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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

DDC TECHNOLOGY, LLC,
Patent Owner.

IPR2023-00707 (Patent 9,420,075 B2)
IPR2023-00708 (Patent 9,811,184 B2)
IPR2023-00709 (Patent 10,528,199 B2)
IPR2023-00711 (Patent 11,093,001 B1)

Record of Oral Hearing
Held: August 7, 2024

Before KALYAN K. DESHPANDE, *Vice Chief Administrative Patent Judge*, SHEILA F. McSHANE, MICHAEL T. CYGAN, and JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

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IPR2023-00708 (Patent 9,811,184 B2)
IPR2023-00709 (Patent 10,528,199 B2)
IPR2023-00711 (Patent 11,093,001 B2)

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The above-entitled matters came on for hearing on Wednesday, August 7, 2024, commencing at 1:30 p.m. ET, via video teleconference.

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

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3 JUDGE DIRBA: Good afternoon. This is the consolidated oral
4 hearing for four related inter partes review proceedings. Those proceedings
5 are IPR2023-00707 related to U.S. Patent Number 9,420,075; IPR2023-
6 00708 related to U.S. Patent Number 9,811,184; IPR2023-00709 related to
7 Patent 10,528,199; and IPR2023-00711 related to Patent 11,093,001.
8 My name is Judge Dirba. I'm joined today by my colleagues, Vice
9 Chief Judge Deshpande and Judges McShane and Cygan. We'll begin with
10 appearances. Who will speak for Petitioner today? You may be muted,
11 Counsel.
12 MR. KIKLIS: I'm sorry, I had it on unmute before joining, but it's
13 toggled, so forgive me. Mike Kiklis for Petitioner, Your Honor. I'm lead
14 counsel. With me is Andy Nguyen from Google and Mark Liang from
15 O'Melveny and Myers, who's backup counsel.
16 JUDGE DIRBA: Thank you, Mr. Kiklis. And who will speak on
17 behalf of Patent Owner?
18 MR. ALEXANDER: Good afternoon, Your Honor. This is Cortney
19 Alexander. I will be speaking for Patent Owner. And also with us today is
20 Timothy Haller, who is backup counsel for Patent Owner.
21 MR. HALLER: Good afternoon all.
22 JUDGE DIRBA: Good afternoon. Thank you all. I'll begin with a
23 brief overview of our proceedings today and a few reminders about the
24 ground rules.

1 Per the hearing order, each party will have 45 minutes of total
2 argument time today. The Petitioner has the ultimate burden of establishing
3 unpatentability of the challenged claims, so Petitioner will open the hearing
4 with its arguments. Petitioner may reserve rebuttal time, but no more than
5 half of its total argument time. Patent Owner will then respond to
6 Petitioner's arguments and may reserve surrebuttal time, but not to exceed
7 more than half of its total argument time.
8 Each side's rebuttal must respond to the immediately preceding
9 presentation, but otherwise, each side may use its allotted time to discuss the
10 case as it chooses, provided that the arguments presented today were
11 previously presented in your brief. No new arguments are permitted at this
12 oral hearing. Also, please hold any objections regarding opposing counsel's
13 arguments until it is your turn to speak.
14 The Judges have reviewed the briefs and the evidence in this case in
15 preparation for today's hearing, and we are familiar with the record. We
16 have the papers and exhibits available to us on our computers, and you may
17 refer to those documents during your presentation. Note that if we look
18 away from the camera during the hearing, we may be consulting those
19 documents or taking notes.
20 We are prepared today with questions and we may interrupt you for
21 that purpose because our questions and your answers will help decide the
22 issues in this case -- or in these cases, I should say.
23 Recording of any PTAB hearing or proceeding is prohibited. The
24 court reporter will provide a transcript of the hearing that will become part
25 of the record in these proceedings at a later date.

1 To ensure that the transcript of this hearing is clear, we ask you to
2 identify yourself before speaking and to identify specific slide numbers
3 when referring to demonstratives. Also, when you are not speaking, please
4 mute yourself, but if you're currently on video, please remain on video. That
5 allows us to ensure that everyone remains -- or maintains access to this
6 presentation.
7 I'll maintain a clock and will endeavor to give each of you warnings
8 as you near the end of your oral argument time. But it would be helpful for
9 the parties to also track their own time.
10 We're currently on a public record and the public has access to this
11 hearing. However, there is confidential information in this record. During a
12 prehearing conference on Monday, August 5th, counsel for the parties stated
13 a preference for a public hearing. It was also agreed that there are two
14 options if discussion of confidential information is required or merited.
15 First, you may reference the confidential information by pointing us to the
16 page and line number of a paper or exhibit that includes the information.
17 Alternatively, you may reserve a short period of time for a confidential
18 record at the end of this hearing. The Board will endeavor to avoid
19 confidential information in our questions, but if you feel that your client's
20 confidential information is being disclosed or about to be disclosed on the
21 public record, please do interrupt us or opposing counsel.
22 A few reminders for video. Because this is a remote hearing
23 conducted by video, we may have an unexpected interruption in the
24 connection. If that happens to one of the video participants or the court
25 reporter, we will pause the argument and resume once that connection can be

established. Please interrupt during the hearing if you have a technical issue that materially impacts your ability to represent your client. If your connection is lost, then please spend up to five minutes or so attempting to reestablish your connection. If attempts are unsuccessful at that point, please rejoin the hearing by audio so that we can discuss how to proceed.

With those general instructions and reminders, I'll ask each party if there are any questions or housekeeping matters before we begin. Petitioner?

MR. KIKLIS: Petitioner yes, Your Honor. Actually, I think you said 45 minutes per side. Unless I misheard you, I think the order says 75 minutes per side.

JUDGE DIRBA: You are correct. I meant to say 75 minutes. If I said 45 minutes, I misspoke.

MR. KIKLIS: Thank you, Your Honor. I can speak really fast if I have to.

JUDGE DIRBA: Any other questions, Mr. Kiklis?

MR. KIKLIS: Oh, no, ma'am.

JUDGE DIRBA: And any questions, Mr. Alexander?

MR. ALEXANDER: No, Your Honor.

JUDGE DIRBA: Okay, very good. As I mentioned, Petitioner, you will go first. How many minutes would you like to reserve for rebuttal?

MR. KIKLIS: I'm probably going to use about half my time for my argument in chief. I'm not sure that my whole argument will go 75 minutes, but, yeah, I guess we're going to have to see how many questions the Board

has and what have you, so probably want to deserve about half my time for rebuttal.

JUDGE DIRBA: Okay. So I'll put it as you're saving 37 minutes, and I will try to give you a reminder based on that. But as I mentioned, please do keep your own clock so that we can be sure that we keep track of time accordingly. And when you're ready, you may begin.

MR. KIKLIS: Thank you, Your Honor. Trying to share my screen here. Is that permitted?

JUDGE DIRBA: Yes.

MR. KIKLIS: Can you see my screen?

JUDGE DIRBA: I cannot at this time. I won't start your time until after we get your presentation up.

MR. KIKLIS: Okay, very good.

JUDGE DIRBA: I can see it now. It's vertical, which makes the text in the center smaller. I just want to identify that to you and warn you. But I believe that we can see it for the most part. It's just that the text is -- that's much better. Thank you. And you may begin when you're ready.

MR. KIKLIS: Thank you, Your Honor. May it please the Board, Michael Kiklis for Petitioner. I'm still trying to get this situated. Here we go. Is that visible?

JUDGE DIRBA: Yes, it is.

MR. KIKLIS: Okay. So, actually, Your Honors, this was five cases that we started out with. There were 112 claims in total. The Patent Owner canceled 41 claims. Basically, the claims of the patents, they're all

1 continuations. Seven related patents that are all continuations. And so the
2 only thing that changes are the claims.
3 The patent speaks of two embodiments, what they call a passive
4 embodiment, where a cell phone touch event is triggered through an
5 electrical connection, so there's nothing mechanical that moves. And there
6 is an electro-mechanical embodiment where there is some movement of an
7 input device. We challenged the passive embodiment with Kondo only.
8 And before the Institution Decision, the Patent Owner canceled all claims.
9 So case 710 went away. And I have a bunch of claims, 11, 12 claims, in 708
10 went away as well. So the only claims that were -- that are at issue here
11 today are the active input mechanism embodiment, this electronic-
12 mechanical input mechanism. Seventy-one claims remain.
13 The patents all deal with a virtual reality viewer and input
14 mechanism. I've got the technical field of the invention here on this slide for
15 you to see, "The present invention relates to virtual reality viewer devices, in
16 particular virtual reality viewer devices for use of personal mobile electronic
17 devices and having an input mechanism." And as I said, the patent describes
18 this virtual reality viewer "configured to hold a mobile electronic device."
19 The claims all recite a "mobile electronic device." The specification talks
20 about a smartphone, so -- but the claims all say "mobile electronic device."
21 The patent admits that virtual reality viewers were well-known at the
22 time of the alleged invention and so were input devices for interacting with
23 those viewers. And I have some cites here for you to take a peek at.
24 The first thing I want to address in my argument, Your Honors, is
25 this POSA issue. The Patent Owner has raised the definition of POSA, and

1 I've been involved in a lot of these cases, and rarely is POSA ever an issue.
2 The reason why they're raising POSA is they define POSA narrowly, a
3 person of ordinary skill in the art, so to try to exclude our expert. Our
4 expert, however, is more than qualified and, in fact, testified on these very
5 patents before the Board previously. There were some IPRs and I think a
6 PGR on several of these patents and the cases were instituted. This is all in
7 our petition. And the cases were terminated before the Board could reach a
8 determination based on some contractual issue.
9 Our definition for POSA is at the time of the invention they had a
10 minimum of an undergraduate degree or equivalent in mechanical
11 engineering or a related field with knowledge of mechanical actuation
12 systems, basic optical design with lenses, head-mounted displays, a basic
13 understanding of touchscreen technology, and at least two years of
14 professional experience in mechanical and basic optical design or
15 engineering. And that's in the petition at pages 21 to 22.
16 Now, the Patent Owner, what they're arguing is that a POSA needs to
17 have detailed knowledge of touchscreen technology. However, the patent
18 doesn't talk about touchscreen technology in any detail, doesn't claim to
19 improve touchscreen technology at all.
20 I'm sorry, was there a question, Your Honor?
21 JUDGE DIRBA: Okay. (Inaudible).
22 MR. KIKLIS: I'm sorry, (inaudible) frustrating.
23 JUDGE DIRBA: (Inaudible) frustrating -- no, I apologize.
24 MR. KIKLIS: Yeah, that's okay. So interestingly, the patent
25 inventor is a mechanical engineer who has no experience implementing

1 touchscreens, and that we discuss in a reply on page 1 and the inventor's
2 transcript, exhibit 1023, page 133, lines 14 through 20, and page 140, lines
3 22 to 25.
4 Getting back to the patent itself, the patent explains that it's pad and
5 electrical shield material work so that any form of touchscreen technology
6 will register a touch event. That's what the patent exhibit 101 -- 001, column
7 10, lines 45 to 49. And the patent even specifically is said to work on a
8 variety of types of touchscreens. For example, resistive touchscreens. And
9 that said in the patent exhibit 1001, column 6, lines 43 to 47, and column 10,
10 lines 49 to 54.
11 Now, in the Patent Owner's surreply, it mentions that we should
12 focus on the claims. So why don't we do that? And that's in the surreply at
13 page 1.
14 Now, if you look at the claim, the claims don't even require a mobile
15 electronic device. The claims are drafted in such a way that the mention of a
16 mobile electronic device is not a required element. If you look at the
17 preamble, "virtual reality viewer for use with a mobile electronic device
18 having a touchscreen." And then when you get into the elements, the focus,
19 the elements is "a housing configured to receive the mobile electronic
20 device." So mobile electronics device isn't even an affirmative recitation
21 within the claims. And there's a reason why they do that. They do that so
22 that they can sue and charge infringement of all of these virtual reality
23 viewers without having to argue contributory infringement for a cell phone
24 or inducing infringement or something along those lines.

