instructions. I want to
17 just send those once is kind of the realization you might have if you're
18 reading Wecker. And I think it's one that I recall.

19 So when we see Wecker and its theory, two things happen. One is we
20 say, well, here's a reference that actually shows the other end of the stick.
21 When I look at the stock ticker, for instance, CDF that was described in the
22 red code segment on Column 12, I know now what happens. I go and I
23 point at something and they give me back. They were ready. They have a
24 content channel for me.

25 And so I've got kind of a bit of an understanding there of how that

1 works now or a way you could do it. And additional to that, I've now got I
2 enhanced the teaching. I'm not just filling in that kind of, if you will,
3 implementation gap. I've actually got -- if I'm going to bring Brown in, I'm
4 going to bring in what it's really telling me to do and I'm going to improve
5 things.

6 And so with that, the theory of Brown is you're going to separate out
7 again that template and that content, which is 100 percent applicable, 100
8 percent beneficial to our readers of Brown. And with that, the combination
9 is born. There's a lot more detail to it, but that's at the heart of it. I want to
10 make sure we really got that now.

11 All right. So with that combination, I want to be clear. And if you
12 look back at the petition, we are clear. We go back and looked at it and
13 confirmed it that we're not talking about changing out parts of Brown with
14 implementation details of Wecker. I suppose somebody else. Some other
15 petition somewhere else might do that I don't know where.

16 We weren't talking about that. But we were proposing very clearly in
17 our petitions was Brown's got it. It's got the goods. It does what it does.
18 But what you're going to do is you're going to now understand a little better
19 about the other end of that location, I'll call that conduit. And you're going
20 to understand how to do this. Well, by virtue of splitting those two things up
21 that Wecker dearly holds to its heart to improve bandwidth, stay with Brown
22 otherwise.

23 So we're staying with Brown's. You name the other features we just
24 got done talking about. You'll see that there's confusion sewn in that this
25 conversation about, well, if you bring Wecker's, what is it called. I can't

1 remember what it's called.

2 But if you bring its details and how it writes its code, it does some of
3 its writing with script and it does some of its writing with executable code.
4 We don't want to bring that. There's no reason to bring that. And if
5 anything, that's a design choice. You can bring both, but we didn't actually
6 allege that.

7 What our allegation was, was Brown gives you a very flexible
8 environment, trying to give a user a flexible experience called the user
9 experience and stay true to that. But just bring in the concept.

10 The other is that we with that would enable creation of components
11 that are fully configurable, size, shape, position, resizing content,
12 identification, location, subscription, those kinds of things. Because after
13 all, we're still in Brown's world. We just now know how to go from four or
14 six or seven or six and get that data to activate.

15 Slide 19, if I could. So Wecker's channel is based -- it's channel based
16 subscription would have provided a way to download Brown's HTML
17 instructions, which could be stored in memory for later access. We can find
18 and we saw that was confirmed through the testimony of their expert on
19 deposition.

20 Slide 20, the similarities between Brown and its template, and its
21 HTML code segments and the Wecker, I guess, template would have yielded
22 a combination involving just simple retaining of HTML instructions offered
23 by Brown rather than replacing them with scripts. And with both Brown and
24 Wecker data structures designed for the same thing, which is to define the
25 appearance of data. We think there's a reasonable expectation of success for

1 people of skill trying to perform that.

2 Slide 21. With Brown's Figure 4 already focused on downloading
3 desktop icon components, the teachings from Wecker really just qualify
4 Brown's existing disclosure by explicitly teaching the content and
5 downloading the template. And to that extent, it's obvious from Brown or
6 the combination.

7 And Slide 22, as mentioned, Wecker separates template from content
8 to enable updates to time, critical information, those stock tickers that
9 actually names a stock ticker during peak trading, for example. And that
10 was the same example you might remember in in Brown. And that allows
11 maximum efficiency as well as the flexibility and the subscription.

12 Now, Dr. Greenspun, Slide 23 again, is where we -- Slide 22, sorry, is
13 where we are. Dr. Greenspun and Dr. Schmidt before him, they both
14 observed that a POSITA would have been motivated to apply Wecker's
15 theories to Brown and its HTML code segments for really a host of reasons.
16 I'm going to pause in this slide for the second, make sure it's available to
17 you.

18 This is the slide where, really, you see Greenspun testifying as to the
19 host one, two, three, four, five different reasons that would help to motivate
20 somebody if they're thinking about that. And they're in the bold in his
21 testimony up top.

22 One, improve data transfer times, which makes sense. Two, increase
23 usability. Again, make sense. Three, standardize interfaces across different
24 devices. Reduce client side storage requirements. And capitalize on the
25 growing need to display internet content in a customizable way, which

1 you've got to go back to '98 to get your frame of reference there. But that
2 was something that was really on the mind.

3 Slide 23. You know, it's between Brown and Wecker. We wanted to
4 point out that a POSITA would have observed commonality of the source.
5 You know, Microsoft 95 is where they're -- it's what they're playing on top
6 of commonality of more granular functional details like their use of CDF
7 files. And Slide 24, they'd observe commonality of operating systems.
8 Again, mind you, 95, but both saying that they would instill a greater and
9 greater confidence in the success of the combination for these things.

10 And in all of this, complementing what was the noted observed
11 commonality in the template function and the applicability of Wecker's
12 concepts to Brown's earlier design, which would motivate particularly
13 considering the improvements that they would have been reasonably
14 expected to achieve. So with that, we think that these would inform both
15 motivation and reasonable expectation of success.

16 If I move to Slide 25, it's the last slide I have on the combination I'm
17 going to go ahead and do right now. I would say here's this point of
18 confusion that I had earlier referenced, and it probably doesn't bear talking
19 about too much. But it is the case that here you can see DoDots was
20 expressing concerns over the perceived challenges with integrating Wecker's
21 more complex scripts into a Brown system with Brown's personal computer.

22 But as you recall, that's just not the combination that we were
23 proposing in the petition. The proposed combination applies only Wecker's
24 theory and separate template, the visual appearances and the frames is what
25 that really addresses from data. So it's due to promote the efficiencies

1 among other benefits, the Slide 22 benefits, not to change Brown's
2 implementation detail, which happens to be working HTML markup code
3 segments into scripts.

4 That would be unnecessary to enjoy those benefits in Wecker's theory,
5 and not what we were proposing and frankly, we think it's more likely a
6 POSITA would do what we're proposing.

7 So if there are questions about any part of the combination, I am
8 happy to fill them. Otherwise I would actually move us to secondary
9 considerations at this time. And that's Slide 135 for your benefit. As I'm
10 getting there, any questions would be -- okay.

11 So, secondary considerations. I made the cardinal sin I didn't turn on my
12 timer. Can I be reminded of the time. Thank you.

13 JUDGE FENICK: You have about 12 minutes left in the hour that
14 you wanted to use in your primary speaking portion.

15 MR. RENNER: Thank you very much. Okay. So Slide 135. As to
16 secondary considerations, DoDots has failed to offer sufficient evidence to
17 substantiate its claims that a secondary -- that objective indicia of non-
18 obviousness should negate the strong showing we believe to exist for
19 obviousness.

20 It's important to recall the legal framework here that to set aside or
21 overcome a strong showing of obviousness as here. The evidence of
22 secondary considerations really must be very strong and in relative terms
23 that is an examination of the record evidence reveals anything but on the
24 merits.

25 There's two categories of problems, first DoDots fails to establish

1 strong evidence of any of the theories they advance industry praise
2 commercial success on felt need more of the evidence that they provided
3 fails to establish nexus just there is no better.

4 They asked for a presumption of nexus but failed to demonstrate co-
5 extensiveness, and missed that one pretty badly because there's some
6 significant items in the products that are acknowledged as such but missing
7 in the claims. So there we don't believe entitled to the presumption that
8 they're seeking and there's no showing of specific nexus of the praise or
9 commercial success or to the particular showings that they have. So they
10 need that nexus in order for this to activate.

11 Slide 136. I'm going to hit nexus first. I'll do it in that works. I think
12 it's the proper way to do it. The nexus between a product and claim to be
13 presented, for that to exist, it is not only necessary for the claims to be
14 practiced by the product, but for the product to be captured by the claims.
15 You've all heard this before. And so I won't belabor too much.

16 I'll just say that during the deposition, we learned from Dr. Selker, the
17 expert for DoDots, that he drew his expressed conclusions. We can see a
18 testament of her left of nexus based solely on a comparison of the claims to
19 the DoDots technology. That analysis is flawed. It's insufficient.

20 It's incomplete because this conclusion was based on a lack of
21 information bearing on the key part of the inquiry, which would be whether
22 or not the product features are actually in the claims as well. It should be
23 given no weight, we believe, on the question of nexus.

24 Critically, Dr. Selker was the only witness DoDots offered to relate
25 the claims to the product and vice versa, and therefore to support nexus.

1 To this point, I just want to make sure the record is not confusing. He
2 did cite to John Kembel testimony, Exhibit 2021, the declaration. But
3 Selker, in doing so, was looking to him for his perspectives on long felt
4 need, praise and history of DoDots, not the claim comparison, which we
5 confirmed that Kembel did not actually perform in any event on his
6 deposition.

7 So we see that DoDots not only failed to provide evidence of co-
8 extensiveness, but it also failed to demonstrate that the critical aspects of its
9 commercial Dots were indeed captured by the claims. And despite this
10 failure, they asked for a presumption.

11 But without this kind of evidence that they don't offer a basis to
12 presume that praise, for instance, attributed to the product generally was the
13 result of the claims. It might instead have been the product of those
14 unclaimed features or other things that we'll talk about. And the same is true
15 of other secondary considerations.

16 So this comes into focus when we actually consider that they not only
17 fail to demonstrate co-extensiveness, but they developed a record that we
18 believe actually demonstrates kind of the opposite, that there's an existence
19 of key unclaimed features in the product. And we'll look at those in the
20 coming slides.

21 Speaking of Slide 137 here, we see evidence of unclaimed features is
22 actually significant and the features are significant. One is the unclaimed
23 feature of visual design. Now, that's not on this claim. That's on the slide.
24 But I wanted to point out before we get into the details of what is on the
25 slide, and that is the deposition of George Kembel. He's co-founder and

1 CEO.

2 His deposition acknowledged that the visual design of this particular
3 product was an important ingredient for its success. That's cited in page 31
4 of our reply. He remarked the, quote, visual design of the Dots is one
5 ingredient why DoDots was successful.

6 So the amount of success, for instance, or praise that comes, it's just
7 not going to be discernible as to how much of it would flow for that
8 particular unclaimed feature. But that's not really the star of the show. The
9 more prominent unclaimed feature is the HomeDot.

