

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HANGZHOU TAIHE TRADING COMPANY &
NINGBO LIKEJU TRADING CO., LTD.,
Petitioner,

v.

EP FAMILY CORP,
Patent Owner.

IPR2023-00658
Patent D934,012

Record of Oral Hearing
Held: May 16, 2024

Before JOSIAH C. COCKS, SCOTT A. DANIELS, and
KIMBERLY McGRAW, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing on Thursday, May 16, 2024, commencing at 12:02 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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

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3 JUDGE DANIELS: This is the oral hearing in IPR 2023-00658
4 relating to design patent number D934,012. Petitioner is Hangzhou Taihe
5 Trading Company and Patent Owner is EP Family Corp. Did I pronounce, is
6 Hangzhou how you pronounce it?

7 MR. RILEY: Yes, Your Honor. That's fine. Thank you.

8 JUDGE DANIELS: All right. Thank you. I'm Judge Daniels and
9 with me is Judge Cocks and Judge McGraw. Let me just cover a few
10 administrative matters before we begin. If for some reason we lose anyone
11 or the court reporter or one of the judges, we will take a quick break and
12 we'll get everyone back and then we'll start up wherever is necessary, so we
13 have a complete record. Also, at the conclusion of the hearing, please just
14 stand by. We'll submit the case and then I'm going to ask the court reporter
15 if she has any questions or needs any clarifications for anything that went on
16 during the hearing. We don't have a timer because we're not in the hearing
17 room or we don't have the hearing room timer. So I will keep track and
18 Judge Cocks is going to back us up with the timing. I'll encourage the
19 counsel to keep track of the time as well.

20 Let me just say that if, you know, we are flexible on time, if we ask
21 questions and you need a little more time to explain something, we are not
22 going to hold you hard and fast to the 30 minutes, but we will keep the time
23 fair so everyone has the same amount of time this afternoon. Let's see, what
24 else. Oh, we have a public audio line that is open so members of the public
25 can listen into the proceeding. And we're not aware of any confidential
26 subject matter in this proceeding. So, if I'm incorrect about that, please just

1 let me know. All right, let's get to parties, appearances. Who do we have
2 from Petitioner Hangzhou?

3 MR. RILEY: Good afternoon. This is Andrew Riley from Mei &
4 Mark on behalf of Petitioners. And I'll let my co-counsel introduce
5 themselves.

6 MR. ZHU: Good afternoon, my name is Guang-Yu Zhu. On behalf
7 of Petitioners.

8 JUDGE DANIELS: Mr Riley, are you going to do all the speaking or
9 is Mr. Guang Zhu going to be doing it as well?

10 MR. RILEY: I will be doing the speaking this afternoon, Your
11 Honor. Thank you.

12 JUDGE DANIELS: All right, and for Patent Owner EP?

13 MR. MCCONNELL: Robert McConnell of McConnell Law Firm
14 here for Patent Owner EP Family Corporation. And I'll let my co-counsel
15 introduce themselves.

16 MR. WANG: My name is Cheng Wang. We're on behalf of EP
17 Family Corp.

18 JUDGE DANIELS: Welcome. And the same question.

19 MR. MCCONNELL: I'll be doing the speaking today.

20 JUDGE DANIELS: Okay, thank you. All right, welcome. Thank
21 you for being here this afternoon. We set forth the procedure for the trial for
22 today's hearing in the trial order, but just to remind everyone, please mute if
23 you're not speaking. We have your demonstratives in front of us. And
24 please try to refer and describe the demonstratives you were referring to so
25 it's clear on the record what you're talking about. For instance, the
26 demonstrative number is always helpful. And if you are referring to an

1 exhibit, please state for the record the exhibit number and the slide number
2 of the demonstratives. That's always helpful. Each party has 30 minutes of
3 total time to present arguments for each case. As I told you, we are flexible.
4 The Panel wants to make sure we hear all your arguments and evidence
5 today. Petitioner has a burden and will go first and may reserve certain time
6 for rebuttal at the start of its argument. Patent Owner will then have the
7 opportunity to present its response. Petitioner can rebut and Patent Owner
8 may also present a brief sur rebuttal if requested. At the end, we'll give each
9 counsel a warning when you're reaching the end of your argument time.
10 Like I said, if you wish to have a little bit more time, we can probably
11 accommodate that while being fair to everybody. Okay, since Petitioner,
12 you have the burden. Mr. Riley, you're up. And let me know if you're going
13 to reserve any time for rebuttal.

14 MR. RILEY: Yes, good afternoon or good morning, depending on
15 where you are in the various time zones. Yes, I would like to reserve ten
16 minutes for rebuttal. May it please the Board. Can I share my slides on the
17 screen? Is that appropriate?

18 JUDGE DANIELS: You can, and we also have them, so sure.

19 MR. RILEY: Thank you. I'll just put them up here on the screen as
20 well. Thank you. Broadly speaking, this IPR is about a design patent that
21 was filed in 2019 for a tabletop. And this design that was filed in 2019 is for
22 the ornamental design of a tabletop, where you have the tabletop formed
23 from two boards, two plain boards, coming together. Now, procedurally, the
24 Patent Owner did not file a substantive response to the institution decision,
25 and instead elected to file a motion to amend. So, my remarks this afternoon
26 are going to be on that motion to amend.

1 JUDGE DANIELS: Mr. Riley, let me ask you a quick question here
2 at the start, and it may bear later on in our discussion. We have recently, the
3 Federal Circuit has had, a number of cases, one of which is In re SurgiSil-
4 limited, and the other is the Curver Luxembourg case, talk about the title of
5 the patent limiting the scope of the claim. Although both of these cases, I
6 believe, are sort of talking about the scope of prior art. Does the title of the
7 patent, should we be taking that into account when we consider the scope of
8 these claims? As you said, there are two boards here that or two panels or
9 portions that form the tabletop.

10 MR. RILEY: Good question, Your Honor. And I think, yes, the
11 Board should be informed by the title, which is simply tabletop. I think
12 most instructive, however, is the claim that is at issue here, which is the
13 ornamental design for a tabletop as shown and described. And that's here on
14 demonstrative slide number three. But this is also found in the design patent
15 itself, obviously, on the first page there where the claim is. And if you look
16 further into the reference, if you look at the description, for example, figures
17 one through eight are grouped together because they're talking strictly about
18 just the top portion of the completed table. And then the next series or the
19 next grouping of figures is talking about the bottom portion. And then the
20 last grouping, which starts roughly around figure 16 and goes to the end, is
21 for that completed tabletop, which is actually what the claim is addressing,
22 where you have the two boards or planks that have come together to form
23 the completed tabletop. And that, in Petitioner's view, is what the claim is
24 covering and not the individual elements of the table before they come
25 together. Does that answer your question, Your Honor?

1 JUDGE DANIELS: Yes. And let me follow-up with this just from a
2 nomenclature perspective. When we talk about the top, I know there is some
3 issue about the sort of construction of this claim, claim construction as far as
4 width. But when we talk about the, looking at figure 16 on demonstrative
5 three, is that your understanding and Patent Owner can weigh in when it's
6 their turn. But the bottom, the bottom portion. The top portion is the wider
7 one, at least as we see it in figure 16. And the bottom portion is the
8 narrower one. Is that correct?

9 MR. RILEY: Yes. If you look back at the other figures, for example,
10 figure three, and this is in exhibit 1001, which is the patent. I'm sorry, figure
11 one from exhibit 1001, it shows, or it's described as being figure one is the
12 perspective view of a top portion. And if you compare that figure, figure
13 one, with, for example, figure nine, you are correct, Your Honor, that the
14 wider portion is the top portion in the nomenclature of the patent. But what
15 is unfortunate is the way the figures showing the completed tabletop are
16 aligned. The two are flipped so that when you're looking at, for example,
17 figure 16, you're correct. The wider portion that's on the bottom of figure
18 16, as shown on demonstrative slide three, here is what's referred to as the
19 top portion, and then the portion on the top with that dashed rectangular
20 cutout in the top left corner. That is the bottom portion.

21 JUDGE DANIELS: Thank you.

22 MR. RILEY: Thank you. Now, Petitioner's first argument here is
23 that, well, first let me address a little bit more about what the proposed
24 amendment has done to the figures. And the amendment has specifically
25 amended figures one, six, eight, nine and 14 and left as original the
26 remaining figures. So, figures two through five, seven, 10 through 13 and

1 15 through 23. And this is explained on demonstrative exhibit slide number
2 eight. And so now, looking on slide number nine, what you see on the left
3 hand side is the original figure one from the patent and then the amended
4 figure one on the right hand side. And the difference is that four of the
5 originally dashed circles or holes, four of those are now solid lines and now
6 part of the proposed amendment. And moving on to slide number 10, figure
7 eight has similarly made solid four of the dowels, or tenons that are on the
8 left hand side of figure eight on the edge there. Four of those are now solid
9 and are part of the proposed amendment.

10 JUDGE DANIELS: Mr Riley.

11 MR. RILEY: Yes.

12 JUDGE DANIELS: I know you're going to have, you have some
13 arguments about the approach appropriateness of the amendment that you're
14 going to get to. Let me just ask this at the start. You know, in looking in
15 particular at MPP 15-0404, my understanding is that it is frankly permissible
16 for a Patent Owner to change a dashed or a broken line to solid lines. At
17 least as far as we have figure eight. So is there any issue with respect to
18 that?