1 And if you look at their infringement contentions, which are exhibits
2 1010 and 1011, that's exactly what they do. They are accusing virtual reality
3 viewers themselves. So cell phones aren't even claimed themselves in the
4 claims of all the patents. I've checked every single one and all of the claims
5 that are currently challenged. In fact, the patent's figures don't even show a
6 cell phone. And of course, there's the requirement during prosecution to
7 show in the figures all claimed elements.
8 Our POSA definition aligns with the field of invention, which the
9 MPEP section 608.01(c)(1) says is a statement of a field of art to which the
10 invention pertains. So we feel very comfortable that our POSA definition is
11 the right definition.
12 Now, quickly, let me talk about the patent. I'm only going to talk
13 about this electro-mechanical, the active embodiment. You can see here on
14 slide 6 that the user presses what is called in the patent a lever. And what
15 causes -- what happens in response to that press is this electric shield pops
16 out. If you look at the left, the electric shield is kind of vertical mostly, and
17 then it pops out. Sitting across from that is the touchscreen of a smartphone.
18 And that would cause a touch event.
19 Now, we need to really kind of focus on what this case is really all
20 about. You know, you can kind of look at the Patent Owner's product and
21 Google Cardboard and the similarities, et cetera, and there's a very good
22 reason for that. The reason for that is that the inventor admitted that what he
23 did was take Google Cardboard Version Number 1 and copy it. That's what
24 he did. He admits that right here on slide number 7, deposition transcript,

1 page -- 1023 exhibit, page 29, lines 6 through 13. And this is mentioned in
2 our reply brief in footnote 3.
3 So any similarities is because he copied Version 1 of Google
4 Cardboard, and what he did was add a conductive capacitive. Google
5 Cardboard Version 1 had magnets as an input device, and that changed over
6 time. He took Google Cardboard Number 1, the inventor, Mr. Buckley, and
7 he added a capacitive, conductive -- conductive capacitive input device into
8 the mechanism.
9 Now, that mechanism itself is not new because we can see during
10 prosecution, and this is mentioned in our petition as well as in our reply, I'm
11 on slide 8, the Patent Owner claims that what's the distinguishing feature of
12 their patent is this user input mechanism. And they do all this secondary
13 consideration analysis, not just the general conductive capacitive input
14 mechanism. But during prosecution, the patent only faced an anticipation
15 rejection based on Compton. In fact, I should mention that in the prior
16 proceedings before this very Board, Google Cardboard prior versions was
17 used as prior art, and so was Compton. So during prosecution, Patent Owner
18 faced an anticipation rejection based on Compton, which discloses a
19 conductive capacitive input mechanism. And this is mentioned in the reply
20 on page 24. It's also in our petition, we discussed the prosecution history as
21 well.
22 Now, in Compton, on paragraph 45, you'll see that those push
23 buttons 510 and 511, I'm using my cursor to kind of point those out,
24 hopefully, you can see that, are connected to these rocker arms. And when
25 you push one of the buttons, the rocker arm swings down, and this tip then

1 touches the touchscreen. And in paragraph 50 of Compton, it specifically
2 says that Compton's invention can be used with capacitive touchscreens, and
3 that explains how they would be this electrically conductive material on
4 these special tips, number 610, and how that would work. So conductive
5 capacitive input mechanisms were not needed, and you weren't on a virtual
6 reality viewer, which is exactly what Compton is.
7 So what did Patent Owner have to do during prosecution of the 707
8 case? The 707 case, the '075 patent, they had to amend their claims, and
9 when they amended their claims to require that the electrical shield has a
10 surface. And number one, only a portion of that surface, number two, is
11 configured to contact a central region of the touchscreen of the mobile
12 electronic device. Two requirements they had to add to their claims. Now,
13 what's interesting, so you have to judge this case based on the narrowness of
14 what they even considered during prosecution of what their scope of their
15 claims were.
16 Now, the cases, as I said, five, there's only four pending now. The
17 '001 patent is the last of these to issue as relates here. And the prosecution
18 of the cases had probably skipped, like, three different firms. And so the
19 claims of the '001 patent are actually broad enough to read exactly on
20 Compton. It's almost like, forgotten about Compton when going through
21 these continuations. We mentioned that in our reply of the '001 patent,
22 because -- in responding to secondary considerations and nexus. So that's
23 slide number 9.
24 Now let's get into claim construction.
25 JUDGE DIRBA: Counsel?

1 MR. KIKLIS: Yes, Your Honor.
2 JUDGE DIRBA: This is Judge Dirba. I'll interrupt you with a couple
3 of questions about the point that you were just making.
4 So, if I understand you correctly, your argument is that -- so the
5 general concept of having a capacitive input button for a VR viewer, that
6 general concept was known, and you point to Compton for that and you
7 point to Kondo for that. With respect to, for example, the '075 patent that's
8 at issue in the 707 IPR or the '199 patent that's at issue in the 709 IPR,
9 there's -- as you pointed out on the screen -- there's a lot of specific
10 limitations about what that input mechanism needs to be and what it needs to
11 do and what it needs to have. Would you agree with me that that specific
12 input mechanism, that's recited in at least those two patents, is not disclosed
13 in the prior art?
14 MR. KIKLIS: I disagree, Your Honor. That's the basis of our case.
15 Our Kondo and Chu combination shows every single element. Every single
16 element.
17 JUDGE DIRBA: I'm asking specifically for the -- if I understand, the
18 point that you were making was relevant to the objective indicia argument
19 that the parties have made at trial. And saying that your proposed
20 combination of Kondo and Chu disclosed it, is different than saying any
21 given prior art disclosed it in a way that would be relevant for that secondary
22 considerations analysis. So would you agree that the limitations in those
23 claims -- I heard what you were saying about the '001 patent and we can
24 certainly take that one separately -- but for the other two patents for which
25 this argument is relevant, would you agree that the limitation that's recited in

1 there isn't disclosed in a single prior art reference? It's not disclosed
2 anywhere other than the combination that you're proposing?
3 MR. KIKLIS: I disagree, Your Honor. I can't agree to that. We
4 focused on prior art. There's a lot of prior art that I had seen that was out
5 there. In fact, if you look at the prior case in front of this Board, what the
6 prior art was was Google Cardboard because Google was working on a
7 conductive capacitive input mechanism at the same time. And so the prior
8 art in the prior cases used Google Cardboard as prior art and also used
9 straight up Compton, I believe, with a combination of something else.
10 I can't agree to your characterization, Your Honor. It's my belief
11 firmly that there's nothing new here. There's nothing new here.
12 JUDGE DIRBA: So let me ask the question in a different way that's
13 perhaps more helpful and more useful for (inaudible) these proceedings.
14 What evidence have you put into this proceeding that the specific input
15 mechanism recited in the claims of those two patents was disclosed in a
16 single prior reference?
17 MR. KIKLIS: We're putting forth a combination of Kondo and Chu
18 under 103, Your Honor. The only argument that is pending before this
19 Board is a 103 combination, for these cases, a 103 combination between
20 Kondo and Chu. We are not alleging 102 for any of the challenged claims
21 that are now existing.
22 JUDGE DIRBA: Okay. And just to drill down into that and then
23 perhaps clarify my question in a way that -- it's not sort of meant to end the
24 whole case. It's just specifically to the objective indicia argument.

1 So in your briefs, you argue that Patent Owner has not shown a
2 nexus or has not shown that it's entitled to a presumption of nexus for its
3 evidence related to secondary considerations or objective indicia because the
4 evidence relates exclusively to a feature that was known in the art. And you
5 said what was known in the art is a capacitive or conductive mechanism
6 generally speaking. And I understand your argument to that degree. What I
7 don't understand is you also seem to argue that specifically what's recited in
8 the claims, the specific input mechanism recited by the claim, like I said, the
9 '075 and '199 patents, that that specific input mechanism is also disclosed in
10 the prior art. I hear what you're saying about the Kondo and Chu
11 combination, and you can begin (inaudible) that one (inaudible).
12 My question is, do you have any evidence that that input mechanism
13 is disclosed in the prior art in a way --
14 MR. KIKLIS: As I understand --
15 JUDGE DIRBA: -- (inaudible) combination.
16 MR. KIKLIS: Yeah, I understand where you're going, Your Honor.
17 The argument is really secondary considerations, and I wanted to cover that
18 on rebuttal because they have the burden on that. But the bottom line there
19 is that (inaudible) just a fair reading of the prosecution history. They did --
20 their analysis for secondary considerations was based on the erroneous
21 assumption that conductive capacitive input mechanisms themselves were
22 new. But in their prosecution history, it's those two points. So they
23 admitted that they're not new during prosecution.
24 So if they were to do any kind of a secondary consideration analysis,
25 it would have to be limited to what they consider, at least at the time during

1 prosecution, and they didn't do that. Rather, the secondary considerations
2 argument is for the whole conductive capacitive input mechanism, as if
3 they're new when they're not.
4 My argument in the secondary considerations is they had to put on a
5 case based on the limitations that they put in for the '075 related to a portion
6 of the input mechanism touching the center of the screen. They didn't tie
7 any of those secondary consideration evidence to those two features. That's
8 what's said about it.
9 I don't think that there's any conflict in our argument, Your Honor.
10 You know, we're trying to point out that conductive capacitive mechanisms
11 for VR viewers are not new. Anything that they could possibly claim, you
12 know, would come from the prosecution history, and so they would have
13 had to do a secondary consideration analysis based on that.
14 But let me conclude by saying that the Kondo-Chu combination
15 shows every single element. Like there's no stretching here whatsoever
16 when you do an analysis, a claim analysis.
17 Did that answer your question, Your Honor?
18 JUDGE DIRBA: It does, but I'm asking -- or it does in part, but I'm
19 asking a few follow-ups. So as far as secondary considerations is concerned,
20 and I hear that you wanted to address that later, but I have questions now
21 and I think they're important questions, so I'd like to discuss this a little bit
22 further now.
23 Patent Owner argues that it's entitled to a presumption of nexus
24 because its product is -- meets the limitations of the claims and is
25 coextensive with the limitations of claims. It also says that one of Google's

1 products meets the limitations of the claims and is coextensive with the
2 claims. And as a result, if they do show that they get -- they are entitled to a
3 presumption of nexus, are they not?
4 MR. KIKLIS: The law is that if -- I don't have it in front of me. But
5 there is a presumption that if they show the claims are commensurate with
6 the product -- Your Honor, I'm kind of stretching here. I don't have that in
7 front of me. There is a presumption under the law for sure, so -- for
8 secondary consideration, so I'm not going to dispute that. I'm not disputing
9 that.
10 What I would say, though, is that -- and in our briefing, you know,
11 we believe that there's a lack of clarity in how they were doing their
12 mapping between the claim and the product. Sometimes this Board has
13 shown a very exacting standard for clarity and I'm not sure it's there. But
14 even assuming -- and we do not concede that there's a presumption of nexus
15 here. We do not concede that. But even assuming that there were a
16 presumption of nexus, we can rebut that by showing that what is purported
17 to be new is not, and even some painstaking detail to show that.
18 Now, Your Honor, I would be happy to jump into my secondary
19 consideration argument if you would like me to. I think that would be
20 helpful for you. I mean, I want to do what's helpful to the Board, but I don't
21 want to be penalized for not going through some of the things that, you
22 know, I wanted to get through. So tell me how you'd like me to proceed,
23 Your Honor.
24 JUDGE DIRBA: You can proceed if you'd like. You can proceed
25 with the points that you raised. I am very interested in the secondary

1 consideration discussion because I do think that there's a lot of meat there. It
2 applies to a lot of these proceedings, and so I do want to reserve time to
3 discuss that further.
4 MR. KIKLIS: Okay. So let's get back. So what I wanted to pick up
5 with is claim construction. And the only issue that's in contention is the
6 claim term "lever". We have several dictionary definitions, one of which,
7 from our petition on slide 11, the one that we believe is relevant, is "a
8 projecting piece by which a mechanism is operated or adjusted." There are a
9 lot of definitions out there, of course. The Patent Owner points to one where
10 it refers to more or less like an entire machine, like a seesaw, as you can see
11 here on slide 12, where you use it to lift objects.
12 And the Patent Owner in their Patent Owner response cites to this
13 mechanical engineering dictionary. But we dismiss that and distinguish over
14 that because the patent itself calls this active input mechanism an electro-
15 mechanical input mechanism. And our expert backed us up on that.
16 Now, what's interesting is in one of the Patent Owner's own
17 definitions, dictionary definitions, definition number 1 refers to a simple
18 machine. Definition number 2 refers to "a projecting handle used to adjust
19 or operate a mechanism." And it appears that that's more likely or more
20 relevant in our situation, because we're not talking about an entire machine
21 that's used to lift things. We're talking about a device or a handle, basically
22 to operate a mechanism. And that is what we consider to be -- yes.
23 JUDGE DIRBA: Mr. Kiklis?
24 MR. KIKLIS: Yes, Your Honor.

JUDGE DIRBA: This is Judge Dirba again. A person -- you contend a person skilled in the art would be a mechanical engineer with additional -- or someone with a bachelor of science in mechanical engineering, correct?

MR. KIKLIS: Yes, Your Honor.

JUDGE DIRBA: Additional experience. And it's your position that someone with a bachelor of science in mechanical engineering would understand the term "lever" to have this generalized definition that you have highlighted on demonstrative slide 14?

MR. KIKLIS: Yes, Your Honor. It's used to operate a machine. Yes, I believe so.

JUDGE DIRBA: Rather than a more specific technical definition that's provided by some of these other dictionaries. Is that correct?

MR. KIKLIS: Well, those -- again, Your Honor, what I'm saying is the specific technical definition that you are alluding to are entire devices, the entire machines. But, I mean, over -- you know, when you look -- when you're over -- well, a lot of times people refer to a handle on a doorknob for a doorknob, you know, the kind that turn like that as a lever. And so, I mean, in -- when you're talking about operating a machine, a projecting piece can be called a lever.

And what's really important here, Your Honor, is that the infringement contentions, right, support that broader meaning. In the infringement contentions, as we show on slide 15, that's Google Cardboard. You push down on the input mechanism, it's all one piece, and there's a hinge. There's a hinge right here, and you can see this red line right there on slide 16. That's a hinge. That's their annotations.