10 If you see the lower left testimony from John Kembel, he is a brother
11 and co-founder to George and the CTO of the company. He confirms that
12 HomeDot was something a user needed. He credited HomeDot for enabling
13 a user to open importantly Dots in the first place to close them and to share
14 them. And he called it the face of the client. Simply without it, Dots don't
15 work. And even the patents before us today, they seem to endorse criticality
16 of these HomeDots.

17 If you look at Figure 6 of the '083 Patent, you'd see direct lines
18 between the HomeDot, and it's literally identified as HomeDot, and each of
19 the Dots that are actually doing the work, the operating Dots. That line is
20 there to contrast with a dash line. It's a needed line. It's a required
21 connection between them. The specification proclaims it essential.

22 The specification says that enablement of those Dots that are
23 connected to the HomeDot is based on whether the HomeDot client has been
24 installed. '083 column 21, lines 45-48, that's column 21 lines 45-48, I quote,
25 assuming that the computer is not enabled, i.e. that the HomeDot client

1 application 119 has been installed. So they're doing a condition precedent to
2 using these computers in the Dot system, their application for the HomeDot
3 application being installed.

4 And we see similar references, for instance, the column 22, 1-15.
5 They reference a Dot hyphen enabled terminology. All this emits prolific
6 mention within the specification in the '083 Patent alone. The specification
7 mentions HomeDot over 250 times. It mentions applications media viewer,
8 which is synonymous with HomeDot another 25. But as can be seen, the
9 importance of this is just -- it's just not really debatable.

10 And it's surprising to see that it's featured so prominently in DoDots
11 marketing literature. It's the first and front and center of the most
12 prominently shown objects. For instance, in the Patent Owner Slides 17 and
13 18, which are the slides that are there. We didn't include in ours to show the
14 marketing literature that was being used of day.

15 So this was not something that was a behind the scenes feature. It was
16 something that was out in front. It was something that was seen as
17 necessary. It was something that was seen as essential to the inner workings.
18 Not the kind of thing you would know how to deal with success or praise or
19 these kinds of commercial success for that matter without accounting for it.

20 138. They also appear to -- HomeDot also appears to be subject to
21 other Dots patents other than the '083, '407, '545 are subject to our hearing
22 today. The '467 and '306 patents speak to it. Claim 1 speaks of a whole
23 NIM and claim 16 is shown here also bearing on the issue. But this list isn't
24 extensive, I'm sure if we look more into their patents. But after all, that's it's
25 burden here. And they're supposed to be the ones bringing forward evidence

1 of co extensiveness if they want nexus. And they've not done so.

2 They've certainly not shown and not brought evidence to bear that
3 their claims actually do include HomeDot, for instance, despite this being at
4 issue. So this record is, we think, pretty clear on the point that it's omitting -
5 - the claims are some of the product is -- the claims are omitting some of the
6 product's really important features.

7 Final point on nexus. It's always concerned me when I see someone
8 with multiple patents saying that all of the patents deserve nexus, a
9 presumption of nexus. They are all drawn naturally to independent points of
10 novelty, that's just part of our law. They have to be patentably distinct to
11 one another. But the presumption requires that there needs to be co
12 extensiveness as between the claimed subject matter of a given patent and
13 the products with bears on.

14 When I have three different patents pointing at the same product, how
15 do I know how to attribute in which one of those patents is deserving, if any
16 of them? And so if I think there's something deserved, I know it's one. And
17 I don't -- I think there's a problem here as well. And again, with the Patent
18 Owner owning the burden of demonstrating and appealing to the Board for
19 application of that presumption, we see nothing of that type here. And I
20 submit to you that it's got its own issues.

21 I'll go a little more quickly here in the last couple of slides, which all
22 deal with the specific points of secondary considerations to say that the
23 industry praises three pieces of evidence. The first demigod is what it's
24 called. It's an award, Exhibit 2041, page 7. That's not in the slide. It's
25 featured on Slide 74. This award, when you hear it, to know that it's not

1 about the technology, it is about a presentation and how well someone
2 presents.

3 On the page 7 of the document where that award is described, where
4 the award recipients are, it says, and I quote, the presenters race the clock to
5 demonstrate products in eight minutes or less. It is a difficult proposition yet
6 each year, a rare few transcend the pressure and manage to present with
7 poise, passion and clarity. That's how they describe that award.

8 That is not an award that is looking at the technology and saying, my
9 God, they've broken down the walls. We've got a new technology here. Not
10 suggesting there may be other ones, but this is the word that was brought in
11 to demonstrate that. We don't believe it does.

12 The second and third pieces of evidence are shown here or they're
13 referenced here. One, Tom Kosnik, Stanford professor. Importantly, also
14 someone who served on Kembel's board of directors. He offers one, and the
15 other is Heidi Roizen, SoftBank, who agreed to fund and gave the praise, if
16 you will, after funding. As mentioned on the slide and in the briefing, it's
17 hardly surprising to see Dots would be praised by its own board of directors
18 or an investor.

19 The fourth piece of evidence is Dr. Selker. But his evidence, we
20 characterize it here as really praising Microsoft. He hadn't even heard of
21 Dots we find in his testimony, on his deposition until this case. He had very
22 much heard of Microsoft and was all about Microsoft's contribution. So his
23 testimony is not praise of Dots.

24 Commercial success. No evidence of market share growth and market
25 share replacement of prior sales. Nothing here of those types. Asked

1 questions of them were even profitable, couldn't get an answer. So we look
2 back at Slide 142, and we found at least there was some testimony in the
3 prior proceeding IPR 2019-01278, where they're then in-house counsel had
4 confirmed the lack of profitability and the expense they're running. Slide
5 140, please.

6 JUDGE FENICK: Sorry, I don't want to interrupt you, but I want to
7 tell you that your 60 minutes is up. So you can continue, but you'll be into
8 your rebuttal time.

9 MR. RENNER: Thank you, Your Honor. I'll probably take five more
10 of those minutes, but understand. They're mine. I'll only have 10 then or
11 whatever it may be. So I appreciate the heads up.

12 Long-felt need. Evidence is equally, we believe, unavailing. DoDots'
13 evidence suggests prior contemporaneous recognition of the same problem
14 by other companies and better performance by them in getting to a solution.
15 How does it deal with its actual presentation? It's three articles, all after the
16 critical date, each discussing Dots.

17 The test, of course, has to account for the failure by others, and we
18 don't think that does the trick. So as foreshadowed, we don't think that the
19 secondary considerations evidence comes in here, and we are left believing
20 that there's a strong showing of obviousness.

21 So thank you for the warning on time. I would ask my colleague,
22 H.J., to come up and complete our conversation. Any questions before I step
23 aside? Okay. Thank you very much.

24 MR. IN: Thanks, Karl. Your Honors, this is Hyun Jin In for
25 Petitioner. So I know we're eating into our reserved rebuttal time now, and

1 so I'll try to be brief. Just want to very briefly mention our other set of
2 grounds that we have here. If we could quickly jump back to Slides 2 and 3
3 that Karl mentioned.

4 You will see that all three of our petitions rely not just on the grounds
5 based on Brown and Wecker, as Mr. Renner just discussed at fair length, but
6 also on the completely independent set of grounds based on the references of
7 Shimada and Buchholz.

8 With regard to Brown and Wecker, you just heard from Mr. Renner
9 how DoDots tries to change the narrative by finding fault in arguments we
10 never really made. And DoDots takes a similar approach here with respect
11 to Shimada and Buchholz. And such approach is no more credible here as it
12 was for Brown.

13 Quickly, if we could jump to Slide 90, we can see how Shimada
14 discloses using something called screen configuration data, which we have
15 mapped to the claimed NIM template. And this enables the outputting of
16 various screen configurations to the user. And we can see an example of this
17 on Slide 90, where we see content and various custom controls provided to
18 the user within a configurable frame.

19 And if we can move up to Slide 91, we can see that Buchholz
20 discloses user devices, which it refers to as subscriber units that are
21 configured to receive, store, and display template data, which are
22 downloaded as part of packs. And now if we can go to Slide 93, Dr.
23 Schmidt explained that a POSITA would have been motivated to combine
24 these two references by, and I quote, implementing the screen configuration
25 data of Shimada into the subscriber units of Buchholz.

1 Along these lines, this panel noted in the Institution Decisions, for
2 instance, at page 39 for the '083 Patent, that the Petitioner proposes a
3 combination where Shimada's screen configuration data is used or
4 substituted as a template in Buchholz.

5 And as confirmed through Dr. Greenspun's testimony, which we see
6 on the bottom of Slide 93, Petitioner relies on the structure of Buchholz to
7 implement the techniques of Shimada, and not the other way around, as
8 DoDots appears to argue, again in an apparent attempt at trying to shift the
9 narrative here.

10 And ultimately, the proposed Shimada-Buchholz combination allows
11 the user device in Buchholz to enjoy the benefits of Shimada's screen
12 configurations or templates with little to no modification. And this is
13 because, one, both Buchholz and Shimada similarly disclose the use of
14 HTML-based templates, which we summarize on Slide 95. And two, both
15 are similarly directed to reducing download times in low-bandwidth
16 environments.

17 And as Mr. Renner just noted, was the case for Brown and Wecker,
18 this was certainly the case for Shimada and Buchholz as well, which are
19 both from the dialogue days of 1997 through '98, that timeframe. And we
20 summarize this in Slide 92.

21 So with that, unless there are any questions from Your Honors, we'll
22 reserve the remainder of our time for rebuttal.

23 JUDGE FENICK: Thank you so much, Mr. Renner.

24 MR. IN: How much time do we have for rebuttal, Judge Fenick?

25 JUDGE FENICK: I have that you have 10 minutes left on rebuttal.

1 MR. IN: Okay, perfect. Thank you.

2 JUDGE FENICK: This time, I think because of the length of the
3 proceeding, we're going to take a five-minute break. To do this, my
4 recommendation is that we all don't leave this virtual meeting, but instead
5 we stop our video and mute, and then we'll come back. Let's say we come
6 back at 2:20. And we'll start again at 2:20. Thank you.

7 MR. IN: Okay. Sounds good, Your Honors. Thank you.

8 (Whereupon, the above-entitled matter went off the record at 2:13
9 p.m. and resumed at 2:21 p.m.)

10 JUDGE FENICK: Thank you very much. We're going to resume
11 now this oral hearing. And our next order of business is to hear from the
12 Patent Owner. Mr. Reynolds, how much time would you like to take --
13 would you like to reserve for your surrebuttal?

14 MR. REYNOLDS: The same, 10 minutes.

15 JUDGE FENICK: 10 minutes?

16 MR. REYNOLDS: Yes.

17 JUDGE FENICK: All right. I'll endeavor to tell you after about 60
18 minutes have passed, so you'll have five more minutes left. And I'll try and
19 do that, and I'll break in with apologies in advance for doing that.