19 MR. RILEY: Petitioner hasn't argued that there isn't, that that change
20 is not inappropriate or it's not incorrect to have done that. I think where we
21 were going to get to here momentarily is that there's an inconsistency among
22 the figures now with these amendments that one of skill in the art would not
23 be able to reconcile as to what the actual claimed ornamental design is, and
24 that inconsistency would render the proposed amendment indefinite. And I
25 can get to that next if you'd like, Your Honor.

26 JUDGE DANIELS: Yeah, please.

1 MR. RILEY: Okay, let me turn then to slide number 20 in the
2 Petitioner's demonstratives. And actually, I'll start on slide 21. Now, as I
3 mentioned earlier, the grouping of the figures in the description, again are
4 such that figures one through eight are just referring to the top portion. So
5 just that same one element of the completed tabletop. And if you look on
6 slide 22, the challenge here is that figure one and figure eight are supposed
7 to show the same top portion. However, figure one has been amended to
8 show four holes are now part of the proposed amendment. But figure eight
9 shows four tenons or dowels emerging from that top portion. And so, one of
10 skill in the art here would not know which of the two is actually part of the
11 ornamental design that is being claimed. And if we look further at slide 23
12 again, the grouping of drawings from figures one through eight are all
13 supposed to be of that top portion. So that would, in somebody's mind, or
14 one of skill of the art's mind would look at figures two and three, for
15 example, which are now shown on slide 24. To see the same tenons or
16 dowels that are emerging from figure eight, you would expect to see those in
17 the side views of figures two and figure three, but they're completely absent.
18 And if you turn now to figure -- sorry, slide number 25, the same thing here,
19 you would expect to see those tenons or dowels emerging from the tops of
20 figures four and figure five if they were consistent with figure eight. But
21 they're now inconsistent because you're not showing those same tenons or
22 dowels in all of the same figures. For that reason, one of skill in the art
23 would not understand the scope of the ornamental design that is being
24 claimed here.

25 JUDGE DANIELS: Mr. Riley. So there's, if I'm understanding your
26 argument correctly, there seems to be sort of two issues with the drawings.

1 Can you go back to 22, slide 22? So this, as we talked about, just to keep,
2 again, nomenclature correct, figure one and figure eight are the same top
3 portion as described in the description of the patent, is that correct?

4 MR. RILEY: Yes, Your Honor.

5 JUDGE DANIELS: And one of the inconsistencies you're pointing to
6 is that figure one, which only shows holes, is the same portion, the same top
7 portion as figure eight, which is now is amended showing tenons, or did it
8 show tenons and it had the dashed tenons in the original patent, though,
9 correct?

10 MR. RILEY: Yes, Your Honor. In the original figures, the tenons
11 were there in figure eight, and the circles or holes were in figure one, but
12 both of them were unclaimed subject matter. The only parts of the claim
13 that were at issue in the original claim were the solid lines which formed the
14 completed tabletop here. Now we've got, if we follow the proposed
15 amendment's logic, we've got the same top portion in one figure has holes,
16 and that's figure one. And then figure eight, which is supposed to show the
17 same top portion instead of holes, we now have the tenons or dowels. And
18 so, one of skill in the art isn't going to be able to reconcile this with all of the
19 figures to make sense as to whether or not the tenons are part of the claim or
20 not, and where on which portion, if any, they should belong.

21 JUDGE DANIELS: Okay, so I get it. So one of the inconsistencies,
22 at least, is that this top portion, we don't, you wouldn't be able to tell from
23 looking at this whether it has, it's supposed to have tenons or holes. So,
24 because basically we now see both. It wasn't a problem before, right, when
25 it was dashed, when they were dashed and not part of the claim. But now
26 that they're solid, it is creating the first inconsistency.

1 MR. RILEY: Yes, that's right, Your Honor. The switch from the
2 dashed unclaimed subject matter to now being claimed subject matters has
3 made this inconsistency one where one of skill in the art would not know
4 what the scope of the ornamental design is that's at issue. Continuing on, I
5 was going to address Petitioner's expert, Mr. Hatch testified in exhibit 1,011
6 at paragraph 40, that when he looked at these differences, there was no way
7 to determine whether the substitute claim actually includes or requires those
8 added tenons or not, because you have them appearing in figure eight, but
9 not appearing in figures one through five, for example. So for that reason,
10 the Petitioner would urge the Board to find that the claims, the amended
11 proposed amendment claim, is indefinite because of this internally
12 inconsistent drawings that don't clearly show the scope of what has been
13 claimed in the ornamental design.

14 JUDGE DANIELS: So just to follow on to my previous question, sort
15 of I see it as a second part of your argument that it's also inconsistent that the
16 additional drawings do not show these tenons for the top portion. So again,
17 that goes, I guess that's sort of the— Yeah, on slide 24, so we don't... so
18 you're saying we don't know, for instance, we can't see the tenons here, so
19 we don't know how far they would be spaced. We obviously can't see the
20 holes because there you couldn't see them from this view. And so again, this
21 is sort of an additional inconsistency. Is that fair?

22 MR. RILEY: That's fair, Your Honor. I think that there are sort of
23 two primary inconsistencies that these amendment, the amendment has
24 caused to the drawings. The first is between the figure one and figure eight,
25 which are showing the exact same top portion, and one has holes, which is
26 figure one. And the second figure, figure eight, has the tenons. And then

1 the second part of this inconsistency is that there's not a consistency at least
2 with respect to figure eight and the added tenons or dowels. That's not
3 shown in any of the other amended figures. So one of skill in the art would
4 be confused about the nature of whether the tenons, in fact, are part of the
5 proposed ornamental design that the amendment wants to claim.

6 JUDGE DANIELS: Can we also see this as two different
7 embodiments?

8 MR. RILEY: I don't think you can, Your Honor, because, first of all,
9 the claim is directed to the completed tabletop, not to these individual
10 portions. Even if it was, they are directed to the same top portion. And
11 there's -- sorry, give me one moment. I believe I have a demonstrative on
12 this topic. I don't seem to be able to locate it quickly, Your Honor, so I'll
13 move on. Did I -- was able to answer your question, Your Honor, without
14 the slide?

15 JUDGE DANIELS: I think just my understanding in general, is that
16 the multiple embodiments during prosecution are usually severed from the
17 original, from the patent application. So really, what we should be looking
18 at is one embodiment. Is that your understanding of how prosecution
19 usually occurs as well?

20 MR. RILEY: Yes, Your Honor. For this kind of design, there has to
21 be a clear design that is claimed. And by having one figure show holes and
22 then having another figure which is supposed to show the same portion of
23 the claimed ornamental design, show tenons and not holes, then that's where
24 you supposedly, you could see it as having two embodiments. That's not
25 what the law would allow here, I guess I would refer you to slide 42. That's
26 the slide I meant to go to, to address this topic. The other thing I would say

1 is that the claim is not directed to any aspect of the unassembled state here.
2 So even though we have figures and some description about the two planks
3 or boards that are coming together to form the claimed design as the
4 tabletop, the claim is not directed to any of the unassembled portions of the
5 tabletop. And so really, it's -- you have to look at that completed tabletop as
6 the design and not at the individual portions in isolation.

7 JUDGE DANIELS: Thank you.

8 MR. RILEY: I'm nearing the end of my time on my opening
9 argument, so I was going to address functionality or some of the obvious
10 arguments, and I would just open it up to the Board if they have any
11 questions on either of those two topics before I run out of my opening
12 argument time.

13 JUDGE COCKS: This is Judge Cocks.

14 JUDGE DANIELS: Go ahead.

15 JUDGE COCKS: So, yes, I would like to hear about the functionality
16 versus ornamental aspects of what's happened here. And again, as my
17 colleague said, in answering our questions, we will apply additional time in
18 that respect. But I would very much like to hear your thoughts on this.

19 MR. RILEY: Thank you, Your Honor. So let me briefly address this.
20 And I'm referring now, starting at slide number eleven. It is Petitioner's
21 position that the amendments here of adding that the tenons and or the holes
22 is functional and not ornamental and functional. If we look now at slide
23 twelve, the precedent is very clear on this. Functional elements are not
24 protectable.

25 JUDGE DANIELS: Mr. Riley, should we just ignore these features?
26 If the tenons are unprotectable, should we just ignore them? I mean, we

1 recently had a case where the Petitioner argued that certain features should
2 be disclaimed or read out of the actual design. Is that what we should do?

3 MR. RILEY: So I have sort of two responses to that, Your Honor.
4 First, I don't think you can, because the only aspect of this patent that are in
5 front of you right now is the proposed amendment to the claim. The Patent
6 Owner has already admitted on the record that its motion to amend is non
7 contingent. So we're really just focused on what's left here, which is the
8 amended claim. The other thing I would say is that the responsiveness of the
9 amendment to the instituted grounds. From Petitioner's perspective, the
10 tabletop is what is claimed here. And when you look at those images,
11 figures 16 through 23, those have not changed at all by adding the tenons
12 and the holes. So, in fact, it's Petitioner's position that the amendment is not
13 responsive to the instituted grounds. And for that reason, it should also. The
14 amendment should be denied and the proposal should be found unpatentable.
15 Does that answer your question, Your Honor?

16 JUDGE DANIELS: Sort of, I guess my concern is that, for instance, I
17 was looking at on slide twelve, you have a site from odds on products right
18 there in the middle. And this is, we're very often urged to basically, you
19 know, I want to make sure what I understand you're asking us, we're often
20 asked to ignore or not consider parts of the design. For instance, a tenon is
21 an example. It has a functional purpose, but we're often asked to ignore that.
22 What odds on products says to me is that even though, if you read actually
23 past the section that you quoted to us here, I believe it says that the
24 ornamental aspects of those functional portions of a design should still be
25 considered. And it may be that there's not much ornamental weight to it, but
26 we cannot ignore them. Is that fair?