1 So you push down on this input mechanism and the entire thing
2 moves towards the touchscreen. It's one unit. It moves towards the
3 touchscreen. They accused that of infringement, and that's in our reply on
4 page 8. And there's no fulcrum there. I mean, their whole argument is that
5 you need a fulcrum in the definition of a lever, but yet there are two
6 (inaudible) Google Cardboard that doesn't have a fulcrum. Because the
7 basic part of the fulcrum is, if here's your fulcrum, the sides of the fulcrum
8 are moving in different directions, like a seesaw, like their very definition.
9 On slide 16, over here, this is from their dictionary definition. We were
10 asked -- the small f is the fulcrum, and anything on either side of that is
11 moving in opposite directions. This is what they accused infringement.
12 You know, if they could try to say -- they actually called this hinge
13 that I call it the flexible linkage. So what they were really calling was this
14 piece over here that you press down on is the lever. So these are two
15 different claim terms and, you know, you really can't do that. But even
16 assuming that that were okay, there's no fulcrum no matter, even if you try to
17 use this hinge for two parts, two different claim elements or two different --
18 yeah, claim elements, claim terms I should say, there's no fulcrum because it
19 moves in the same direction.
20 So at trial or during the District Court proceedings, they're using this
21 very broadly and they should be held to that. They don't consider this. They
22 don't consider it being considered then to require a fulcrum.
23 Additionally, there --
24 JUDGE CYGAN: This is Judge Cygan. Which claim are you
25 focusing on now?

MR. KIKLIS: The claims dealing with lever, I believe, are claims 12 and 13. I'm sorry, 12 and 18. I might have that wrong, Your Honor. It's --

JUDGE DIRBA: Claims 12, 14, and 20.

MR. KIKLIS: I could tell you in a second. It's the claim term 12, 15, and 20, Your Honor.

JUDGE CYGAN: So have you moved on from the independent claims to the dependent claims?

MR. KIKLIS: Right now, Your Honor, I'm talking about claim construction. That's it. So what I'm trying to say here is that in this case, right now, there's only three claim terms that we construed, so I'm still on claim construction. I haven't even gotten into the meat of the argument yet. "Lever" is one of the claim terms that's in dispute. I think it's the only claim term that's in dispute other than claims 7 and 8, which they raise, Patent Owner raises in the Patent Owner response. So unless there's any questions on "lever," I'd like to move forward.

The other issue, I want to skip 7 and 8 for a little bit and then come back to that. So the two pieces of prior art, that's Kondo and Chu. Kondo on slide 19 is a VR viewer that holds a smartphone. This is an electrical embodiment, pressing on a button, because the cell phone is held here in this holding part, and as soon as it's closed, there are pads that are pressed against it. So touching button 77 cause a touch event. And this shows that there is a touchscreen inside of there.

1 Importantly, for the purposes of secondary considerations, which I'll
2 get to eventually, is that Kondo calls the touchscreen a "projected capacitive
3 touchscreen". And we're going to have a lot to say about that later on.
4 The other prior art is Chu, which is an enclosure -- a waterproof
5 enclosure for a smartphone. And in order to cause touch events on the
6 screen, they have a button on the outside, and you can see here where it's at
7 rest, and here the user on the right-hand side of slide 22, the user is pressing
8 down and you can see electric charge flowing from the user to the
9 touchscreen and back. The way touchscreens work is you need an electric
10 charge to cause a touch event or grounding, and we can get to that. We'll get
11 to that in a little bit, but that's the way they basically work.
12 Prior art Chu has two -- three embodiments actually. On slide 22 is
13 one embodiment where the button goes straight in and then the button is
14 shaped as an L for embodiment number 2. And embodiment number 3 is
15 really a swipe embodiment where we all have cell phones, we all sometimes
16 have to swipe to move things, delete things, whatever it might be. So Chu
17 has a swipe environment where you grab the button and you twist it and it
18 causes a swipe input.
19 And here is our combination from slide 24. Let me just catch up
20 here. You can see we've got Kondo's housing and Chu's input mechanism
21 embodied one combined -- embodiment number 1 combined. And then on
22 slide 25, you can see Chu's input mechanism, embodiments number 2 and
23 number 3, where you've got this L shape and you can do a swiping motion,
24 et cetera.

JUDGE CYGAN: Counsel, this is Judge Cygan. I have a question about your combination.

MR. KIKLIS: Yes. Yes, Your Honor.

JUDGE CYGAN: One of the asserted motivations to combine was to provide waterproofness by including Chu's input device. Which part of this combination is providing that waterproofness?

MR. KIKLIS: It would be the teachings of Chu that show that it would be waterproof. That the --

JUDGE CYGAN: The mechanism --

MR. KIKLIS: Right.

JUDGE CYGAN: (Inaudible) by what in your drawing, I guess, is my question?

MR. KIKLIS: What in the drawing? I think it's explained in the text. But clearly Chu itself on slide 22, the whole reason of being, *raison d'être*, for Chu is that this is something you can hold underwater and this is all sealed and what have you. And our point is to provide that functionality, yes, you would use that kind of an input mechanism. It has a benefit. In fact, Your Honor, I can skip over, but one of the benefits is that it can be then waterproof.

JUDGE CYGAN: Doesn't Chu also use a certain amount of gasketing to achieve its waterproofness? I'm curious to see how much of Chu you're putting in here.

MR. KIKLIS: We're using their entire input mechanism. Like when I point to this over here, Your Honor, I'm pointing to their entire input mechanism. And as we explain in our petition, yes, there are going to need

1 to be some tweaks and here and there, et cetera, all within the skill of a
2 POSA, person of ordinary skill in the art. So we are taking Chu's input
3 mechanism and we're, you know, inserting that, if you will, in the housing of
4 Kondo, and that's our combination.
5 JUDGE CYGAN: So would the rest of the housing in Kondo be
6 watertight? And then you're inserting, I guess, the watertightness around the
7 buttons? Is that (inaudible) combination?
8 MR. KIKLIS: Well, you -- right. So (inaudible) skill in the art, right,
9 to -- you've got the housing that will be closed completely as necessary and
10 then you've got a waterproof button. And then it can be manipulated that
11 way and they're waterproof in a -- in such an environment.
12 JUDGE CYGAN: So your combination really is not quite what's in
13 this picture. It's the button. It's the sealing around the button. And any
14 other sort of sealing that one would think necessary. Correct?
15 MR. KIKLIS: For that motivation, Your Honor, yes, I think one of
16 ordinary skill would know that. Yes.
17 JUDGE CYGAN: Okay.
18 MR. KIKLIS: There are lots of other motivations that we have,
19 though. And I'll get to the --
20 JUDGE CYGAN: You raise the point of motivation. So I just -- I
21 did notice some curious language in your motivation statements. Looking at
22 petition straddling 37 or 38, the way that you phrase it is, "A person of
23 ordinary skill in the art designing a VR viewer by using Kondo would look
24 to certain teachings of Chu." It's unclear to me whether you're trying --
25 whether you're saying this combination would improve Kondo or this

1 combination would include a VR viewer that would improve a VR viewer.
2 Which improvement are you asserting there?
3 MR. KIKLIS: We're improving VR viewer. The teachings that
4 we're taking from Kondo -- so that's an important question, Your Honor.
5 We're not taking two, as Patent Owner is suggesting, taking two systems and
6 mashing them together. We're taking the teachings of a VR viewer from
7 Kondo and combining it with the input mechanism of Chu. It's the teachings
8 that we're combining together.
9 JUDGE CYGAN: In Kondo you're relying on their stereoscopic
10 mechanism. Because VR viewers really come within claim 1, right? It's not
11 -- I don't believe that Kondo uses that term. You're really talking about its
12 use as a stereoscopic viewer, correct?
13 MR. KIKLIS: I don't -- stereoscopic viewer, Your Honor, it's -- no,
14 we're using it as a virtual reality viewer. I mean, if you put a cell phone in
15 there that has a VR application on it, it's a virtual reality viewer.
16 Stereoscopic, in my mind, I think you're going to our background of the
17 petition. We're referring to those old, you know -- I forget the name of those
18 devices that would have scenes or whatever it was. So, you know, is
19 stereoscopic viewers a part of VR? I think they are. I think there are
20 applications for that. But we are very definitely -- our combination is a VR
21 viewer with the input mechanism that's claimed by using the teachings of
22 Kondo and Chu.
23 JUDGE CYGAN: So if I understand your argument, you're saying
24 that someone looking at Kondo, which is a stereoscopic viewer, for example,
25 in the game system, as in their figure 13, they would take the stereoscopic

1 viewer, they would notice the prior art, such as Chu, which is an
2 underground camera, and from there they would produce an improved VR
3 device.
4 MR. KIKLIS: So Kondo very definitely is a virtual reality viewer.
5 And there are screws. There's some diagrams in there, in the petition, that
6 show that. It's a virtual reality viewer. Our motivation include, yes, that
7 somebody -- the designer of virtual reality viewer looking at Kondo would
8 know of Chu because there's a very similar deal with the same problem, the
9 external activation of the smartphone's touchscreen enclosed in a device. It's
10 facing the same problem. So a person of ordinary skill could look to that
11 and how to improve it. And one of the main reasons, the first reason that we
12 put together, is that Kondo only works with capacitive touchscreens. But
13 Chu's input mechanism works with both capacitive and resistive.
14 JUDGE CYGAN: Pardon me, Counsel, I'm still a little confused by
15 the fact that you're not trying to improve Kondo by adding Chu's teachings.
16 You're not trying to improve Chu because you're only adding Chu's
17 teachings to Kondo. So the only thing that seems to be left is to be
18 improving Kondo using Chu's teachings. But you seem to be very careful to
19 say you're not trying to improve Kondo, you're trying to improve VR
20 viewers in general. I'm a little --
21 MR. KIKLIS: You know, Your Honor --
22 JUDGE CYGAN: (Inaudible).
23 MR. KIKLIS: Yeah, I think that you can look at it both ways, that
24 you're improving -- if you're designing -- yes, here it is, VR view. "A
25 designer looking at Kondo would readily realize and be motivated to

1 increase the usability and consumer appeal for their device by making it
2 work with both capacitive and resistive touchscreens and, therefore, would
3 be led to Chu." So very definitely on page 37 of our petition we're saying
4 that there's a VR designer out there and he sees or she sees Kondo and then
5 says, hey, I can improve upon that by using Chu. That's what our argument
6 is. Very definitely.
7 And I'm sensitive to the language here, Your Honor, because Patent
8 Owner's whole case, no, we're just using Kondo, every little bit of Kondo,
9 we're stuck with Kondo, blah, blah, blah, blah, blah. And they go through
10 this big, you know, description of surface capacitive and blah, blah, blah, all
11 that stuff. But here in our petition, we're talking about a VR designer in
12 general looking at Kondo, decide how they could increase the usability of
13 their device by making it work with both capacitive and resistive
14 touchscreens.
15 JUDGE CYGAN: So the way I would describe it for clarify that, if I
16 can -- you know, the interesting thing about that statement is that if you go
17 in a petition straddling 38 to 39, now it seems like you're improving
18 handheld devices. So now you're focused not on VR viewers, but on
19 handheld devices.
20 MR. KIKLIS: I respectfully disagree, Your Honor, that with --
21 again, we start off this whole section by talking about a VR designer, and
22 then we gave a number of reasons why that VR designer would look to Chu.
23 And so we're talking about a VR designer, not just general handheld
24 designer. Our POSA is there trying to design a VR viewer. And these are
25 our reasons why they would improve their VR viewer.

JUDGE CYGAN: So is the discussion on 38 to 39 sort of assuming that VR viewers are handheld? Is that how you are bridging that gap?

MR. KIKLIS: I don't think that there's a gap to be bridged, Your Honor. I think that the VR view is, by definition, I think shadows to somebody's eyes, right? I mean, I think that we have that here. The claims recite a virtual reality viewer, right? So, you know, the virtual reality viewer is either a handheld device or a headset, but it's something right against the person's eyes.

JUDGE CYGAN: And just to be clear, the waterproofness, is your assertion that waterproofness improves VR devices in general or waterproofness would improve Kondo's device?

MR. KIKLIS: So we have a POSA out there, Your Honor, who's designing a VR viewer. They look at Kondo and they say, hey, I can improve this. I can use Chu -- if I may, Your Honor, and I'll answer your question, but I'm going to go through the slide now, if it's okay. I'm going to improve Chu because Kondo can only deal with capacitive touchscreens. I can have it deal with both capacitive and resistive by using Chu's input mechanism. Okay. Again, I've already mentioned that this is a similar problem.

Also, the input, by using Chu's input mechanism in a VR viewer, different amounts of pressure can be used and that can be interpreted as different inputs. You can add a swipe input.