20 MR. REYNOLDS: No, please do. I'd appreciate it.

21 JUDGE FENICK: All right. Please begin when you're ready.

22 MR. REYNOLDS: Sure. I promised myself that I would start with
23 background, and I really think it's important to do justice to the inventors on
24 these patents and to explain where they came from, how they developed
25 their solution. And I'm going to spend a few minutes on that. There are a

1 few things I just have to address off the top, because they're really important
2 and if I don't get to them -- I have to make sure I do.

3 The secondary considerations stuff, you mentioned the word burden
4 numerous times. Okay, it's their burden that they've failed. The DeMarco
5 (phonetic) case that they cite says that once you establish that claims read on
6 a product that's successful, there's a shifted burden for the challenger to
7 come forward with evidence. They've done none of that.

8 Everything about secondary considerations in this case from them is
9 not evidence, it's attorney argument. So I ask you to look at the DeMarco
10 case and the other cases we cited, but that's a complete mess. The burden is
11 theirs.

12 I'm troubled by some of the stuff they do here. On reply, we made
13 point, you know, if you recall, they said that Dr. Selker said you could
14 download HTML. On reply, we said that wasn't his testimony. He was
15 talking about storing HTML. And here we are at the hearing.

16 If you look at Slide 19, they were saying he's talking -- they say he
17 testified about downloading HTML. And if you look at Slide 19, it has his
18 testimony. Sorry, that's their Slide 19, where he's talking about storing it.
19 So, I mean, we pointed this out and they're still there. So that's an issue.

20 This claim construction stuff, it's ironic that they claim we've done
21 claim construction. We have no claim construction in our briefing. We
22 don't say disavowal. We don't do anything. But ironically, that's what
23 they've just done. None of this stuff about whether the configurability is in
24 the claim or controls in the claim or not, it's not raised in any briefing
25 whatsoever. And it was also addressed in the Federal Circuit in this case.

1 The Federal Circuit addressed those matters as well as whether it's
2 from the developer point of view. And that's at 2021 U.S. App Lexis 36126.
3 Okay. But either way, it's all attorney argument. It's not in the record. So
4 once we're done here today, it really isn't going to amount to anything.

5 And then there's a signal obviousness reference. They haven't
6 supported at all throughout these proceedings. They didn't put it in their
7 reply at all. You know, they just kind of leave it lingering out there. And I
8 think they just leave these arguments lingering out there because, as I'll
9 show, they have these arguments that go all over the place. And they don't
10 want to narrow the record. They just want to have all these approaches out
11 there that maybe we respond to, maybe we don't.

12 But the Yeida (phonetic) case we cited points out a huge problem with
13 that, those single obviousness references. They use this language. A
14 POSITA would have recognized or found obvious between 35 and 45 times
15 per petition. Those are two different standards.

16 One is what a reference discloses, which would be an anticipation
17 argument. And the other is what a POSITA would have found obvious. But
18 they don't do any analysis on that obvious part in any of those 35 to 45
19 references. And if you look at the Arendi case, Arendi S.A.R.L v. Apple,
20 that's 832 F.3d 1355. They set that out.

21 And then there's a Shimada Buchholz reference. I mean, it's not a
22 combination. We'll talk about it, but it's just not really a serious attempt.
23 And they don't spend any time on it on the replies. And they, you know,
24 almost skipped over it in their response. So they've never treated it
25 seriously.

1 But anyway, we'll get to it because, you know, I'll explain why those
2 references are in that. But those are just some of the things I noticed. I
3 mean, their demonstratives look at their petition and reply. Everything in
4 there comes from those two. So, as you heard counsel talking, anything that
5 wasn't in there and there's a fair amount, it's not in the record and it's just
6 attorney argument.

7 Okay. So I would like to just take a few minutes, if I could, to talk
8 about the background of where these patents came from. These are
9 pioneering patents, full stop. Most patents are improvements. These patents
10 describe something that did not exist until the Kembels created it.

11 And the thing about pioneering patents is improvement patents are an
12 accomplishment, but pioneering patents are a legacy. This is the inventor's
13 legacy. These inventors have no financial interest in the patent. They testify
14 to that. But it is an important part of who they are.

15 John and George Kembel who testified, if you read their deposition
16 transcripts, you're going to find they're very credible. And they're very
17 proud of what they accomplished. They're also active in the startup
18 community. And so, this is proof of their ability to, you know, advise on
19 folks who are creative and who are developing products because they did
20 this. But for the tech bubble bursting, the world would have looked
21 differently, very different, without the work that these folks have done.

22 So if we look to DoDots demonstrative 2. I'm happy to go in any
23 order, but what I propose is some of the background, which will just take a
24 couple of minutes. And then I'd like to go and talk about just some of the
25 substantive failings that we've identified in our surreply for these petitions,

1 which makes them just legally insufficient. And then we'll get into, you
2 know, some of the details. But I'm happy to jump from place to place as the
3 Board would like. Just please, you know, tell me to stop talking and I'm
4 happy to go there.

5 If we go to DoDots 4, I should have made this timeline longer
6 because, you know, we're in 2024. So we're looking back 25 years here.
7 And that's longer than most IPRs. And we have this era in the 90s where the
8 web -- the internet was the browser. We know that. We'll get to slides
9 showing how everybody hated the browser, but that was the internet. And
10 Active Desktop was released in 1997. And this isn't some hidden piece of
11 prior art. Microsoft put it on every PC in the world that came as part of
12 Internet Explorer.

13 So, three years later, look what happens. DoDots bursts onto the
14 scene as investments, industry praise, adoption, huge user base. Everyone
15 looked at Active Desktop and looked at DoDots and said, that's what we
16 need. That's how we get out of the browser. And so that is why secondary
17 considerations are demonstrative in this case. Because sometimes you've
18 got prior art that hidden prior art where it's hidden somewhere, you know, in
19 a university library, not here. Active Desktop was very well known.

20 I remember in the formative years of my computer nerd. I'm being
21 excited about Active Desktop. But, you know, as with everything Microsoft
22 was doing at the time, remember Windows 95, Windows NT, Windows 98,
23 there's always supposed to be a paradigm change. And it just never ended
24 up being that way. And it wasn't. So it's important to look at this and say
25 that in order to invalidate these patents, you have to look past all of these

1 secondary considerations.

2 And again, I didn't show on here the tech bubble bursting. I mean,
3 that's what did it. It's a six sigma event that but for that goes DoDots. If we
4 go to Demonstrative 5, in the petition, they rely a lot on these high level
5 compatibility arguments. So both references mentioned Windows 95 or both
6 references mentioned CDF. But if you recall, this is the Y2K era. I mean,
7 we didn't even know that our own applications were going to work
8 overnight.

9 So if you see here a sticker Best Buy had, you put on your computer,
10 you know, to remember to turn it off for the new year. And, you know, as
11 an article here in CNET notices, it took years. Windows wasn't even
12 committing to having Windows 95 fully compliant. So the computers didn't
13 just work together because they mentioned CDF or because they both
14 mentioned HTML.

15 If we go to DoDots 6, it's our pleasure to introduce Dr. Selker. We
16 submit that he is a very credible witness. Sometimes you get experts that are
17 dodgy in depo. I encourage you to read his deposition. He's the complete
18 opposite. So much so that he caught himself complimenting Microsoft.
19 And, you know, Petitioner points this out every time they can. What he
20 really accomplished from Microsoft or what he really said on Microsoft is he
21 complimented what they are trying to do.

22 He mentions that Bill Gates was hoping to kill the browser. And as
23 we'll see in just a second, Bill Gates failed to do that. But he gave a credible
24 response. And I ask you to just please read page 31-36 of this deposition,
25 because it is just a very credible off-the-cuff surprise when he says, look at

1 what these patents did.

2 Yeah, he didn't know about DoDots. Who cares? That's not -- I
3 mean, not everybody in the world has to know about something for it to be
4 famous or successful. But he looked at these patents and he was surprised
5 he didn't think that this was going to work and they made it work.

6 If we go to DoDots 7, this was the internet. And I think counsel
7 pointed to this. I mean, dial-up modems, even computers were using dial-up
8 modems at the time. They were usually working off of like, you know, 14.4
9 kilobit modems. And, you know, that means that HTML files took like 6 to
10 7 minutes on a desktop to render. Then there are these mobile devices. And
11 these mobile devices, this Palm Pilot, this two-way pager, that two-way
12 pager is the exact pager described in Buchholz.

13 These devices were extremely limited capability. They couldn't put
14 multiple fully controllable frames on them if they wanted to. But they're in
15 every obviousness combination in this case.

16 If we go to DoDots 9, this is Petitioner's second expert, Dr.
17 Greenspun. He's talking about prior to 2007. Prior to 2007 introduction of
18 the iPhone, the typical mobile device was ill-suited to rendering
19 conventional web page. Okay. This is -- I think I've identified seven. This
20 is the first fundamental weakness that defeats every ground in the IPRs.
21 There's no reason to combine these references because the structure, they
22 claim they rely on the structure of Buchholz, which is a pager.

23 And Wecker was very concerned with sending the smallest bits of
24 information possible to a PDA, personal data system. But that was the
25 image I showed before. None of the combinations, none of the

1 combinations work with their core reference RAM. And we'll get into why
2 they were inoperable. And even if you did squeeze them together, they
3 would defeat its core purpose. But this is their expert telling you. I mean,
4 it's almost a decade after the patents and they still couldn't do what the
5 combinations are proposed.

6 So if we go to DoDots 10, this tells us what everybody knows. The
7 internet was the browser in the late 1990s. Netscape had 70 to 75 percent of
8 the market. And we all know what happened there. Microsoft put its full
9 focus on unseating Netscape. Why? Because that was the internet at the
10 time. It's so much so that we all know the famous antitrust case that came
11 out of that.

12 So where did the Kembels come in? This is exactly where they come
13 in. If you look at DoDots 12, you see these gentlemen. John Kembel and
14 DoDots 13. So this is his deposition testimony, which by the way, when
15 Petitioner talks about secondary considerations, he's ignored their depo
16 testimony. We've cited it. I think if you read through it, they're very clear
17 that the entire ecosystem of what they designed, everything ran through the
18 Dot template. But anyway, I digress.

19 John Kembel says, we realized existing web browsers had significant
20 limitations. It trapped content and monolithic documents. They wanted to
21 break out of, and what he says here is the page-based browsing model.
22 That's going to be important when we talk about secondary considerations.
23 And I don't know much about the history of the internet, but I do recognize
24 Tim Berners-Lee as kind of like the founder of the internet. And even he
25 hated the browser at the time. They wanted out.

