

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MASIMO CORPORATION,
Petitioner,

v.

APPLE INC.,
Patent Owner.

IPR2023-00664
Patent 11,106,352 B2

Record of Oral Hearing
Held: August 1, 2024

Before: KEN B. BARRETT, JOSIAH C. COCKS, and
ROBERT L. KINDER, *Administrative Patent Judges*.

IPR2023-00664
Patent 11,106,352 B2

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P R O C E E D I N G S

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JUDGE KINDER: All right. Good morning, everyone. My name is Robert Kinder, and with me today on the panel are Judges Ken Barrett and Josiah Cocks. Today's proceeding is captioned Masimo Corporation, Petitioner versus Apple Inc., Patent Owner, and it is IPR2023-00664 involving U.S. Patent Number 11,106,352. If we could first get an entry of appearance for each counsel, we'll start first with the Petitioner's counsel and then move to the Patent Owner.

MR. CANNON: Good morning, Your Honors. I'm Ted Cannon for Petitioner, Masimo. With me in the room are Irfan Latif and Raymond Lou.

JUDGE KINDER: All right, Mr. Cannon, are you going to be presenting or are you splitting it up?

MR. CANNON: I will be presenting.

JUDGE KINDER: All right. Thank you, Mr. Cannon. And for Patent Owner, Apple.

MR. RENNER: Thank you, Your Honor. Good morning. Carl Renner on behalf of Apple. In the room with me are Usman Khan, Andrew Patrick on the line, Kim Lum, and Natalie Post, as well as Tucker Terhufen from Apple. I'll be splitting the presentation between myself and Usman Khan.

JUDGE KINDER: All right. Thank you, Mr. Renner. We'll go over a few formalities before we begin. And most of this is actually coming from the oral hearing order that was sent out about a month ago. We will

1 start with Petitioner, and Petitioner has a total of about 60 minutes to
2 present their argument. Patent owner will also have a total of 60 minutes.
3 And Petitioner can reserve some rebuttal time to respond to arguments
4 presented by the Patent Owner.

5 So, Mr. Cannon, I'll ask now how much time you want to reserve
6 for rebuttal.

7 MR. CANNON: I plan to reserve 15 minutes.

8 JUDGE KINDER: All right. Thank you. And the Patent Owner
9 may also request time for a brief sur-rebuttal. So, Mr. Renner, how much
10 time would you like for the sur-rebuttal?

11 MR. RENNER: Same, Your Honor, 15 minutes. Thank you.

12 JUDGE KINDER: All right. Thank you. So, that's the order of
13 the proceedings. For demonstrative evidence, as a reminder, demonstratives
14 are not actually evidence. They will not be relied upon as evidence, as a
15 reminder of that. When counsel, when you're speaking, you should only
16 unmute when you're speaking. If several people have their mics open, we
17 tend to get some feedback occasionally. So, as a courtesy, please mute
18 yourself when you're not speaking. The panel has access to all the papers
19 filed with the board, including demonstratives. So, during the hearing,
20 please identify which paper you're referring to. And as a courtesy, if you
21 can just give the panel a brief second or two to flip to that demonstrative or
22 to that piece of evidence, it helps because we're navigating a couple different
23 things on our own screens to bring that up.

24 Counsel, you have the option of either presenting the evidence and
25 demonstratives or just referencing the numbers and giving us time to flip to

1 it ourselves. But how you want to present is up to you. Either way is fine
2 with us. And we have limited number of speakers today, so it shouldn't be
3 an issue. But please identify yourself when you begin speaking. If there are
4 any technical difficulties, which rarely happens but sometimes does, we will
5 pause the proceeding to give everyone a time to get relogged back on. In a
6 worse case type scenario, we have the ability to call in via telephone if the
7 video, for whatever reason, goes down. So, that would be a last case option,
8 and hopefully we don't have to use it. And I believe that is all I have.

9 Before we get going, any questions, Mr. Cannon?

10 MR. CANNON: No, Your Honor.

11 JUDGE KINDER: Mr. Renner, do you have any questions?

12 MR. RENNER: No, thank you.

13 JUDGE KINDER: All right. Mr. Cannon, whenever you're ready
14 to proceed with your 45 minutes of opening, it's to you. Thank you.

15 MR. CANNON: Thank you, Your Honors. I'm Ted Cannon, and
16 I'll be presenting for Masimo. Let's turn to slide 2 of Masimo's presentation.
17 This slide shows the topics that I'll be going through in the order that I
18 intend to present them. I don't expect to get through all of the topics.

19 Let's go to the next slide, slide 3. The first topic is obviousness,
20 just swipe in different directions for the home screen and the widget screen.
21 This is for Claims 1, 9, and 17.

22 Let's move to slide 4. Slide 4 shows a representative Claim 1. It
23 has in highlighted colors the different limitations that I'll be discussing
24 today. We have --

25 JUDGE KINDER: Mr. Cannon.

1 MR. CANNON: Yes.

2 JUDGE KINDER: You might get to this more when we're talking
3 about the power saving state limitation, I think, which is at issue. But just
4 looking at how the claim is written, what is the relationship between the
5 computer system and the display generation component or the display?
6 What does it, in particular, what does it mean to be in communication with
7 it?

8 MR. CANNON: For the first limitation, it means simply that the
9 computer system communicates with the display, for example, to
10 communicate information that the display would then display. For the
11 power saving state, the relationship is that the display waking criteria is what
12 exits the power saving state and turns the display on. And so, there's a clear
13 connection in the claim between the power saving state and the display
14 being on or off. Does that answer your question?

15 JUDGE KINDER: Is the display generation component is that part
16 of the computer system as claimed?

17 MR. CANNON: It can be. Looking at the claim as written, it does
18 not appear to require it to be, but it can be. It doesn't specify one way or the
19 other.

20 JUDGE KINDER: Okay. We'll probably get into it more when
21 you're talking about power saving state issues. But I don't want to -- since
22 the claim was up, I just wanted to talk briefly about it. Thank you.

23 MR. CANNON: Right. The second limitation is the power saving
24 state that we just referenced. The third is in blue, and that is the requirement
25 that movement in a first direction causes display of a home screen that has a

1 plurality of application icons. And then in green, movement in a second
2 direction causes display of a widget screen with a plurality of user interface
3 objects that contain application content. And when selected, it causes
4 display of an application. Now, it's important that the claims drive the
5 obviousness analysis here. So, in other words, in showing what the
6 references disclose or suggest, we're only required to show that the
7 references make obvious the claimed limitations and not unclaimed
8 elements.

9 In addition, for motivation to combine and reasonable expectation
10 of success, we're only required to show motivation to achieve the claimed
11 invention and to have reasonable expectation of success of achieving the
12 claimed invention and not unclaimed features. Here, the claims cover the
13 broad concept of navigating between different user interface screens using
14 swipes in different directions. Now, of course, it wasn't new to navigate
15 between different screens. Prior to touch screen devices, people needed to
16 navigate between screens by some kind of physical button, touching a
17 keyboard, a mouse, or some other kind of physical button. Touch screens, of
18 course, removed all or most of the physical buttons and therefore there was a
19 need to have some other way to navigate between screens and gestures or
20 swipe gestures and other gestures were an obvious way to do that. That
21 existed before the '352 patent. Using gestures such as swipes as input to a
22 touchscreen is not new. For a touchscreen device, it's a natural to use swipes
23 instead of physical buttons or keys for navigation. It's also important to
24 note that Claim 1 does not specify anything about the first and second
25 directions except that they need to be different from each other. So, it

1 doesn't specify whether they're left, right, up, or down. It also doesn't
2 specify whether they're parallel or perpendicular in relation to each other.
3 They just simply need to be different.

4 Let's move to slide 5. Slide 5 shows the Ground 1 for Claim 1, and
5 it emphasizes that Chae has all the limitations, so it either anticipates or
6 renders obvious Claim 1, or in the alternative, if it doesn't have every
7 limitation, Chae in view of Narendra renders Claim 1 obvious.

8 Let's move to slide 6. Chae discloses the computer in
9 communication with the display and the input device. The computer is the
10 smartphone or laptop computer disclosed by Chae. The display and the
11 input device are the touchscreen and the computer system necessarily
12 communicates with the display and input device.

13 Let's move to slide 7. Chae also discloses a computer having a
14 power saving state. And to the left and top, we have Chae's Figure 2 that
15 shows that Chae wakes up the mobile terminal. Dr. Rosenberg, explained
16 that it was a typical thing for smartphones to have a wake up process where
17 the display would start darkened, saving power, but then the display could
18 be awakened when somebody needed to use the device. And he explained
19 that in relation to prior art, for example, Exhibit 1019, that it discloses a
20 sleep state where the touch panel display is not illuminated and any sensor
21 functionality is disabled. As a result, a low power mode is achieved.

22 Now, there's an Apple dispute that simply having the display off is
23 a low power mode. However, Dr. Rosenberg replied in Exhibit 1056 that it's
24 undisputable that a display consumes less power when it is off. And Dr.
25 Coburn, Apple's expert, conceded that a display consumes less power when

1 it is off. And thus, a POSITA would have understood Chae as teaching that
2 the computer system uses less power when its display is off than when its
3 display is on. To the right, we have --

4 JUDGE KINDER: Excuse me, could I --

5 MR. CANNON: Yes.

6 JUDGE KINDER: Could I ask a couple of questions? I think the
7 Patent Owner presents several potential or possible scenarios where other
8 hardware or even software running could result in a hypothetical where the
9 system as a whole is using more power. Is there any evidence you have to
10 counter that, or is there a hypothetical -- or is it just kind of a hypothetical
11 that it's possible, but it's also possible to use less?

12 MR. CANNON: You can imagine a hypothetical where if
13 someone intended to use more power, they could ramp up everything about
14 the device. The claim does not require getting to that hypothetical in order
15 to determine that the prior art renders obvious the power saving state
16 limitation because clearly the normal mode is that you're going to have
17 background processes running whether the display is on or off. If the
18 display is off, you're going to be saving power in comparison to when the
19 display is on. And when the display is on, you're obviously going to be
20 using more power. So, we don't need to show every possibility or every
21 hypothetical that could be imagined to show that it would have been obvious
22 to have a power saving state in view of Chae and the other prior art.

23 JUDGE KINDER: Could I ask one more --

24 MR. CANNON: Yes.

25 JUDGE KINDER: -- one more question. So, you know, the

1 display seems to be the main issue, you know, with, and I think Patent
2 Owner agrees it uses less power but they present the hypotheticals where it
3 could potentially, the system as a whole. What does it mean, I don't know if
4 you focused on this in particular, but when it says the sensor functionality is
5 also disabled, how would that impact power for the overall system?

6 MR. CANNON: In the prior art 1019, the sensor functionality
7 being off would also result in less power. So, the display being off results in
8 less power. The sensor functionality also does. If you only turned off the
9 sensor, that would be low power mode. If you only turned off the display,
10 that would also be low power mode. So, we don't have to, of course, show
11 everything that could be turned off. The fact is, and it's undisputed, that if
12 you turn off the display, then you're going to have less power than if the
13 display was on.

14 JUDGE KINDER: Thank you. That's all I had on that.

15 MR. CANNON: All right. Slide 7 also to the right, we have the
16 Android piece of prior art, the video that shows that Android device, the
17 Android device in the video, could also have a power saving mode.

18 Let's move to slide 8. Chae and Narendra also disclose the basic
19 functionality that these claims center on, and that's the ability to move
20 between screens using different swipe directions. To the left we have Chae,
21 Figure 3, and it shows in this embodiment three different swipe gestures in
22 different directions that navigate to three different what they call customized
23 home screens, and as we'll explain, one of them is a home screen as used by
24 the '352 patent, one of them is a widget screen as used by the '352 patent.
25 We'll get into more detail of that later, of course. But the important thing

1 here is that Chae has three different gestures for moving away from the wake
2 screen to different screens. Narendra has a two dimensional map for moving
3 between screens, both the start screen and any other screen, and moving
4 back to some original screens using a two dimensional map where you can
5 go vertically or horizontally through the entire map.

6 Let's move to slide 9. Chae also discloses a wake screen user
7 interface, '352 patent has an illustration, and really all that's important for the
8 wake screen user interface is that it is the screen that is displayed upon
9 waking the device. To the right we have Chae that shows the screen that is
10 displayed when waking the device in Chae.

11 Let's move to slide 10. Chae discloses a home screen user
12 interface. The '352 patent shows that a home screen user interface is one
13 that includes multiple application icons, and some of them are shown on the
14 screen. And to the right we have Chae that has several application icons in
15 the red box. They look very much the same as those in the '352 patent.