And to get at your specific point, Your Honor, it can provide waterproofing capabilities, so to the extent you're outside, you drop it in a puddle or whatever. Also, the device, by being waterproofed, you can use it

1 and cleaned and it could be used in a sanitary environment. Those are all
2 reasons for using Chu in the VR viewer that you're designing, you know,
3 after looking at Kondo. So our motivations all deal with specific
4 motivations for a VR viewer.
5 JUDGE DIRBA: Counsel, you're at 45 minutes.
6 MR. KIKLIS: Yes, Your Honor, I am. Okay.
7 JUDGE McSHANE: I'm sorry, Counsel, can I just sneak in here a
8 little? This is a very brief question. If you go back to 24 or 25, you talked a
9 few times about the combination and the screen actuation. Okay. How is
10 that done in the combination? How do you get the actuation?
11 MR. KIKLIS: Sure. Right here, Your Honor. It's on slides 22 and
12 23. So if you look at 22, figure 5 of Chu shows it's unactivated. And then
13 figure 4 shows the person pushing the button, electrical charge flows from
14 the human body, which is a capacitor, through the probe head and probe pad
15 to the touchscreen right here. That's the activation mechanism. We're taking
16 this entire mechanism and using that.
17 JUDGE McSHANE: Okay. So you're using Chu's actuation, if you
18 will. So you're getting that as well as pressure, touch. Yeah.
19 MR. KIKLIS: Yes.
20 JUDGE McSHANE: Okay. Thank you.
21 MR. KIKLIS: Yes, Your Honor.
22 JUDGE McSHANE: Just to clarify.
23 MR. KIKLIS: Sure, good question. Okay. So I already covered the
24 motivations, a reasonable expectation of success, because these are simple.
25 Ultimately, you know, these are simple mechanical devices. The cardboard

1 viewer is a simple mechanical device. A POSA would have a reasonable
2 expectation of success and just consider the combination to be merely
3 routine.
4 Now, there are some specific claims which Patent Owner addresses.
5 Claim 10, so in --
6 JUDGE DIRBA: Before you (inaudible), I have a question about the
7 independent claims again. And I think your time is best spent with those
8 claims, for what it's worth.
9 As far as the independent claims, one of the arguments Patent Owner
10 makes is that there are a few reasons why a person of ordinary skill in the art
11 would not have been motivated to modify Kondo so that it worked with
12 resistive screens. Patent Owner presented evidence that there was little and
13 decreasing market share in 2013, that only low-cost mobile devices would
14 have had a resistive touchscreen, and those low-cost mobile devices didn't
15 have sufficient processing power to handle a VR application. Patent Owner
16 presents evidence that there were poor optical properties with resistive
17 touchscreens, and that those types of screens couldn't handle multitouch
18 inputs which were required for smartphones at the time. And they say all
19 that helps to show or goes to show that one of the proffered motivations that
20 Petitioner has is wrong and doesn't really work. In other words, a person of
21 skill would not have been motivated by that.
22 I did see in the record that your expert testified that you can have a
23 resistive touchscreen or phone with a resistive touchscreen that did kind of a
24 stereoscopic view of a particular image. In other words, not a video, static
25 image. For example, if you were traveling and you wanted -- you had seen

1 the Eiffel Tower and you wanted to be able to feel like you were seeing
2 Eiffel Tower in 3D again, it would give you the opportunity.
3 Did you present any other evidence in the record to contradict the
4 evidence that Patent Owner put in on those issues?
5 MR. KIKLIS: Yes, yes. Importantly, Your Honor, the patent itself.
6 So Patent Owner goes on to say, oh, nobody would ever consider, you know,
7 a VR viewer that would use both capacitive and resistive, you know, go on
8 and on and on, market share and all that. I was an engineer. I'm sure most
9 of you are engineers. There's always backwards compatibility. We always
10 try to increase the market size of the usability of your device.
11 Also, the patent itself, exhibit 1001, column 6, lines 43 through 47,
12 column 10, 49 -- lines 49 through 54, states that the alleged invention should
13 work on a variety of touchscreen technologies, such as capacitive, resistive,
14 or conductive touchscreen technologies. So when they're not facing the
15 possible invalidation of the patent, the inventor is speaking to the world
16 saying, hey, I want this to work with everything, including resistive. And so
17 that's unbiased, right? That's not in the context of litigation or Patent Office
18 proceeding.
19 You also have the Compton reference itself suggesting that the
20 patent -- recognizing the desirability of working with both capacitive screens
21 and pressure sensitive screens, which are resistant. That's exhibit 1022,
22 paragraph 0050.
23 So there is -- so we provided a motivation, and their response is
24 nobody would ever, ever want to do that. Well, Your Honor, what's more
25 plausible here, right? We're all familiar with engineering principles where

1 you -- backwards compatibility and all of that. Plus, you're talking about a
2 cardboard mechanism here, right? And this is in our briefing as well, a
3 cardboard mechanism.
4 And where you have to use your own touchscreen as the screen,
5 well, these are not people who are not going to have the latest and greatest
6 touchscreens, are they? Right? They may have older, less expensive
7 touchscreens such as resistive. And our expert contradicts every single point
8 they say: that there wasn't enough horsepower you could use, you know,
9 some -- more of a stereoscopic kind of a view of, like, the Eiffel Tower, as
10 you mentioned, et cetera. So -- and that's the only, frankly -- yeah, the
11 View-Master style. And that's, our expert mention, that you could use it like
12 a View-Master and also the reasons for it to -- for cost-effectiveness or
13 consciousness.
14 But that's one of our motivations that they challenge. They don't
15 challenge any others, Your Honor. They don't.
16 JUDGE DIRBA: And I take your point about the reasonings that you
17 provided. I saw a lot of those in the briefing. I hear your point about -- I'm
18 only asking about one of the rationales that you provided.
19 The evidence that -- I heard your point. To compare my question --
20 or my question was really designed to make sure that we consider all of the
21 evidence that you have to the contrary on those points. And I heard you
22 point to the patent. You had a couple of column and line numbers for the
23 challenged patents. That's very helpful. Compton, you pointed out
24 paragraph 50, you say it has -- demonstrates that a person skilled in the art at
25 the time would have been interested in making sure things were compatible

1 with both resistive and capacitive touchscreens. You referenced generally
2 your expert's testimony. I don't believe you pointed out any particular
3 portions of that testimony. Is there any other evidence that is germane to
4 that issue?
5 MR. KIKLIS: So I think our reply on pages 15 and 16 speak to this,
6 the testimony I'm referring to from our expert: exhibit 2053, page 137, line
7 19, through page 138, line 5; and then on page 138, line 6, through 1 -- page
8 139, line 1; also page 139, line 20, through page 140, line 1; and then page
9 140, lines 10 through 24; and then page 141, lines 5 through 15. And that's
10 in our briefing on reply, pages 15 and 16.
11 JUDGE DIRBA: Thank you.
12 MR. KIKLIS: Yeah. If anybody has any other questions on
13 independent claims, let me know. Otherwise, I just want to make a few
14 quick points.
15 So on claim 10, Patent Owner complained that there -- this doesn't
16 show electric charge going through a probe pad. But these lines specifically
17 are an electric charge. And you can see in Chu, paragraph 41, that's exactly
18 what they say.
19 You know, Your Honor, I think at this point I'm going to reserve the
20 rest of my time. I've only got about 20 minutes left. I'd like to reserve that
21 for rebuttal, if I may.
22 JUDGE DIRBA: Yes.
23 MR. KIKLIS: Okay. And thank you, Your Honor.
24 JUDGE DIRBA: Mr. Alexander, how much time would you like to
25 reserve for your rebuttal?

MR. ALEXANDER: Twenty minutes, Your Honor.

JUDGE DIRBA: All right. You may begin when you're ready.

MR. ALEXANDER: Okay. Could you give me a moment to try and share my screen?

JUDGE DIRBA: Absolutely.

MR. ALEXANDER: Your Honor, am I still with you?

JUDGE DIRBA: I can still hear you and see you. The content is not yet being shared from my perspective.

MR. ALEXANDER: Okay. You disappeared from my end when I hit Share, so.

JUDGE DIRBA: Feel free to take a moment to try to get the technology to work correctly for you.

MR. ALEXANDER: Yeah. I'm having a Webex error message that pops up, so I may have to exit and try to rejoin.

JUDGE DIRBA: Understood.

REPORTER: Mr. Kiklis, while we have a break here, a little pause, when you come back for your rebuttal, can you move your screen closer to you or scoot closer to your screen so that we can all hear you better? Thank you very much.

MR. KIKLIS: I read (phonetic) you. Sorry, Your Honor. Feel free to interrupt me if that ever is the case.

MR. ALEXANDER: All right, Your Honor. I apologize for that. Okay. I've now tried to share the screen again. Are you able to see Patent Owner's demonstrative exhibits?

JUDGE DIRBA: Yes, I am. Can you see us again?

1 MR. ALEXANDER: I can, yes.
2 JUDGE DIRBA: Excellent. All right. You may begin when you're
3 ready.
4 MR. ALEXANDER: Okay. I want to start by just briefly discussing
5 the development of the claimed inventions by Patrick Buckley, who was the
6 founder of DODOcase, a predecessor of interest to these patents. And one
7 of the important pieces of evidence in this proceeding is emails from
8 Petitioner's employees referring to the input mechanism that Mr. Buckley
9 developed as "genius," as we see in this case.
10 Going back a bit in the art to the years before Mr. Buckley's patent
11 applications were filed, there were various sorts of efforts to develop VR
12 viewers for use with mobile electronic devices, but how a person actually
13 input a touch event was a problem. Some of the earlier devices included just
14 cutouts in the mechanism in an effort to allow a user to reach his fingers into
15 the devices, but those proved unsuccessful.
16 Moving forward in time, in June 2014 was when Google launched its
17 VR viewer, known as the Google Cardboard V1. That's the device that
18 included the magnetic switch as an input. Petitioner's counsel correctly
19 noted that DODOcase's first generation viewer did also include a magnetic
20 input. Now, there was a characterization as though Mr. Buckley had done
21 something improper by following the pattern of Google's GCV1 Viewer.
22 And in fact, that's exactly what Google wanted folks to do, was to do that.
23 So there was nothing inappropriate about what Mr. Buckley did.
24 But one thing that Mr. Buckley did notice very quickly was that the
25 magnetic input was flawed. This is set out in declaration in this proceeding.

1 And he, in fact, reached out to Google, as we see in this email. That's also
2 of record, exhibit 2034, where he explains that he's working on this
3 improved input mechanism, what we call the capacitive, or sometimes it's
4 referred to as the conductive button or input mechanism. And he notes to
5 Google that it has various advantages. One would be eliminating a potential
6 choking hazard for children, and it also had the ability to work on various
7 types of smartphones.
8 Now, what Mr. Buckley was talking about here was not so much the
9 resistive issue, which we'll probably talk about later, but the fact that the
10 existing Google device didn't work with all types of smartphones on the
11 market. It only worked with certain phones, even though all those phones at
12 the time were capacitive touchscreens.
13 So Google responded quickly to Mr. Buckley, and he says -- we see
14 here Google employee Andrew Nartker saying, we "agree this could have
15 benefits." And Google acknowledged that they "experimented briefly with
16 this, but didn't fully refine" it. And so that's one of the points of contention,
17 which I believe Petitioner's counsel, you know, suggests that Google was
18 also working on their own ways of doing this at the time. But what we -- the
19 only evidence of record is what we have from Google here, where they say
20 we experimented with it, but we didn't refine it. So there's no evidence that
21 Google actually had something that worked. It was only after Mr. Buckley
22 shared his invention with them that they saw something that actually did
23 work for this purpose.
24 And so before Mr. Buckley met with Google to share the details of
25 it, he filed his first provisional patent application. As he states in his sworn

1 declaration, he filed the patent application before he met with Google.
2 That's another assertion that Google -- that they suggested in their briefing in
3 this matter, that perhaps Mr. Buckley filed his patent application after
4 meeting with Google and maybe they suggest getting some ideas for his
5 invention from Google. That's contrary to the only evidence of record in this
6 proceeding.
7 Google, had they chosen to, they could have submitted declarations
8 from any of these employees. They did not do so. If it were true that
9 Google had contributed to Mr. Buckley's invention, no doubt we would have
10 heard that through sworn testimony from them.
11 JUDGE McSHANE: Mr. Alexander, I'm sorry to interrupt, but on my
12 set of slides I'm seeing slide numbers and it really helps our record if we can
13 get slide records in the transcript. I don't see those. Oh, there they are.
14 Good. So if you did call out on that when you remember, I'd appreciate it.
15 Thank you.
16 MR. ALEXANDER: Will do. I apologize for that. And I decided to
17 try to be full screen, but you're right, I had gone a little too far and cut off the
18 slide numbers. So thank you for interrupting me.
19 So, moving on to now we're in late July 2014, after Mr. Buckley's
20 filed his patent application, he sends videos of a prototype of his invention to
21 Google. I've got screenshots on the slide number 10 from exhibit 2060,
22 where Mr. Buckley is showing his invention and operation. On the left hand
23 you see it in the unactuated state, and the kind of copper-looking strip,
24 vertical strip in the middle is flat. Then when he actuates the input
25 mechanism, we see it bend out towards where a touchscreen would rest.