1 If we go to DoDots 14, this took an ah ha moment, but this was the
2 spark of genius that led to these patents. Now we know for obviousness,
3 you don't need a spark of genius anymore, but even if that was the standards,
4 these clear it because he sat there and said, we need a fully configurable
5 frame.

6 Okay. Now I just want to pause there because Petitioner mentions a
7 lot about the fact that you could pull, drag the frame and resize it and move
8 it on the screen. You could do that with Netscape. If you hit the little do
9 double screen button at the top and make it smaller, you can put it anywhere
10 on the screen you want. That's not the problem they were solving. And it's
11 not in the claims. We'll bring it back to the claims because we have to, but
12 I'll explain how it's in the claims.

13 But just from the starting point of it's a fully configurable claim
14 because you can move it around or drag the box. I mean, that's non-starter.
15 But he explains right here, and that requires something special to make the
16 Dot work. And the Dot is that NIM that folks see. You needed to be able to
17 define the Dot or make a template for the Dot. We call that a Dot template
18 or a Dot definition.

19 The Dot template is in every claim. Even these patents they went out
20 and found on -- in their reply, the two that they cite in one of their
21 demonstratives, they never developed the argument. And so we were going
22 to object to the slides, but we decided not to. Because when you look at the
23 claims, the Dot templates were cited like five or eight times in each of those
24 claims. They're all based on the Dot template, all of the patents. I mean,
25 they're directed to the Dot template.

1 That's what makes it possible because if you look at -- Dr. Selker has
2 some great testimony on this. In the '407 declaration, that would be DoDots
3 2010, I ask you to just look at a few couple paragraphs. I think it's 48-52.
4 And he describes how Active Desktop is tied to Microsoft and Internet
5 Explorer. That's tied to the operating system and parts of the operating
6 system. The Dot template wasn't. It's just a data file that can be sent and
7 moved around.

8 And so it's easy to develop. It's easy to share. It's easy to move. It's
9 very lightweight. That is what made these inventions, the Dot template.
10 And you don't need to take my word for it because we've cited in our
11 surreply the testimony of John Kembel, George Kembel, who explained that.
12 And then Dr. Selker, they completely ignored this testimony, but he goes
13 through in his declaration and maps it onto a representative claim.

14 So anyway, I got off a little bit on the side tangent there. But if we go
15 to DoDots 15, these guys became famous for what they did. This is Fortune
16 Magazine. And I want to point out here the date. So it's February 21, 2000.
17 So this is about two and a half years after Active Desktop was released. And
18 they're quoting Bill Gates as saying he wished the browser would go away.

19 So we've got whole publications about how we get this browser to go
20 away years after Active Desktop. The thing is nobody thought Active
21 Desktop made the browser go away. What they did is they hid the box that
22 goes around it. And then they stuck it on the desktop and you couldn't even
23 use it until you closed all your other windows so you could see it. But
24 everybody was still solving this problem in the year 2000.

25 And this recognizes that the winners of people who market on the

1 internet would turn to companies that learn to use tool or would be
2 companies that learn to use tools like DoDots who can wean their users
3 away from the browser. They succeeded what Bill Gates and Microsoft
4 failed, no question.

5 On DoDots 16, another prominent publication, Forbes. This is
6 interesting because it's kind of a battleground that both sides have chosen.
7 We both cite this. But one of the companies Petitioner cites, this Maze
8 Limited company, where they said they solved it the same way DoDots did.

9 Well, they have a fellow named Roy Stringer who's got a fancy title,
10 chief hypermedia architect. And he said in that exhibit, he admitted it will
11 be a struggle to get the world to scrap the browser. He wasn't there. And a
12 lot of the other companies, some of them were trying to do these 3D things.
13 Some of them were trying to do these global maps of internet pages.

14 But remember, I mentioned the important part about the bookification
15 of the internet or the page by page. That's what the symbols wanted to
16 avoid. So this article finds one entity did it. One entity, and that was
17 DoDots. What they managed to do, they managed to eliminate the browser.

18 DoDots 17. If you're anything like me, this is unfathomable to think
19 you'd see something like this in the early 2000s. Now, yes, you could have
20 multiple programs on Windows. But remember installing these things?
21 They're all so codependent on the operating system and working with the
22 DLLs, the display DLLs. And they were heavy. And you had to have
23 multiple disks sometime.

24 If the tech bubble hadn't burst, these things would be popping up
25 anytime you wanted. Because they'd be passed in these Dot template files,

1 which are really slick. They're fully branded by the companies, MySimon,
2 Merriam-Webster, CNET, and then the ABC networks even got involved.
3 It's just, it's unfathomable what the world would have looked like but for that
4 Six Sigma event.

5 If we go to DoDots 18, we see that the Dot template, you know, that's
6 what really allows all this to occur. So one of Dr. Selker's explanations is,
7 and I'm quoting from paragraph 48 of his declaration, specifically Brown,
8 that's Active Desktop emphasizes a special HTML viewer contemplated by
9 Brown, runs programs, interprets ActiveX, takes files from the client,
10 integrates those programs into Microsoft Windows OS on specific Windows
11 personal computers.

12 This is different from the invention of the '407 Patent, where the NIM-
13 NIM template architecture is designed not to engage with the operating
14 system functions and can work across platforms. That's why the products
15 are all embodied by the Dot template, because it allows them. That's what
16 allows these things to work as they do.

17 So now let's talk about the patents and the claims in DoDots 21.
18 Unfortunately, I put some typos in here. It's networked information monitor,
19 and then it's not a nominator, it's a monitor on the right side. But the rest of
20 the constructions, but for the bullets, are true. And so I really want to talk
21 about this right now, because we don't even have to get to that Federal
22 Circuit decision. We don't even have to worry about the new attorney
23 argument on claim construction. But let's see what we're doing here.

24 So the template defines the characteristics of a NIM, including the
25 frame, view, and control characteristics. And it's nimble, excludes that

1 heavy executable code. And that allows a NIM to be instantiated, a fully
2 configurable frame. Well, the patent tells you that that's how these two work
3 together.

4 The '407 Patent says, each NIM defines the characteristics -- sorry,
5 each NIM template defines the characteristics of a specific NIM, including
6 the fully configurable, there's the word, fully configurable frame
7 characteristics, viewer and control characteristics, and content references.
8 That's what makes it fully configurable. Not that you can move it around the
9 screen, not that you can resize it. It's that you can define all the important
10 elements that show up in that NIM.

11 And this is -- well, I'll get there in just a second. Before I do, DoDots
12 22 is a visual representation. This is how lightweight the NIM templates are.
13 They're just these data structures. And then the NIMs are the things you see
14 on the screen. DoDots 23, this is a visual exercise.

15 So we dumped the claim constructions into claim 1 of the '545 Patent.
16 And then, you know, put some brackets just so they tie together. But it's just
17 more of a visual exercise. The fully configurable part is, pervades every
18 aspect of every claim in these patents.

19 And so, this is the second fundamental weakness that defeats every
20 IPR. Because what you'll see is they go through and they pull out a term
21 like control, or view, or frame, and then they try to find something in Brown
22 that meets it. They ignore the term characteristic because all they can do is
23 find allegedly the thing itself. And we'll talk about that.

24 But even if you credited those little, you know, resizable X and Y, like
25 even if you credited that -- like, so resizable X and Y is a problem because

1 it's a characteristic of the frame. It doesn't say anything about a control.

2 Like, I can resize myself, but that doesn't tell me what the control is, what I
3 need, or how I stretch myself out. So the resizable, you know, that isn't a
4 control characteristic.

5 But even if those were in there, they never tie it to something that
6 makes a fully configurable frame. What they do is they set off a section
7 where they talk about fully configurable frame in their petitions. And then
8 they just talk about the user can move it around. And so, they're not being
9 faithful to the claims.

10 The claim language has to be read in context. The entire claim has to
11 be considered for obviousness. You can't just start pulling out these words
12 and matching words. And in fact, that's been their full approach. Match
13 words across references, match words in the claims, and that's enough. And
14 I'm going to show you how I think they did that in just a second. But I just, I
15 urge you to consider the context of these claims and what makes them fully
16 configurable. And this is enough to defeat all the petitions right here.

17 And Dr. Selker notes on DoDots 24, his testimony about how the fully
18 configurable frames allow you to get out of the browser. And on DoDots
19 25, this is the testimony I pointed you to earlier. I was somewhat surprised
20 by these patents in that regard. They accomplished something he said I was
21 never convinced anyone was going to overcome. Okay. So now I want to
22 get to the third fundamental weakness of these petitions.

23 JUDGE FENICK: Before we leave this fully configurable argument:
24 I was looking at the specification of the '083 Patent. And it looks like fully
25 configurable -- sorry I need to get to the column I'm talking about. In

1 column 2, the background of the invention. It has the discussion which kind
2 of echoes what you're talking about with respect to a web browser having
3 captured the information of the internet. And that a user, this is -- sorry.
4 Right, the content provider.

5 So column 2 of the '083 Patent, line 45, says “content providers and
6 end users have limited tools to alter the browser in which the content
7 appears. That is, the controls associated with the browser are not fully
8 configurable. Thus, the vendor of a browser is in a position to brand the
9 browser and regulate the controls associated with the browser.”

10 So does this mean that we should think of fully configurable as an
11 ability to not have a brand? In other words, not to remove any kind of brand
12 and to regulate controls associated with content provided in a frame? It
13 sounds like your argument is that fully configurable is more expansive in
14 some way because you have to read the claim language. But I'm not sure -- I
15 understand your argument that fully configurable is broader than something
16 that you're saying that the Petitioner is arguing. But I'm not sure the breadth
17 of it.

18 In other words, , at some point we have to draw a line around fully
19 configurable. It doesn't look like, you know, 3D is supported in this
20 specification. That looks like a place where you can look to see what is fully
21 configurable mean and what is not fully configurable. Do you agree with
22 that? Is that in accord with what you've argued here?

23 MR. REYNOLDS: So I think it's an illustrative example. Certainly,
24 one of the things that you couldn't do with Internet Explorer is pull off the
25 branding and put your own branding. And so, by controlling the content of

1 the frame itself, like that allows you to brand it. But our position on all the
2 cite stuff to the patent is, I mean, that's a claim construction issue.

3 And even when you're in a claim construction issue, I mean, you got
4 to get down to the disavowal question or whether there's -- so, I mean,
5 pointing to certain parts out of the specification without giving context,
6 whether it's important to every embodiment, whether it's a different
7 embodiment. I mean, just taking things here or there can't control the claim.
8 That's a claim construction issue. But I don't think we have to get there. I
9 do think that this part describes what someone can do.