1 MR. RILEY: I think what I would say is you can't ignore them.
2 Because first of all, the only change from the original ornamental design to
3 the proposed amendment is adding these functional elements, the holes and
4 the tenons, so they can't be ignored, because that supposedly is how the
5 Patent Owner sees overcoming the prior art that has been presented. And
6 the other thing I would say on top of that is, in certain circumstances, what
7 might be normally a functional element, like a tenon or something else, can
8 be an ornamental part of an ornamental design. But here they're completely
9 hidden. They're completely -- it's not clear at all. If you look at figures 16
10 through 23, one of skill in the art, Mr. Hatch testified about this. How those
11 two boards are joined is not something that someone can see from the design
12 itself. It could be that there's a nail or a screw or a series of nails or screws
13 that are, in fact, what are connecting the two planks or two boards together.
14 And so, the choice here of using tenons and dowels is for functional reasons
15 only and not at all for ornamental reasons. And again, on top of that, again,
16 just to remind you, the claim is directed towards that completed tabletop.
17 It's not been addressed to any of the subcomponents or sub parts. And so
18 those are the only instances when you would be able to see that the tenons
19 and the holes that were added. So again, that's another reason why they're
20 functional and not at all ornamental here.

21 JUDGE COCKS: Counsel, this is Judge Cocks.

22 MR. RILEY: Go ahead.

23 JUDGE COCKS: Yes. So to follow along that line, is there any
24 significance, for the sake of argument, assuming you could see these tenons
25 in some sort of finished form, again, just for the sake of argument, is there

1 any significance to the fact that what is claimed is only a subset of the total
2 number of tenons that were illustrated, i.e., four instead of all six?

3 MR. RILEY: The significance that Petitioner sees from that is that
4 Patent Owner has not limited the number that could be included in the final
5 implementation of the tabletop. Right. So by leaving two of the holes still
6 dashed and two of the tenons still dashed, it's opening the door for one of
7 skill in the art to include those, or to potentially include other tenons and
8 holes, depending on the size of the ultimate tabletop. Mr. Hatch, Petitioner's
9 expert, talked about how for a smaller implementation of this design, such
10 as, like an end table or a nightstand, you might need as few as four dowels or
11 tenons. But as you increase the size of the table for the application, if you're
12 looking at, like, a dining room table, you might then need to increase and
13 spread the dowels and tenons out so that you have ten, potentially. So, I
14 think the significance of leaving some of those still in the dashed form in the
15 drawings is to allow for that flexibility. And the Patent Owner deliberately
16 did that.

17 JUDGE MCGRAW: This is Judge McGraw. Is there any reason why
18 we could not consider the design to be directed to a tabletop in multiple parts
19 that can be assembled by the user, in which case the appearance of the dowel
20 may be relevant?

21 MR. RILEY: You kind of tapered off there at the end. I understand
22 your question to be whether or not the Board should consider having the two
23 portions also be part of the covered ornamental design, is that right?

24 JUDGE MCGRAW: Correct. In other words, the design would be
25 directed to a tabletop that's in multiple parts that could be assembled to form
26 the completed tabletop shown in the design.

1 MR. RILEY: That's not what they claimed. Respectfully, Your
2 Honor, the claim is simply for the tabletop and based on how the description
3 is written, particularly given that they broke out figures one through eight to
4 discuss just the top portion, and then figures nine through 15 discuss that
5 bottom portion. Patent Owner knew how to address those specific elements
6 of the completed tabletop and did not include that at all in the claim. And I
7 would probably look back again at slide 42 in Petitioner's demonstratives to
8 address some of this concern. The specific language that's used in figure,
9 the description of figure one, for example, is that it's a perspective view of a
10 top portion of a tabletop isolated for clarity of illustration showing my new
11 design. And if you look at that with respect to the claim itself, it's for the
12 tabletop and not for the top portion or the bottom portion. It's strictly for the
13 completed tabletop, Your Honor. Are there any other questions? I
14 appreciate the court's time. Yep.

15 JUDGE DANIELS: As a follow up, Mr. Riley, Patent Owner
16 presented a couple cases. One is, I believe it's the Keystone case. That has
17 to do with parts of a portion of a design is hidden when it's in use, and yet
18 was still part of the overall design. Those are interesting cases. And the
19 other one is for a hip prosthesis, for hip arthroplasty. And those are hidden
20 and can't be seen, of course, by the user, or at least partly can't be seen.
21 Well, hopefully the hip one is completely not seen. But how do those differ
22 from here, from this case?

23 MR. RILEY: Yeah, I believe the difference is, Your Honor, in those
24 cases, let's start with Keystone, for example. First there, I believe that the
25 way the claim was phrased was to claim those unassembled elements, and
26 we don't have that here. With respect to the prosthetic or the hip, I believe

1 there the rationale that was used was that even though in the sort of end state
2 it would be hidden within a human body, but before that point, it would have
3 been prominently discussed and displayed potentially with the patient that it
4 was going to be implanted with, and would probably be displayed at
5 conferences or in medical literature or however it's described. But sure. But
6 in that circumstance, though, the entire, the hip, the entire thing was hidden.
7 In contrast here, just the holes and the tenons or dowels are what's hidden,
8 not the entire tabletop. So that's another key distinction between that
9 particular application and what's happening here in this circumstance.

10 JUDGE DANIELS: Thank you.

11 MR. RILEY: Thank you. By my account, I'm at 30 plus minutes. I'm
12 happy to continue, but I also don't want to be abusive of everyone's time.

13 JUDGE DANIELS: So let me say this. Unless the other judges, I
14 think we'd like you to at least get to some of the other issues, in particular
15 the merits and obviousness that you were going, that you were talking about.
16 So we're at 30 minutes. I'm certainly willing to give you another five
17 minutes and then we can talk about extending the rebuttal, and sur rebuttal
18 times as well too. But unless there's any complaint from or issue with the
19 other judges, I think we'd like to hear a little more. We've asked you a lot of
20 questions.

21 MR. RILEY: I appreciate the questions, and I'm happy to pick up a
22 little bit of Petitioner's obviousness arguments. So I've turned now to slide
23 34. And, sorry, now on slide 35, what I would say here is that the Petitioner
24 has presented three primary references. We have Morgan, Bordonabe
25 Furniture and Iannaccone and Mr. Hatch, Petitioner's expert, has argued that
26 those have basically the same visual impression as the proposed amendment

1 here. And in addition to that, Petitioner has submitted Carter as a suitable
2 secondary reference, and as well as the Galant reference. And Carter is
3 specifically included to show the use of the disclosure of the dowels or
4 tenons and holes in the prior art. And Carter is quite old, I believe it's more
5 than 100 years old. And then the Galant secondary reference is a very
6 widely distributed commercial desk by IKEA that's been around for quite a
7 number of years. And the reason that we're including that is to address the
8 potentiality that the specific sort of length to width ratio that's shown in the
9 012 patent, if that's an issue, Galant has generally the same one to two ratio
10 between the length and the width. And that's why that would have been
11 combined as well.

12 I would turn now to slide 39 to address Carter in particular. Carter is
13 exhibit 1,012. And again, as I mentioned, it's the secondary reference here.
14 And Mr. Hatch, in his second supplemental declaration, exhibit 1,011,
15 starting around paragraph 60, he discusses how Carter is so related to the
16 Morgan reference that it would be suitable to have features that would
17 suggest application in Morgan. And those relationship there that he
18 identified was that they're both tables, they both have table tops, and in fact
19 they're both folding tables that are formed from two halves or two sides
20 coming together, and that not only do they have the tabletops that are
21 similar, but they also, in this circumstance, as folding tables, have the same x
22 shaped legs when unfolded. And for those reasons, they are similar enough
23 to each other that one of skill would look to combine the features with each
24 other.

25 Now, one of the areas of concern for Petitioner when we presented the
26 original petition and continuing on, is under what interpretation of the claim

1 should the art be addressed? And we have addressed it under both Patent
2 Owners construction as well as Petitioner's construction. And we would
3 urge the Board here because there is a dispute between the parties about
4 what the interpretation of the claim is. We would suggest that the Board
5 should provide a written description of the ornamental design, because the
6 Patent Owner has argued that the disclosure here is sufficient to include not
7 only unequal boards coming together to form the completed tabletop, but
8 also equal width boards coming together. And we believe it's appropriate in
9 that circumstance, because that's an issue between the parties, that in fact the
10 Board should then construe the ornamental design with a written description
11 of it.

12 JUDGE DANIELS: So, Mr. Riley, would you agree with our original
13 decision to institute where I believe we relied on, we looked at the claim
14 construction, at least initially, as providing for a wider and a narrower
15 section?

16 MR. RILEY: Yes. Petitioner's position is that the top portion is, as
17 disclosed, is the wider of the two, and the bottom portion is the narrower.
18 So we would agree with that? If that's the construction that the Board moves
19 forward with? Yes, we would agree with that.

20 JUDGE DANIELS: Is there -- follow up. Let me ask this. It's not
21 really a follow up to that question, but it's something I've been thinking
22 about. Does it—Patent Owners been bringing up the issue that Morgan, for
23 example, is a folding table. What impact should that have on our analysis
24 when we're comparing the prior art to the claim design?