1 And so that's what he sent to Google on July 25th. That's what Google
2 responds to in three separate emails. We have Andrew Nartker saying,
3 "That button looks really neat." Alex Kaufmann says, "That's an ingenious
4 button." And Clay Bavor says, "That button is genius."
5 DODOcase goes ahead a couple months later and gets this product
6 out on the market in its V1.2 VR Viewer. DODOcase has initial success
7 with this. For example, Regan Arts published a book and they included the
8 V1.2 Viewer in it, resulting in 50,000 shipments to customers across the
9 United States. Mr. Buckley also had evidence that was submitted here from
10 DODOcase, where -- showing sales of the V1.2 Viewer. The top line here
11 shows Virtual Reality Cardboard Toolkit, which included the viewer, and
12 the revenue associated with that was 200 --
13 JUDGE McSHANE: Excuse me, Mr. Alexander, on that one you say
14 that item 1, I looked at the record and maybe you can point it out to me, you
15 can do it on surrebuttal or whatever, but I looked at the record, I could not
16 find evidence of what this item 1 is, this Virtual Reality Cardboard Toolkit
17 is. And I think you said that included the V1.2. I think that's what you just
18 said. Is that correct?
19 MR. ALEXANDER: That is what I said, Your Honor.
20 JUDGE McSHANE: Yeah, I couldn't find evidence for that in the
21 record. But in any event, so if you could point that out to me, I'd appreciate
22 it. So maybe it's there, maybe I missed it.
23 MR. ALEXANDER: Okay. So in paragraph 18 of exhibit 2054,
24 which is a declaration that Mr. Buckley submitted in this proceeding, he says
25 that he points out to this $216,000 of revenue from the sales of the Virtual

1 Reality Cardboard Toolkit. And he then goes on to give reasoning for why
2 he believes that that revenue -- a significant portion of that revenue was
3 attributable to the Version 1.2 Viewer.
4 JUDGE McSHANE: Right. But as I read this, it could have been the
5 earlier version could have been in that package, correct? I mean, that's what
6 it appears to me as I read it, but you don't have to surmise, that's okay.
7 Maybe not, but that's okay.
8 MR. ALEXANDER: Sure. So what I would point you to is that I
9 believe Mr. Buckley did address that in that paragraph where he gives his
10 reasoning for why it was the V1.2 Viewer and not the V1 Viewer. So I do
11 understand your question, but I think the only evidence of record is Mr.
12 Buckley explaining why he thinks it was, at least primarily, the V1.2
13 Viewer.
14 JUDGE McSHANE: Okay, thank you.
15 JUDGE DIRBA: Mr. Alexander, this is Judge Dirba, and I had the
16 same question as my colleague did on this. If I'm reading this, what it says
17 is that we've got a significant portion of this 216K revenue is attributable to
18 the VR Viewer, and it gives two reasons why it's a significant portion of that
19 revenue. But I don't see how we could apportion that 216K of revenue
20 between or among the Version 1.2 Viewer and other things. So they're
21 saying it's a significant portion -- to me, it's tantamount to saying it's not all
22 of it. And I don't know how we decide how much of that 216 is associated
23 with Version 1.2. And as a result, I suppose my question for you is, without
24 that level of certainty, can we still take that 216 number into account in
25 commercial success?

1 MR. ALEXANDER: I believe that you can, Your Honor, because the
2 Virtual Reality Cardboard Toolkit was a toolkit to provide this V1.2 or the
3 viewer. And I don't believe there was any reason why people would buy
4 that other than the viewer. So the driving factor here for the purchases was
5 to obtain a viewer.
6 JUDGE DIRBA: Are we sure that this is only the Version 1.2 Viewer
7 as opposed to the Version 1.1?
8 MR. ALEXANDER: That's what the question I addressed a moment
9 ago, where Mr. Buckley, in paragraph 18 of exhibit 2054, gives his
10 reasoning for why he believes it was at least (inaudible) significantly, it was
11 the V1.2.
12 JUDGE DIRBA: Okay, thank you.
13 JUDGE McSHANE: Let me just follow up on that. What I find, like,
14 confusing, and to be entirely honest, is if you look at item 8, right, that's the
15 Virtual Reality Cardboard Toolbox - V1.2. Right, that's the 65,000. So --
16 I'm sorry, 67,000. So there's a specific call out for that Version 1.2 there.
17 So, you know, if that's being tallied, I'm not really quite sure why exactly
18 that would be included in the version -- in the item shown in item 1 as well.
19 If you can point me to evidence on that, let me know.
20 MR. ALEXANDER: I don't think there's evidence in the record as to
21 why these are separately broken out in the DODOcase financial records. But
22 I do believe that the testimony from Mr. Buckley is that this is the Google
23 Analytics reports, I believe, for DODOcase. And we do have separate line
24 items referring to these separate revenue, because you see that there's also a
25 percentage of product revenue that's broken out and they each have their

1 own percentage. So, in other words, I don't believe there's any evidence to
2 suggest in the record that these are duplicative, if I understood correctly the
3 nature of your question.
4 JUDGE McSHANE: Yeah. Yeah, you understood the question.
5 Thank you. I appreciate it.
6 MR. ALEXANDER: Okay. Well, I will wrap this up. So this is
7 really more of an introduction, but I do understand secondary considerations
8 is a topic of interest. So if you have further questions on that, I'm happy to
9 switch into that now rather than returning to it later, which was my plan. So
10 I'll proceed, but if you have questions, you'll let me know.
11 After DODOcase's product went on the market, at some point
12 Google sought a license from DODOcase. This is also in the record. The
13 parties were not able to reach terms and it was not so long after that
14 DODOcase was actually forced to abandon the production and sale of its
15 Version 1.2 Viewer due to price pressures from unauthorized sellers in the
16 marketplace. So while DODOcase did experience initial success, after the
17 unauthorized sellers entered the marketplace, as we'll talk about in a bit, that
18 did include Google, then DODOcase was forced to abandon the product due
19 to unauthorized competition.
20 I'll move now to the definition of a person of ordinary skill in the art.
21 Petitioner's counsel did correctly identify this as an important topic here.
22 I've put on the screen Petitioner's expert's definition of a person of ordinary
23 skill in the art, and I've highlighted what we think is the key issue here,
24 which is that in Petitioner's view, only a basic understanding of touchscreen
25 technology is required. Patent Owner does believe that's insufficient.

1 Here we've heard all through the presentation from Petitioner about
2 various reasons to combine the art, and important in that is the recognition
3 that the reason the input mechanism exists in the patents at issue in this case
4 is to induce a touch event on a mobile electronic device. And so the nature
5 of the mobile electronic device, the nature of its touchscreen, is critically
6 important to the claimed invention here, and to what a person of ordinary
7 skill in the art would need to understand.
8 To illustrate the issue, Patent Owner's expert pointed out some
9 misunderstandings that Petitioner and its expert had regarding the
10 technology that's issued in this case. For example, as Petitioner -- I'm sorry,
11 Patent Owner's expert noted, Petitioner's expert talked about -- characterized
12 capacitive touchscreens as needing to use the electrical properties of the
13 body to create a change of charge at a location on a touchscreen. And while
14 it's possible that the human -- the properties of the human body could be
15 used to induce a touch event, it's definitely not necessary. And that is one of
16 the issues that's important in this case as it relates to claims 7 and 8. So
17 that's an example of a misunderstanding that really illustrates, in our view,
18 why a person of ordinary skill in the art does need more than just a basic
19 understanding of touchscreens.
20 Therefore, and for reasons that are fleshed out further in our briefing,
21 it is the Patent Owner's position that a person of ordinary skill in the art
22 would have a minimum of two years of experience in implementing
23 touchscreen technology, along with certain other characteristics. But I think
24 it's this issue of experience with touchscreen technology that is critical in our

1 view. And here we think there is a very significant difference between the
2 parties' respective experts.
3 I put on the screen slide 26, which is a an excerpt from Patent
4 Owner's experts declaration describing his experience. From 2001 to 2017,
5 he led development of touchscreens at Synaptics. He goes on to detail a lot
6 of the work that they did at Synaptics. He has 27 patents that are
7 specifically for innovations in capacitive touch sensing, so he was very well-
8 qualified to offer the opinions that he did in this matter.
9 In contrast, Petitioner's expert, when it came to understanding
10 touchscreen technology, we acknowledged that he had not -- they didn't
11 really have any familiarity with the specifics. That includes both the
12 capacitive touchscreens that they say Kondo describes, and it also includes
13 surface capacitive touchscreens, which is what Patent Owner says Kondo
14 describes. The Petitioner's expert wasn't able to discuss the differences
15 between those technologies. He wasn't even familiar with the term "surface
16 capacitive touchscreen." So that would be relevant passages of his
17 testimony. There we include exhibit 2053 at page 49, as we've shown on
18 slide 27 of our demonstrative.
19 Now let me transition into --
20 JUDGE DIRBA: Counsel?
21 MR. ALEXANDER: Yes.
22 JUDGE DIRBA: I'll ask a few questions about the POSITA
23 discussions. So the argument, as I understand what you said today, is how
24 much knowledge a person of skill in the art would have needed to have had
25 about touchscreens. And there's, as with most kinds of knowledge, I suspect

1 that there is a spectrum. There's someone who doesn't even know what a
2 touchscreen is, and then at the other end, there's someone like, it sounds like
3 your expertise, someone who designs touchscreens themselves. Are you
4 saying that a person of skill in the art would have needed to have experience
5 designing touchscreens or simply would need to have enough knowledge
6 and experience in order to implement those in VR headsets or something
7 like that?
8 MR. ALEXANDER: Right. I believe the language we used was
9 "implementing". So I don't think -- we're not taking the position that you
10 had to be designing them necessarily.
11 I think here it really comes down to a practical issue where our
12 expert gave very detailed testimony, I'll walk through it, time permitting, of
13 why Kondo, viewing the reference as a whole, that a person of ordinary skill
14 in the art would clearly understand that it's describing a surface capacitive
15 touchscreen, and that a person of ordinary skill would also know that that
16 was not feasible, not really possible in the combination that Petitioner is
17 proposing here. Whereas Patent Owner's expert, since he wasn't familiar
18 with surface capacitive touchscreens, he was able to, one, identify that that's
19 what Kondo was talking about, though, as we discussed in our briefing, he
20 did identify places where he was aware that Kondo did not accurately
21 describe the operation of a projected capacitive touchscreen. So even
22 though that's what they're saying Kondo discloses, he acknowledged that it
23 did not disclose correctly the operation of a projected capacitive
24 touchscreen. But because of his -- because of only having a basic

1 understanding of touchscreens, he actually wasn't familiar with the type of
2 touchscreen that Kondo was actually dealing with.
3 JUDGE DIRBA: And I'd like to ask a few follow-up questions
4 because I think your argument, to some degree, is premised on an
5 assumption that a person of skill in the art would know the difference
6 between a surface capacitive touchscreen, and a projected capacitive
7 touchscreen. So I'd like to -- I'm going to ask you a few questions to kind of
8 drill into that and ascertain whether that is actually true or whether a person
9 skilled in the art need not have had knowledge about those details.
10 I guess we'll just start with the specification, so far, it didn't seem to
11 say anything about touchscreens or surface capacitive or projective
12 capacitive. What evidence do we have in the record, other than your expert's
13 testimony pointed to that -- what other evidence in the record do we have
14 that a person of skill in the art would have known about these two different
15 flavors of capacitive touchscreens and how they work specifically?
16 MR. ALEXANDER: I believe that you're correct, Your Honor, that
17 we are relying on our expert's testimony. Now, he gave very detailed
18 descriptions of what a person of ordinary skill in the art would know, what
19 would be available. I know there is a textbook cited in his declaration where
20 you would -- a person of ordinary skill in the art would have access to that,
21 and it describes these sort of touchscreens. So that, I believe, is our expert
22 that we're relying on.
23 Now, Kondo, of course, described the surface capacitive touchscreen
24 for the reasons our expert stated as well. So that's evidence that a person of

1 ordinary skill in the art would be aware of those sort of touchscreens because
2 Kondo actually goes on to describe various aspects of how it works.
3 JUDGE DIRBA: So, Buckley is the only named inventor here. Is
4 there any evidence that he knew about the differences between projected
5 capacitive and capacitive touchscreens? Is there any evidence about the
6 level of experience he had with touchscreens prior to making these
7 inventions?
8 MR. ALEXANDER: So the first question about is there specific
9 evidence they knew the difference between projected capacitive and surface
10 capacitive, no, I don't believe there is. Now, his deposition testimony does
11 include discussion of his background and his work here.
12 First, I don't believe there's any requirement that an inventor be a
13 person of ordinary skill in the art for one thing. The reason it's important
14 here is because Petitioners are proposing a combination that wouldn't work.
15 And in fact, to the extent Mr. Buckley isn't familiar with surface capacitive
16 touchscreen, in connection with his work with DODOcase, which was
17 focusing on, you know, products for use with mobile electronic devices, is
18 that, like our expert testified, a person of ordinary skill in the art would
19 know that a surface capacitive touchscreen -- you would just never consider
20 it. It's not -- it would never be implemented. It is impossible to implement it
21 in a mobile electronic device. They were used for things like ATMs, as our
22 expert gives some other examples, but it's a wholly different type of device
23 for a lot of different reasons.
24 JUDGE DIRBA: So would a person of skill in the art know that a
25 smartphone uses a projected capacitive screen at the time -- or did they only

1 use projected capacitive screens at the time or was it just a primarily
2 situation?
3 MR. ALEXANDER: We have some evidence in the record on that. I
4 think in the '075 proceeding, I believe it is exhibit 20 -- or the 707
5 proceeding, dealing with the '075 patent, I believe it's exhibit 2046, which
6 gives some statistics on the use of projected capacitive. And, you know, I
7 can't say it's impossible to find. The patent application would file that there
8 weren't, you know, a tiny handful of devices that use resistive capacitive, but
9 I think the evidence is overwhelming that they were clearly more than just
10 on the way out, you know.
11 And then the other important piece of evidence is that, as our expert
12 testified, even going backwards, and this relates to the issue of backwards
13 compatibility that Petitioner's counsel raised, the resistive touchscreens
14 because they were at the low end of the market, they didn't have the
15 horsepower to run VR-type applications. So one of ordinary skill in the art
16 wouldn't have really been motivated to use a resistive touchscreen in the
17 invention.
18 We also, of course, say that this issue is irrelevant to the Kondo and
19 Chu combination, because Kondo does not disclose a resistive touchscreen.
20 I don't believe there's any question about that. There's no dispute that Kondo
21 does not disclose a resistive touchscreen. So whether Chu was -- you know,
22 whether somebody would want to use Chu with a resistive touchscreen, we
23 don't think you would because we don't think anybody would have been
24 trying to use a resistive touchscreen in this timeframe, in this sort of -- In the