10 When we showed you that image where MySimon is on the bar, not
11 Internet Explorer, that's what they mean. You control the content there.
12 And I think that this is a good explanation of some things you can do. Yeah.

13 JUDGE OBERMANN: I have a problem in a way with that. Even if
14 you're correct and the fully controllable aspect embraces what's in column 2
15 here, why shouldn't we view the language broad enough to embrace also
16 what your friend has argued Brown is doing? It's possible that this claim is
17 written so broadly that it does encompass what the prior art did in addition to
18 the thing that everybody thought was new here, right?

19 MR. REYNOLDS: No, no, no. Because the template has the
20 characteristics that allow the NIM to be fully configurable. So the template
21 does not have a user decides to move it around. So when -- no, that's not.
22 The plain language of the claim is not going to cover that. These
23 characteristics are in the NIM template that allows them to create the fully
24 configurable NIM. I mean, the Federal Circuit addressed this.

25 So, I mean, this has been decided, but it also meets precisely with the

1 plain language of the claims. It's the NIM template that derives the full
2 configurability.

3 JUDGE OBERMANN: So is your view that only by eliminating the
4 browser, do you meet this claim? In other words, to be fully controllable,
5 you have to be able to eliminate the browser?

6 MR. REYNOLDS: No, I think -- no, I mean, I don't think they put
7 that in the language. What they say is this allows you -- it operates without a
8 -- it allows you to configure a frame where you're not trapped into the
9 browser.

10 JUDGE OBERMANN: And that's a requirement to be capable of
11 doing that?

12 MR. REYNOLDS: That's what these claims allow because they're --
13 it's a template that is, you know, that just has a data structure and it has to be
14 instantiated into a NIM. So it's not tied -- the rest of the prior art, it is tied to
15 a browser. So the claims allow you to be separate from the browser, but it's
16 not a limitation in the claim.

17 JUDGE OBERMANN: Well, I guess what I'm really saying is, does
18 it embrace Brown? And what I'm hearing you say is because Brown doesn't
19 have that capability, no, in fact, Brown doesn't render this obvious.

20 MR. REYNOLDS: Right. That's exactly right. As I said, Dr. Selker
21 testifies that all you can do in Brown is identify something and then
22 somehow Internet Explorer will get here through this little black box driver,
23 puts it on screen. So you can identify something that shows up on screen
24 and then you can drag it around. Well, that's not the full configurability of
25 the claim recites because the full configurability of the claim has got to come

1 from the template.

2 Brown is extremely limited in what the user can actually do. And, or I
3 mean, how the developer -- like the user is kind of the developer there
4 because the user is the one that puts it on the screen. And, you know, you
5 can't get in and develop Internet Explorer. So you can't change the ActiveX
6 part of Internet Explorer, which controls how it goes onto the screen.
7 Nobody can change that.

8 The only thing someone can change is just saying, oh, I want this
9 frame on my desktop. But there's no template where you can go in and say,
10 I want to change a control characteristic. I want to change a view
11 characteristic. I want to change a content characteristic. You can't do that.
12 The content's fixed.

13 I think that's faithful to the, you know, what the Federal Circuit said
14 and the plain language of the claims. I mean, we're looking for a template
15 that defines these characteristics.

16 Okay. So, happy to take more questions on that aspect as we get
17 there. But, you know, I want to get to this third fundamental weakness. I
18 mean, these petitions have not been fairly presented. The arguments are all
19 over the place. They absolutely relied on Wecker's script template in their
20 combinations. This is a '545 petition, page 3. Thus, as Dr. Schmidt
21 explains, a POSITA would have had a reasonable expectation of success in
22 implementing Wecker's templates, Wecker's templates, into the disclosure of
23 Brown.

24 Okay. Their initial motivation to combine talked about rendering
25 content using templates and script files. And the Institution Decisions in

1 '083 and '407 mentioned that too, mentioned that those script templates were
2 in the combination. So this is just yet another example. It's like a head fake.
3 And then now they're disregarding it. And then they replied. They claim
4 they never made that argument.

5 They absolutely made that argument. We spent time responding to it
6 on the Patent Owner response. And now they're completely shifting
7 positions. And look how they're doing it. They've got a new expert. And
8 this is on their -- I believe it's their Slide 19.

9 If you could go to their Slide 19. You've got two experts that both
10 have sections on motivation to combine. And they're just talking on top of
11 each other. There's no discussion of how I'm clarifying one person's point of
12 view or why I'm opining on this high-level issue on their combinations.
13 They just slap them both up there. And we're supposed to figure out what
14 they're trying to say. And they're different.

15 So, the first one, Brown's desktop components could be implemented
16 as mobile channels. And the known technique they applied, the only time
17 they get close to an obviousness rationale, is rendering content using script
18 files. So that's Schmidt. And then we've got Greenspun. And what he's
19 trying to do at Schmidt is they're moving away from Wecker without saying
20 so. Because then the Patent Owner response, we hit him with Wecker has
21 visual basic in its script templates.

22 And just a note on that, Wecker doesn't disclose templates. It uses the
23 term script templates as shorthand, but it says very clearly in Wecker that the
24 scripts, the visual basic script defines templates, but it never really says what
25 the templates are. So it has visual basic script in there. But anyway, they're

1 moving away without saying so. And now we're talking about requesting a
2 template. And then later on in Greenspun's declaration, he talks about as
3 part of a channel.

4 So first we were a channel and we're rendering stuff. Now we're
5 requesting a template, but it's part of a channel. No explanation. And I
6 mean, I don't have a computer background, so maybe you all see something
7 I don't see here, but none of it makes any sort of unified sense. And we've
8 cited regulations in the statutes in our sur-reply just completely unfair way.
9 It's a spaghetti approach to just throw arguments out there and see if
10 something sticks.

11 One of the panels addressed something similar in Kingston
12 Technology Company v. Imation. It's IPR 2015-0066, paper 19. If you look
13 at page 33, theirs was moving claim constructions, but I think the same
14 rationale applies here. It's just too many arguments, not a clear approach.

15 So if we go to DoDots 28, those are symptoms of an underlying
16 weakness or an underlying problem. And the underlying problem is a
17 completely skipped gram factor two, where you ascertain the differences
18 between the prior art and the claims at issue. So some courts have called
19 this establishing the gap. It's crucially important for people like us who are
20 responding to this because we have to know what the gap is they're trying to
21 clear.

22 Now in the '545 petition, and we really cleared, they don't do it at all.
23 Zero analysis of John Deere factor two. In the other two positions, '083 and
24 '407, they do. They make it very clear and they rely on one thing. They use
25 the word single. You can search for single in there. And the single thing

1 they rely on Wecker for is storage of a NIM template. Well, now they're
2 telling us they're not relying on Wecker's template.

3 So all you've got in John Deere is storage. That doesn't answer any of
4 these questions about how you could take the mobile channels in Wecker.
5 And the mobile channels in Wecker are web pages. They tell you it's a web
6 page. They use the word mobile channel, but it's a web page and combine it
7 with Brown.

8 So there's no John Deere factor two analysis. I'd like you to look
9 through the petitions to find it, but it'd be reversible error to invalidate
10 patents when you don't conduct a required analysis. And that's what the
11 Arctic case says.

12 Quickly, I want to address this bodily incorporation thing that they
13 cite. Bodily incorporation is a failure of a factual record. Okay? It doesn't
14 obviate the need to identify analogous art, which they at least tried to do. It
15 doesn't obviate the need to ascertain the differences between the claim
16 invention and the prior art, which they didn't.

17 It doesn't obviate the need for an explicit analysis as KSR and
18 Constate (phonetic). And it doesn't obviate the need to do these -- analyze
19 the specifics of the base device, finding a need for improvement, finding that
20 known techniques are applicable to the base device, finding a POSITA had
21 recognized the results would be predictable.

22 All they do is say they both cite CDF. And it doesn't obviate settled
23 law that prior art can teach away, which both of them do. We've put that in
24 our brief. It doesn't say that combinations -- it doesn't obviate the fact that
25 combinations that render prior art inoperable are not obvious. That's a

1 TriVascular case. It applies directly to Brown and Wecker.

2 You cannot combine the two without destroying the user choices that
3 are the baseline of Brown. And it doesn't obviate the fact that fundamental
4 differences between the references are central to the inquiry, that's the
5 Adidas case. What it basically does is it prevents 'gotcha' arguments when
6 there's no factual record in support. That's what the bodily incorporation
7 thing does.

8 But they hide behind it because as you look through their petitions,
9 they keep saying, step back, step back. Patent Owner's over-complicating it.
10 Patent Owner's over-complicating it. No, it's not. And we're going through
11 the required obviousness analysis.

12 This TriVascular case I mentioned, they addressed bodily
13 incorporation and they rejected it because they found that this reference on
14 the left that has a little spike around DoDots 30, you couldn't combine the
15 two without removing that spike. And the purpose of that spike was to shoot
16 up into the tissue and hold the cuff in place. And they say if you combine
17 the two, you'd get these circular type, you know, guys on the outside instead
18 of the spikes and it would defeat the basic objective. So that's settled law.

19 And so this is the fifth fundamental weakness that defeats, you know,
20 not the whole petition. This one defeats the Brown-Wecker combination,
21 which is really the basis of their petition. And it's that Brown and Wecker,
22 there's no way to combine them without rendering Brown inoperable.

23 Let's talk some terminology here real quickly on DoDots 31. We've
24 addressed -- other counsel addressed how, you know, NIM definition, NIM
25 template, Dot template are the same. So are NIM. And then this term

1 application media practice package, both sides agree that means a NIM and a
2 Dot.

3 On the right here, there's a lot of talk about XML and HTML and
4 HTTP. And this is what HTTP -- this is what HTML is. It's nothing. It's
5 nothing until somebody writes it for a specific purpose. So if you noticed on
6 their slides where they address data structure, Slides 41 to 45, that would be
7 Petitioner slides, Brown's missing. They never cite Brown.

8 I know counsel mentioned Brown. He just said Brown has HTML.
9 But all they have cited documents and exhibits and all this stuff about like
10 what HTML can do and what some people can do, I mean, can you write a
11 data structure in HTML? I don't know. I'm not a POSITA. Probably. Did
12 Brown do it? Brown's the disclosure. Brown is the combination.

13 So, you know, they haven't even addressed the data structure, the
14 alleged data structure in Brown. And on DoDots 32, terminology is
15 crucially important. My experts bangs me over the head on this all the time.
16 So I just want to go through some of the terms you'll see in here. Mobile
17 channel, that's Wecker's term. Wecker says very clearly that that describes a
18 complete web page. But that's just how Wecker uses it.

19 So it's not this concept of the type of channel you might have in a
20 CDF file because their mobile channel is everything combined. And he says
21 it in column 3, line 8. It's a self-describing website.