25 MR. RILEY: That's an excellent question, Your Honor. It should not
26 impact the use of the tabletop in Morgan as a prior art reference here,

1 because, again, the claim that is at issue in the proposed amendment is for
2 the completed tabletop. And it doesn't limit it in any way to a tabletop that's
3 formed from folding or some other way of having the two portions come
4 together. It's simply for the completed tabletop and a design like Morgan or
5 Carter, those having in their completed forms a tabletop, they just happen to
6 come together from a folding table. You've also seen, I believe it's the
7 Iannaccone reference, which is get you the exhibit number for that one. That
8 one's exhibit 1,006. That one has that sort of drop leaf where you have one
9 stable, fixed horizontal portion, and then another portion that comes up and
10 comes down, depending on the user's interaction with it. But in its
11 completed form, even in Iannaccone, still has a complete tabletop that's
12 formed from two planks or two boards being abutted against each other or
13 joined together. And so, the claim here is, should not prohibit the use of
14 whether it's trap leaf, whether it's a completed tabletop, like we see in
15 Bordonabe Furniture, which is exhibit 1,005, where it just shows the
16 completed tabletop and not how those two portions come together. As long
17 as you have those two halves or two portions that come together to form the
18 tabletop, that's appropriate prior art here against the ornamental design that's
19 in the proposed amendment.

20 JUDGE DANIELS: Let me ask you one question you brought up
21 about Iannaccone. However, the correct pronunciation is. One of the
22 concerns I have is there is a raised sort of backstop, low backstop portion on
23 the Iannaccone icon reference on the tabletop. How should we -- that seems
24 to me to be part of the tabletop. How should we consider that?

25 MR. RILEY: I don't think that you should consider it as part of the
26 tabletop for the same reason that the Board and its institution decision chose

1 to ignore the legs or the types of legs. You should also ignore the portion on
2 top there in the Iannaccone reference, and I would refer you to slide. Let me
3 skip ahead here, 62. In Petitioner's demonstratives, that is one of the
4 arguments that the Patent Owner has raised is that you have those legs or
5 other mechanical elements or potentially things that are embedded on the
6 surface. But even in their own drawings, they have included dashed lines for
7 elements that could potentially be included in any final tabletop. You have,
8 I think, a cylinder sort of underneath in figure 23, and you've got sort of like
9 a. I'm not sure if it's a control pad or whatever it is. There on the right hand
10 side in Figure 23, those are things that are not claimed.

11 And so, one of skill in the art would look at this, an ordinary observer
12 would look at this tabletop design and understand that there could be other
13 elements on top or on the bottom. Certainly you would need legs to support
14 the table. But the focus when you're comparing the design here with the
15 prior art, would be to look at the tabletop itself. And in Iannaccone, when
16 you look at it, I don't think one of skill in the art would have a hard time
17 understanding, and Mr. Hatch certainly didn't have a hard time
18 understanding that. That sort of three sided back portion, that wouldn't
19 prevent them from being able to understand that you still have two boards or
20 planks coming together to form that tabletop. And that same thing is what
21 has been attempted to be added here in the amendment.

22 JUDGE DANIELS: Thank you. We're nearing sort of 40 minutes
23 total that we've taken up of your time. You could, I'm certainly willing to
24 give you a few more minutes to perhaps finish up anything you would like to
25 do here. And then we will allocate some rebuttal time as well when we get
26 there.

1 MR. RILEY: Appreciate that. I don't believe there's anything else I
2 would raise at this point in time. I think I would raise the remaining points,
3 if appropriate, on rebuttal, Your Honor. So I appreciate the questions. I
4 thought they were excellent questions, and they certainly kept me on my
5 toes. And I will reserve what time available I have for rebuttal.

6 JUDGE DANIELS: All right. Thank you. What we'll tentatively do
7 is you asked for ten minutes of rebuttal. We can honor that, probably. And
8 of course, give Mr. McConnell here an equal amount of time here, 40
9 minutes. And just let us know, Mr. McConnell, we have questions for you,
10 too. So we can probably use up this time for good reasons. So just, Mr.
11 McConnell, tell me if you'd like to reserve some time, and then I'll let you
12 go.

13 MR. MCCONNELL: We can reserve five minutes at the end for any
14 necessary rebuttal. And that's rebuttal only if it's necessary. I know we're
15 nearing the end of our scheduled hour, so, you know, it depends on the
16 Board's time. I'm available after the hour is over to continue this if we need
17 to.

18 JUDGE DANIELS: Look, we are here to get as much information
19 from you all as we can.

20 MR. MCCONNELL: So let me start by sharing my demonstratives.
21 And then, well, let's see if I can do this smoothly. I'm sorry. Have technical
22 difficulty that.

23 JUDGE DANIELS: We have them too, if you're having any
24 difficulty. We have them. We're looking right at them.

25 MR. MCCONNELL: Right. So, in any case, let's discuss the points
26 that we've already discussed in this hearing. Right. And we can go. The

1 demonstratives are just back up for this information. But the first and
2 foremost discussion is around the scope of the actual claim and what that
3 covers. Right. So I would like to point out that the claim language does not
4 say completed tabletop. It says tabletop as shown and described. And we
5 all know it's settled that design patents are comprised both of the very simple
6 claim language and the figures that go along with it. And our figures clearly
7 define three states. Figures one through eight define the top portion of the
8 unassembled state. Figures nine through 16 comprise the bottom portion of
9 the unassembled state. And figures, or, excuse me, nine through 15. And
10 I'm looking at demonstrative page 29. So, the bottom portion is figures nine
11 through 15. And the complete tabletop is figure 16 through 23. It is our
12 position, Patent Owners position, that there's nothing in the words or figures
13 of the patent that limit this claim to an assembled tabletop. And, in fact, in
14 the market, these sort of things are sold unassembled, and the user puts them
15 together at home and sees all of these pieces. Right. So, you know, that's
16 the first point. And I'm not sure where the legal authority comes to limit this
17 to a completed tabletop. I would be interested to know if there's a legal
18 citation involved, but it's our position that the figures clearly outline an
19 unassembled state and an assembled state. And there's nothing in the
20 language of the claim that limits that. It doesn't say completed. So, do we
21 have any questions on that point.

22 JUDGE DANIELS: Mr. McConnell? What? So three states?

23 MR. MCCONNELL: Two states, assembled and unassembled.

24 JUDGE DANIELS: Okay, so two states. So how does it get from
25 state one to state? How does it get from unassembled state to the assembled
26 state?

1 MR. MCCONNELL: Well, that's really. I mean, it's a design patent.
2 So we're talking about the ornamental aspects, not the functional aspects of
3 putting them together. But the pieces are delivered unassembled, and the
4 user puts them together. I don't think that that is excluded from the words of
5 our patent in any way that, you know, I would --

6 JUDGE DANIELS: That means that in some respects, the patent
7 encompasses some level of functionality. That your states show a first state
8 where they're unassembled, and a second state where they're assembled.
9 And that takes some sort of functionality to put them together.

10 MR. MCCONNELL: Okay.

11 JUDGE DANIELS: And on top of that, my concern, and I understand
12 what you're saying, and I appreciate this argument, because it seems like
13 those are two separate embodiments. You have an embodiment where
14 they're separate, an embodiment where they're together. And I'm just as
15 interested to know as if you have a citation or other examples, even, of
16 claims that are done in this way with two states.

17 MR. MCCONNELL: Yeah. I don't know that I would consider this
18 to be two embodiments. I would explain this as the pieces of a puzzle and
19 the final puzzle. Right. The pieces of the table and the completed table are
20 all part of the claims here. When we drafted this patent, claims figures one
21 through 15, which is the vast majority of the claims, are devoted to this
22 unassembled state where the two pieces are shown in isolation, separate
23 from each other. And then figures 16 through 23 are shown, assembled.
24 And I just don't think that there's two embodiments here because there is a
25 single product. Right. That is in two different states, assembled and
26 unassembled.

1 JUDGE DANIELS: How does that reconcile with; I believe the
2 statutory language is that a claim is directed to an article of manufacturer.

3 MR. MCCONNELL: It is, yeah.

4 JUDGE DANIELS: If we have it in two separate pieces, then those
5 are articles of manufacture. And to me, would be two different
6 embodiments. Or let me not say to me, in looking at how design claims are
7 usually drawn to an article of manufacturer, it seems like we have two
8 articles of manufacture, a top portion and a bottom portion.

9 MR. MCCONNELL: I would argue that you have a single item
10 article of manufacturer, which is the tabletop, comprised of a top portion and
11 a bottom portion, shown in an unassembled state and an assembled state. It's
12 a single article of manufacture, and there are elements of it that are hidden
13 from view that are part of the ornamental aspects of the amended claim.
14 And those are shown in the views of the unassembled state. And they were
15 there from the beginning, just not claimed. And we simply changed the
16 broken lines to solid lines to make the tenons and holes. The four tenons
17 and four holes claim material of the ornamental design.

18 JUDGE MCGRAW: The concern that we have, though, is that the
19 claim is directed to an ornamental design for a tabletop. And then when you
20 go to figure one, the description of figure one, it states, it's a perspective
21 view of a top portion of the tabletop, isolated for clarity of illustration,
22 showing my new design. And I'm having trouble understanding how that
23 language can be used to say the claim covers two separate parts of the
24 tabletop or an unassembled tabletop. Unassembled is not part of the
25 description anywhere. So, I guess my concern, as I said, is how can I use the

1 description of the figures to read your claim as covering unassembled
2 tabletop portions as opposed to a tabletop?

3 MR. MCCONNELL: Yeah. I think that our argument there would be
4 that isolated for clarity of illustration could also be a synonym for
5 unassembled. There's more weight to that than this is limited to a single
6 tabletop, and only the figures 16 through 23 control what's claimed in the
7 design. But I understand your point.