16 Moving to slide 11, Chae shows the figure, and a person of
17 ordinary skill in the art would understand those are application icons and
18 that when you select them, they would open. But just in case, we pointed to
19 Narendra also that expressly says that application icons launch applications.
20 And Dr. Rosenberg explained that if Chae itself doesn't disclose that the
21 application icons would open applications, it would have been obvious in
22 view of Narendra.

23 Let's move to slide --

24 JUDGE KINDER: Mr. Cannon, just to clarify, is this the primary
25 reason you're relying upon Narendra for launch of applications?

1 MR. CANNON: For Claim 1, as I mentioned, Chae has all the
2 limitations. So, for Claim 1, just filling in these fairly minor things is why
3 Narendra is there as a backup. Now, there are a few additional things. I
4 think this is the main one where we pointed out if this isn't expressly
5 disclosed, then it's in Narendra for Claim 1. Narendra comes in for some
6 other things for some of the dependent claims.

7 JUDGE KINDER: Okay, thank you.

8 MR. CANNON: Yeah. Let's move to slide 12. Chae discloses a
9 widget screen user interface. And this has, there's a dispute about this. And
10 so, we have several slides about this. Here's the intro slide. The '352 patent
11 explains that it describes widgets as user interface objects that contain
12 application content from an application, and when selected, cause display of
13 an application. Chae discloses at paragraph 100 that a customized home
14 screen can include multiple widgets. Now, before we go further, it's
15 important to note that the reference, the prior art doesn't need to use the
16 exact language of the claim. It doesn't have to say widget screen user
17 interface. And so, it's not particularly relevant that Chae calls the
18 customized home screen a home screen. The issue is, does it have multiple
19 widgets or user interface objects as the claim, and if it does, it meets the
20 claim language despite the label that Chae gives it. To the right on Chae, we
21 have three objects. The objects labeled Lauren, the object labeled Chris, and
22 then the object that has a weather icon on it. And those are what a person of
23 skill in the art would have understood to be user interface objects as claimed,
24 or a person of ordinary skill in the art would have at least believed that Chae
25 suggests the user interface object functionality as claimed.

1 Let's move to slide 13. Narendra also has a description of desktop
2 screens that have multiple widgets. Let's move to slide 14. The first two
3 references don't have an express statement in text as to what widgets are.
4 The person of skill in the art would have understood them to be the user
5 interface objects as claimed. Hong provides some additional detail, and
6 that's Exhibit 1010. And at paragraphs four through five, which are
7 background section describing prior art to Hong, it says that widgets enable
8 a user to access contents provided in an application without executing the
9 application, such as a clock, a calendar, et cetera. And it further says in
10 paragraph five, a user may check at a glance information or a function
11 provided by an application through a widget that functions as a preview of
12 the information or the function without actually executing the application
13 itself. Now, it says that you don't have to execute the application itself to get
14 a preview. But it does not say that you can't execute the application itself to
15 see the full application. And in fact, a person of skill in the art would
16 understand that as implying that you, in fact, can execute the application
17 itself.

18 Let's move to slide 15. Android also discloses widgets. On the
19 screen, we have an email widget that the video further shows that when you
20 select an email, it opens the full scale email application, the kind that we're
21 all used to, where you can see the full email, and you can respond and
22 forward and do other functions.

23 Let's move to slide 16. Dr. Rosenberg explained that Chae's Figure
24 6(b) discloses or suggests a widget's screen user interface. A POSITA
25 would have understood that the three objects shown in the red box are the

1 user interface objects as claimed. To the right, he explains the content that a
2 person of ordinary skill in the art would have understood comes from
3 applications. For example, in the Lauren and Chris icons, those have content
4 that include names, Lauren and Chris, and also images or pictures of those
5 individuals. And a person of skill in the art would have understood that as
6 suggesting that it comes from something like a contact database or profile
7 database that would contain that information. To the right, we have a
8 graphical depiction of current weather conditions, and a person of skill in the
9 art would have understood that that would come from a weather application.

10 Let's move to slide 17.

11 JUDGE KINDER: Could I ask one question real quick, Mr.
12 Cannon?

13 MR. CANNON: Yes.

14 JUDGE KINDER: Is your expert just relying upon what one of
15 skill in the art would have known at this time, or is he relying on any other
16 specific evidence to support? It's not necessarily in the reference itself, that's
17 why we're talking about it, but what other evidence is he relying upon to
18 support these allegations?

19 MR. CANNON: Yes, Dr. Rosenberg is relying on the disclosure
20 of Chae, including the figure, and the rest of the disclosure, of course, would
21 under -- would rely on what would be suggested, not just what is expressly
22 disclosed, but what is suggested to a person of ordinary skill in the art, and
23 then he's also relying on additional prior art as background prior art to
24 describe what a widget was and what was commonly known in the art as to
25 what a widget was. And so, we'll get into that. One of them is Hong, one

1 of them is Android, and we'll specifically mention those in the next few
2 slides.

3 This slide 17 kind of provides an overview of that by saying that a
4 person skilled in the art would have understood that the well-known
5 functionality of widgets was that selecting a widget would cause display of
6 an application corresponding to the respective user interface object. And so,
7 Figure 6(b) with the POSITA's knowledge would have conveyed to a
8 POSITA that selecting one of the objects shown in the center of the screen
9 such as the weather object would cause display of a corresponding
10 application such as a weather application.

11 So, let's move to slide 18 which gets into some of that other
12 background prior art that I mentioned, and that's Hong. Hong supports Dr.
13 Rosenberg's understanding of what a widget was understood to be by a
14 person of skill in the art. He explained that Chae and Narendra used the
15 term widget and that that functionality of opening the application would
16 have been understood by a person skilled in the art. He further points to
17 Hong as supporting that understanding. He points to the paragraphs four and
18 five that I mentioned previously that shows that the user may see a preview
19 of the application prior to opening it, but then it strongly implies that of
20 course you can actually execute the application just as you can with any
21 other application icon.

22 Let's move to slide 19. Apple disagrees with our interpretation and
23 argues that the prior art widgets did not allow execution of applications. Dr.
24 Rosenberg explained why that interpretation is incorrect in the four reasons
25 shown on the slide. Apple reads information into Hong's disclosure that's

1 not actually there. Hong's disclosure that a widget displays a preview of an
2 application implies that you can execute the application. You can select the
3 widget to execute the application to display more content. Third, a POSITA
4 would have understood that the widget applications Hong lists such as a
5 clock or a calendar are the type of applications that can be executed to
6 display more content. And fourth, a POSITA would have read Hong
7 consistently with the basic GUI functionality that's selecting an application
8 icon launches an application. A widget is simply a form of an application
9 icon. It has some additional functionality, but at its core, it's an application
10 icon that can open an application, but it has the additional functionality that
11 it provides a preview of information prior to opening the application.

12 Now, Dr. Coburn, Apple's expert, conceded much of this when he
13 said that an application icon that also shows a preview of contents would be
14 consistent with what Hong calls application widgets, and that's at Exhibits
15 1057, page 119, lines 17 through 21, which we cited at our reply pages 11
16 and 12.

17 Let's move to slide 20. Apple tries to rely on Hong in its sur-reply
18 to argue that Hong does not open up the application. They rely, specifically
19 on the top left. It quotes a portion of Hong that says the preview application
20 screen may be identical to the application screen shown when the user
21 actually executes the application. So, there's some important things to note
22 there. It expressly says that there is an application screen shown when the
23 user actually executes the application. So, it expressly discloses actually
24 executing the application to see further application content. Now it says it
25 may be identical to the preview, may be identical. It doesn't say it must be

1 identical, implying that you can in fact access additional information by
2 actually opening up the application. Paragraph 68 of Hong, at least more of
3 it, is shown to the bottom left of this slide that supports what I mentioned.
4 And then paragraphs four through five of Hong that are background also
5 support that, and that's shown on the slide. Now just a quick note on that.
6 Paragraphs four through five are a background section that's describing prior
7 art and the prior art widgets understood by Hong. Paragraph 68 is actually
8 discussing Hong's invention, which is actually slightly different from the
9 prior art background section. They're not talking about the same
10 embodiments, in other words. But taken all together, a person skilled in the
11 art would understand that widgets had the functionality described in Claim
12 1.

13 Let's move to slide 21. Apple also ignores the Android video. Just
14 past the two minute mark, you can actually watch an email application being
15 opened in response to the user selecting an email widget. And so, Apple is
16 incorrect to suggest that Dr. Rosenberg's testimony is uncorroborated and
17 conclusory. In fact, two references, Hong, and Android both corroborate Dr.
18 Rosenberg's testimony.

19 Let's move to slide 22. Now, in our view, and we've shown it in
20 the petition, Chae has widgets or at least suggests widgets as claimed by the
21 '352 patent. But just in case we put in evidence into the record, Dr.
22 Rosenberg explained that even if Chae's figure 6(b) does not show widgets,
23 it would have been advantageous and a person skilled in the art would have
24 been motivated to add widgets to Figure 6(b) because of their advantageous
25 feature of displaying useful information generated by applications running in

1 the background without requiring the user to open the applications. And for
2 the efficiency and convenience of that functionality, a person skilled in the
3 art would have been motivated to add widgets to Chae's Figure 6(b) screen.

4 Let's move to slide 23. So, now we're moving on to the dependent
5 claims, and the second topic is obviousness to vary the navigational paths to
6 arrive at the navigational paths of the dependent claims. The first few slides
7 are general slides that relate to all of the dependent claims, and then later
8 we'll get to some of the more specific issues for the dependent claims.

9 Slide 24, this is the general description of why it would have been
10 obvious to result in the different navigational paths. The dependent claims
11 merely recite different navigational paths that are trivial and obvious
12 variations of the basic concept of navigating from one user interface screen
13 to another using directional swipe gestures. And a POSITA would have
14 recognized that these directional swipe gestures are an efficient and
15 convenient mechanism for accessing any user interface screen from any
16 other screen. Now incidentally, the '352 patent itself does not explain why
17 any navigational path is better than any other navigational path. For
18 example, it doesn't say that a left swipe is better than a right swipe, and it
19 doesn't say that a parallel swipe is better than a perpendicular swipe. And in
20 fact, it provides no explanation as to why it claims any particular
21 navigational paths. A person of skill in the art would understand that they're
22 all different paths that could be achieved by trivial and obvious variations of
23 the basic concept.

24 Let's move to slide 25. Once you have the basic concept of
25 moving between different screens using swipe gestures, a person skilled in

1 the art would have understood that associating a particular directional swipe
2 gesture with each movement is a simple matter of choosing from a finite
3 number of design choices. And a person skilled in the art would simply
4 need to choose from a finite set of directions. directional slight gestures,
5 such as left, right, up, and down, to associate with each of the navigational
6 paths. So, this is a classic example, like *KSR*, of you have just a finite
7 number of choices. They're predictable as to their results. And putting them
8 together, making those finite design choices is obvious in these
9 circumstances.

10 Let's move to slide 26. The conclusion here is that it would have
11 been obvious to choose among the finite design choices to yield any of the
12 specific navigational paths recited by the dependent claims. And
13 importantly, those last three slides, that is the petition's description of the
14 combination. It's not specific to you have to choose a left swipe and a right
15 swipe and an up swipe and a down swipe. It doesn't have any of those
16 specifics. What it does say is a person skilled in the art would be able to
17 choose from those finite choices to arrive at any of the navigational paths.
18 And so, it would be incorrect to say that the petition provides one and only
19 one combination as Apple tries to do.

20 And let's move to slide 27 to talk about that. Apple points to
21 conceptual graphics that are representations of the claims to suggest that the
22 petition somehow suggests that there is one and only one combination
23 suggested by the petition. That's an incorrect reading of the petition. The
24 figure to the left is for Claim 6, and the petition expressly says that that is a
25 description or a conceptual description of the scope of Claim 6, and the real

1 reason for these is not to say this is our one and only combination. It's
2 simply because the claims are very wordy and they're difficult to understand
3 just in words. And so, a graphic to show the scope of the claims we believed
4 was a -- would be a useful thing. But just to be clear so there was no
5 misunderstanding, we expressly said in our petition the graphics illustrate
6 general concepts not a precise navigational map required by the claims and
7 all that is required is that the three directions are different from each other
8 not that they are the exact ones shown on the screen. So, we never said there
9 has to be an up swipe to go from wake to home, a down swipe to go from
10 wake to widget, and a right swipe to go from home to wake.