22 Now it's assembled from three things in a very complex process.
23 Visual basic files, which define templates. Again, that's an amorphous
24 thing. Wecker never really tells you what his template is. A data file, where
25 I think contains mostly textual content. And then there's a CDF file, which,

1 you know, contains a URL.

2 And so in their reply, I believe, Petitioner uses the word Wecker's
3 subscription model. Wecker uses the word subscribe or some version of it
4 one time. And he's talking about conventional technology that a desktop
5 uses, right? But the point of Wecker is to send files to a mobile device. So
6 it's just this example of just matching terms or making up terms to kind of
7 try to make these things go together. But they don't go together.

8 They also say part of a channel. We mentioned that in obviousness.
9 Wecker doesn't use that term. Brown doesn't use the word channel. The
10 only channel in Brown is in the CDF acronym. And again, that's a very
11 specific thing. HTML instructions are organized by tags, usually separated
12 by those angled brackets.

13 The components in Brown. Counsel mentioned getting these
14 components, the Brown Figure 4. And by the way, Brown Figure 4 was not
15 relied on in any of the petitions. Okay. So and on reply, they only relied on
16 Figure 4 as part of the motivation to combine, based on how similar they are.

17 So this new argument that somehow Brown can get its own, quote-
18 unquote, templates, is a new argument undeveloped. But it's also defeated.
19 I'll get there in two slides. Because the only testimony of record that talks
20 about downloading these individual tags, because what they call the NIM
21 templates are those individual tags that are in the same file counsel went
22 through line by line. So they're the same file. It's called Desktop HTT in
23 Brown. And their alleged templates are separate sets of lines.

24 The only testimony of record from Dr. Selker, who analyzed Brown,
25 and said Brown is absolutely incapable of receiving fragments, lines of

1 HTML. So that's it. I mean, the issue is absolutely closed on the
2 combination of Brown and Wecker, because they're not compatible. So
3 that's HTML instructions.

4 The components that they mentioned, those are what a viewer sees.
5 So you know that static image that opposing counsel mentioned? That's not
6 a template. That's a JPG file. That's a viewer that's looked at a URL, gone
7 to a website, seen that website code, seen that the code references a URL,
8 probably in an image tag, and pulled it onto screen. So if you downloaded
9 that, you get a JPG file or a GIF file or whatever the PDF file he mentioned.
10 These are things to keep in mind when we're looking at the terminology.

11 And then in terminology on DoDots Slide33, I'm going to be so bold
12 as to tell you how these petitions went together. Brown has those separate
13 components they like. It doesn't mention the word template, because Brown
14 doesn't use templates. It's all user choices. They have no reason to rely on
15 templates. They want the user to be able to change how it looks. So no
16 templates in Brown doesn't appear.

17 Every other reference, except for kind of a throwaway, you know, the
18 ones to just establish something small, every other reference has the word
19 template in it. And the interesting thing is now that they've moved off of
20 Wecker, they don't rely on any of the actual templates in those references.
21 They all have templates, but they rely on bits and pieces of HTML code, like
22 in that Shimada reference, when they went through and found different little
23 pieces in Windows and said, there's a template.

24 But so the search here shows Brown doesn't have a template, because
25 they had to go find one, but they didn't. Let's see. Okay. I'm at 46 minutes.

1 Slide 36. This is what I mentioned before. I mean, this is it. This is Brown
2 and Wecker. This is the record that you have. Dr. Schmidt talked about
3 downloading files, HTML files. If you look at his cite to Brown 213-29, it
4 doesn't mention downloading at all. So we submit that that's, you know,
5 unsupported testimony that you can disregard.

6 So what we're left with is Dr. Selker says here on the right, as
7 discussed, the API, which runs Brown, includes no capability for accessing
8 HTML documents or fragments thereof. Those fragments are the lines.
9 Those iframes that they've identified, that's what those fragments are,
10 because they're just pieces of a single file. There's no contest that Brown's
11 Active Desktop is completely contained in that desktop HTTP file, one file.
12 There's no contest about that.

13 They go through and they circle different parts of it, which, I mean,
14 begs the question whether anyone would ever think a template is something
15 where you open up a system file and find different lines in it. I mean, it just
16 -- it doesn't make sense to me, but it doesn't have to make sense to me,
17 because we've got Dr. Selker who says fragments can't be downloaded.

18 So even if you credited Dr. Schmidt's unsupported testimony about
19 downloading files, no one else talks about this inability to download the
20 fragments that Brown has, what they call to be their templates.

21 This next page is a little, Slide 37. This just struck me because they
22 claim Brown directs users to CDF, but they're basically just citing CDF for
23 more information. And then the next sentence they say, given the similarity
24 to disclosures and spurned by Brown's directive, as if they're trying to make
25 a TSM. I mean, that just strikes me as a little too acute. I don't know if that

1 bugs the panel, but it's just -- I mean, it was a citation to support its own
2 system. It was not a directive to go anywhere or do anything else.

3 So, I mean, we submit that at some point you get to be -- you develop
4 some credibility issues in the arguments you're making. If we go to DoDots
5 38, the motivation to combine. Again, I ask you to read their motivation to
6 combine paragraph by paragraph.

7 They just, they seem to be different things. But you heard counsel
8 talk about Windows 95 and Windows CE. They absolutely were not
9 compatible. There's a reason one went on mobile devices and one went on a
10 desktop. But the law we cite is very clear, mere compatibility is not enough
11 for obviousness.

12 And then this just improve everything brick, which he recited,
13 standardized interfaces across device, reduce client-side storage
14 requirements and blah, blah, blah. And, or any other relevant business or
15 technical reasons. No, those don't work for obviousness. It's a generic
16 desire for improved access time. Hulu v. Sound View Instruments says
17 that's not good enough.

18 You've got this quoted, and if I go to DoDots 39, the similarity in
19 Wecker's, you know, they claim that Wecker's script files are similar to the
20 HTML tags, the supposed templates in Brown. I mean, that's not even close.
21 Those are visual basic script. I mean, they describe how to stitch together a
22 webpage. An executable script has nothing to do with the webpage Brown
23 puts on its desktop. They're just completely different things.

24 And then we've already talked about this other language that it's just
25 impossible to parse. Known techniques, templates, scripts, you know,

1 downloading, rendering as parts of channels. And what we did is slide --
2 DoDots Slide 40.

3 So the terminology here is in no order. It's just stuff we found in their
4 briefing about Brown's disclosure, tags, URLs, CDF file, URLs in them,
5 techniques, subscribing to channels, downloading, implementing, requesting,
6 storing, Wecker's disclosures, and then these reasonable expectations which,
7 I mean, those are just, those are bald and conclusory anyway.

8 And if you just search their demonstrative slides, the only time they
9 mentioned reasonable expectation or predictability is in one that they
10 admittedly failed. And so they're submitting these new arguments on
11 Wecker because they're aware of these issues. But this is just a visual
12 depiction.

13 KSR tells you how obviousness works. And you have an adjustable
14 pedal, which is known. You have a technique, you know, you put the sensor
15 on the pivot point, and then you have a disclosure of that sensor. And then
16 you have a reasonable expectation of success because it's taught of why you
17 put it on there by Rickson and Smith references. That's an elevator speech
18 of obviousness.

19 I mean, there's nothing in this record, nothing that really explains what
20 makes these patents obviousness. It's just all this terminology they rely on
21 all over the place.

22 Okay. So I'm just going to quickly do the fully configurable part. So
23 if we go to DoDots 42, this is how Brown works. They relied on Figure 4,
24 that's how you find a component. When you choose a component, you heard
25 counsel say data is sent to the registry. He's absolutely right. You're not

1 sending HTML, you're not sending templates, you're sending data. He said
2 that. And Dr. Selker agrees. I think it's in 178, paragraph 178 and 179 of
3 the '407 petition.

4 That's the user choices that go to the registry. And then it goes into
5 this black box. It's run by Internet Explorer 4.0 and this driver, desk email
6 DLL. Nothing explained about what it does, but it spits out a system file,
7 this Microsoft specific desktop HTT file. And then that file is used to
8 generate what you see on screen.

9 So, you know, we're talking about the ability to get out of the browser.
10 Here the browser controls everything. Those controls they reference. I don't
11 know if we'll have time to get there, but the petition relied on one control,
12 resizable. Then later in reply, they started pointing these ActiveX controls.
13 All those controls are outside of their template and they're all controlled by
14 Microsoft. So Microsoft controls this thing. That's why Dr. Selker
15 explained that it's tied to Microsoft.

16 And we've talked about the part of the patent. I think this is the part
17 we are talking about that explains how a vendor can get out of the browser.
18 Again, this is what allows someone to do with these NIM templates.

19 If we go to DoDots 45. So this explains how -- this is a visual
20 depiction of how Brown works. It gets data, it puts data in the registry, and
21 then it generates something and it generates instructions. So it changes it to
22 something else. And I counted counsel when he was describing the desktop
23 HTT file. That's what's generated here. It's like it's a type of HTML. So
24 where it says you generate HTML, they mean the HTT file.

25 He said the word code segment when he was describing that. Because

1 it is. That's not data. You had data and then you generated the HTML for a
2 web page and it became code because it's something that the viewer is just
3 going to go through sequentially and render. And anytime data changes at
4 the top, then the HTTP file is regenerated. So that's not how data structures
5 work.

6 Data structures contain data that you use, right? They don't contain
7 information that's changed anytime data is -- that's completely redeveloped
8 anytime data is used. So regardless of what anyone else can do with HTML,
9 Brown does not use it as a data structure.

10 If we go to DoDots -- okay, I'm going to have to go DoDots 47, we
11 show that the controls, the dotted boxes. So their templates are the solid
12 boxes, green and red. The dotted boxes we added, that's where the controls
13 come from. They're all in separate objects. So even the controls that they've
14 identified sit outside of the templates. And these controls apply to anything.

15 So, I mean, the claim language is clear. The controls got to be -- even
16 if these were control characteristics, they have to be defined in the NIM
17 template. There's no question that they're not. Resizable X, Y does show up
18 in there, but again, that's a characteristic of a frame. Whether it can be
19 resized or not doesn't describe control.

20 So then on DoDots 48, what makes these things work, these claims,
21 are that the NIMs in the NIM templates are independent. So especially
22 claim 12 of '545 Patent allows them to communicate together. Now, they
23 cite this In re Harza case. And I wish we didn't have to spend time on it, but
24 I'll try to do it real quickly. In re Harza said that if you have one rib that's on
25 a member that holds two cement blocks together, then a patent that has two

1 ribs is not obvious over it because you just would have doubled up that rib.