8 JUDGE MCGRAW: Thank you.

9 MR. MCCONNELL: Are there -- do we want to discuss the -- I feel
10 like this is sort of the crux of what we're discussing today, is the scope of the
11 claim, whether it covers assembled and unassembled states, because that
12 flows through much of the analysis. And, you know. So let me talk about
13 indefiniteness for just a moment. You know, it is our position and our
14 expert's position. It's shown in our papers, and this is on slide
15 demonstrative, slide 28 and 29, that the tenons that are claimed in figure
16 eight are clearly denoted as part of the top tabletop portion. There are no
17 holes. There are holes shown only in the bottom tabletop portion. And then
18 it's clear to our expert, as a one of ordinary skill in the art, that the tenons
19 would be applied to the top portion and the holes applied to the bottom
20 portion. So that's sort of the crux of our indefiniteness argument. And we
21 don't feel that the claim is indefinite under the standard outlined in the case
22 of citations.

23 JUDGE DANIELS: But figure one does show holes, and that's the
24 top portion, correct?

25 MR. MCCONNELL: Yes.

1 JUDGE DANIELS: But then you amended figure eight, which is also
2 the top portion, that have tenons.

3 MR. MCCONNELL: That's correct.

4 JUDGE DANIELS: So how does ordinary observer, assuming they
5 see these in two separate pieces?

6 MR. MCCONNELL: Again, we go back to the collection of the
7 figures as figures one through eight are the top portion, figures nine through
8 15 are the bottom portion, and 16 through 23 are the completed portion. In
9 showing tenons in figure eight, they are part of the top portion. There may
10 be a minor inconsistency in the figures, but we feel that an ordinary
11 observer, one of ordinary skill in the art, which is the standard. Right. It's
12 one of ordinary skill in the art, would understand that the tenons would be
13 applied to the top half of the table because there are none shown in the
14 bottom portion.

15 JUDGE MCGRAW: There's no tenons shown at all in figures two or
16 three. So, doesn't that raise a non-minor inconsistency between what is
17 being claimed? If figures two and three don't show any tenons, why would
18 we assume that tenons should be read into those figures and be part of the
19 claimed design?

20 MR. MCCONNELL: Again, I mean, I think that this is one of the
21 issues to be settled by the Board. And we would argue that one of ordinary
22 skill in the art as an ordinary observer who understands how these tables are
23 assembled. Right. We start with a disassembled and assembled state. One
24 part of the table includes tenons, one includes holes, and it's clear from
25 figure eight that the tenons are in the top portion. And, you know, it's our

1 position that it's a minor inconsistency. It does not affect the understanding
2 of the scope of the claim, and our expert has testified to that.

3 JUDGE MCGRAW: Why would someone assume that figure two is
4 incorrect—the scope of figure two, which doesn't show tenons, is wrong—
5 and that the figures that do show the tenons are correct? Why would an
6 ordinary observer believe that figure two is incorrect and discount figure
7 two?

8 MR. MCCONNELL: In this instance, it's our argument that looking
9 at the group of figures as the top portion, which includes the tenons in figure
10 eight, that would be what shows the tenons need to be in figure two for the
11 device to work. And, yes, I mean, that's our argument.

12 JUDGE COCKS: Counsel, just to follow up. So the nature of the
13 inconsistency is that figures two and three should be showing the tenons, but
14 they do not, or that they don't need to and it's not necessary, and so that it's
15 not inconsistent that they're not there. I guess, can you clarify the nature of
16 the inconsistency?

17 MR. MCCONNELL: The inconsistency is. Sorry, could you repeat
18 that?

19 JUDGE COCKS: So I guess, what is the nature of the
20 inconsistencies? That figures two and three should have shown them and or
21 ordinary designer would have recognized that they would be there, or that
22 they do not need to be there, such that there's symmetry with figure one,
23 which shows the holes?

24 MR. MCCONNELL: So our position would be that they do not need
25 to be there for a designer of ordinary skill to understand that they would be

1 there because of figure eight. Right. And that that's the nature of the
2 inconsistency --

3 JUDGE COCKS: Thank you. I understand.

4 MR. MCCONNELL: -- figure eight, it's part of the top portion. All
5 right. So I'm certainly happy to try to answer more questions about that
6 indefiniteness, but I would like to talk about functionality because I think
7 that that's an important subject in this IPR. So, referring to slide number 25,
8 I apologize that this citation to L.A. Gear here is correctly cited in our briefs,
9 but there's actually two L.A. Gear cases, one from 1988 and one from 1993.
10 This quote is actually from the '93 case, which is in the briefs. There was a
11 typo. In any case, the relevant law shows that if there are multiple
12 functional ways to achieve a goal, the choice of which functional means to
13 use can be considered an ornamental one. Right. And this is what's shown
14 in the L.A. Gear line of cases and the Ford cases. So, you know, in our
15 papers we show that there are at least seven other functional ways to join or
16 connect the two tabletop portions. Right. And I won't go through them
17 here. These are outlined in our experts declaration. But the existence of
18 multiple other ways to achieve this function of joining the two tabletop
19 portions is not dispositive. It certainly increases the likelihood that the
20 choice is ornamental in this case. Seven other methods lends great weight to
21 that likelihood.

22 And another point which is that I feel like these functionality
23 arguments flow into the -- well, they certainly flow into the obviousness
24 arguments as well. Right? So our expert further testified that the choice of
25 four tenons and holes in this case is made for ornamental reasons.
26 Specifically, to establish a visual effect of repetition for design symmetry

1 and for visual balance. This is in contrast to other available methods. Such
2 as blind mortise and tenon joints or tongue and groove joints. He also
3 testified in his declaration that the placement of the tenons in the holes on
4 the left and right side is symmetrical and positioned nearly near the edges.
5 Creating a visually balanced equilibrium effect. The number and positioning
6 of four tenons and holes is done for primarily ornamental reasons, not
7 functional reasons, given the number of other choices. Right. So the L.A.
8 Gear cases and the Ford cases show functional elements being chosen. A
9 number of different functional elements being chosen from. To establish an
10 ornamental effect. And that's the case here.

11 JUDGE DANIELS: Mr. McConnell, did you just say that the most
12 important reason for the tenons and holes is ornamental?

13 MR. MCCONNELL: No, I did not say that. There are both
14 functional reasons and ornamental reasons for the tenons and holes. Right?
15 And just because the case law is very clear that removing all function from
16 every aspect of a design patent would make it make them meaningless.
17 Right? So, what we're talking about here is the choice of which functional
18 means is an ornamental decision. Because there are many choices that could
19 be made for functionally joining two tabletop portions together. And Patent
20 Owner has chosen this particular one in this number, arrangement ,and
21 configuration.

22 JUDGE DANIELS: So those, just to be clear, and I agree with you
23 that we have to consider. You know, I think that a lot of the cases -- the case
24 law is sometimes interesting because it talks about, you know, primarily
25 functional designs as opposed to parts of the design which are functional,
26 which, of course, we have to have. You don't have a table that supports

1 something, then it doesn't make any sense. It's going to do something
2 functional at the end of the day. Every article of manufacture, for the most
3 part, that I can think of. But I guess my question is how should we look at
4 it? For instance, these tenons, as you just said, have a functional reason.
5 And in many cases, we've looked at parts of the design that are functional.
6 And we have to look at them in the overall appearance of the design. And
7 how they impart their ornamental features to the design as a whole. In light
8 of the fact that these are hidden. At the end of the day, how much of the
9 design? How much, maybe weight? I don't know if that's the right word,
10 but let me just use weight. How much weight should we give ornamental
11 aspects of this, which you say are the proportional positioning of them and
12 maybe the length of the tenons? How much weight should we give that as to
13 the overall appearance of the claim tabletop?

14 MR. MCCONNELL: Well, stepping back to the initial discussion of
15 unassembled and assembled states. It's again our position that this design
16 patent covers both. And that the user, an ordinary observer of this design,
17 would see the tenons and holes. And that if you think about it, the seven
18 other methods all look very different. We've provided examples of those in
19 our expert declaration. And so there's a different visual effect to the
20 different ways to functionally join these two tabletops together. And so for
21 that reason, it should be given the weight of being an ornamental choice.
22 Now, the quantum of how much weight should it be given? Function versus
23 ornamentality. That's a difficult question to answer and is challenging based
24 on the case law. But there are ornamental reasons for the choice of these
25 tenons and holes that are cited. Especially in light of the many other
26 options. Arrangement. The number of choices and the number of tenons.

1 And you asked a question at the beginning of this hearing about the claiming
2 of four versus six. And it's our position that we're claiming the ornamental
3 arrangement of four tenons and four holes in this number and arrangement.
4 Right. And that's what design patents cover. And many of the arguments
5 that are made around specifically obviousness and the Carter reference
6 completely ignore the fact that what's claimed here is the ornamental
7 arrangement for tenons and holes. And so, before I jump into that, let me
8 continue to answer any questions that you have about functionality. I hope
9 I've answered them, but I'm happy to discuss it further.

10 JUDGE DANIELS: These are great answers. Thank you. Let me
11 follow up my question with; I understand that you have an expert that has
12 said that these have some ornamental value. And again, we acknowledge
13 and appreciate those seen them. And as we studied this case, the question I
14 have for you is, do you have evidence. I'm looking -- do you have evidence
15 that a user would see this thing in two pieces?