11 Let's move to slide 28. Apple argues that Masimo's combination
12 needs to achieve the alleged intended purposes of both Chae and Narendra to
13 switch between SIM cards and navigate between password protected and
14 non-password protected screens. Apple's incorrect about us needing to show
15 the intended purposes of both of those references. Dr. Rosenberg explained
16 in his testimony shown on slide 28, that the combination he proposed does
17 not depend on Chae's specific teaching of using multiple SIM cards or
18 Narendra's specific teaching of switching between password protected and
19 non-password protected screens, that he proposed using Chae's and
20 Narendra's general concepts for navigating between user interface screens
21 using swipe gestures. Those general concepts have obvious uses beyond
22 discriminating between screens with different SIM cards or levels of
23 password protection. And he further explained that it would have been
24 obvious to combine Chae's and Narendra's general concepts without
25 requiring fulfillment of Chae's purpose of switching between SIM cards or

1 Narendra's purpose of switching between password protected and non-
2 password protected screens.

3 JUDGE KINDER: Mr. Cannon, can I ask one question? I think
4 they -- I think the Patent Owner eludes that the combination if made would
5 actually prevent Chae from functioning as required with the navigation
6 between the SIM cards. So, not just kind of, you know, impacting the
7 accommodability, but actually destroy the -- what Chae is intended to do.

8 MR. CANNON: Yes. And the important thing -- so there's two
9 issues there. One is if it prevents Chae from moving between different
10 screens as claimed, that would be a bigger issue. Now, it doesn't do that. It
11 doesn't prevent Chae from moving between different screens as claimed.
12 The second issue is they argue that it would prevent Chae from switching
13 between SIM cards. And that is a legal issue of do we have to show that the
14 combination would achieve that intended purpose and also the intended
15 purpose of Narendra. And we're suggesting on this slide that no, we do not
16 have to do that because a person skilled in the art would understand that
17 there are functions of Chae beyond just simply a first primary purpose.
18 Now, in addition, I just want to point out that Apple's slide 10 incorrectly
19 suggests that Chae's primary purpose is unlocking SIM cards, but Apple's
20 POR conceded on page 8 that Chae's primary objective is to use the
21 direction of touch gestures on the touch screen to determine which home
22 screen associated with one or both of the SIM cards to display. So, it's not
23 just about switching between SIM cards, but it's about displaying different
24 screens. And I'll further answer your question on slide 29, and that gets to
25 the legal issue of do we have to show that the combination would achieve

1 the intended purpose of Chae and the intended purpose of Narendra. And
2 the answer is no, we don't have to show that. *KSR* says that. It says familiar
3 items may have obvious uses beyond their primary purpose. So, for
4 example, Chae says you can switch between SIM cards and display screens.
5 It doesn't limit it to that. A person skilled in the art would understand it's
6 obvious to move between screens even if we're not switching between SIM
7 cards. Intel says a reference's intended purpose does not control the
8 obviousness inquiry. Axonics says a POSITA may be motivated to combine
9 certain features to achieve the claimed invention even when bodily
10 incorporation of all disclosed but unclaimed features would be impossible or
11 inadvisable. And *In re Heck* says prior art patents are not limited to their
12 described invention or problem solved. They are relevant for all they
13 contain. There's also a case, *In re Urbanski*, that distinguishes the case
14 Apple cited, *In re Gordon*. And Urbanski held that a motivation to pursue
15 the desirable properties of a reference was sufficient even if it meant
16 forgoing the benefit taught by another reference. And that's at 809 F.3d
17 1237, 1244 Federal Circuit 2016.

18 So, let's move to slide 30. Now, we covered all the bases. Even if
19 we were required to show that Narendra is compatible with Chae's purpose
20 of switching between multiple SIM cards, we did show that. And we
21 explained and we showed by evidence that a POSITA would have easily
22 implemented the Narendra navigational concepts on various hardware
23 platforms, including Chae's multi-SIM card device. There's nothing special
24 about moving between different screens using swipes. And there's no
25 technical barrier that says you have to do it on one SIM card, you have to do

1 it on two SIM cards. We showed in the petition supported by evidence that
2 it would have been obvious to do it in a one SIM card device. It would have
3 been obvious to do it in a multiple SIM card device such as Chae. There's
4 no incompatibility between these references.

5 Moving to slide 31, we also showed going the other direction,
6 there's no incompatibility with Chae using Narendra's password protection.
7 And in fact, Apple says you can either switch between SIM cards or you can
8 switch between password protected and non-password protected screens, but
9 you can't do both. Chae itself refutes that. It has an embodiment, Figure 5,
10 that depicts an upward swipe for accessing a screen associated with SIM one
11 after input putting a secret code. So, that's both switching between SIM
12 cards and accessing a password protected screen. It also discloses using
13 swipes to access non-password protected screens associated with a different
14 SIM2. So, that's switching to a different SIM card, SIM2, and also
15 switching to a non-password protected screen. So, Chae's and Narendra's
16 basic concepts are actually compatible with each other, and Apple hasn't
17 shown any incompatibility between these concepts.

18 Now going to slide 32, you can see sort of the trivial nature of
19 Apple's incompatibility argument if you look at Apple's POR at 12. And
20 they raise an alleged incompatibility that a right swipe leads to one type of
21 screen in Chae but leads to a different type of screen in Narendra. So,
22 they're saying these are incompatible because in one device one thing says if
23 you swipe right you're going to one place, and the other one says if you
24 swipe right you're going to a different place. That is an extremely trivial
25 difference. A person of skill in the art would understand that you have to

1 have unique gestures for each place you go to, and thus in combining Chae
2 and Narendra, a person skilled in the art would easily resolve any such
3 incompatibility by associating a unique swipe with each destination screen
4 reachable from a common origin screen.

5 Let's move to slide 33. And now we're moving on to more
6 specifics on Claim 6, also Claims 14 and 22. That is specifically returning
7 to the wake screen using a different swipe gesture.

8 Move to slide 34. The petition explains the motivation to combine
9 and the motivation to achieve a navigational path of Claim 6. It first
10 explains in a general sense that it would have been obvious to return to the
11 wake screen to lock the smartphone to enhance security. So, that's the basic
12 reason why you would want to go to the wake screen after going to some
13 other screen. It also explains in particular why a person skilled in the art
14 would have used a different directional swipe gesture for returning to the
15 wake screen, and explains that wake screens, they don't have a lot of
16 functionality. They're limited functionality. So, you don't want to just go
17 there willy nilly. You don't want to go there all the time. You want to
18 reserve the normal gestures for the normal path of switching between home
19 screens and widget screens and those types of screens that have a lot of
20 functionality. And you want to reduce the likelihood of user confusion or
21 inadvertent access of the more limited functionality wake screen by using a
22 different directional swipe gesture.

23 Slide 35. Apple says we didn't explain this in enough detail, but
24 we in fact provided the specific reasoning here by saying a POSITA would
25 have wanted to provide a navigational path for returning to the wake screen

1 that is easily distinguishable by the user from the usual path for navigating to
2 home screens and widget screens. So, a person skilled in the art would have
3 wanted to have the navigational path be different, and for that reason would
4 have used a different swipe gesture.

5 Let's move to slide 36. This is also an issue of finite design
6 choices as I mentioned before. There's really only a few choices of swipe
7 gestures. A person skilled in the art is going to choose among the ones that
8 are easily distinguishable from each other such as up, down, left, and right.
9 There's also a limited number of screens that are disclosed in the prior art
10 such as wake, home, widget, and control panel screens that were described
11 in Chae and Android and Karunamuni. And contrary to what Apple says,
12 neither the prior art nor Coburn identify a vast number of screens. Apple
13 wants to try to put this case in the type of chemical cases such as Knauf
14 Insulation, In re Jones, and Takeda that Apple cites in its briefs, in which it's
15 a needle in a haystack problem where you have these huge -- a huge genus
16 of chemicals and you're trying to find the one or two or three chemicals, a
17 very limited set of chemicals that will work for the particular treatment. The
18 problem is that those chemical cases have huge geneses, they're looking for
19 a very small subset that will work and there's unpredictability as to which
20 ones will work. We don't have any of those characteristics in this case. We
21 have a very small subset of choices, and all of the choices are essentially
22 interchangeable as to their functionality. They're totally predictable, I
23 should say. They're predictable in that everyone knows that up, down, left,
24 and right are interchangeable. They're all going to work equally well.
25 Apple also cites Waseca that says disclosure of a genus does not necessarily

1 anticipate a species. We're not relying on a disclosure of a genus for
2 anticipation. We're showing that there's a general basic functionality that
3 was known of switching between screens using swipe gestures, and then
4 we're providing the motivation for each one of the particular navigational
5 paths.

6 Let's move to slide 37. Apple argues that a parallel swipe direction
7 to move back to the wake screen would be better than a perpendicular swipe
8 direction. However, a parallel swipe direction is not required for motivation
9 to combine. A person of skill in the art would be motivated also to use a
10 perpendicular swipe direction because of this reduction of inadvertent wake
11 screens rationale. In fact, a perpendicular swipe direction would further
12 distinguish the path taken from moving between other types of screens and
13 would enhance this motivation of reducing inadvertent wake screen access.
14 So, perpendicular swipes are totally fine and would have been obvious.

15 Let's move to slide 38. In addition, the petition doesn't require
16 perpendicular swipes for the reasons I explained before. We're not limiting
17 ourselves to these particular figures. These are general concepts, not precise
18 navigational maps that limit our petition.

19 Slide 39. Apple made an argument in its Patent Owner response
20 that we responded to in our reply. And what Apple did at 28 of its POR is it
21 incorrectly assumed that Chae and Narendra require a parallel swipe to
22 return to the wake screen. It also incorrectly asserted that the combination
23 of Chae and Narendra would not meet the claim limitations because the
24 second and fourth swipe directions would be the same. And then they
25 showed one example of just one way to combine Che and Narendra that

1 would not be covered by the claims. Now, the problem here is that Apple's
2 wrong about this assertion that Chae and Narendra would not meet the claim
3 limitations and that there's not a combination that would meet the claim
4 limitations, assuming that you're using a parallel swipe. And so, in response
5 to their Patent Owner response, we provided another example of how Chae
6 and Narendra work together and how a person skilled in the art could choose
7 among these finite choices and achieve the exact navigational path required
8 by Claim 6, while also using a parallel and opposite swipe direction to get
9 back to the wake screen. That was permissible to do. It's a proper rebuttal
10 of Apple's assertion. The petition need not set forth all possible examples or
11 permutations. Petitioners may discuss other relevant examples in their reply.
12 That's *Apple v. Andrea Electronics*, 949 F.3d, 697, 706 (Fed. Cir. 2020).
13 And the Petitioner may elaborate on previously raised arguments, which is
14 *Chamberlain Group v. One World Technologies*, 944 F.3d, 919, 925 (Fed.
15 Cir. 2019), and *Rembrandt Diagnostics v. Alere*, 76, F.4th, 1376, 1385 (Fed.
16 Cir. 2023).

17 Let's move to slide 40. Apple says that Chae uses up all four
18 cardinal directions. That's incorrect. There's multiple embodiments in Chae.
19 None of them use more than three cardinal directions. So, there's always at
20 least one cardinal direction available for an added swipe. And that's
21 sufficient to provide the additional functionality of the claims.

22 Let's move to slide 41. As I mentioned, Apple proposed a
23 combination that would not satisfy the claims. It's important to note it's not
24 Masimo's combination. It's Apple's strawman that they put out there. It's
25 only one combination that doesn't embody Claim 6, but it doesn't rebut that

1 Masimo's combination does embody Claim 6. It's only proposing an
2 alternative, which does not negate obviousness. Apple does not refute that a
3 POSITA would have desired to reduce inadvertent wake screen access.
4 Forty-two, what Apple does say is that it would have been better, it would
5 have been more user friendly to use a button to return to the wake screen.
6 That also does not refute obviousness. Apple argues a button would be more
7 user friendly than a swipe. It relies on Coburn's subjective user friendliness
8 opinion. No objective evidence supports that. There's no surveys, there's no
9 user interface evaluations. Masimo showed that swipes are an acceptable
10 substitute for button or key presses, and mouse movements or clicks. A
11 POSITA would not be discouraged from using a different swipe to return to
12 the wake screen because some users may find it easier to press a button.
13 And we cited three cases that say we only need to show a suitable option for
14 obviousness, we don't need to show the most user friendly option or a
15 perfect option. And so, we have shown a suitable, acceptable substitute for
16 button or key presses that supports the motivation to combine.