1 claimed invention. Even if there was some question about that, that's not
2 what Kondo discloses.
3 JUDGE DIRBA: And I didn't mean to go down the resistive
4 touchscreen path because, as I understand, there's projected capacitive,
5 which include these two flavors: surface and projected. And then there's
6 resistive touchscreen, which is a separate bucket of things. And so I'm just
7 looking at the -- or just trying to ask questions about the capacitive
8 touchscreen bucket.
9 Do the differences between surface projective -- or rather surface
10 capacitive touchscreens and projected capacitive touchscreens, do those
11 differences make any difference to how either the claimed invention works
12 or Kondo works? In other words, if you took the claimed invention or, you
13 know, let's say, the (inaudible) described in 57, would that only work with
14 the surface projected screen or only work with the projected capacitive
15 screen?
16 Same thing for Kondo. Do we have any evidence in the record to let
17 us know, basically, does it matter that there are these two different flavors of
18 capacitive touchscreens? That an expert who designs capacitive
19 touchscreens is certainly going to be familiar with, but whether or not
20 someone skilled in the art is designing a pair headsets would have known
21 those unique differences or those different flavors is something that I'm
22 trying to ascertain.
23 MR. ALEXANDER: Okay. Well, yes. The question is, does the
24 difference matter? Yes, it matters greatly. And that's what I was saying.
25 And this is where Petitioner -- I'm sorry, Patent Owner's expert goes on in

1 some detail about describing not just the differences between surface
2 capacitive and projected capacitive touchscreens and how they operate, but
3 also that they were -- a person of ordinary skill in the art would have known
4 that you could not use a surface capacitive touchscreen within the context of
5 this invention, which is the VR viewer views with a mobile touchscreen. He
6 explains why a surface capacitive touchscreen would not have been
7 appropriate for mobile devices, that they were only used for large things like
8 kiosks and ATMs.
9 JUDGE DIRBA: So it's not -- is it that there's anything, and this
10 could be in the expert's testimony and, if so, we can, you know, we can stop
11 here and you can just point to the paragraph that's relevant of his testimony
12 and I can go back and look at those offline. But what I'm trying to
13 determine is, let's say that, yes, surface capacitive maybe will typically use
14 in these large screens. Is there anything about that technology that means
15 that it would not have worked here? In other words, are these flavors
16 between surface and projected capacitive sort of minor differences in the
17 way that those touchscreens are operating on the inside, or are those
18 differences that are going to make differences from the perspective of the
19 inventions that we have here, which were VR viewers that work with those
20 touchscreens.
21 MR. ALEXANDER: I do believe that if I'm understanding the
22 question correctly, let me know if I'm not, but if you look, starting at
23 paragraph 67 of exhibit 2050, that is in the 707 proceeding, that is the
24 testimony of Patent Owner's expert where he explains the lack of motivation
25 to combine. And so, for example, in paragraph 67, he says that a person of

1 ordinary skill in the art would know that a surface capacitive touchscreen,
2 such as Kondo's touch panel 1506, would not be used in personal mobile
3 devices. He goes on to explain some of the reasons why that is and he
4 continues for the next few paragraphs there.
5 I think if you actually look back at paragraph 65, this is at the end of
6 his discussion of the Kondo reference. He says that a POSA at the time of
7 the '075 patent would know with certainty that it was not possible to
8 integrate a surface capacitive touchscreen into a mobile consumer
9 electronics device such as a smartphone. And again, he gives some
10 reasoning there.
11 And yeah, I think it's worth noting that this is unrebutted testimony
12 in the sense that I understand that Petitioner put in an expert declaration with
13 their petition, but as I noted, and, you know, it's in the record that their
14 expert was not even -- he didn't know what a surface capacitive touchscreen
15 was. He didn't have any familiarity with it, so, of course, it wasn't addressed
16 in his opening -- in his declaration.
17 Petitioner had the opportunity to depose Patent Owner's expert. They
18 chose not to. They also had the opportunity to put in reply evidence, be it an
19 expert declaration or otherwise, and they chose not to. So all of this
20 testimony from Patent Owner's expert, there was no response to it other than
21 attorney argument.
22 JUDGE DIRBA: And a final question on the POSITA definition. In
23 your surreply you made a couple of comments about Petitioner's expert, Mr.
24 Keller. Is it your argument that we should weigh the testimony of these two
25 experts, measure it with their level of experience and knowledge about

1 touchscreens? Or are you arguing that Mr. Keller should be disqualified
2 because he didn't qualify as a person of skill in the art?
3 MR. ALEXANDER: We didn't present a motion to exclude evidence,
4 Your Honor. So I think, you know, in our minds, it's not a -- the outcome
5 really should be the same regardless of which path you went. We don't
6 believe that Mr. Keller meets what should be the definition of a person of
7 ordinary skill in the art. Therefore, we don't think he's qualified to speak to
8 these issues. But as you noted, even if you consider his testimony, the
9 outcome should be the same because, like I said, he wasn't familiar with the
10 type of touchscreen technology that our expert has explained his reasoning
11 why, you know, why Kondo -- this is what Kondo is talking about. This is
12 why a person of ordinary skill in the art wouldn't want to use that. And it
13 just wasn't something that Mr. Keller was equipped to speak with. But I
14 believe that's why they didn't put in a reply declaration from him.
15 JUDGE DIRBA: And did you argue in your Patent Owner response
16 at all that Mr. Keller's testimony -- I certainly saw in the response you
17 pointed out, hey, Mr. Keller was asked questions of this and he couldn't
18 answer that. He asked questions about this and he couldn't answer that. I
19 had understood all of that to be these are reasons why his testimony should
20 be given less weight than your expert's. I didn't see anything in Patent
21 Owner's response that did argue that, for example, that Mr. Keller doesn't
22 qualify as a person of skill in the art or, like I said, shouldn't be disqualified
23 or anything. Did you make any of those arguments -- any of the arguments
24 that Mr. Keller is not a person of skill in the art or he should be disqualified
25 in your patent owner response?

1 MR. ALEXANDER: I don't know the phrasing, Your Honor, off the
2 top of my head, if we use that. But I believe there may have been some
3 assertions that Mr. Keller wasn't qualified or didn't meet that definition.
4 Certainly, I think the briefing would support that based on our discussion of
5 it. But I don't believe there's anything in the briefing where we say that you
6 should exclude Mr. Keller's testimony.
7 JUDGE DIRBA: Okay. If you could point me, between now and
8 you rebuttal, if you could look in or have one of your colleagues look in the
9 Patent Owner's response and point me to where you might have made the
10 argument that either he doesn't qualify as a person of skill in the art or we
11 should disqualify him, as opposed to just how we weigh the evidence. Then
12 I would like to see those cites and see whether that argument was really
13 properly presented.
14 MR. ALEXANDER: Understood.
15 JUDGE DIRBA: Okay.
16 JUDGE McSHANE: Mr. Alexander, I've got a two-parter here. First
17 of all, I'm wondering how you reconcile your view of Kondo and
18 smartphones because it seems that -- and you say emphatically -- and you're
19 going to get to it, I think, so I'm going to roll you to the next topic, I think,
20 which is Kondo. You say it's a surface capacitive touchscreen. But Kondo
21 says it uses is a smartphone. So it says that.
22 Second issue is Kondo also says explicitly that it's a projected
23 capacitive touch panel and it refers specifically to a component, as I read it
24 anyway, a component that's in the smartphone.
25 MR. ALEXANDER: Right.

1 JUDGE McSHANE: So take those at whatever pace you want, but.
2 MR. ALEXANDER: Sure.
3 JUDGE McSHANE: Yeah.
4 MR. ALEXANDER: Yeah, I appreciate the question. So it's true
5 that Kondo, in one location in the patent, in paragraph 24, uses the term
6 "projected capacitive". In that very paragraph, it goes on to describe the
7 operation of a surface capacitive touchscreen. And so I've got now on the
8 screen slide 32 from Patent Owner's demonstratives. And this is excerpts
9 from the Patent Owner's expert talking about paragraph 24. And he's
10 quoting here aspects of Kondo's paragraph 24 and explaining how in
11 particular its current-based method of touch detection is, as he says in
12 paragraph 57 of his declaration, "This is an accurate description of how a
13 surface capacitive touchscreen works." And he also states in his testimony,
14 the counterpoint is it's not how a projected capacitive touchscreen works.
15 He details this again in the context of Kondo's paragraph 48, which, again, is
16 describing Kondo's current-based method of touch location detection. So
17 that's describing surface capacitive, not projected capacitive.
18 And so to your question about, you know, what do we do with, you
19 know, here's this one reference to a projected capacitive touchscreen? First,
20 we say that the fact that Kondo's immediately within the same paragraph,
21 and it's not a long paragraph, that goes on to describe a surface capacitive
22 touchscreen's operation, a person of ordinary skill in the art would
23 understand that. And that goes to just the legal issue of, you know, how
24 does the obviousness combination work? And, you know, this is a matter of
25 Federal Circuit precedent.

1 I'll give you an example of *In Re Enhanced Security Research*, 739
2 F3d 1347, at page 1355. That's a Federal Circuit case from 2014. And there
3 the Federal Circuit said it's not appropriate to, and I'm quoting here, "stitch
4 together an obviousness finding from discrete portions of prior art references
5 without considering the references as a whole." This is MPEP as well. For
6 example, MPEP section 2145.
7 It's not appropriate to seize on one phrase here, which as Patent
8 Owner's expert then goes on to spend paragraphs of his declaration explains
9 various aspects. It's not just this current base, that touch location detection,
10 it's other issues about Kondo, like Kondo's concern with static electricity,
11 Kondo's concern with providing a ground circuit. All of these things
12 unequivocally tell a person of ordinary skill in the art, hey, this is surface
13 capacitive. And so it's not appropriate to cherry-pick just this one mistaken
14 use of the term "projected capacitive" and say, well, that's what Kondo is
15 talking about. We think that's the wrong way to go about (inaudible) this
16 combination under the applicable Federal Circuit precedent.
17 JUDGE McSHANE: Okay. But to the first question, if you say it's
18 surface capacitive, it's still using a smartphone, right?
19 MR. ALEXANDER: Well, if you (inaudible) it's saying a surface
20 capacitive touchscreen in a smartphone, and that's the problem. And that's
21 what I read from paragraph 65 of exhibit 2050. That's Patent Owner's expert
22 declaration saying that's what one of ordinary skill would understand. It's
23 not just like not a good idea. It's not possible. That's -- if you look at that,
24 that's his testimony. And again, that's not rebutted by anything, any

1 evidence of record. So Kondo is a flawed piece of prior art and a person of
2 ordinary skill in the art would have known that.
3 JUDGE DIRBA: So, Mr. Alexander, you're telling us that we have
4 your expert's testimony, who is -- it's the basis -- it's the only evidence we
5 have in the record to believe that a person skilled in the art would have
6 known the difference between a surface capacitive and a projected
7 capacitive. And then your expert also says that Kondo -- or (inaudible)
8 Kondo specifically talks about a smartphone, as my colleague pointed out.
9 And your expert points out that some of the things that Kondo says, well, he
10 does say projected capacitive at one point, but other things that he is
11 describing sound more surface capacitive. Isn't Kondo evidence that a
12 person skilled in the art would not have been familiar with the differences
13 between a surface capacitive and a projected capacitive? That's a layer
14 deeper than a person of skill in the art of designing a VR headset would have
15 known?
16 MR. ALEXANDER: I don't think that it would be appropriate to
17 draw that conclusion from Kondo's mistake because we don't know where --
18 we don't know how that mistake was made. Kondo is a foreign reference
19 translated into English. We don't know who drafted Kondo. You know,
20 attorney errors sometimes happen. We don't know anything about the
21 inventor of the Kondo reference. There's nothing of record about that. So I
22 don't think it would be appropriate to draw that conclusion from this, from
23 Kondo's disclosure.
24 JUDGE DIRBA: But on the other hand, we have your expert
25 disagreeing with Kondo's disclosure. And we do know that Kondo was

1 written at the relevant time. It is one of the prior art references. And it does
2 sound like your expert is testifying that Kondo doesn't mean what it says in a
3 very fundamental way. In other words, if I understand what your expert is
4 saying, your expert says that a smartphone can never be surface capacitive.
5 Kondo is very clearly directed to a smartphone. So I don't know how to
6 reconcile that, other than it does seem that your expert is asking us to believe
7 him or believe the reference.
8 MR. ALEXANDER: Well, I think there is actually additional
9 evidence in the record of the problems with Kondo. And I've got on the
10 screen now Petitioner -- or, I'm sorry, Patent Owner's demonstrative 34,
11 which is an excerpt from the deposition of Petitioner's expert where he was
12 asked the question if he believes that Kondo's -- that Kondo accurately
13 describes how projected capacitive touchscreens in mobile devices operate.
14 He says here, "It's not fully accurate." And he's asked why. He says, "It's
15 weird that it mentions alternating currents."
16 In regard to Kondo's paragraph 48, he was similarly asked is this
17 accurately describing the operation of a projected capacitive touchscreen?
18 And he says, "Does this sentence describe that perfectly? Not perfectly."
19 And he goes on to detail it more. This is all cited in our briefing. But even
20 though Petitioner's expert wasn't familiar with surface capacitive
21 touchscreens, he was familiar enough with projected capacitive touchscreens
22 to understand that Kondo wasn't describing it accurately. So even their
23 expert acknowledged that there were problems with Kondo's description.
24 So I know my time is starting to run short. I think we've probably
25 talked at this point about Kondo and the lack of motivation to combine in the

way that Petitioner proposes. I know the Panel had a number of questions for Petitioner regarding secondary considerations. Like Petitioner's counsel, I didn't (inaudible) talk a little bit about some of the dependent claims, but I would like to ask the Panel's guidance, given what's starting to run a little short on time, about if I should move to secondary considerations or to further into the claims.