16 MR. MCCONNELL: Well, again, I think I answered this question in
17 the beginning and saying that there are, you know, the two states that are
18 clearly outlined in the different figures, and we don't have evidence in our
19 papers. I'll just be honest. We did not include evidence in our papers that
20 would say, the expert says that the user of this would see these in two pieces.
21 We certainly could have such evidence. We just don't. To me, it's quite
22 clear from the type of product that these are received in an unassembled state
23 and assembled by the user and by the figure, the description of the figures as
24 well in the patent.

25 JUDGE DANIELS: Thank you.

26 MR. MCCONNELL: Yeah.

1 JUDGE DANIELS: I also have a question that you brought up, and it
2 does go to scope here. And I think. I'm trying to see. I'm just giving me a
3 few seconds to find the right slide in your slide deck here. I think slide --
4 page six, which shows the proposed amended claim, the original figure eight
5 and the amended figure. I'm blowing it up for myself on my own screen so I
6 can see the ends. You have put forth the -- you have said that the scope of
7 this claim, I believe, encompasses not just a tabletop that would be unequal
8 width, these portions would be unequal, but also equal. Is that correct?

9 MR. MCCONNELL: I think the correct answer is we have not taken
10 a position on limiting the claim construction to one or the other. And I don't
11 think that it's in our papers that we are limiting ourselves to one claim
12 construction or the other.

13 JUDGE DANIELS: I want to ask you about figure eight. I believe
14 that you said it may be in your reply or in your--I'd have to go look. But
15 maybe it's in your motion to amend that the line -- I want to talk about the
16 lines here at the very end of the -- I guess I'm looking at the amended figure
17 in your slide six. You have the ends, the very end, which shows a
18 chamfered or a curved corner on one side, and then broken lines that extend,
19 forming a part of the end of the board that that is unclaimed. Correct?

20 MR. MCCONNELL: So that is unclaimed, yes, according to the
21 description in the claim and the patent.

22 JUDGE DANIELS: And I may be misconstruing your argument, but
23 you also seem to say that the dash dot dash line that's underneath it, which
24 indicate which is a boundary line, is if that that is an indication that the
25 width of these boards is indeterminate or could be varied, is that a correct --
26 Is that a fair assessment?

1 MR. MCCONNELL: I'd say that's a fair assessment, yes.

2 JUDGE DANIELS: If this width were indeterminate, how would
3 either a person of ordinary or a designer of ordinary skill or an ordinary
4 observer know what you're claiming if they don't know how wide these
5 boards are?

6 MR. MCCONNELL: So, the claim doesn't cover the actual
7 dimensions. It covers the visual impression, the design. And so, it would be
8 our position that any board that's part of a tabletop that has this shape with
9 these tenons or holes in the other portion, the bottom portion, would be
10 cover infringing the claimed invention. Yeah, I think it would be. It's about
11 the proportion and the elements and the visual impression, which is really
12 what we talk about in the design patent context, not the specific dimensions.

13 JUDGE DANIELS: How is anyone looking at this? How can they
14 determine the proportions if the widths are indeterminate?

15 MR. MCCONNELL: I would say the widths are not. The ratio of the
16 width of the height is not indeterminate in these figures, which is the
17 dispositive element. Right. In determining the proportion, it's not the actual
18 width. It's the relationship of the width to the height of the boards.

19 JUDGE MCGRAW: Can you clarify what you mean there? I don't
20 follow what you're saying.

21 MR. MCCONNELL: I'm saying that if the board has a vertical or a
22 length of x and a width of y, the determinant issue for a design patent is the
23 ratio of x to y. It's not the actual specific dimension. Y equals 2 meters or 3
24 meters. And I don't know if I'm making, if I've clarified that by adding an
25 equation, does that get to the point?

1 JUDGE MCGRAW: How about if you go to figure 16 of the patent
2 and use that figure to explain what you mean? Because I do have a very
3 hard time following. To me, figure 16 shows two boards of unequal width.
4 And I don't see how you can make an argument that your patent would cover
5 a tabletop composed of two boards of equal width, given what's shown in
6 figure 16.

7 MR. MCCONNELL: Okay, I see what you're saying, and –

8 JUDGE MCGRAW: Maybe I'm missing something. This is your
9 chance to explain.

10 MR. MCCONNELL: I don't have a great answer today, and rather
11 than give you something that doesn't make sense, I don't want to answer it
12 all.

13 JUDGE COCKS: So I have one follow up question to my colleagues
14 inquiries. And when it comes to this claim construction issue, you had
15 previously said that Patent Owner is not taking a position on one or the other
16 of two claim constructions. I understand the one to be that it requires
17 unequal widths. But can you explain what the other is that you reference,
18 just so I understand?

19 MR. MCCONNELL: Well, the other claim construction that has been
20 discussed in Petitioner's documents is the equal width claim construction.
21 And this is, I believe, designed to encompass some primary references that
22 include equal width boards. And, you know, the reality is that we would be
23 willing to discard that claim construction if that's what it takes to make this
24 clarified in this hearing. We focus just on the unequal width construction.

25 JUDGE COCKS: And that's fine. I don't want to belabor this, but
26 just. Just so I fully understand. So unequal widths is what Petitioner's

1 offering is, requires unequal widths. The claim does. The other side, if I
2 understand, would be it's not just equal widths, but it's a construction that
3 encompasses both unequal and equal. Is that accurate?

4 MR. MCCONNELL: I think that's only accurate.

5 JUDGE COCKS: That is accurate. Okay, thank you.

6 MR. MCCONNELL: We have actually spent no time arguing the
7 equal width construction at all in any of our papers. And that's what I mean
8 when we haven't taken a position on it. And so, if it narrows the number of
9 issues that can be -- that need to be addressed by the
10 Board, we would be happy to focus solely on the unequal width claim
11 construction.

12 JUDGE MCGRAW: Are you saying that you do not construe the
13 claims as encompassing a tabletop having equal widths?

14 MR. MCCONNELL: Yes.

15 JUDGE MCGRAW: Thank you.

16 MR. MCCONNELL: All right, so let's see. We were talking about
17 functionality and then the scope of the claim. I have arguments related to
18 the obviousness references. I recognize that we're 20 minutes over. I'd be
19 happy to make -- I'd like to make a couple points about Carter and perhaps
20 the folding table discussion that we had earlier. Is there time for me to do
21 that?

22 JUDGE DANIELS: Certainly. I mean, so we're 32 minutes, and we
23 gave Mr. Riley 40. So let's go another eight, 10 minutes if we need to, and
24 then we'll see where we have, how we're doing.

25 MR. MCCONNELL: Okay, let's move to page 22, which is Carter.
26 You know, the obviousness. There are six grounds that remain in this IPR.

1 They all relate to obviousness. They all rely on Carter as a secondary
2 reference. And I think it's worth talking about Carter in that regard, because
3 we feel it's deficient and does not disclose, discuss the configuration of four
4 tenons and four holes in the arrangement we've claimed in our ornamental
5 design patent. Carter, the figures show a single dowel pin. There's no other
6 suggestion or reference to any other dowel pin. There's just one dowel pin.
7 They don't show. It doesn't show a hole. If we move to exhibit page 23.
8 Yes, there are some plurals used in the specification, but there's very little
9 written. There's still no whole discussed or disclosed in this specification.
10 And it's our position that you just can't read this in. Just because it doesn't.
11 It doesn't appear there saying that it wouldn't work without the whole. It just
12 doesn't. I don't think that there's any case law supporting that proposition. I
13 would be curious, again, to see a site if there was one.

14 And so again, just to reiterate, discloses only a single dowel pin. It
15 doesn't suggest, disclose or discuss a complementary hole. Doesn't suggest,
16 disclose or suggest the possibility of adding more than one dowel pin,
17 regardless of the use of a plural in the specification. And, you know, it
18 would not be obvious to one of ordinary skill in the art to extend Carter to
19 the ornamental function that we're the ornamental design of four tenons and
20 four holes. So we discussed the ornamentality versus functionality at length
21 earlier. And it's our position that Petitioner's arguments stating that it would
22 be obvious to one of ordinary skill in the art to combine Carter. And then
23 there's some other references in their brief that are not cited as obviousness
24 references, but just discussed, which are joints in woodwork. And Oliver,
25 these arguments are based in function. Right. These functional arguments

1 suggest that one of ordinary skill would extend the single dowel pin of
2 Carter to achieve the function of joining two tabletop portions.

3 But Petitioner's references fail to address the ornamental aspects that
4 we're arguing. Right. Again, in view of the multiple functional ways to
5 achieve this goal of joining two tabletops, we argue that these are
6 ornamental choices that are made to choose four tenons and four holes. And
7 the arrangement of that should also be considered ornamental. And so,
8 there's no single reference. Carter doesn't show. This doesn't suggest it.
9 None of the references that they've discussed show or suggest four tenons
10 and four holes in an arrangement that's similar to what is shown in our
11 amended claim.

12 JUDGE MCGRAW: Can you address exactly what is shown in your
13 claims as to the arrangement of the tenons?

14 MR. MCCONNELL: Yeah. So there's two tenons and on close to the
15 one edge and two tenons close to the other edge, the holes are matching. In
16 terms of location. There are two unclaimed tenons in the center. Towards
17 the center of the tabletop portion.

18 JUDGE MCGRAW: And when you say they're matching, what do
19 you mean that they're matching?

20 MR. MCCONNELL: When assembled, the tenons fit into the holes.
21 So the holes are located at the same location. Along the vertical center line
22 length of the bottom portion of the tabletop. As to match the location along
23 the top portion of the tabletop.