17 JUDGE KINDER: Mr. Cannon, I believe your initial 45 minutes
18 is up about right now. So, you're into the next 15. You can split it ever how
19 you like.

20 MR. CANNON: All right. Let me just quickly mention for one of
21 the -- for one group of the substitute claims, slide 57, Apple argues that the
22 Tu reference uses g-forces instead of tilt angles to determine whether to
23 wake up the device. Slide 57 has citations from Tu that rebut that and show
24 that tilt angles to the right of the top portion of the slide, the top highlight.
25 Tilt angles can be inferred from accelerometer data. And then there's other

1 portions that are highlighted that show that Tu is definitely using tilt angles
2 and a tilt angle threshold to decide whether to wake up the device. And so,
3 that rebuts Apple's main argument with respect to that grouping of the
4 substitute claims.

5 And with that, we'll -- I'll rest on the briefs for the other issues
6 presented. We believe all the claims are obvious in view of the arguments
7 and the evidence shown in the briefs. And with that, I'll reserve the balance
8 of my time. Thank you.

9 JUDGE KINDER: All right. Thank you, Mr. Cannon. Mr.
10 Renner, we'll transfer over to you whenever you're ready. And again, I think
11 you reserved 15 minutes. So, we'll let you know when that initial 45
12 minutes is up.

13 MR. RENNER: Thank you, Your Honor. Karl Renner, on behalf
14 of Apple, may it please the Board. I plan to begin with a discussion relating
15 to Claim 1, and more specifically to the lack of proof by Masimo that a
16 POSITA would have found Claim 1 obvious in view of either Chae alone, or
17 in view of that proposed combination discussed previously of Chae and
18 Narendra, which anchors Masimo's petition. And that Masimo therefore
19 fails to demonstrate unpatentability of even the independent claims that are
20 in question. Usman Khan, my colleague, will also present and he'll discuss
21 various other problems that we identified with Masimo's petition, including
22 problems with Masimo's attempt to address power savings, as well as those
23 relating to Claims 6, 14, and 22, and similarly situated claims.

24 Jumping right in, Masimo alleges unpatentability of Claim 1 based
25 on Chae alone, and of course that integrated missing features from Narendra

1 into Chae. And Masimo has provided a record that also fails to offer
2 evidence supporting either of its contentions. I wanted to take us to Chae
3 alone first. So, let's look please, if we could, at Masimo's demonstratives,
4 slide 12. As was apparent in Masimo's presentation here today as well as its
5 briefing, the viability of Chae hangs on the presence and the meaning of the
6 word widget, as used in Chae, and as used in other cited prior art references
7 that are of record and discussed.

8 Here, Masimo calls attention to the presence of the term widgets,
9 which appears in Chae's paragraph 100. But that doesn't really advance the
10 issue. Why? Because there is literally no dispute over the presence of the
11 term widget within Chae, or within several of the other references. Rather,
12 the dispute arises from what is our sustained contention that Masimo has
13 failed to establish that the identified instances of that term or the uses of the
14 things that are referred to by that term are effective in demonstrating the
15 obviousness of the claimed user interface object recited by the '352 patent's
16 independent claims, and the given functionality that's associated with that
17 object in those claims.

18 So, let's go to Masimo's slide 4, if I could, because there we show -
19 - they show the independent claim, and it's a place to park and just reorient
20 for a moment, please. Independent Claim 1 does recite a respective user
21 interface object of a plurality of user interface objects. And it goes on to
22 require that the recited user interface object has two associated, I'll call them
23 functions just for the ease of use of terminology for reference sake, but the
24 two things that are referencing that user interface object and necessary as a
25 part of it are that it contains application content from an application

1 corresponding to the respective user interface object, and when it's selected,
2 that there's a display that's caused of an application corresponding to the
3 respective user interface object. So, in more layman terms, the first is that
4 the object must contain content from a corresponding application. The
5 second, that the object, when selected, it needs to cause the display of a
6 corresponding application. And for these, as mentioned, I'll just use a rough
7 shorthand throughout the presentation of functional requirements, despite the
8 fact that these are the requirements of the object itself. Masimo contends
9 that this claimed functionality is attributed to various types of widgets that
10 are mentioned in the applied references. And as such, Masimo contends that
11 the mere presence of the term widgets within those references demonstrates
12 the obviousness of the claimed user interface objects. The problem with
13 Masimo's argument is that a careful examination of the reference reveals no
14 disclosure of the claimed functionality, in many instances the presence of
15 different functionality. And these are attributed to the word widget in each
16 instance. Each of these undermines Masimo's obviousness contentions, and
17 particularly, they're reading the word widget alone in paragraph 100 of Chae
18 as having some extraordinary meaning that it doesn't have. In a moment, I'll
19 examine carefully each instance of widget within the cited prior art,
20 including instances that were referenced by Masimo and a couple that were
21 not. In doing so, it'll become apparent that the record is without any
22 evidence to establish that a POSITA attributed common meaning to the word
23 widget. There's no dictionary definition that's been offered or endorsed or
24 otherwise said to represent what people of skill think. And Masimo has
25 failed to establish evidence of meaning, otherwise attributed to the term

1 through what would be common usage that would be thought to be
2 applicable to a population of POSITAs.

3 And on that point, the Hong and Android reference were just
4 talked about, and they're in the record, and they're discussed here and there.
5 But I'll address those references because each one not only fails to establish
6 common usage, or a definition for that matter, but it actually contributes to
7 the evidence against common usage being common. Well, at least common
8 usage being commonly disclosing of the two claimed functions. And so --

9 JUDGE KINDER: Mr. Renner, could I ask a broad question first?
10 And this may be a hypothetical, but looking at Chae's, I think it's Figure 6(b)
11 in the weather graphic. Are you contending that a person of ordinary skill in
12 the art looking at that would not know that that could be something you
13 press to display a corresponding application? Is that your position? Is that -
14 -

15 MR. RENNER: It's one of the several failures we believe that
16 exists. That is the 6(b), what we'll be talking about is the nakedness of the
17 disclosure is at paragraph 100, a simple one word, widgets, is said to be as
18 an alternative to icons. So, we have to look at that word in order to know
19 what Chae is actually disclosing relating to Figure 6(b) and whatever that
20 item is. So, when we look at that word -- sorry, Your Honor.

21 JUDGE KINDER: Yeah, so what would it be then if the icon with
22 the weather, or I don't want to use the term incorrectly, but the graphical
23 picture, what could it be? Your expert testified that it could just be a graphic
24 that has no corresponding underlying application that's launched?

25 MR. RENNER: That's correct, Your Honor. Well, there's two

1 functionalities to keep in mind. One is the item has to indicate or contain
2 content from an underlying application, and two, it has to be selectable to get
3 to that corresponding application. What we find in Chae is at Figure 22, it
4 uses the word widget also, and when it uses the word widget within its four
5 corners, it's not using that word to refer to something that launches into an
6 application. The widget that it's talking about, when it uses the word widget,
7 it's using it loosely, and that word can be used to launch, for instance, into an
8 environment. That would be the SIM environment. I don't know that it has
9 to launch into anything at all. The point that we're trying to make is that the
10 word widget is a very loose word. It is a word that has had no defined
11 meaning attributed not only in this record, but in general. And we think that
12 the evidence of record that's been put forth by Masimo actually proves that.
13 When we look at Hong and we look at Android, for instance, we're going to
14 find that those references not only don't define or establish a specific
15 common usage, they give you different kinds of usages, none of which have
16 both of the functions that we're talking about. So, when I read the word
17 widget in Figure 6(b) as a single word that is an alternative to icon, I don't
18 know actually on this record, and I don't think I know generally what that
19 means. And I believe it's the Petitioner's job in this proceeding to have
20 established that this prior art meets the claim. And to do that, they needed to
21 make sure that this record spoke to what that word means. Otherwise,
22 Figure 6(b) doesn't have the disclosure that renders obvious the claim, and
23 that's what we hope to discuss here today. I wanted to walk through really
24 literally each instance of the word widget in each of the four references just
25 to look at it to make sure that we're all seeing this, that there are no

1 definitions offered by any of the references. And the common usages, if you
2 want to even call them that, they're all over the place, that each of these
3 authors use these terms differently. And that's because the word doesn't
4 have a specific meaning. Had Masimo attempted to demonstrate through a
5 combination that would have brought something different to Chae than what
6 it says, we'd be talking about something different. Who knows? But what
7 they've given us is Chae alone, and then they've given us Chae plus
8 Narendra. And when you look at Narendra, I'm getting ahead of myself,
9 you'll find another single word reference to widget. So, on this record, we
10 just don't have evidence of what a person of ordinary skill would see in 6(b)
11 when that naked reference to widget occurs. And more importantly, we
12 don't know that we'd see the two specific functions that are called out in the
13 claim for the user interface objects in Claim 1.

14 And, Your Honor, if I may, we also hope that as we go through the
15 various instances of widget to demonstrate that these specific things that are
16 being referenced, not only do they -- do the authors not give us a definition,
17 nor do they give us a common usage that would be what Masimo would
18 need. They also don't demonstrate specific instances that have these two
19 functions. So, I can't even see that there would be a combination of one of
20 these references that isn't even alleged in this record. It's just Chae alone.
21 And you heard today that Narendra is really there as a gap filling, but as to
22 widget, it doesn't offer anything more.

23 JUDGE COCKS: Mr. Renner, this is Judge Cocks. Can you
24 specifically -- what two -- when you refer to two functions, what are those
25 two functions?

1 MR. RENNER: Thank you, Your Honor. The two functions are,
2 if we look at the claim, it's the contains application content. These are
3 attributed to the user interface object, and the user interface object is said by
4 the claim to, first, contain application content from an application
5 corresponding to the respective user interface object. That's one. And two,
6 it says that when selected, this user interface object causes display of an
7 application corresponding to the respective user interface object. So, in one
8 instance, it has to contain content from an application, and the other, it has to
9 be selectable to get to the application.

10 JUDGE KINDER: Mr. Renner, could I ask one question about
11 framing this entire argument? What's the critical date we're looking at here?
12 Is it 2017?

13 MR. RENNER: Seventeen, mm-hmm.

14 JUDGE KINDER: Okay. So, it's 2017, and as far as your
15 definition of a person of ordinary skill in the art, I don't think you propose
16 one specifically. So, do you agree with what was in the petition as far as the
17 framing of the ordinary artisan?

18 MR. RENNER: Thank you, Your Honor. We didn't dispute the
19 level of skill. Our contention is that whatever the level of skill is, what we
20 see in the record evidence before us is that different people of skill are
21 disagreeing as to the word widget and what is attributable to it. And more
22 importantly, they're giving examples of things they are calling widgets that
23 don't actually include these two requirements. So, when people of skill read
24 this reference and they see the word widget at 6(b), not only do they find
25 Chae looking at the word widget and saying in the four corners of the

1 reference Chae itself, that widget means something that is not these two
2 different requirements, but they see in these other references that other
3 authors, other people of skill, when they write about or speak of the word
4 widget, they too don't think of it as a word that conveys these two
5 requirements. It doesn't necessarily have them. And so, when you read
6 Chae, when we're trying to figure out, well, what does Chae actually
7 disclose, or what does it render obvious, we don't see record evidence that
8 establishes these two functional elements associated with the user interface
9 object on 6(b).

10 JUDGE KINDER: I'm certainly not one of skill in the art, but
11 looking at the timeframe, 2017, one of skill in the art ignoring the word
12 widget, just looking at the graphical presentation of figure 6(b), wouldn't
13 they understand that there's a possibility that the weather icon in that graphic
14 could represent an underlying application that could be selected and
15 launched?

16 MR. RENNER: Your Honor, that would be adding something to
17 Chae that it's not actually disclosing for us. It shows you a two-dimensional
18 still image. There's no reason to think that that's a live image. There's no
19 reason to think that's got information coming in. And more importantly,
20 there's no reason to believe that it doesn't select through to something other
21 than an application. Chae itself elsewhere says that a thing it calls a widget,
22 that is at Figure 22, for instance, it selects into something that is not an app.
23 So, we think that the four corners of Chae just doesn't give us that, and
24 frankly, it doesn't render obvious, nor does it disclose it. And then I look at
25 Narendra again, I see nothing more than a word in the Narendra. But to

1 Your Honor's point, I don't know what a POSITA could imagine as it relates
2 to that. I don't believe that that is what's really at issue here. That would be
3 a different inquiry. I think there's no evidence to believe that the Chae
4 reference tells us this, nor that it suggests it or renders obvious, therefore,
5 that modification of what it actually shows us.