2 What they use Harza for is saying, well, if you have two NIM
3 templates, they could be the same thing. They could overlap and be the
4 same thing. No, that's not even the same issue, right? No one would say
5 that if you had two ribs that I could look at one big rib and say, oh, the
6 claimer cites two ribs, but this rib is so big it constitutes both. So I invite
7 you to read that case. It's a very short opinion, but it's cited all over. And it
8 just doesn't have really any application here.

9 If we go to DoDots 50, we have Wecker. So Wecker splits up
10 everything that looks like HTML because it teaches away from transmitting
11 HTML. It even teaches away, says the delivery of -- we're on DoDots 50 if I
12 didn't mention it -- the delivery of very large content such as HTML.
13 HTML is a stripped-down version of HTML. And it says it's highly
14 impractical in the mobile channels that they rely on for Wecker.

15 So even if you took the fragments of HTML they claim to be the
16 template, Wecker says no. It teaches away from that. Slide 51 shows you
17 how complex Wecker is. The scripts take in all this information, stitch stuff
18 together. It's not a template. It's very much a piece of code that takes all this
19 data and kind of holds it together. And the language we've put there
20 explains that.

21 So quickly on Shimada and Buchholz, they failed their burn here and
22 they admit it. So on the left you see they said to establish reasonable chance
23 of success. They rely on the fact that Buchholz and Shimada are both
24 implemented in HTML. Well they're not, Buchholz uses a different variant.
25 And they say thus they would have had a reasonable chance of success.

1 That's their sole basis for it.

2 We pointed out on reply that they're different, or on response that
3 they're different. And on reply they say, well, hold on, Buchholz is
4 completely silent on these templates. And their expert says, Buchholz would
5 need more information. Now that's their burden. That was what they were
6 trying to show, that these things were similar. So they've completely failed
7 their burden.

8 On the next slide, DoDots 54, we've shown they don't address view
9 characteristics at all. It's just very cursory. I mean, you can look through,
10 but what they settle on is just accordingly Shimada satisfies this feature
11 simply because it can be -- content can be observed, viewed in the frame.
12 And that doesn't apply to claims.

13 DoDots 55, Shimada is a Hitachi pad. They made servers. Okay. So
14 the important part of Shimada is this screen configuration device which sits
15 on a remote network. DoDots 56, the templates that they found in their
16 search sit on that server. That's why they don't rely on it. They've got to
17 find something else in Shimada, not the actual template.

18 And then on 57, the templates they find, they start piecing, again,
19 different lines or fragments of HTML to claim it's a template. But they're all
20 the end result, the thing that's just a webpage. And I just want to make sure
21 because I think they did something tricky in their demonstrative.

22 If we go back to Slide 53, this quote here, they cut off the part about
23 Buchholz and Shimada being in HTML. And they cut off the part about thus
24 Dr. Schmidt explains. And they started their quote with a POSITA. And
25 they didn't show that they were making 'A' a capital. It's on Samsung 93.

1 It's just one of those things that I don't want you to miss the fact that what --
2 the only testimony in their entire set of demonstratives, they had to cut out
3 the part they were wrong on.

4 Okay. DoDots 58, this is how complicated Shimada is. It was a point
5 -- the purpose was to store a bunch of stuff on a server and then have this
6 back and forth with a device to decide, you know, what it wants to send. But
7 there's no frames.

8 If you go to DoDots 59, the only thing Shimada does is puts this
9 normal and quick button at the top. There's no configurable frame, nothing.
10 It's just a button that says, oh, if I want a simpler version of a web page, I
11 just click it. It's basically a URL link to another web page. So that's why I
12 don't think they spent too much time.

13 DoDots 60, I would submit this is another credibility issue. I mean,
14 their expert is saying that an anchor tag is the NIM that's fully configurable.
15 And that's just -- it's a non-starter. An anchor tag is a URL with a label on it.
16 It's probably the most simplistic, smallest piece of the internet. They're
17 making that argument. They do it in one sentence.

18 So very quickly on Buchholz, they're very clear they rely on the
19 structure of Buchholz. Buchholz are two-way pagers. On DoDots 62,
20 Buchholz can only really define where and what size and color text is. These
21 are very simple devices. So they would have no capability on this front.

22 And their expert on DoDots 63, Dr. Greenspun, agrees. And he says,
23 again, prior to 2007, phones couldn't do this. He said something as simple
24 as incompatible ways of storing binary data and memory could get in the
25 way of combinations. And he said Buchholz doesn't have enough

1 implementation details. We'll go straight --

2 JUDGE FENICK: I told you I would tell you when you have about 5
3 minutes left. I think you have about 4 minutes in your initial 65 minutes that
4 you wanted.

5 MR. REYNOLDS: Okay. Very much appreciated. DoDots
6 demonstrative 68, we've gone through the fact that they've failed their
7 burden shift in DeMarco. And maybe we can hear on rebuttal something
8 about that. But there's other law here. And basically what they say is, there
9 might be unclaimed features. And, you know, you guys didn't identify any.
10 But this Teva case has said that the court has never held that the existence of
11 one or more unclaimed features standing alone means that nexus may not be
12 presumed.

13 And then once this presumption is established, they have to come
14 forward with evidence. They have no evidence. If you read the Kembel's
15 testimony, they explain why everything came out of this Dot template. And,
16 you know, Teva explains that the unclaimed features are part of a spectrum.
17 So these are things you have to analyze. They never do. It's maybe one
18 page in their reply where they just say, oh, there might be unclaimed
19 features.

20 And then those patents they cite without addressing, I've already said,
21 they've got the word NIM template in them like five or eight times. And
22 even if we don't have a presumption, there's nothing in the record contesting
23 the Volvo case, which says that as long as the invention are prior to a direct
24 result, this is DoDots. They did one thing. They created one thing in one
25 period of time. So clearly these things came as a direct result. I think I have

1 a note here that nine times in one of the claims the template is recited.

2 So nexus on the slides here, Dr. Selker went through and established
3 the nexus. John Kembel testified that the entire ecosystem arose from the
4 Dot. And if you look at the other deposition testimony, it's very clear. They
5 won awards. Opposing counsel takes issue with this demigod award. It's
6 not just how fast you do it. I mean, this is a competitive industry of finding
7 new tech companies.

8 You've got to get out there and explain and convince people real
9 quick. And that's what these guys does. It doesn't take long to see what they
10 did. But there's industry praise on 75. None of that's contested in the record.
11 None of their 250,000 users they established.

12 And the last thing I'll say is that profits are not the sine qua non of
13 success, especially for tech companies. We cited a case in our surreply to
14 that effect. These guys grew a user base. The investors looked at whatever
15 profits were there and decided on DoDots 77 that this company was worth
16 \$275 million because of the ideas that they had. All of this is absolutely
17 uncontested. Thanks. I'm sorry, I was concluding. I haven't concluded.

18 JUDGE FENICK: Okay. Thank you so much. All right. I think that
19 you have 11 minutes left on rebuttal -- on surrebuttal, sorry. Mr. Renner or
20 Mr. In?

21 MR. RENNER: Yes, Your Honor. Would it be possible to have
22 another very short break? It's been a little while.

23 JUDGE FENICK: Yeah, we can have another 5 minute break. And
24 why don't we say 3:32 Eastern time?

25 MR. RENNER: Thank you very much.

1 (Whereupon, the above-entitled matter went off the record at 3:27
2 p.m. and resumed at 3:34 p.m.)

3 JUDGE FENICK: It looks like Mr. Renner and Mr. Reynolds are
4 both here. Mr. Renner, you and Mr. In have about 10 minutes or have 10
5 minutes left for your rebuttal. Please feel free to start when you are ready.

6 MR. RENNER: All right. Thank you, Your Honors. So the first
7 place I'd like to begin, just a note on the burden issue, since that began my
8 colleague's presentation. Our position is the burden ultimately of persuasion
9 on obviousness clearly remains and is always with the moving party
10 ourselves.

11 But this we're talking about is the burden as it relates to establishing
12 nexus for purposes of veiling yourself of the presumption of nexus. And
13 that particular burden is and remains with the Patent Owner at this stage.
14 And that's because they haven't made it showing yet sufficient to flip that
15 burden over.

16 And relevant case law, just if it's helpful, WMS Gaming Inc. v.
17 International Game Tech 184 F.3d 1339. It's a 1999 Fed Circuit case, but
18 this is long established. It's the Patent Owner bears the burden of
19 establishing nexus. And that burden has not yet been dispelled.

20 The second point I'd like to just briefly touch on is the question of
21 have the grounds articulated properly and sufficiently distinct version, which
22 would be Brown versus the Brown versus Wecker. And I just direct you by
23 way of example in the '083 record, page 8 of the petition. You can see there
24 as clearly as we think we could make it grounds 1a/1b.

25 Well, it says claims 1-5 and 14-16 are rendered obvious by Brown 1a

1 and claims 1-16 rendered obvious by Brown and Wecker 1b. We can see
2 similar nomenclature and citation throughout in the briefing to try to make it
3 compact. For certain, when we were trying to make points that were
4 relevant to both, we would use language at the end or other language to talk
5 about disclosures and or obviousnesses. Clearly they are different standards,
6 and that's quite, we think, consistent with that briefing.

7 Third point would be that the Brown code segments are the object of
8 the combination. This goes back to the point I spent some time on my
9 opening, so I won't belabor this too much. But I just want to make sure that
10 you have our thoughts on this. So first, our theories are, we believe, not
11 unclear on this. Our petitions and our corresponding IDs and our
12 corresponding declarations say this. We think quite consistently, with the
13 exception, it seems, of one instance.

14 So we have the '083 petition, page 13, '407 petition, 12, 13, '545
15 petition, 11. These are all directly in the middle of our description of what
16 the combinations are. Looking together at, for instance, the '083 cite, I will
17 read from page 13. A POSITA would also find it obvious that Brown's
18 desktop components that would include its components could be
19 implemented as mobile channels. Those would be the mobile channels
20 referenced by Wecker.

21 So you're implementing Brown as the mobile channel components
22 such that the user could download desktop components and their associated
23 HTML instructions to their composite desktop. This is on the page and in
24 the very first paragraph of the combination of Brown and Wecker. Similar
25 disclosure is present in each petition. That includes the '545.

1 If I look at page 11 of the '545, I'd find almost the same quote on its
2 page 11. Then you do go a couple pages later, and the very end of it, there is
3 a reasonable expectation of success statement there that seems inconsistent
4 with the same in each of the other two petitions, and also inconsistent with
5 the declaration that is citing it. And it seems to have changed the word
6 techniques to templates. I have no idea why. I'd love to be able to tell you I
7 do.