24 JUDGE MCGRAW: Are you arguing that any particular placement
25 of the tenons along the length of the side of the tabletop is ornamental? And
26 if so, explain to me what that position is.

1 MR. MCCONNELL: So, our position is that this arrangement,
2 symmetrical, with two tenons symmetrically located along one side edge of
3 the tabletop and two tenons located symmetrically along the other side edge
4 of the tabletop, was chosen for ornamental reasons. That, to make it clear, it
5 would be our position that an infringing device would have to show this
6 arrangement. And so, an obviousness reference would also need to show
7 this arrangement to be considered shown.

8 JUDGE MCGRAW: Could you address Petitioner's argument then
9 that an ordinary designer would have placed the dowels or the tenons in such
10 an arrangement? They would have been placed close to the end. Just placed
11 the exact same way that you described how the tenons and holes are shown.

12 MR. MCCONNELL: Yeah. I don't think that Petitioner specifically
13 made that argument rooted in ornamentality. They made this argument,
14 again, in function. But, you know, again, to me, it's a leap of logic to say
15 one of ordinary skill in the art would do this this way in this arrangement,
16 when there's no reference to suggested, there's no evidentiary support.
17 There's just an expert saying, oh, it would be obvious to do that, because I
18 don't see it. That's how I would address that argument.

19 JUDGE MCGRAW: And you don't have any evidence to the
20 contrary, correct?

21 MR. MCCONNELL: No. But it's not our burden of persuasion to
22 show that. Yeah, it's not our burden. I don't believe that the Petitioner has
23 carried their burden in this way.

24 JUDGE DANIELS: Mr. McConnell, you're closing in on the end of
25 40 minutes here.

1 MR. MCCONNELL: Oh, let's talk about folding tables for just a
2 quick minute. Because I know that everybody's been waiting with bated
3 breath to discuss our arguments about folding tables. So, if we go to slide
4 16, excuse me, slide 17. So, you know, it's been our position all along that
5 the tabletop of the 012 patent includes two distinct states before assembly
6 and after assembly. And that the folding tables also have two distinct states
7 impacting the visual impression. There's folded, and this is when there are
8 two tabletop portions still attached to each other, as opposed to what's shown
9 in the 012 patent, where they're detached by hinges, and there are three
10 hinges in Iannaccone and two in Morgan. And then there's a folded state
11 where it's showing a completed tabletop.

12 So it's our expert's testimony that these two distinct states, before and
13 after assembly show, provide a very different visual impression from the
14 folded and unfolded states of Morgan and Iannaccone. And so those should
15 be considered in the analysis as primary references in an obviousness
16 analysis. Now, Carter, we believe, is dispositive and doesn't meet the
17 standard of showing the elements necessary to be appropriate secondary
18 reference here. But in the case of Iannaccone and Morgan, we don't believe
19 it's folding tables, as shown in those references also meet the standard of
20 primary reference in terms of the visual impression. So I think that that's --
21 do you have any questions about the folding tables analysis? I mean, it
22 really all continues to hinge on the assembled versus unassembled argument.

23 JUDGE DANIELS: Mr. McConnell, you made the argument that, I
24 think, with respect to indefiniteness in the beginning of our discussion, that a
25 user would know, even someone looking at the patent here would know
26 where in, for instance, figures two and three, the tenons should be. In

1 tenons, we have a lot of evidence, seems like in the record, the tenons and
2 poles are pretty well known to a designer of ordinary skill in the art of
3 tabletops. So why wouldn't just a single reference, as shown in Carter, why
4 wouldn't a person of ordinary skill in the art also know that you could use
5 tenons and holes, multiple ones, rather than just a single one that's shown in
6 Carter?

7 MR. MCCONNELL: So -- and this is the crux of the argument I'm
8 making about functionality versus ornamentality. If you're talking about the
9 function of joining two tabletop portions, perhaps it might be obvious to
10 want of ordinary skill in the art to extend the tenons to have multiple tenons.
11 But we're talking about not, as I've discussed, there are functional and
12 ornamental aspects to this method of joining these two tabletop portions.
13 Right. And the ornamental aspect is the arrangement in number. And I
14 don't think that there's been any reference shown that it would be obvious to
15 choose this arrangement of four tenons arranged the way they are, and holes
16 arranged the way they are. That's the crux of it, is the ornamentality versus
17 the functionality. Does that make sense?

18 JUDGE DANIELS: Yes, thank you, yes.

19 JUDGE MCGRAW: It does. But it does raise an interesting issue,
20 which is, where exactly are the tenons and holes located on the side of the
21 table? So, in your drawings, there's boundary lines on the ends. So, the
22 length of the table top is indeterminate. How close do those dowels and
23 tenons have to be to the edge? Since it's shown in the figure as a boundary
24 line, we can't say that the tenons have to be exactly or proportional to the
25 end as shown in the figure. Is that correct?

1 MR. MCCONNELL: I would say that the tenons need to be
2 proportional to their location, to each other.

3 JUDGE MCGRAW: What does that mean?

4 MR. MCCONNELL: Well, that they're arranged the way they're
5 shown in the figure, in reference to each other. Right. If there's four tenons,
6 and the same analysis would hold for holes. So we'll just talk about tenons
7 going down the length of the center line of the tabletop. The tenons have a
8 relationship in distance to each other, which is part of the claim invention.
9 And this is the --

10 JUDGE MCGRAW: In other words, if you just number the tenons
11 going down one, two, three and four, one and two have to be apart the same
12 distance as tenons three and four have to be apart?

13 MR. MCCONNELL: Tenons two and three would be the same
14 distance apart as shown in the figures. Because there's a gap between one,
15 two, three and four. Two and three have a distance. One and two have a
16 distance. Three and four have a distance. Now, the distance is not a set
17 number, it's a proportion, because there's not actual inches or meters,
18 centimeters in this, you know. But they would need to show the same visual
19 impression of two tenons at the top and two tenons at the bottom, close to
20 the edge of the table.

21 JUDGE MCGRAW: Thank you.

22 MR. MCCONNELL: Okay. All right, does anyone have any further
23 questions for me?

24 JUDGE DANIELS: Unless the Panel has questions, you're just a little
25 bit over 45 minutes, which is perfect. If you want to summarize, we can
26 keep moving.

1 MR. MCCONNELL: Yeah. Very quick summary. Our argument is
2 that the claims of the patent show an unassembled and assembled state. The
3 figures are clear in terms of their labeling of the unassembled top and bottom
4 portion versus the assembled completed tabletop. The claim is not indefinite
5 because figure eight shows the tenons. Figure eight is part of the top
6 portion. It's very clear to one of ordinary skill in the art that the tenon would
7 be included in the top portion. And from a functionality perspective, given
8 the many other functional means to join two tabletops under the current
9 Federal Circuit precedent, L.A. Gear and Ford, the choice of which of those
10 methods is given ornamental weight and we've chosen an ornamental
11 arrangement here that is not shown in Carter or suggested by Carter, nor is it
12 suggested by any references cited by the Petitioner. Simple summary is the
13 Petitioner hasn't met their burden of showing any of the grounds of
14 unpatentability, functionality or indefiniteness.

15 JUDGE DANIELS: Thank you.

16 MR. MCCONNELL: Thank you so much.

17 JUDGE DANIELS: Okay, Mr. Riley, you asked for ten minutes, I'll
18 grant you ten minutes here for rebuttal.

19 MR. RILEY: Thank you, Your Honor. I'm going to share my slides
20 again to just help illustrate some of the points I'd like to raise. So I've got up
21 on the screen slide number three and I want to discuss here the scope of the
22 claim. Really I guess first again, the claim is for the ornamental design for a
23 tabletop as shown and described. And we heard some discussion from
24 Patent Owners counsel about assembled and unassembled state. We heard
25 some discussion about shipped and assembled by users or the marketplace.
26 None of that's in this patent and none of that is in the record. There are not

1 two separate embodiments. And in fact, at least one of the patents on cited
2 on the face of the patent design patent 328680 includes a description. I think
3 it's figure ten, where it says, let me read the correct language here. It says
4 figure ten is a top plane view of the alternate embodiment. So, there was a
5 way to do that in the prior art. It was known in the art how to do this and
6 that was not done at all here in the claim that's at issue or in any of these
7 figures, we simply see, as we'll see further on slides. Get to the right slide
8 here. Yep, slide number 21 in Petitioner's demonstratives. Again, figure
9 one is simply isolated for clarity of illustration. It's not talking about an
10 alternative embodiment; it's not talking about one of the pieces for assembly.
11 It's simply isolated for clarity of illustration. And in fact, what the tabletop
12 is, is shown in figures 16 through the end of the figures that are shown. In
13 fact. Yeah, I'll leave that there.

14 I'd like to now turn to the functionality issue that has been raised. I
15 guess I would make two points here. The tenons or dowels and the holes as
16 they're being proposed in the amendment are not being proposed in any
17 different way than they have been used for at least 100 years in this art
18 space. Woodworkers, table makers, furniture designers have been using
19 dowels and holes to join elements together in this same way for at least 100
20 years. And in fact, what reinforces the fact that they're functional only and
21 not ornamental is that they're hidden. At the end of the day, when you get
22 the completed tabletop and you have the two boards put together, they're
23 completely hidden. And one of skill, looking at that completed table would
24 not know how they are joined, whether it was one of any of the number of
25 methods that are described by Patent Owners expert, any of those methods,
26 none of those is able. One of ordinary skill would not be able to determine

1 which of any of those is used. In fact, it could be something else. Like I
2 mentioned earlier, it could be screws or nails or some other joining method.
3 It's not ornamental here because they are simply being used in a functional
4 way as they've been used for at least 100 years now.