6 Let's look at Che if we could. If we look at Exhibit 1005, you're
7 probably there already, but pages 5 and 8 is where I wanted to direct your
8 attentions. Five and 8 show us paragraphs 100 and 152. In each of these
9 paragraphs, Chae uses that term widget. In doing so, it leaves open the
10 definition of that term, or really a detail as it relates to that term. And it does
11 not use the term widget in a way that Chae establishes or reflects usage
12 intending to reveal disclosure of those two claimed functions as our position.
13 It instead demonstrates otherwise by using that term to refer to an object that
14 it lacks at least one of these two. At paragraph 100, this is on page 5 of
15 Chae, that's the first instance, and that's the instance that's referred to by our
16 counterpart. Here, Chae provides just bare mention of the term, as
17 mentioned by me earlier. I'll quote, the home screen customized to the sim
18 has items displayed on the home screen, including icons and widgets. That's
19 it. Nothing more. Notice no definition, no context, no indication of what it
20 means by transitioning to what would be a widget. So, the reader is left
21 without any information from this paragraph about what is meant by that
22 reference to widget. They're instead left by Chae and this paragraph to
23 resolve the meaning of widget elsewhere.

24 So now, if we look at paragraph 152, we ask ourselves, what does
25 this author say elsewhere about the word widget? And here we see Chae

1 invoke the term widget again. This time it's referring to an object that is said
2 to use state information, I'm quoting, use state information of the first and
3 second sims which can be dragged by a user to unlock one or -- of the first
4 and second sims. So, according to this passage Chae recognizes this thing
5 called a widget as something that it selected leads to unlocking a sim
6 environment. That's not the same as unlocking an application as the claim
7 requires, nor is it the same as unlocking an application corresponding to
8 content contained by the object that Chae identifies as the widget. And as
9 such, this reference to widget is, again, unlike the claimed user interface
10 object. Selection of this claimed user interface object causes display of that
11 corresponding user, sorry, the claimed interface object causes display of the
12 corresponding application, but selection of this paragraph 152, Figure 22
13 widget causes selection of something different, a sim environment. Now,
14 the point being that Chae uses this term widget, it does use the term in a
15 manner that does not disclose or render obvious, at least the recited function
16 associated with the Claim 1G interface objects. And more relating to the
17 list, the first recited function we talked a little about, Masimo's suggestion
18 that the use state information, this is the Figure 22 referred to, use state
19 information of a sim environment, that that would constitute application
20 content from an application corresponding to one of these widgets, that too
21 is questionable. And for each and both of these reasons, the usage in Chae
22 itself demonstrates that the term widgets, it is not limited to user interface
23 objects that perform the two claimed functions, particularly where the term
24 appears in Chae, but also generally if it appears in other documents, because
25 this is helping us to understand what a person of ordinary skill frankly

1 doesn't see in the word widget. It sees something that does not disclose
2 those two limitations. We actually think this alone answers the question,
3 and the question is whether or not obviousness has been demonstrated. The
4 record is just thin here, and it's unfortunate for the proof.

5 More, as we noted in our Patent Owner's response, it's not clear
6 from Chae what if anything happens, and this goes to the point we're just
7 discussing, if the user attempts to select any one of the objects on Chae's
8 Figure 6(b) interface, much less whether the objects on that interface are
9 even selectable. Masimo does suggest that selection leads to what it thinks
10 is an obvious display of corresponding applications, but on what basis? The
11 expert -- we don't think so. Their expert witness merely reiterates literally
12 verbatim, the arguments made by Masimo, without adding any corroborating
13 evidence or anything for that matter to lend support to the argument. And
14 this is a pattern. If you look throughout the declarations provided by this
15 expert, they mimic verbatim, the words that are used in the briefing of
16 Masimo. The Boards recognize that little or no weight is attributable to
17 expert testimony that lacks corroboration like this. And indeed, the
18 precedent of *Xerox v. Bytemark*, it's IPR2022-00624, in that this point was
19 reinforced on circumstances that are highly similar to these in which a
20 Petitioner relied on a declaration containing exact restatements of the
21 Petitioner's unsupported conclusionary assertions without any additional
22 supporting evidence or reasoning.

23 Finally, I'll note that Masimo's assertion, it isn't even logical. It is
24 possible, certainly, and perhaps even likely, that the Figure 6(b) objects lead
25 to non-applications, power, or other OS functions, any manner of thing, or

1 that they may not even be selectable. Masimo offers nothing on this point,
2 other than bare conjecture by their expert.

3 Now, I foreshadowed, if we can go to slide 13, please, of Masimo's
4 slides, I foreshadowed that Narendra, Exhibit 1006, which is combined with
5 Chae to fill in holes, that it offers even less detail than found in Chae's
6 paragraph 100. And in this regard, as fully quoted on Masimo's slide 13,
7 Narendra simply states without explanation at paragraph 25 that, and I quote,
8 desktop screens on mobile device 300 display contents such as application
9 icons, widgets, and the like. No definition, no common usage, nothing
10 regarding the meaning or the use of the word widget, beyond what you see
11 here, which is not beyond what already exists in Chae. So, it's a bit
12 challenging to understand why Masimo would contend that the proposed
13 integration of Narendra with Chae would somehow blunt the failure of Chae
14 to disclose the claimed user interface objects and the corresponding
15 functionality that they have.

16 And if you -- slides 14 and 15 of Masimo's slides, speak to Hong
17 and Android, and let's go through those individually. Hong and Android
18 each fail to demonstrate disclosure of an instance of the term widget being
19 recognized or even applied as conveying the two functions attributable to the
20 claimed user interface object. As such --

21 JUDGE COCKS: Mr. Renner, I have a question. This is Judge
22 Cocks. So, you have focused on the term widget, and I understand as a part
23 of the prior art. I will say this, it feels a little like we are construing that
24 term in the prior art, which is a somewhat unusual approach. Let me ask this
25 question. Do any of the four items of prior art, Che, Narendra, Hong, and

1 Android, do any of them expressly show a user interface with an icon that
2 executes an application?

3 MR. RENNER: User, sorry, let me think. User interfacing with an
4 icon that, again, what was the last part of that?

5 JUDGE COCKS: Executes an application.

6 MR. RENNER: Executes an application. Sorry, I'm going through
7 them one by one. I don't think so, but there's a lot of disclosure. What I
8 maybe would answer with, I hope it's not an answer, but what I would say is
9 that each of them discloses the use of the word widget as meaning other
10 things than that. So, they show examples where that's not a part of what the
11 widget that they call out is. And I do agree. It's a little unusual because to
12 us it's unusual that the reference is being applied, and they're looking at the
13 word widget, and they're calling out attributing meaning to it that would be
14 necessary to meet the claim. And it's for that reason that we're trying to
15 understand what that word means to a person of ordinary skill. What does
16 this reference mean? So, I appreciate the question. I hope it's clear what I'm
17 saying is that even if an instance in one of the references, certainly not Chae,
18 and certainly not Narendra, it would be in Hong or possibly Android if any,
19 but our contention is that those references aren't part of the combination.
20 And so, they would be useful. They could be useful if they helped us to
21 understand what a person of ordinary skill believes would be conveyed by
22 the word widget. And if that word was consistently used, for instance, then
23 when I read Chae, I would say to myself as a person of ordinary skill, a
24 consistently used word. I know what that means, and I can use, I can apply
25 its meaning here to know what this disclosure means. But what we have

1 instead is not only does Chae use the word in a manner that's -- it uses it in
2 one way, but it does not use it for the two functions. We see these other
3 references, and we're about to go through them, use the word in different
4 ways, ways that also fail to use those two functions. And whether one of
5 them would have an example where either one or even both of those was
6 used, we don't think that actually speaks to what a person of ordinary skill
7 would have established as common meaning attributed to the word widget
8 such that when they read Chae, they do what Masimo wants you to do,
9 which is to interpret Chae to invoke that that common meaning tells us what
10 Chae must mean to a person of ordinary skill or convey to them. Does that -
11 - I hope I did not answer your question. I was trying to answer your
12 question, but is there a follow-up or anything more I can add?

13 JUDGE COCKS: I believe there will be, but why don't you
14 continue on with your presentation, and follow-up later. Thank you.

15 MR. RENNER: Thank you. Okay, so Hong, it identifies a UI
16 object as a widget. We'll see that true as well, if you will, in Android. But it
17 does not disclose the two functions associated with that UI object. And this
18 is apparent from its Figure 7A, for instance. Again, if you look at their slide
19 14, you can, we can get to Hong here. Hong uses the term widgets to
20 describe UI object 290. And you can see that includes a motion object 300
21 on Figure 7A. Noticeably absent from Masimo or in Hong is any evidence
22 of any attempt by a user to select either the widget 290 or the motion object.
23 Also absent is the evidence of a response to any attempt to select either of
24 those two things. Or, notably, that responsive display of an application from
25 which the content is harvested would occur. And that's because there

1 wouldn't be. If you look at 290 or 300, for that matter, interfacing with that
2 object itself, which is called a widget, which tells us that people of skill call
3 even that a widget, that allows you to turn a radio button on or off to invoke
4 or non-invoke the motion detection. So, there's no real reason to think
5 you're going to click through that thing that this user, this author tells us is a
6 widget. Instead, you just have what would be a, we believe, dead end, if you
7 will. But certainly not something that helps us understand the word widget
8 to be commonly understood as having the claimed two functions.

9 So rather, Hong also offers yet another example. Therefore, the
10 POSITA is using the term widget in a way that fails to contemplate those
11 two claimed functions. And yet, even if Hong had used the word as we just
12 talked about, it would be a single one off usage. There's not even a
13 contention by Masimo that Hong establishes common usage that would then
14 impart meaning to the word as it's used in Chae to have these two functions.
15 At best, it contends that there's an example. But we can see here there's an
16 example that definitely contradicts. Android does the same thing. Oh,
17 actually, let me pause for just a moment. There was some citation in the
18 record, and even today, as to testimony that came from deposition
19 transcripts. And I wanted to make sure we all saw what those were. At the
20 Petitioner's reply at 11, and there's a reference to Exhibit 1057, page 100,
21 line 19 to 101, line 8, said there, Cockburn admitted that the, and this is the
22 Petitioner's reply, Cockburn admitted that the capability of implementing the
23 fake six icons as the claim that user interface icons predates the '352. A
24 more fulsome review of the transcript reveals that he was qualifying the
25 statement with an indication that he was speaking to the availability of

1 technology, available to build what was disclosed in '352, not the
2 acknowledgement that there's an inference in the prior art to suggest that
3 disclosure of 6(b) icons should be implemented this way. And as to this
4 point, if you look at, for instance, page 104, 6 to 11, he clarified that Hong
5 does not disclose opening an application when selected.

6 All right, so now Android. Any questions about Hong before I
7 turn to Android? Slide 15 shows us Android, and with respect to that slide,
8 Android suffers from the same problems we believe that Hong does. It
9 offers no definition, and it similarly has not been relied upon by Masimo to
10 demonstrate meaning of widget through what would be an established
11 common usage attributable to users, persons of ordinary skill it is.

12 Android doesn't -- it does little more than show, frankly, the
13 reference by what appears to be a common user, not even a POSITA,
14 identifying something on a device that they're interfacing with as a widget.
15 And the failure of Android to offer a definition or otherwise demonstrate
16 common usage of the term widget is, we believe, telling. The Android
17 disclosure is merely that of a person installing a user interface object that
18 offers display of an email inbox and that enables selection to a selected
19 single email from within that inbox. Now, the user calls the inbox in the
20 video a widget. But is it? It's just an inbox. And besides which, selection of
21 one of the emails within that inbox leads to the display of an app
22 corresponding to the content contained -- containing the thing that it calls a
23 widget, the inbox, it doesn't seem to go right. You've got an inbox, a
24 selection of which goes to a piece of data in an application that's already
25 running, or in a window that isn't. It's a bit backwards, and the claim calls

1 for content contained by the UI to be from an application to which the user is
2 taken if selecting the icon. This implies a distinction between the UI and the
3 application. And as such, consistent with Hong, if anything, we see
4 Android, the usage there, and most demonstrating yet another instance in
5 which there's orthogonality in the word widget.