8 But at page 13, it says thus, it's the concluding sentence, as Dr.
9 Schmidt explains, which if you look at his testimony, paragraph 38, you
10 would find he uses the word templates. I'm sorry, techniques. A POSITA
11 would have had a reasonable expectation of success in implementing
12 Wecker's, according to Dr. Schmidt, in his supporting declaration that comes
13 along with these techniques. But here, template, into the disclosure of
14 Brown.

15 So I would submit to you it's a typo. And everywhere else that I could
16 find, it's consistent the other way, including probably most notably the
17 mapping of the elements that follows. You can see that we are consistently
18 looking to and explaining that it is, in fact, Brown's system modified by
19 Wecker's techniques.

20 Number 4, so control characteristic. Neither the claim nor the
21 construction, or said independently, controls and control characteristics in
22 the same element. That's how it's being treated best I can hear it. So unless
23 there's further narrowing of the specification into the claims, the
24 characteristic of X, Y of a control resizing is a control characteristic and
25 sufficient to meet the claim.

1 If the claim had brought the control into the element, I suppose we
2 could be talking about where that is and whether that is, but it's not part of
3 the claim. The claim calls for a control characteristic, and control is in the
4 '083 Patent and others actually identified as resizing. So we can see that this
5 is a consistency, not an inconsistency.

6 JUDGE TROCK: Mr. Renner, this is Judge Trock.

7 MR. RENNER: Please.

8 JUDGE TROCK: How should we define the scope of a fully
9 configurable frame?

10 MR. RENNER: A fully configurable frame is, number one, it's the
11 frame itself. And that would be -- let me get the Slide 48. So let's Slide 48
12 together, if we could, please. Thank you for the question. And if we go to
13 48, we see the claim construction that was offered. Again, I'm slightly
14 bothered that we're talking about construction of construction, because we
15 really are actually supposed to be talking about a NIM.

16 If you're looking at the claim language and the Patent Owner had once
17 advanced this. They're saying it's our advancing, but we're really adopting
18 theirs. you may appreciate. One way or the other, let's just -- well, this is
19 the field we play on. If we play in this field, we say to ourselves, what does
20 it mean and what does it say? The fully configurable frame with one or
21 more controls.

22 So we know from that language is there's a distinction between fully
23 configurable applied to frame and controls. This is not calling for fully
24 configurable controls. The frame. The frame, we think, is the frame. It's
25 the box. It's where it sits. It's how size it is. It can be resized. We think

1 that is a fully configurable frame. And we think that would make Brown
2 applicable here.

3 JUDGE TROCK: Thank you.

4 MR. REYNOLDS: Thank you. So let's see if I can -- I would like to
5 add to that that they're arguing is if the controls must be fully configurable.
6 And I want to make sure we see that in the '083, it indicates resizing is a
7 base control. That's something you saw a cite to a couple instances where
8 resizing shows up. And we think that it's quite clear that it is indeed a
9 control. And so now you can see the resizing or those kinds of controls.
10 They're separate and apart from the fully configurable.

11 All right. So our two experts. I think you're you were made aware of
12 the reason what happened there. We had our first expert was actually hired
13 in the defense industry. So we unfortunately had to find another expert. We
14 did so and that expert, Dr. Greenspun, he testified. His actual paragraph 21
15 of his declaration tells us that unless otherwise noted, I adopt the Schmidt
16 testimony.

17 So it's not a situation where he's asking you to guess which is right,
18 his or the other. He tells you that mine is consistent in what I believe is what
19 he said. Right. You know, I agree with him unless I say otherwise.
20 Anytime you have a second declaration, you're adding and not necessarily
21 repeating yourself. So I think that's not out of bounds.

22 HTML. I did want to hit this. HTML is referenced in the subject
23 patent. Let's just look, if we could, at '083. I'd like to direct your attention
24 to column 8, specifically lines 36-45. I want to read this aloud because this
25 tells us that the use of HTML is something that the subject patent was

1 contemplating. But you hear over and over again and we can't get it to stop
2 that somehow that's violative. Somehow that's a problem. But it's in the
3 patent. Not to mention the claims aren't specific, even if it weren't enough to
4 exclude it.

5 But I'll read, in one embodiment, Dots, which of course are the
6 NIMS, are programmed with browser readable language. Browser readable
7 language is what's supposedly there that is parsed to the Microsoft Internet
8 Explorer, IE rendering object, referenced with the control name in the Dot
9 web conduit and are capable of displaying any internet content supported by
10 IE 4.

11 However, not necessarily requiring the use of IE or another browser
12 for such display. This browser readable language, here's the key, defines the
13 appearance of the Dot, its functionality and what content presents. This
14 browser readable language includes XML streaming media, DHTML, et
15 cetera. I think that addresses those concerns. So that is what I had for you.
16 I think Mr. In had given me his time and I would be happy to entertain
17 further questions if you had any. Otherwise, we would rest.

18 JUDGE FENICK: I don't hear any and I think we're at the end of your
19 time. So thank you very much.

20 MR. RENNER: Thank you.

21 JUDGE FENICK: Mr. Reynolds, you have 11 minutes left in your
22 surrebuttal time.

23 MR. REYNOLDS: Thank you, Your Honor. I don't contest the law
24 that counsel cited, but he's confusing the burden of persuasion with the
25 burden of moving forward. You can absolutely have a burden shift that puts

1 the burden of moving forward on another party. That's what happens in the
2 DeMarco case. But those procedural things aside, I mean, I would ask the
3 panel to look at that.

4 But it's clear that the Dot template, the ability to share this lightweight
5 thing from all the testimony like that is what they did. I mean, that is the
6 invention, it was the product, it was a company. This isn't a company that
7 had like multiple versions down the road and certain patents covered like,
8 you know, different aspects of the product. It was the product. I think
9 you're going to find it. It's pretty clear that that's -- that the patents covered
10 that.

11 As he discussed the data structure, I mean, I couldn't help but notice
12 again, he calls the HTML code segments. So, I mean, this is the thing. I
13 mean, we can go through the specification and figure out what things are
14 talking about. Although he was talking about components, the NIMS. So
15 the NIM is what the user sees. At some point, web content has to be
16 rendered in the frame. Okay? So HTML is going to come to play when it's
17 time to put internet content on a NIM because you have to read the HTML.

18 So he's talking about the NIM, not the NIM template. But again,
19 whenever we're going into the patent, I mean, I'd be very happy to go
20 through and find the context and explain it. But it's not in the record.
21 They're not things we've been arguing. And these are claim construction
22 issues.

23 And so if I have any -- I tried to address Your Honor's questions about
24 claim construction as much as I can. I wasn't prepared to do it because the
25 Federal Circuit solved it. Has already addressed these things on fully

1 configurable. And again, it's not argued here anywhere in the record. But
2 on top of that, we'll go back to the part of the '407 Patent I cited that explains
3 how the configurability of these things that are recited as part of the NIM
4 template is what makes the frame fully configurable.

5 JUDGE TROCK: Mr. Reynolds, this is Judge Trock. I want to ask
6 you the same question. How should we define the scope of a fully
7 configurable frame?

8 MR. REYNOLDS: So that question is not in the record. I'm not a
9 POSITA. And even a POSITA, you know, couldn't probably answer that
10 question in 10 seconds. But based on my limited ability to do so, there is a
11 famous patent case, I can't remember, where it says that the wheelchair has
12 got to be a size sufficient to fit into the car. I mean, can you say the exact
13 limits of what that wheelchair was? No. But the court said no, a POSITA
14 would have figured it out.

15 So we're not testing the bounds of the claim in this hearing, right?
16 What we're saying is, well, there's something so minimal as being able to
17 choose where in a desktop a frame goes, whether that's fully configurable.
18 Well, that part, that is in the record. That's what we're addressing. And that
19 is just not anywhere close to fully configurable.

20 Obviously, it can't mean anything. You can't make the software come
21 out of the screen and grab you or be 3D, as I believe Judge Fenick pointed
22 out. Yeah, there's a limit on fully configurable, but a POSITA would be able
23 to figure that out. And again, that's not in the record. And I'm not a
24 POSITA that's able to do that right now. But it's not hard to envision, you
25 know, what that means. The control --

1 JUDGE TROCK: Sorry, I'm just going to follow up. So are you
2 telling me you don't have a scope of fully configurable frame that you can
3 provide for us?

4 MR. REYNOLDS: No, I just described what it is. It's the same thing
5 as the case with the wheelchair. A developer is going to look at a frame and
6 say, I mean, the claim kind of sets it out. Can I set the control
7 characteristics? Can I set the view characteristics? And can I set the frame
8 characteristics? I mean, what else is meaningful in a frame that you need to
9 set? Well, in Brown, you can't set those things.

10 So in Brown, you know, there's this resizability. And they keep
11 saying it's a control, but it's not. It just says the thing that's resizable. It
12 doesn't say how or why. But if you look at these things, it's clear when a
13 frame is fully configurable. And nothing on the internet back there allowed
14 you to create a frame that could be instantiated as a graphical user interface,
15 where a developer without using executable code, could define frame
16 characteristics, view characteristics, and control characteristics.

17 So those are three footholds that we can look at to see whether a frame
18 is fully configurable or not.

19 JUDGE OBERMANN: Where are you getting those three particular
20 characteristics of fully configurable?

21 MR. REYNOLDS: So that's in the agreed upon construction.

22 JUDGE OBERMANN: It's where?

23 MR. REYNOLDS: In the agreed upon construction.

24 JUDGE OBERMANN: Okay.

25 MR. REYNOLDS: If we go to our demonstrative 21, a network

1 information monitor template is a data structure that defines the
2 characteristics of a NIM, including the NIM frame, view, and control
3 characteristics. And as I said, the '407 Patent says each NIM template
4 defines the characteristics of a specific NIM, including, here's the word,
5 fully configurable frame characteristics, viewer, and control characteristics.
6 It's the ability to define those characteristics in a simple NIM template that
7 define the scope of the claims.

8 Very quickly on controls. Okay, they say in their briefing control and
9 control characteristic is the same thing. A control is a noun. A control
10 characteristic, the word control, is an adjective and the characteristic is the
11 noun. So that's what needs to be in the NIM template. Not a control call,
12 not an ActiveX call. It needs to be a characteristic of a control. That's the
13 noun. That's the object of the claim.

14 And that's all I have on response. And with that, we'll rest. Thank
15 you, Your Honors.

16 JUDGE FENICK: So I wanted to thank everyone for their time today,
17 and we appreciate your presentations. And our hearing is adjourned. Thank
18 you.

19 (Whereupon, the above-entitled matter went off the record at 3:52
20 p.m.)

IPR2023-00621 (Patent 8,020,083 B1)
IPR2023-00701 (Patent 8,510,407 B1)
IPR2023-00756 (Patent 9,369,545 B2)

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