5 We heard some discussion about four tenons and four holes only, but
6 that's not how the proposed amendment is put forward. You still have at
7 least two holes and two tenons that are dashed lines so that the potential for
8 more could be included. You also, as was pointed out, the length of the two
9 planks can be varied. And as Mr. Hatch testified, one of skill in the art
10 would likely increase the number that one would use for functionality
11 reasons. So you might have ten, potentially, ultimately. So there's been no
12 limitation in the proposed amendment to just the four, the four separate and
13 tenons and holes.

14 I want to turn to slide 44 in Petitioner's demonstratives to address
15 Carter, and what I would say in response is that Patent Owner has argued
16 about the single dowel pin B that's disclosed in figure three in Carter, but has
17 ignored the fact that Carter in multiple places uses the phrase dowel pins,
18 pins being plural. It's at least three occasions where that's used, and it would
19 certainly be impossible to include a dowel pin without a complementary hole
20 for that pin that dowel to go into when you connect the two halves of the
21 Carter table together. And Mr. Hatch testified in paragraph 27 of exhibit
22 1,011 that certainly by the early 19 hundreds the functional purpose of
23 dowering was well understood. And the insertion of a dowel or tenon into a
24 hole prevents the tenon from moving in a direction perpendicular to the axis
25 of the tenon relative to the hole. The Patent Owner seems to be reading
26 Carter just in isolation, focusing so much on figure three. But the reality

1 here is that Petitioner's argument isn't just figure three, it isn't just Carter. If
2 we look now on slide 45, what Mr. Hatch also testified to was that there
3 were other references in the art, some more than 100 years old that talk
4 about the use of dowels and tenons, excuse me, to help align boards, to help
5 keep them from one being higher than the other, to ensure a continuous
6 surface. For a variety of reasons, they were used, and that was very well
7 known in the art.

8 We also heard from Patent Owner this phrase rooted in ornamentality
9 when he was referring to a distinction between the prior art and the proposed
10 amendment. But there's no law that I'm aware of that says you can't look at
11 art that is functional, such as Carter, for example, that can't also be looked at
12 for its ornamental aspects to potentially invalidate a proposed amendment
13 like the one we have here. There's no such limitation on using prior art.
14 Because the prior art was initially disclosed for its functionality, it still has
15 an ornamental aspect. And it doesn't mean that the Patent Owner can now
16 come in here in 2019 and claim something that was disclosed potentially
17 more than 100 years ago.

18 I'd like to look at or briefly address the discussion about folding tables
19 first. That was subject to the Petitioner's motion to strike again, just
20 procedurally, the Patent Owner did not respond to the instituted grounds and
21 instead chose to amend and it's Petitioner's position that the discussions
22 about whether Carter or Morgan are appropriate to use in this instance as
23 primary references or secondary references, that's gone, unless it's focused
24 on the tenons and the dowels or the holes. I also want to address the
25 dimensions. I think I brought this up maybe just briefly, but there's no claim
26 limitation here that says that the dimensions are of a specific type,

1 particularly given that some of the holes are still dashed and some of the
2 tenons are still dashed, those could potentially be moved around and seem to
3 be potentially within the scope. So, I don't see how what was potentially
4 described as being the way they're oriented or the way they're fixed on the
5 design as being somehow limiting, or that one of skill in the art would
6 understand that. I also want to address. Let me just find the right slide here.

7 JUDGE DANIELS: Got about a minute left, Mr. Riley.

8 MR. RILEY: Thank you, Your Honor. Give me one moment, I'm
9 just trying to wrap up. Yeah, slide 32. So up until today, it was Patent
10 Owner's position that the boards are not limited to being of unequal width.
11 That was in paper number eleven, the motion to amend on page four. And
12 that was carried forward to, you know, throughout the briefing up until
13 today. And then I'd like to end on slide 59 in Petitioner's demonstratives.
14 Here, the Patent Owner has not disputed that the combination of Carter and
15 Iannaccone has the same visual appearance as what is here in the proposed
16 amendment. Our combination has the same visual impression overall. And
17 for that reason, we would urge the Board, among all the other reasons that
18 I've articulated today, to reject the motion to amend. Barring any further
19 questions, I will conclude there. Thank you.

20 JUDGE DANIELS: All right, unless any of our Panel members want
21 to weigh in. Thank you very much, Mr. Riley.

22 MR. RILEY: Thank you.

23 JUDGE DANIELS: McConnell. To equal the time out, you have ten
24 minutes, but you may use whatever part of that you like.

25 MR. MCCONNELL: I will try to keep my comments brief here. You
26 know, of course, in responding to what Mr. Riley said, the claim scope of

1 whether this includes an unassembled or assembled state, this is an issue for
2 the Board to decide. Clearly, we don't agree. The question I see in front of
3 the Board is whether the Board wants to read a limitation into the patent
4 claims that is not there, that there is a completed tabletop that is not
5 something that is typically done in patent practice. We're not asking you to
6 do that. And so that's the question I would like to ask the Board. Carter, this
7 reference just does not show or suggest the number of tenons and holes in
8 the arrangement that we are stating is ornamental. And, you know, we could
9 argue about whether the Patent Owner agrees that it says plural number of
10 pins in this short, very minimal discussion of pins in the specification. I
11 believe I did say it was plural in my demonstratives. And in this discussion,
12 I don't think that that's really an issue.

13 But the question I would ask again is just because pins and dowel, or
14 tenons and holes are well known in the art and have been for some time. I
15 don't believe that Patent Owner is disputing this. Would any arrangement,
16 any ornamental arrangement of tenons and holes be considered obvious just
17 because they're known in the art? That's our position is this arrangement of
18 tenons and holes. This ornamental arrangement of tenons and holes is what
19 we're claiming, and that is not disclosed in any reference. And just having
20 someone say it would be obvious to –

21 JUDGE MCGRAW: What about Petitioner's argument that the
22 arrangement is shown in Iannaccone figure five?

23 MR. MCCONNELL: They've added those tenons and holes to there,
24 that those amendments are made by their expert. There's no tenons and
25 holes shown in Iannaccone. And, you know, Carter is just as deficient. And
26 I'm not sure where this argument that we haven't disputed that grounds four

1 of five and six are, you know, they haven't made their case around
2 obviousness, but it's just not the case. It's in our Reply. Iannaccone doesn't
3 include any tenons or holes. Carter is the only thing suggesting tenons and
4 holes. And it's just a deficient. Just because they could put together a
5 demonstrative where their expert has added tenons and holes, there's not a
6 reference. That's just their expert's opinion in my assessment. Perhaps I'm
7 reading it wrong.

8 But lastly, the motion to strike has not been granted. And we've made
9 the arguments as relevant to the arguments. The grounds of unpatentability
10 asserted by the Petitioner in response to our motion to amend. We made our
11 motion to amend. We saw their arguments and we responded. We believe
12 those arguments are properly made in our reply brief. And we have argued
13 such in our motion to strike, which has not yet been decided by the Board.
14 And you know, so it's just our position. The Petitioner has the burden of
15 persuasion. They haven't shown it in relation to ornamentality versus
16 functionality. Even they haven't shown it as far as obviousness. Carter
17 doesn't pull the weight. It doesn't show the ornamental arrangement of four
18 tens and four holes that we are claiming in our amended claim. Yeah, that's
19 kind of the sum total of it. And I will yield back the balance of my time. I
20 hope I haven't taken up ten minutes.

21 JUDGE DANIELS: Just about five minutes.

22 MR. MCCONNELL: Okay.

23 JUDGE DANIELS: As you asked for. Unless the Panel again has
24 any more questions. Thank you all very much. Unless anyone raises their
25 hand at this point, that concludes our hearing. The case is submitted. Stand
26 by for just one second. Let me thank our great hearing staff. We can't do

1 this without you all. And the same for Kamisha, the court reporter. Thank
2 you very much. Counsel, I wish every hearing we did had as good
3 arguments and done as well as you all have done today. Thank you very
4 much for handling our questions and being patient with them and letting us
5 extend your time so that we could get some of these answers. Excellent
6 presentations and arguments. Before we go, let me ask the court reporter if
7 she needs any clarifications for the record.

8 COURT REPORTER: Hello. No, so far, no. No. Clarifications.

9 MR. MCCONNELL: Okay.

10 MR. WANG: Have one minute?

11 JUDGE DANIELS: Yes.

12 MR. WANG: Just 1 minute. I wish I could share my screen
13 regarding the question that this patent seems not to recite.

14 JUDGE DANIELS: Hang on a second. Hang on a second, Mr.
15 Wang. Stand by for one minute.

16 COURT REPORTER: I wanted to make sure that we are off the
17 record. Or are you wanting to still continue?

18 JUDGE DANIELS: No, standby. Mr. Wang, let me explain that the
19 case has been submitted and the time for arguments and discussion of this
20 hearing are over. And therefore, no other argument or discussion is going to
21 be permitted today.

22 MR. WANG: Thank you very much.

23 JUDGE DANIELS: I appreciate again, everyone's efforts today. It
24 was a very good hearing from both parties.

1 MR. MCCONNELL: And I have one final thank you to the Board for
2 your consideration and also to the hearing staff and court reporter for your
3 patience with our long hearing. Thank you.

4 JUDGE DANIELS: Thank you all so much. Have a great day.

5 MR. RILEY: Thank you. Take care.

6 Whereupon, the proceedings at 1:54 p.m. were concluded.)

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