6 So, when we look at Chea, back to Chae because it's Chae alone
7 here, when we look at Chae whether alone or in light of these other
8 references, we're left with no evidence, and this goes to your point, Judge
9 Kinder, of prior art disclosure or obviousness of a user interface object
10 having the two claimed functions as it relates to 6(b). We just don't have the
11 evidence of that. We have the naked reference to widget, and we have all
12 kinds of different references to what widget could mean. But nobody is
13 actually saying that it means these two functions. And this, despite the
14 references to widget that are in the record generally.

15 JUDGE COCKS: Mr. Renner, this is Judge Cocks. One question.
16 You had mentioned these items in Chae. If they're widgets, this is on 6(b). I
17 think you've taken two approaches that I understand you're saying they don't
18 trigger those, whatever those icons are do not open an application. I
19 understand that you're making that point. You had at one point said they
20 may be static and I will confess that I have a hard time believing in a
21 smartphone with a touchscreen environment that those icons would just be
22 static images. But I understand you've made that point. Your second point
23 was that it may -- that there is a greater suggestion that triggering those icons
24 opens an environment that is not an application. Can you give me a citation
25 in Chae that supports that it opens an environment that is not an application?

1 MR. RENNER: I can -- two thoughts on that, please, Your Honor.
2 One is that Chae is -- it's without discussion of what these icons do or what
3 they are. It discusses the interface, but it just lists them, and it doesn't give
4 us detail on them. I'll look when I sit down to make sure there's nothing I
5 can give you to cite to that, but it's bare thread on what it's telling you these
6 are. Now, it does refer to them as the icons, and if I could refer you back to
7 that paragraph 100, you'll recall that it said widgets, icons, or widgets, it's
8 just giving those in the alternative. I don't think it's our view that these
9 particular things on this screen become somehow transitioned into widgets.
10 I don't think that's even alleged by Masimo. I'm not -- I didn't read that in
11 what they were trying to say. I think what the reference is trying to say is
12 that you see icons on the screen right now, and those aren't widgets, and that
13 there could be widgets on that screen, whatever that word widget means.
14 But I think that speaks to me, that at least speaks to these icons here. It's not
15 clear to me that those would themselves be transitioned, but Chae just
16 doesn't give us the detail on that. Chae is really more interested, frankly, in
17 the screens that are used to get to this. It's 6A in the counterpart screens.
18 That's where most of its disclosure comes in. It's trying to navigate to these
19 screens.

20 JUDGE COCKS: Thank you.

21 MR. RENNER: No, thank you, Your Honor. Now, let's turn if we
22 could, to Narendra. So, we know now you've got Chae alone, and the
23 question is what happens when you apply Chae in combination with
24 Narendra. We believe that there was an acknowledgment or at least an
25 appreciation that Chae alone doesn't justify unpatentability, and there's

1 advance, therefore, a combination with Narendra. Not just any combination,
2 it's a very specific integration of Narendra into Chae, and it's said at page 33
3 of the petition, if Chae is interpreted is lacking any limitation of Claim 1, it
4 would have been obvious to add such limitations to Chae in view of
5 Narendra. A vague call, frankly, for the integration of Narendra's teachings
6 into Chae, but nevertheless, it's just Narendra. There's not an integration of
7 Hong or Android or any other reference for that matter. And with this
8 statement, Masimo seems to advance each of two contentions. One, that that
9 combination would be obvious, and two, that if you made that obvious
10 combination, that you would arrive at the claims even if you missed with
11 Chae alone.

12 Taking those in reverse order, I'll offer it -- go back to Masimo's
13 slide 13 if we could, please. Here we'll look and we'll see the record lacks
14 evidence establishing that a failure by Chae to render obvious the user
15 interface object having the two claimed functions of element 1G, that it
16 would be remedied somehow by the proposed integration of Narendra. We
17 think the record actually establishes the opposite. As to element 1G and
18 those two functions, Narendra adds quite literally nothing to Chae. A bold
19 statement, I realize, but it flows from what's been cited, and cited is at page
20 56 of the petition. Other than mentioning the existence of swipe gestures
21 that don't speak to either of the two plain functions that we've been
22 discussing, the petition cites only to Narendra's paragraph 25, and that's
23 shown here. And that reads that desktop screens on the mobile device 300
24 display content such as application icons, widgets, and the like. This is the
25 only reference by Masimo to widgets within Narendra because it's the only

1 reference in Narendra to widgets. And, of course, in it, Narendra does
2 nothing more than list widgets as an option. It does not describe or attribute
3 any function to the term. And this is why I offer that Narendra does nothing
4 more than Chae to demonstrate the presence or the obviousness of the
5 interface object having the two plain functions. And more particularly,
6 Narendra, like Chae, it fails to suggest that the object contain application
7 content or to suggest that the selection of the object is possible, much less
8 that it would lead to the application with respect to which the contained
9 content corresponds. And for that reason, obviousness does not flow, we
10 believe, from the proposed integration of Narendra.

11 Now, I told you I'd go in reverse order, and I'll try to be brief here.
12 But we also argued in the record, you probably noticed, that not only does an
13 integration of Narendra as proposed with Chae fail to remedy Chae. Also,
14 though, that combination struggles. That combination struggles mightily.
15 We believe it's an inappropriate and not motivated combination. And I'd
16 like to talk about this if we turn to Apple's slide 10, please. As can be seen,
17 our Patent Owner's reply surfaced that there existed omissions by the
18 combination of key disclosures from within each of Chae and Narendra.
19 From Chae, that combination proposed, it omitted any discussion at all or
20 any part of the selection of sims using, for example, swipe gestures, and
21 from Narendra, it omitted the use of swipe gestures to select among the
22 password or the non-password enabled screens or movement among them
23 for that matter. We offered testimony from Dr. Cockburn to establish that a
24 POSITA would not have been motivated to combine Chae and Narendra in
25 the manner proposed given Masimo's omissions, assuming a full and fair

1 read, of course, of the references. And at the same time, we noted that
2 Masimo offers no argument in the alternative. It doesn't offer that, even if
3 you did consider these aspects of Chae and Narendra in full, that you'd arrive
4 at the proposed combination. We obvious somehow to arrive at it to the
5 exclusion of them. It doesn't offer any evidence to suggest that a person of
6 ordinary skill would see it. They would see it obvious to do that or be
7 motivated more importantly to do that in light of the omissions.

8 And to this last point, recall that the general motivation section
9 from Masimo was at their pages 28 to 32 of their petition. There we see that
10 Masimo and its expert they praise Narendra for its limited number of
11 directional swipes. They actually go out of their way to talk about how
12 that's a great thing. It promotes sensibility, it promotes ease of use, it
13 promotes consistency. They talk about how the four directions are important
14 to get these achieved goals because they help users to actually remember
15 specifically what functions are associated with what moves, the coordinate
16 system helps you to operate up and down, north, south, east, west is
17 something that they associate with, and the consistency is important. If
18 you're going to integrate, you integrate. You don't only integrate that, but
19 you actually use that to select what you see selected in Narendra, and that
20 would be the password and non-password. And if you did, what you'd see is
21 you'd see displacement of the controls that are necessary, and the only
22 controls that are described, in order to do SIM selection by check.

23 So, what you have is a combination where you displace the
24 functionality. You can't get back to a SIM selection once you transition, if
25 you will, over to a power, or a password protected selection. And this is the

1 problem. My colleague will talk a little bit more about this, but this is the
2 problem. When you think of motivation, how would you move away from
3 what look like central teachings of the references? In Chae, you have
4 reference, it starts in the abstract, it goes to the field, it goes to the
5 background, every single paragraph of the summary, every figure it has, it's
6 all about SIM selection. It's not about swipe gestures only, it's about using
7 them to SIM select. And the same is true in Narendra. In Narendra, you
8 have a comprehensive disclosure that talks about selection among password
9 and non-password protected screens. It's not just some sort of a divorce of
10 that, uncontextualized swipe gestures. And yet when you fold them
11 together, you have problems, you have things that conflict, and this record
12 tells us nothing about what a person of ordinary skill would do in response
13 to those problems. It doesn't paint the picture of how you bring those things
14 together. We painted that issue in the Patent Owner's response, and you can
15 look at the Petitioner's reply to see that there's just not a good answer. And,
16 frankly, the combination is left, therefore, unspoken to.

17 Now, let's see where we are here. The Masimo suggestion on its
18 slide 32 that incompatibilities are trivial and readily resolved is something
19 else I wanted to speak to. They speak to ordinary creativity, and the
20 compatibilities that are noted, the incompatibilities are not trivial, however.
21 And as shown in Apple's slide 12, Dr. Cockburn actually offers testimony on
22 this point. He says that by incorporating Narendra, a user may navigate
23 between those password-protected desktop screens and non-password
24 protected desktop screens. But if they did that, he points out they would lose
25 the ability to navigate among home screens of different SIM cards. That is

1 the primary purpose of Chae. Now you can see this if you look at Apple's
2 slide 11, where you have Narendra's upward swipe leading to a password
3 protected desktop screen. It's right swipe to up among non-password
4 protected screens. It's not really important that it's upward or right. The
5 point is that when you look at Chae, that very same navigation is now
6 displaced. And that was used to select a home screen for SIM 1 and upward.
7 And the right was a home screen for both SIM 1 and SIM 2. So, how do you
8 continue to have the functionality of Chae in light of this proposed
9 combination? We just haven't seen a record developed to give us the answer
10 to that question other than, we believe, a hand wave.

11 Masimo offers us no guidance or suggestion on how to resolve
12 these and other incompatibilities denigrated. And speaking of the general
13 motivations section that we early referenced, as shown into Apple's slide 17,
14 convenience, efficiency, ease of use, these have all been addressed in a
15 similar context and found soundly rejected by the Federal Circuit as
16 insufficient. That's *ActiveVideo Networks v. Verizon* case, 694 F.3d 1312,
17 1327. It's a 2021 case, but it's well-established law.

18 And finally, turning to Apple's slide 18, even if a combination
19 were possible, which we don't believe has been demonstrated, Masimo has
20 failed to demonstrate why or that a POSITA would have made that
21 combination.

22 Your Honors, I'm happy to take questions. Otherwise, I will ask
23 my colleague, Usman Khan to address further issues.

24 JUDGE KINDER: Thank you, Mr. Renner. I don't think we have
25 any questions right now.

1 MR. RENNER: Thank you.

2 MR. KHAN: Thank you, Karl, and good morning, Your Honors.

3 May I please the Board. Can Your Honors please turn to slide 29? I'll be
4 addressing Claims 6, 14, and 22. The features recited in these claims are
5 essentially identical, so I'll be focusing on Claim 6. In discussing claim 6,
6 Your Honors will see that Petitioner made several attempts to try to map the
7 prior art onto the claim features. But each attempt failed because of its
8 serious flaws and inconsistency with the prior art. As we will show, even
9 Petitioner's expert acknowledged that in fact the claim features are not
10 disclosed by the prior art. Now, to better illustrate the deficiencies in
11 Petitioner's mappings, let's first take a look at the claim language at issue.
12 So, if Your Honors could please turn to slide 30. To briefly summarize,
13 claim 6 requires that while a computer system is displaying a home screen,
14 and an input is received in the fourth direction, the display transitions from
15 the home screen user interface to the wake screen user interface. Page 68 of
16 the petition provides a helpful image of how the petition set forth its prior art
17 mapping. The fourth direction is shown in blue. This figure also shows
18 green and red arrows corresponding to the first and second directions that
19 were recited in Claim 1 from which Claim 6 depends. Specifically, when a
20 movement in the first direction that's shown here by green arrow is detected,
21 the displayed transitions from the wake screen user interface to the home
22 screen user interface. When a movement in the second direction that's
23 shown by the red arrows detected, the displayed transitions from the wake
24 screen user interface to the widget screen user interface. The fourth
25 direction here is shown to be orthogonal to the first and second directions.

1 What I would like Your Honors to note here is that this figure is not based
2 on the teachings of the prior art. And to better appreciate that, let's turn to
3 the prior art. If Your Honors could please turn to slide 31. On the left side
4 of slide 31, it's the same figure from the petition we just discussed. On the
5 right side of slide 31, we see Chae's Figure 3. Petitioner mapped Chae's
6 teaching of using a bottom to top swipe, as on the left side of the flowchart
7 to arrive at the SIM1 home screen, and a top to bottom swipe to arrive at the
8 SIM2 home screen. Now, Petitioner mapped Chae's in one home screen to
9 the claimed home screen user interface, and Chae's SIM2 home screen to the
10 claimed widget screen user interface. Note here that Chae also discloses a
11 left to right gesture that can be used to switch to a dual SIM1, SIM2 home
12 screen. Note here that Chae does not use any bidirectional arrows. That is,
13 Chae does not disclose how a user would transition from the SIM1 home
14 screen back to the alleged wake screen, which the petition alleges would be
15 displayed at step S240. There is in fact no disclosure of an input in the
16 fourth direction that can be made to transition from say box S260, the
17 alleged home screen user interface, to the diamond S240, the alleged wake
18 screen interface. So, it's clear that Chae does not disclose this claimed
19 fourth direction.