JUDGE DIRBA: I personally am most interested in the secondary considerations discussion. I suppose that we can address some of those dependent claims if there's still time in the end, but the secondary considerations discussion (inaudible).

MR. ALEXANDER: Okay. So I already went through a lot of the evidence relating to the development of the invention, so I won't repeat that for the sake of time, but we saw Google's threefold description of the invention as tedious and various sort of words.

Now, I want to address one of the things that the Petitioner's counsel mentioned consistent with our arguments in the briefing. They suggested that the secondary considerations argument focuses on capacitive input mechanisms in the abstract, and we don't think that's an accurate characterization because the briefing included claim charts comparing DODOcase's commercial product with the relevant claims, and also Google's product with the relevant claims. So we believe that -- we believe just Google is wrong about that.

We also believe that Patent Owner has shown that it is entitled to a presumption of nexus because Patent Owner put in evidence that the DODOcase product practiced the relevant claims and also evidence that it

1 did not include any critical unclaimed features. And, you know, I've got
2 here on the screen right now Patent Owner's demonstrative slide 89, which is
3 an excerpt from the declaration of Patrick Buckley, exhibit 2054. This
4 particular slide relates to claim 1 of the '075 patent. This testimony was not
5 meaningfully challenged by Google. It presented no evidence that there
6 were critical unclaimed features or the like. And this is true of all of the
7 proceedings.
8 So we believe that after having put in this evidence, that it was
9 Google's duty to come up with something to challenge that, some evidence
10 specifically to challenge that. And since it did not, we believe we are
11 entitled to a presumption of nexus between, for example, the sales evidence
12 that we've provided and the claimed invention.
13 Let me stop --
14 JUDGE DIRBA: (Inaudible) question.
15 MR. ALEXANDER: Yes.
16 JUDGE DIRBA: One question about nexus, Counsel. This is Judge
17 Dirba. You presented the claim charts and the testimony regarding claim 1
18 of the '075 patent. I believe it was also claim 1 of several of the other
19 patents, but not all of the independent claims and none of the dependent
20 claims. What should we do with regard to or what treatment should we give
21 to other independent claims for which there was no claim chart or for
22 dependent claims?
23 MR. ALEXANDER: We chose to focus on the independent claims
24 that we did focus on, so I think it would be appropriate for you to focus on
25 those. I do believe any resulting ruling would -- you know, in our favor,

1 would also certainly apply to the dependent claims that depended from those
2 independent claims.
3 JUDGE DIRBA: So for independent claims that you didn't provide a
4 claim chart for, would you agree that there's no presumption nexus for those
5 claims?
6 MR. ALEXANDER: I would agree that if we didn't put in any
7 evidence regarding claims that, you know, we chose what claims to focus on
8 in our briefing.
9 JUDGE DIRBA: Okay.
10 MR. ALEXANDER: So I've already provided evidence of several
11 cases of commercial success regarding the claimed invention prior to the
12 introduction of the unauthorized viewers, which included Google's
13 unauthorized viewer, as well as others that adopted the V1.2 Viewer. But
14 there also is evidence in the record relating to the increase in shipments of
15 the Google Viewer once it launched the V2. It's a Version 2 Viewer
16 launched on or around May 28th, 2015. And that is the version that was
17 addressed in the claim chart submitted with Patent Owner's briefing.
18 And we provided evidence that -- sorry, I'll scroll to it, but we
19 provided public evidence. I know there's some concern about confidential
20 information, so I'm being clear here, I'm talking about public evidence tying
21 the public information regarding shipments of viewers into the Google
22 Cardboard program to this timing. So around the time that Google
23 introduced the V2 Viewer, at that point there's public information about, you
24 know, a million cardboard headsets had shipped. By January 2016, that
25 number was up to 5 million based on public information. And then as of

1 February 2017, that number had grown to over 10 million based on the
2 public information. And Patrick Buckley's declaration, exhibit 24, walks
3 through this evidence.
4 Now, Petitioner in its reply made some allegations that this
5 information wasn't correct, that there was not this vast increase in shipments
6 of the -- under the Google Cardboard program after that. It presented its
7 own evidence, and I want to be careful about the confidentiality because it
8 has deemed that confidential and there are folks on the line who are not
9 entitled to see that, but as we stated in our briefing, and that is at page 28 of
10 the surreply regarding the '075 patent and the 707 proceeding, we've actually
11 totaled up the sales in exhibit 1024, and we do not believe it supports the
12 assertions that Google was making. We do believe it supports Patent
13 Owner's view of things. And so, you know, I won't go any deeper into that
14 now unless the Board has questions. But we believe that exhibit 1024
15 supports Patent Owner.
16 We believe that the Petitioner, even though they put that exhibit into
17 their -- into the record with their reply, they actually don't cite to it and
18 there's really no discussion. There's certainly no explanation of how that
19 spreadsheet supposedly supports their view that there was not a significant
20 increase in sales or shipments of the Google Cardboard Viewers after V2
21 was introduced. So they don't do anything to support that.
22 There was no declaration from a knowledgeable Google employee
23 explaining that sort of assertion. Presumably, if it were true that shipments
24 didn't vastly increase after the introduction of the V2 Viewer, Google would
25 have been in a perfect position to put in an employee who had detailed

1 knowledge of that and explain exactly what did happen after the V2 Viewer
2 was introduced. The fact that it didn't do that, that it didn't even provide an
3 explanation of exhibit 1024, we actually confirmed that what we're saying
4 about exhibit 1024 and the public information is correct. And we also
5 believe that since we're entitled to a presumption of nexus, that shows that
6 this viewer that Google copied from the DODOcase product shows evidence
7 of non-obviousness of the claimed invention.
8 JUDGE DIRBA: I have a few questions about this, and I will -- I
9 believe I can ask my questions at a high enough level that we don't need to
10 get into confidential information. But if you feel that we do, then we can
11 address those in a confidential session later. But assume -- so you put --
12 Patent Owner put forth evidence showing that its products met the
13 limitations of, for example, independent claim 1 of the '075 patent and is
14 coextensive with them. You also put in evidence showing that GCV2, one
15 of Google's products, meets the limitations and is coextensive with the
16 identified claim.
17 If I understand correctly, Google Cardboard shipments generally
18 include GCV2 as well as other products. Is that correct?
19 MR. ALEXANDER: Are you asking if Google Cardboard shipments
20 could refer -- like, just if you say Google Card shipment -- Google
21 Cardboard shipments, it doesn't refer to as specific version?
22 JUDGE DIRBA: Can you just go up to the previous slide that you
23 were just on a moment ago?
24 MR. ALEXANDER: Yes.

1 JUDGE DIRBA: This is perfect. So we're looking at your slide 100
2 and it says, "Google has shipped over 100 million Cardboard VR headsets."
3 How do I know that that is over -- I'm sorry, I said 100 million, "Google has
4 shipped over 10 million Cardboard VR headsets." How do I know that that
5 is saying over 10 million GCV2 headsets specifically as opposed to other
6 headsets that might be compatible with Google's ecosystem?
7 MR. ALEXANDER: Okay. Well, I think based on the evidence of
8 record, there are only two relevant viewers. There's the Google Version 1
9 Viewer and the Google Version 2 Viewer. And what we're saying and what
10 Mr. Buckley says in his declaration is that if you match up the timelines of
11 this public information and match it up to the date that -- you know, kind of
12 the start of the program versus when the V2 Viewer was introduced, it's after
13 the V2 Viewer was introduced that you see this very quick increase in the
14 sales such that between -- you know, as of -- like it shows on slide 99 on
15 June 2nd, 2015, the report is that 1 million Cardboard headsets shipped.
16 That's around the time the V2 Viewer was introduced. So then a year and a
17 half later, February 28, 2017, now, Google says that over 10 million
18 Cardboard VR headsets have shipped.
19 So that -- you know, I think we're assuming that the 10 million
20 includes those V1 Viewers that were sold before the V2 was introduced; that
21 after the V2 was introduced, you see a very quick upswing in the number of
22 shipments that are being made such that you get up to over 10 million, so
23 like 9 million more than we saw in June 2015. You've got 9 million more by
24 February 28th, 2017. And Mr. --

1 JUDGE DIRBA: I'm sorry, I'm going to interrupt real quick because I
2 think that I wasn't clear enough on my question. So there's definitely -- I'm
3 trying to make sure I use all the letters correctly, GCV1, which was Google's
4 version of this product, and GCV2, which was another Google product. But
5 Google also had an ecosystem where there were other vendors that were
6 providing Cardboard headsets, Cardboard VR headsets. And there's, for
7 example, exhibit 2043 in the record that is the manufacturer's guide that
8 Google provided to different people. And that manufacturer's guide seems
9 to provide certain things that the manufacturer has to do, but doesn't require
10 the capacitive button that is -- that we're all talking about and interested in
11 today.
12 So in other words, it seems to me, from what I've seen in the record,
13 and I'm asking you the questions, you can point evidence to me that might
14 be to the contrary, but it seems to me there were many different Google
15 Cardboard Viewers out there. Some were manufactured by Google, GCV1
16 and GCV2 were made and sold by Google. There were others made and
17 sold by other companies. I know there was a discussion before Institution
18 about, for example, Universal Cardboard and other different entities that
19 were also out there producing or sort of also providing -- working in this
20 ecosystem with Google, I should say. And then there's also DODOcase's
21 products that it sold at some point. And the emails are the sort of publicly
22 available information that you've given and also Google's confidential
23 information.
24 What I see in there is a lot of different products, some of which
25 might be GCV2, but not all of which are GCV2. And what I'm trying to

1 determine is how do I either, number one, know that GCV2 is the same thing
2 as what you're showing me, or how do I determine how much of the
3 volumes you're showing are attributable to GCV2 specifically?
4 MR. ALEXANDER: Okay. First, just to make sure that we're all on
5 the same page, so Google put out these specifications, like you noted, other
6 manufacturers could sell it. So it wasn't just Google that was selling
7 something that was like the Google Version 2. They were wanting third
8 parties to sell these viewers according to their pattern.
9 Now what I don't think there's any meaningful evidence in the record
10 is that there were a lot of manufacturers that would be part of the Google
11 Cardboard program, such that it would be included in, you know, like on
12 side 100, the over 10 million Cardboard VR headsets. I don't believe that
13 there's any meaningful evidence of record that there were a lot of
14 alternatives that didn't either use the magnetic input of Google Version 1 or
15 the capacitive input of Google Version 2. And now there is evidence from
16 Mr. Buckley, where he testified that after Google introduced the Version 2
17 that used the capacitive input, it quickly became adopted by pretty much
18 everyone in the market because it was such an improvement over the
19 magnetic button that had been used in the Version 1. That's exhibit 1023 at
20 159, lines 7 through 15. And he also gave some additional testimony
21 regarding why the V2 was an improvement over the V1 and, therefore, why
22 it was adopted by the market.
23 But I think that's the evidence of record, is that after the Version 2,
24 the Google Version 2 was introduced, the market very quickly went to that,
25 talking about the capacitive input. So I don't think there's really anything in

1 the record about some third option, you know, be it the magnetic, the
2 capacitive, or something else. I don't think there's anything in the record
3 suggesting that a bunch of manufacturers were out there in the Google
4 Cardboard program shipping some third option.
5 JUDGE DIRBA: Okay. And so maybe another way to try to get
6 closer to the -- or to make sure that we're -- that I'm understanding correctly
7 and to make sure that I've asked my question well enough. Let's assume for
8 the sake of argument that I already agree with you that you've established
9 nexus with regard to -- at least a presumption of nexus with regard to GCV2.
10 And then the question becomes, for commercial success, one of the
11 secondary considerations, or (inaudible) that you're arguing about, you have
12 evidence of the sales of the (inaudible), but there's also some evidence of
13 sales by Google. But in order to be entitled to that presumption of nexus,
14 you need to show me that those sales are related to GCV2 specifically.
15 Right? Otherwise, what you need to show is you need to show that these
16 sales that are Google Cardboard generally, maybe it's GCV2, maybe it's
17 something else, you need to show a connection between -- you need to show
18 a nexus between those and your claims, right? If you're -- it's only the
19 GCV2 that you have the presumption of nexus on, is that right? If that does
20 make sense, can you respond to that?
21 MR. ALEXANDER: Sure. And so --
22 JUDGE McSHANE: And I'm sorry, Mr. Alexander and Judge Dirba.
23 Mr. Alexander, you have something showing that's showing some red text
24 on my screen anyway Could you just move that, move your cursor so we're