20 JUDGE KINDER: Mr. Kahn, can I -- this is Judge Kinder. Can I
21 ask a quick question?

22 MR. KAHN: Yes.

23 JUDGE KINDER: If it teaches foundational transitions in three
24 different movements, does it also have to teach the fourth under *KSR*?

25 MR. KAHN: It doesn't have to, Your Honor. That's going to be

1 driven by the prior art, and the needs of the prior art. Here, Chae is directed
2 to SIM1 and SIM2 and navigating two different screens for SIM1 and SIM2.
3 When you see the option, when you have a wake screen, for instance, it's
4 S240, right, there's really no need for a fourth direction there. You have one
5 option where you go to SIM1, another option for SIM2, and a third option
6 for SIM1 and 2, right. This notion that, oh you could randomly add a fourth
7 direction seems to be just inconsistent. And furthermore, the whole idea that
8 there's three navigational directions here is actually not even relevant
9 because at that point, we're actually at the wake screen, right. S240 is the
10 wake screen. The claim recites actually transitioning from the home screen
11 to the wake screen, which is at S260, according to Petitioner's mapping. So,
12 that argument is not even relevant to the mapping that they're applying. I
13 hope I answered that question.

14 And I'd like to turn to Narendra on slide 31. Now, on the left side
15 of slide 32, we see the figure in the petition again. On the right side, we see
16 Figure 9 of Narendra. As my colleague, Mr. Renner had mentioned,
17 Narendra is directed to a method to navigate between password protected
18 and non-password protected screens. For instance, if a user wants to
19 transition from a non-password protected screen to a password protected
20 screen, the user can make a vertical swipe. Once in that different security
21 level, a user can make a horizontal swipe to move between other screens at
22 the same security level. So, applying Narendra's teachings, first, if you have
23 a bottom up gesture movement, you move to a different security level. This
24 teaching mirrors the claims transitions from the wake screen to the home
25 screen. According to Petitioner, they say that while you can also go back to

1 the previous screen using a horizontal gesture, right, the fourth direction.
2 But you can't do that in Narendra, because in Narendra, that would involve
3 going back to the previous screen, which would involve going to a different
4 security level. That can only be done through a vertical gesture.

5 Moreover, Chae and Narendra are fundamentally incompatible if a
6 bottom-to-top or top-to-bottom gesture is used in Narendra, as taught by
7 Narendra. That would mean, if you go back to Chae, that SIM1 and SIM2
8 home screens are at a different security level than the wake screen. But
9 Chae teaches using a horizontal gesture to land at the combined SIM1 and
10 SIM2 home screen, which under Narendra's teaching would not even be
11 possible because a horizontal gesture is used for screens at the same security
12 level, not a different security level. But in asserting this combination of
13 Chae and Narendra, Petitioner is effectively asking you to ignore everything
14 that Chae and Narendra is about and just focusing on navigational swipes,
15 regardless of context. But this is not how obviousness works, and we see
16 that even their own expert undermines the credibility of their combination.

17 On the next slide, please, slide 33.

18 JUDGE KINDER: Mr. Khan, you're a few minutes into your
19 rebuttal time. I presume --

20 MR. KAHN: Thank you, Your Honor. I'll try to get through the
21 rest. Thank you, Your Honors. On the left side of slide 33, Petitioner's
22 expert had explained with respect to some other claims, Claim 8, for
23 example, that it would have been obvious to implement a swiping gesture in
24 an opposite direction when a user wants to return to a particular screen. So,
25 if you consider the statement, what Petitioners propose in their mapping is

1 the exact opposite, using something that's orthogonal in the fourth direction,
2 to go back and forth between the wake screen and the home screen.

3 Now, when confronted with these arguments, Petitioner changed
4 their mapping. If Your Honors could go to slide 34. In slide 34, you see the
5 original theory set forth in the petition. And on the right side, you see the
6 revised theory. While Petitioner attempted to resolve the flaws in their
7 original mapping, the revised mapping has more of the same issues and
8 worse yet, is inconsistent with their independent claim on mapping. For
9 instance, if Your Honors could turn to slide 35, please. In slide 35, you can
10 see Petitioner's revised mapping here on the left. And on the right, you can
11 see Chae's Figure 3, which we discussed earlier. Recall that in applying
12 Chae, Petitioner had mapped SIM1 home screen and the SIM2 home screen
13 to the claimed -- sorry, the SIM1 home screen to the claimed home screen
14 user interface, and the SIM2 home screen to the claimed widget screen user
15 interface. Now, notice here that to move from a wake screen to widget
16 screen, Petitioner contends that you can use a swipe gesture from left to
17 right. But such a position directly contradicts Chae. In Chae, such a gesture
18 would be used to move to the dual SIM screen. The widget screen, which
19 Petitioner maps to the SIM2 user interface, is reached by a top to bottom
20 swipe gesture, which Petitioner earlier contended, mapped to the second
21 direction. So, the Petitioner's revised mapping is clearly inconsistent with
22 the art and with its own claim on mapping.

23 Now there is no embodiment in Chae that uses bottom top -- a
24 bottom to top swipe to unlock SIM1 and display its customized home screen.
25 A left to right swipe to unlock SIM2. So, Petitioner's revised mapping is

1 unsupported by the asserted art.

2 I'd just like to note that on slide 36, you'll also note that the
3 Petitioner, when confronted with these questions in their mappings, they
4 tend to fall back on this general concept of well, you know, knowing
5 navigational, the general concept of navigating between different screens,
6 you can use different navigational paths, and that all this is really trivial and
7 obvious. Well, it's not, right? Because the context of these references really
8 matter, right? They have ignored that Chae is about SIM cards. They have
9 ignored that Narendra is about secure password and non-password screens.
10 They just ask you to ignore all that and arrive at the combination.

11 I'll, with that, Your Honors, I will pause and request that the
12 remaining time be kept for rebuttal. I'd also just quickly add that Claims 3 to
13 5, they suffer from the same types of issues. So, the same flaws are there in
14 Petitioner's mappings for Claims 3 to 5. Thank you.

15 JUDGE KINDER: Are you going to address the motion to amend
16 it all in your opening time, which you have the burden? The issues for
17 which you at least have the burden?

18 MR. KAHN: We'll rest on the briefs on that, Your Honor.

19 JUDGE KINDER: Okay. Thank you. All right. Thank you, Mr.
20 Kahn. Let me give you how much time you have left. You have about
21 seven minutes left in your presentation. Again, if Mr. Cannon goes over a
22 little bit, I'll be happy to correspondingly, give you a couple extra minutes if
23 needed, but not too many. We have kind of a deadline we have to stay on.

24 MR. KAHN: Thank you, Your Honors.

25 JUDGE KINDER: Mr. Cannon, whenever you're ready. You have

1 about 13 minutes left.

2 MR. CANNON: Thank you, Your Honors. Let me first talk about
3 the discussion about the term widget. This case does not come down to
4 whether there was a common definition of the term widget in the prior art. It
5 comes down to obviousness as to what the references suggest, and not just
6 what the references expressly disclose. And in view of all of the evidence,
7 not just the use of the term widget, but all of the evidence, including
8 background prior art, including the figures themselves, a person skilled in
9 the art would have understood that Chae suggests the user interface objects
10 as claimed.

11 Mr. Renner argues that there's no disclosure in any of the prior art
12 of the record of opening an application. And in fact, he's ignoring Apple's
13 own application Dascola, Exhibit 1051, paragraph 325 describes many
14 applications that select and open an application, paragraph 70 shows
15 application content. That's not part of our combination, but I wanted to
16 correct Mr. Renner's misstatement that there's no evidence of record
17 whatsoever of that express disclosure. But more importantly, it doesn't
18 matter whether there's express disclosure because again we're talking about
19 obviousness and what a person of ordinary skill in the art would have
20 understood and had suggested to the person skilled in the art at the time of
21 the invention. And we're talking about 2017, we're talking about a person
22 skilled in the art that is a person of ordinary creativity and not an automaton.

23 Let's look at Apple's slide 28. Mr. Renner argues that Android
24 does not show opening an application. But this is incorrect. As shown in
25 the second screenshot from the right on this slide, the video shows the user

1 selecting the email widget and a specific email previewed in the widget.
2 And in the rightmost screenshot, it shows that the email application is
3 opened to display the complete selected email and to allow the user to read
4 or respond to the email. And you can even see at the bottom of that screen
5 there are buttons for various functions related to emails. It's a normal
6 common email application. There is no possible way that this is not an
7 application as discussed in the '352 patent. Apple hasn't offered any
8 construction of application that it would exclude this from being the
9 displayed email application. Mr. Renner says that maybe the second to the
10 right one isn't actually a widget. Well, the reference explicitly calls it a
11 widget, it's prior art. And in addition, it is very consistent with the types of
12 widgets we're talking about where there's a preview, a summary of the
13 inbox, and then when you select it, you get the full email application. So,
14 there's no real issue here that in fact the prior art shows user interface objects
15 that allow selecting them and accessing the full application. Mr. Renner
16 misstates --

17 JUDGE KINDER: Mr. Cannon, can I just clarify something?

18 MR. CANNON: Yes.

19 JUDGE KINDER: Android prior art reference isn't used in the
20 base combination for Claim 1. Is it --

21 MR. CANNON: That it's not used in Ground 1, you're correct. I
22 was just about to indicate that Mr. Renner misstates the record by saying that
23 there's only anticipation by Chae and obviousness in view of Chae and
24 Narendra. That's Ground 1. There are Grounds 4 through 6 that he ignores,
25 that he did not address, that say building on Ground 1, which said if Chae

1 doesn't expressly disclose widgets with this functionality, it would have been
2 obvious to add those widgets because of the functionality and the advantages
3 of providing a preview prior to opening the application. Ground 4 says if
4 you don't -- if you need Android as part of the combination you can add
5 Android as part of the combination and the same motivation applies, you
6 would take the functionality from Android which is very beneficial and you
7 would add it to Chae to add that beneficial functionality. So, Mr. Renner
8 ignored that obviousness ground which is definitely part of the petition and
9 it's not simply an anticipation or obviousness in view of Chae on Narendra
10 case.

11 JUDGE BARRETT: Mr. Cannon.

12 MR. CANNON: Yes.

13 JUDGE BARRETT: This is Judge Barrett. Referring again to that
14 second figure the one with the Gmail icon, I think you said something to the
15 effect that that shows a summary or something like that before you click on
16 it and go to Gmail. How do we know that that is showing a summary? I
17 personally can't tell from here what that means. In other words, put it in
18 terms of the claim recitation contains application content.

19 MR. CANNON: Yeah. Sure. It's an email -- it's an inbox that
20 shows a summary of emails in the inbox. It shows sort of an abstract of the
21 first few lines of each of the emails. That is application content, because the
22 content from your email inbox, of course, has to come from an application.
23 It's not showing the entire email application, so it's showing a summary or
24 preview. And then when you select an individual email, it pops up the full
25 email application.

1 JUDGE BARRETT: Okay. So, are you talking about the third
2 figure from the left then? I was thinking of the second figure, where it has
3 messaging, Gmail, a clock.

4 MR. CANNON: Yes, I am referring to the third thing from the
5 left, which includes the email application. . . .

6 JUDGE BARRETT: Okay. So, you're saying -- I'm sorry for
7 interrupting. So, you're saying an email preview in that third picture, that is
8 what you're mapping to a widget?

9 MR. CANNON: Yeah, and that's a widget. And actually, that's
10 the one -- two from the left. That is a portion of the video that's showing a
11 user selecting which widgets to put on the screen so that they're accessible.
12 That's not actually showing the widget in actual use. It's saying, I want to
13 select either a clock or an email or whatever else to put on the screen. The
14 widget that actually shows up on the screen when you put the email one is
15 the picture three from the left, two from the right.

16 JUDGE BARRETT: Thank you for that clarification.

17 MR. CANNON: Sorry. Did you have another question?

18 JUDGE BARRETT: No, I was just thanking you for that
19 clarification.

20 MR. CANNON: Okay. Let's talk about Chae's Figure 6(b) and the
21 red box with the three images in the middle. Mr. Renner's position appears
22 to be, and Apple's position appears to be, that maybe those are just pictures,
23 they're just static images. You select, you swipe to a customized home
24 screen, and this particular customized home screen shows you three pictures
25 that you can look at, but you can't open, you can't do anything with. That is

1 not a reasonable interpretation of the reference, and it's not a reasonable
2 interpretation of what a person of ordinary skill in the art would have
3 understood at the time of the invention. And again, we're talking about not
4 just express disclosure, but what would have been suggested to a person of
5 ordinary skill in the art in 2017.

6 Okay. Let's go to Mr. Renner argued that launching a SIM
7 environment with a customized home screen is not an application. There's
8 no -- he hasn't shown any definition of application that excludes that from
9 being an application. Mr. Renner talks about allegedly mimicking verbatim
10 portions of the declaration. The case he cited is about conclusory testimony.
11 It's not about whether the language is the same. It's about conclusory
12 testimony. And Dr. Rosenberg's testimony is far from conclusory. It's very
13 detailed. He provides very detailed explanations for everything that he
14 provides. And of course, this being a patent case where we need expert
15 testimony and it's very technical, we relied a lot on his expert testimony.

16 Mr. Renner speculates about all the things that Chae possibly could
17 open instead of an application. The issue is not whether it could possibly
18 open other things besides applications, it's everything that would be
19 suggested to a person skilled in the art, and opening an application would be
20 among those things that would be selected.

21 Let's move to Apple's slide 12. Apple misreads the *DePuy Spine*
22 case to incorrectly suggest that obviousness requires showing that the
23 references can be physically combined to satisfy the intended purposes of
24 the references. *DePuy* addresses whether the physical combination of two
25 mechanical devices would achieve the desired result of a rigid pedicle screw

1 which was offered as a motivation to combine. Federal circuit found that the
2 prior art disparaged and taught away from the motivation of achieving a
3 rigid pedicle screw. We don't have that situation here. Chae and Narendra
4 are not mechanical devices. They're software that is easily combinable.
5 And the prior art does not disparage or teach away from the navigational
6 paths or motivations to combine that are specified in the petition. There's
7 nothing in *DePuy* or *KSR* that says that you have to prove that references can
8 be physically combined to satisfy the intended purposes of the references as
9 explained by the cases I mentioned on Masimo's slide 29. We don't have to
10 show that selecting between different SIM cards and between password
11 protected and non-password protected screens is compatible, but even if we
12 did, we did show that as I explained in Masimo's slides 30 and 31.

13 Let's go to Apple's slide 17. Apple also misreads the *ActiveVideo*
14 case. They're trying to say that *ActiveVideo* says that every time you say
15 you use convenience, efficiency, ease of use, and user friendliness, you have
16 an insufficient motivation to combine. That case is the Federal Circuit
17 saying that the expert's declaration was insufficient because the expert
18 merely provided a generic paragraph that asserted those motivations and
19 those advantages but didn't tie those advantages to any specific combination
20 of prior art references. The Federal Circuit distinguished *ActiveVideo* in
21 *Intel v. Qualcomm*, 21 F.4th 784, 797 (Fed. Cir. 2021) that says broad
22 advantages like stronger, cheaper, cleaner, et cetera, are sufficient when the
23 evidence shows how and why a POSITA would have modified the prior art.
24 And here the petition does explain how and why a POSITA would have
25 modified the prior art and has specific motivations for every single claim

1 and for the prior art references and it's not within the *ActiveVideo* case.

2 Let's go to slide 18. Apple argues in *PersonalWeb* that you can't
3 show obvious just by saying that you could combine the references. You
4 have to say that it would combine the references. The petition never says
5 that we're merely saying that you could combine the references. The
6 petition provided specific reasons for each claim why a POSITA would have
7 combined the prior art to yield the claimed invention. Apple focuses only
8 on the general motivation to combine section on pages 32 and 33 of the
9 petition but ignores that every single claim has its own motivation to
10 combine section as well.

11 Let's go to slide, Apple's slide 30. And just to highlight this, this is
12 a significant misrepresentation of the record. Apple came up here and told
13 you that this was a prior art mapping. There's no evidence in the petition.
14 The petition doesn't say this is a prior art mapping. We're talking about the
15 representative Claim 6 and we're talking about the figure that shows an
16 illustration of what Claim 6 covers. And that's what the petition says it is.
17 The petition never says it's a prior art mapping. And so, it's a complete
18 incorrect statement of the records to suggest that these diagrams that
19 Masimo provided are a prior art mapping.

20 We showed a proper response to Apple's arguments to show that a
21 person skilled in the art would be able to make the combination that we
22 expressly put forward in the petition of selecting from a finite number of
23 design choices to arrive at any of the claimed navigational paths, and we
24 showed a motivation for every single one of those navigational paths.

25 And with that, if there are no further questions, I will rest on that.

1 JUDGE KINDER: Mr. Cannon, it looks like the panel does not
2 have any further questions. We appreciate your time. Thank you.

3 MR. CANNON: Thank you.

4 JUDGE KINDER: Mr. Renner, whenever you're ready. Again,
5 you have about seven minutes or so.

6 MR. RENNER: Thank you, Your Honor. One moment, please.
7 Okay. Thank you, Your Honor. Judge Cocks, you had asked me a question
8 in the opening, and I told you I'd look for and think about that offline. I did.
9 I wanted to just clarify. I think you asked me whether there were instances
10 in the prior art of references that include disclosure of something other than
11 an application being displayed in response to selection of an object identified
12 as a widget. And to clarify, Chae Figure 22 provides exactly such an
13 example. Well, exactly. On it, objects are identified as SIM1 and SIM2.
14 They're identified by Chae's widgets, and each offer an example of a widget
15 or a thing they call a widget that can be manipulated to arrive at something
16 other than an application corresponding to the content contained by them.
17 Specifically, each leads to unlocking a corresponding SIM environment,
18 which we see depicted in Chae as something that's not an application. It's
19 got all kinds and manner of things on the screen that are the desktop that it
20 unlocks. So, we see selection of something in Chae itself that does not lead
21 you, as the functionality of the claim requires, to a display of an application
22 but something different than that.

23 There's also, we, as talked about, I think maybe after the question,
24 in Hong and even in Android, we believe, that you will end up in places that
25 are not the application themselves but other things. As for Android, I

1 wanted to address what my colleague just had mentioned. Yet again, we
2 believe that the 4.1 Ground is much like the Chae plus Narendra ground. It's
3 a mere suggestion that if you don't like what's in reference one, let's just
4 open it up and have reference two come in. And now you have, it seems,
5 you have an indication that Android is of the same ilk. It's no motivation to
6 combine. There's no actual reference combination that's detailed here.
7 There's nothing to indicate what would result specifically from the
8 combination. Just picking and choosing of elements from a different
9 reference, this time with the suggestion that if you don't like the option one
10 of Chae or Chae in your Android, now you can select into Android instead.
11 And with respect to Android, when you look at Android's third and fourth
12 figures, there was some discussion of that in the immediately prior
13 discourse. What we see in these figures, and when you listen to the video,
14 you have, you know, a person just commenting and using the word widget.
15 Look at the third figure. It is a preview screen. It is a screen. It is the
16 inbox. It's the inbox. It is actually selectable. It doesn't say that you select
17 the screen. You select an item in that inbox. You select an actual email in
18 that inbox, and that's how you arrive at the screen that's to the right. That is
19 a far cry different than an object, which is an icon, which is generally
20 selectable to get you into an application. Here you're actually being -- you're
21 using the icon, if you want to call it that, it is the application on the third in
22 the third. And that's a different -- so, I'll say it differently this other way.
23 When you have Chae, for instance, and you have something that's showing
24 you updated information in its Figure 22, a selection of that object, be that a
25 drag or a tap into it, that's going to take you to a desktop, not to a specific

1 one of the things on that object. Here, it's not selection of the object, you're
2 selecting the actual email within what is an email interface, that is Figure 3.
3 This application is already open. Whether the person says the word widget,
4 again, we have that word being used in all kinds of contexts and all kinds of
5 things. We do not think that this reference compliments Chae any way that
6 would give you the ability to show obviousness, as has been alleged.

7 As for reliance on expert testimony, it is normal in these cases to
8 rely on expert testimony. What's abnormal here is when you look at the
9 correspondence between the expert testimony and even arguments that are in
10 the attorney's arguments that appear in it. It's quite clear that that is not the
11 testimony directly from the expert, if nothing else. Well, of course, you'll
12 draw your reference and your inferences.

13 If I may, I'll yield some time to my colleague Usman Khan, but I'm
14 happy to take any questions before I do that, anything that you'd like me to
15 speak to. Thank you, Your Honors, Appreciate your time today.

16 MR. KAHN: Your Honors, thank you, again, for the opportunity
17 to address opposing counsel's remarks. With respect to Claim 6, Masimo's
18 counsel had indicated that the figures they provided are not prior art
19 mappings. And they have a footnote in the petition saying, well, you know,
20 this is a general idea of how you can use navigational swipes. Well, there's a
21 couple of things there. First, it is Petitioner's burden to show how the prior
22 art maps onto the claim features. So, they showed us two different
23 mappings, both of which have severe deficiencies and are inconsistent with
24 the claims and the prior art, then they haven't satisfied their burden. If the
25 very thing, the figures that they're showing demonstrate the claim features,

1 but they're not prior art mappings, then I don't know what they're showing
2 here.

3 The second thing is with respect to design choice. You heard
4 Masimo's counsel say repeatedly design choice, design choice, design
5 choice. But design choice has to be made within the context of the system
6 that you're operating in, right. Your design choices are limited by what the
7 system is. You go to Chae's system, and they have certain design choices,
8 and Masimo has not explained why you would make those design choices in
9 Chae. We explain, when they turn to Narendra, we have explained why
10 what you have in Narendra or what you have in Chae simply wouldn't be
11 necessary, would be an impractical design choice. We've explained that.
12 Secondly, Masimo and their expert offer various theories of design choice.
13 Sometimes they say, well, it would be obvious to go back and forth, right?
14 If you go from screen A to screen B, you swipe left to right, and you want to
15 go back, you go right to left. Well, somehow that doesn't apply when you
16 want to go back to the home screen. Other times they say, well, we can also
17 use the design principle of you always -- if you always swipe in one
18 direction, you end up at the home screen. Again, that is inconsistent with the
19 teachings of Narendra. So, the various design choices and rationales that
20 they have offered are just not consistent with the systems in the prior that
21 they have relied on. And Your Honors, I have no further comment on
22 Claims 6, or 4 or 5. If Your Honors have any questions on that, I'm happy to
23 answer. Otherwise, I'll give -- yield back to my colleague, Mr. Renner, for
24 last comments.

25 JUDGE KINDER: Thank you, Mr. Kahn. I don't think we have

1 anything right now.

2 MR. KAHN: Thank you.

3 MR. RENNER: Your Honors, I had just one more point I wanted
4 to make before we close, and that is my colleague and I would agree that this
5 case is about obviousness. That is certainly what's at issue here. The only
6 point I would make is that in an obviousness context, it's important to have
7 the evidence of record demonstrate what we need to have for the conclusions
8 we've reached. Now, we think that in this record, what you have is the
9 absence of that. So, when we're talking about the meaning of the word
10 widget, we're trying to find the meaning of the word widget and what that
11 would mean and how that would come to bear. We're looking for the
12 evidence of what a person of ordinary skill when reading these references
13 would draw out as inferences so that you can inform that question with the
14 evidence before us. I think you've probably heard enough from me on that,
15 but I just wanted to make sure we didn't get that lost in the ruffle.

16 With that, that's all that we have. Unless you have further
17 questions, we're happy to close and appreciate your time.

18 JUDGE KINDER: All right, Ms. Renner, it looks like we have no
19 further questions. After we submit the case, I would like counsel, if you
20 could stay on just for another five minutes, to clarify anything the court
21 reporter needs.

22 And I want to thank both parties. It was a very detailed and
23 thorough presentation today. Thank you for your consideration and your
24 time preparing it. And with that, unless my colleagues have any further
25 questions, it looks like they do not. The case is submitted. Thank you. We

1 can go off the record.

2 MR. CANNON: Thank you, Your Honors.

3 COURT REPORTER: Going off record. The time is 11:12 a.m.

4 Eastern Standard.

5 (Whereupon the above-entitled matter went off the record at 11:12

6 a.m.)

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