1 not seeing that? Thank you. Okay. Sorry to interrupt. I apologize and I
2 apologize if you're going to have to repeat that question.
3 JUDGE DIRBA: I can try to restate it and maybe it will be more
4 simplified, if that would be helpful, or if you feel you understood, Mr.
5 Alexander, I'd like for you to respond.
6 MR. ALEXANDER: So, if I understand you correctly, Your Honor,
7 so we believe that we have put in evidence that Google -- the Google
8 Cardboard program, that shipments went up a great deal after the
9 introduction of the Google Version 2 Viewer. Now, when -- is it possible
10 that some of these 9 million that were sold after the introduction of the V2,
11 is it possible that a handful of V1 Viewers were included in that number?
12 It's possible, but the only evidence of record that I'm aware of is from Mr.
13 Buckley testifying that after Google introduced the V2 Viewer, the market
14 very quickly adopted that almost entirely.
15 And he also testified, you know, what the -- you know, why would
16 he know that? And it's because, well, he was in the market, you know, with
17 DODOcase. And so they were, of course, they were a member of the
18 WWGC program and I think maybe the first member. And so they were in
19 the market, they were selling these things. They were also watching people
20 they thought infringe their patents. So they had a motivation to be watching
21 very closely what was going on in the market. And so I think Mr. Buckley
22 had provided a good foundation for why he was in a position to testify that
23 the market very quickly went to the Version 2 Viewer. And there's no
24 evidence of some third option. So the only evidence of record is that the

1 magnetic input was quickly abandoned after Google introduced the V2
2 Viewer with the capacitive input.
3 Then it goes back to, you know, Google had the opportunity to
4 respond to this, and they would have been the ones who would have known.
5 If there were other manufacturers who were making something other than
6 the capacitive input after the V2 was introduced, they would have been the
7 ones keeping track of this. I mean, they're the ones who produced exhibit
8 1024. You know, so they were watching what the Google Cardboard
9 manufacturers, members were doing and they didn't put any evidence that
10 there was some third option that -- such that a lot of these 10 million, you
11 know, that had been sold, you know, or the 9 billion after the introduction of
12 the Version 2, they didn't put any evidence in that it was something other
13 than the capacitive input, and they're the ones sitting on that information. So
14 if they thought that the evidence that we're providing based on the
15 information available to us, which we believe we have a good basis to say
16 that, look, millions of these were the V2 based on Mr. Buckley's testimony,
17 if they thought that was wrong, they know. They have that information in
18 their databases and they came up with nothing.
19 JUDGE DIRBA: This has been a helpful discussion. I should warn
20 you, Counsel, that you're at 63 minutes.
21 MR. ALEXANDER: So I'm happy to answer any additional
22 questions that you have, but if not, I'll reserve the remainder of my time.
23 JUDGE DIRBA: Thank you.
24 Alright. Mr. Kiklis, my record shows that you have 21 minutes
25 remaining. You may begin whenever you're ready.

1 MR. KIKLIS: Thank you, Your Honor. So, I need to correct my
2 friend. What he said is wrong. There is evidence in the record that there are
3 other input mechanisms out there. Exhibit 2043, page 3, those were the
4 guidelines for a Cardboard-compatible viewer for Version 2. And it wasn't
5 required that you use a capacitive input mechanism. This is discussed in our
6 reply on page 30.
7 And the evidence that -- so the evidence that my friend relies upon is
8 Mr. Buckley, who vaguely said that, you know, most of everything that was
9 out there was capacitive, blah, blah, blah. It's unsupported, it's vague, and
10 there's bias. He's the sole inventor. And in our brief today we provide other
11 reasons why it's biased. It's conclusory. There's no supporting facts.
12 In the deposition of Mr. Buckley, I showed him a long list of all of
13 the WWGC members. WWGC, Your Honors, you may recall in some of
14 our briefing, it was a program called Works With Google Cardboard. And
15 what would happen is if you did various compatibility reasons -- but, again,
16 for Version 2 in the timeframe we're talking about, there was no requirement
17 already used for an input mechanism, and you can see that yourself. But if
18 you had various compatibility things, then you could take -- you could use
19 branding and say that you're part of a WWGC program. There'd be
20 advertising, there'd be marketing, there would be all sorts of benefits, and
21 it'd be listed on their website. And, you know, of course, that turned and
22 Google would refer customers and all that stuff.
23 In Mr. Buckley's deposition, first of all, the public information to
24 which my friend refers, he couldn't tell whether that was Google Cardboard
25 only or whether that was sales of all WWGC members. I think it was sales

1 of all WWGC members. And exhibit 1024, which we produced, it's
2 inadvertent that we didn't cite to it. If you look at our reply brief list of
3 exhibits, to answer something produced at the different District Court, we
4 say that in our briefing. During the editing process, we didn't cite to exhibit
5 1024. He did. And the information that we have on page 30 shows that
6 there was only a 31 percent increase on monthly sales, and all the figures are
7 there for you. That came from exhibit 1024.
8 Also, my friend was incorrect about something. When we showed
9 exhibit 1024, he objected. Patent Owner objected against my declaration, all
10 sorts of issues, et cetera, et cetera. And so we served as supplemental
11 evidence, a declaration, exhibit 1032. With the Board's permission, I will
12 add it to the record, by Mr. Roy Pak (phonetic), who was the development
13 manager at the time, who testified about what these numbers were. So when
14 my colleague, my friend on the other side says that doesn't know what it is,
15 there's no foundation, et cetera, that's not correct.
16 And the main thing here is that I sat down, and let me get back to
17 what I was saying earlier is I sat down with Mr. Buckley and I showed him a
18 -- well, I didn't show it to him. I read through a list of all the WWGC
19 members at the relevant timeframe, and for the most of them, he couldn't tell
20 what kind of an input mechanism they used. So not only is his testimony
21 biased, vague, and unsupported, but he's proven that he doesn't actually
22 know the information. And let me cite the Board to exhibit 1023, page 97,
23 line 14, through page 106, line 15. This is cited in our reply brief at page 30.
24 You know, my friend has also made, you know, various assumptions
25 and presumptions, because we didn't do this, we didn't do that. You know,

1 there are no such presumptions. You know, he's got the burden of proof on
2 various things, certainly secondary considerations. And so, you know, just
3 because, you know, we don't respond to something, doesn't mean that we
4 didn't have an argument. I mean, that's not correct.
5 And then there's the secondary --
6 JUDGE DIRBA: Mr. Kiklis, let me interrupt and ask a few questions
7 about the commercial success, very similar to what I was asking Mr.
8 Alexander at the end of this presentation. So there's evidence in the record,
9 some of it's confidential, and so we'll try to (inaudible) confidential, and
10 some that Patent Owner has put forth about sales by Google of its products
11 within sort of the relevant timeframe. And something that I'm trying to
12 ascertain is -- for this question, assume for the sake of argument that we
13 were to decide that the Patent Owner has shown a nexus for GCV2, but not
14 for any of the other products. How would I take the evidence that we have
15 and determine how much of those sales is related to GCV2 specifically?
16 And could you, you know, if I can ask a two-part question, can you
17 specifically respond to what I understood Mr. Alexander's response to be,
18 which is Mr. Alexander seemed to say Google sales are either Version 1 or
19 Version 2? At that time, they were much more likely to be Version 2. So
20 the vast majority of them -- we can assume the vast majority of those sales
21 are Version 2. Can you speak to whether or not there might be a third
22 category of other products that were not relevant to that? And in your
23 answer, do refer to the exhibits, the evidence, and the records, which
24 (inaudible) can.

1 MR. KIKLIS: Yes. So specifically exhibit 1024, that is the sales and
2 financial information for all of WWGC members. Maybe I wasn't clear
3 before, Your Honors, but that was all WWGC members. And if you look at
4 the evidence that he put forward, the only possible way it would be all
5 WWGC members.
6 And as I'm showing you, exhibit 2043, conductive capacitive input
7 mechanisms were not required for anybody who's compatible with Version 2
8 of Google Cardboard. So we have no idea what everybody was doing. And
9 when I specifically asked Mr. Buckley about every single member of the
10 WWGC program, what input mechanism they had, most of them he didn't
11 know. Or that he said three answers, they were magnetic at some point,
12 (inaudible). When did they change? He had no idea.
13 So there's -- the information here for any kind of commercial success
14 is just completely vague. There's nothing that could nail it down to a
15 conductive capacitive input mechanism. I'm not aware of anything.
16 And furthermore, Your Honor, if I just may continue, sitting here I
17 have no idea when the overlap happened. Was Version 1 where people in
18 WWGC is still selling Version 1 after, I don't know, I think September,
19 October, whenever the guide -- those guidelines came out, August 2015,
20 something like that? I forget what it was. I don't know. I have no
21 information on that whatsoever. It was up to the individual members to, you
22 know, to do what they're going to do.
23 Remember WWG -- so the WWGC program started about a year and
24 a half before -- you can look at the exhibit 1024, and you'll see the first sales.
25 WWGC started around then. It was marketing, it was branding, it was

1 everything else. And you'll see testimony from Mr. Buckley himself about
2 how it helped him.
3 JUDGE DIRBA: So far I didn't hear a response to my question, so
4 let's step back for a second. And I did hear a lot of what you said, and I
5 understand most of what you've been saying, so that's why I want to kind of
6 redirect you and focus in on the very little part that I'm asking about, exhibit
7 20 -- or, I'm sorry, exhibit 1024, is there any way for me to determine from
8 that exhibit what the sales of GCV2 were?
9 MR. KIKLIS: I think it's a relative timeframe, Your Honor. There's
10 no concrete way to do that that I'm aware of.
11 JUDGE DIRBA: So if I understand you correctly, exhibit 1024 does
12 not tell you what the sale of the GCV2 were, correct?
13 MR. KIKLIS: I don't believe it does, Your Honor.
14 JUDGE DIRBA: Okay.
15 MR. KIKLIS: I don't believe -- I think it's all sales. I mean, I don't
16 have it up in front of me, but I don't believe it does. I think the only way
17 that you can come close to approximating that is by timeframe, the date of
18 exhibit 2043. It will take me a second, Your Honor, to find it. Please
19 forgive me.
20 JUDGE DIRBA: And 2043 is the email. And assume for the sake of
21 argument or for the sake of my question, I suppose, but I understand the
22 point that you're making, which is Google had an infrastructure, an
23 ecosystem that it was trying to create. And its manufacturing instructions
24 were, hey, if you want to be part of our ecosystem, if you want to say that
25 you can work with our stuff, then you need to meet these requirements. And

1 the requirements, at least -- and your argument is that the requirements of
2 2043 for V2 did not require this capacitive button. I understand all that.
3 MR. KIKLIS: Yes.
4 JUDGE DIRBA: My question is really on the commercial success
5 piece, really trying to drill down into GCV2, and what evidence do we have
6 of what the sales of those are? And what I heard you to say is that the
7 evidence that Google has provided does not answer that question at all. The
8 only evidence we could have in the record about what those sales are is the
9 evidence that Patent Owner has put in the record. Is that correct?
10 MR. KIKLIS: No. So what I would say is this, that the V2
11 manufacturer's guide is available August 27th, 2015. Okay? That's in
12 exhibit 2043. So beyond that, we did a calculation for our brief, and I think
13 it's publicly reported that Q3 timeframe of 2015 is when V2 started out,
14 okay, August, September timeframe.
15 You know, I'm trying to be precise, Your Honor. Is there an exact
16 date when V1 stops and V2 takes over? It's a ballpark, weeks, that
17 timeframe, I would say. And that's what we based our calculation on, on
18 page 30. There wasn't a specific day on which it happened. I would say the
19 end of Q3 is when that transition occurred. And so for our calculations, we
20 did -- you know, I think we started Q4, which was, I think, put all V2 at that
21 point, Version 2, and then we did the calculations there, so.
22 JUDGE DIRBA: Let me ask a follow-up question to make sure that
23 I'm understanding the world correctly here. So if I understand correctly,
24 there's an ecosystem. Google made some VR headsets that were compliant
25 with this ecosystem. Other companies did as well. So Google products that

1 were made by Google were GCV1 and GCV2. And exhibit -- what was it
2 that you were just talking about? Exhibit 2043 is not about the Google
3 products, the Google sold products. In other words, that's not about GCV1
4 or GCV2. That's about other companies who are selling VR headsets that
5 were compatible with this ecosystem. Is that all correct or am I
6 misunderstanding something?
7 MR. KIKLIS: That is correct. That is correct.
8 JUDGE DIRBA: So my question to you --
9 MR. KIKLIS: Yes.
10 JUDGE DIRBA: My question to you is, and it's a very important
11 question, is I want to know how many GCV2 headsets were sold. Patent
12 Owner says it's put evidence in the record that says that it was approximately
13 on the order of millions. Right? And Google put in the record exhibit 1024,
14 which I thought was Google's response to Patent Owner's evidence. But I
15 heard you to say exhibit -- I can't find the number of GCV2s that were sold
16 by looking at exhibit 1024. So I'm left with just Patent Owner's evidence on
17 that particular question, is that right?
18 MR. KIKLIS: I wouldn't say that, Your Honor. Let me --
19 JUDGE DIRBA: So what evidence do I have if I need to figure out
20 how many GCV2 were sold? (Inaudible) evidence in the record for me to
21 ascertain that?
22 MR. KIKLIS: Yeah, let me take a -- so I think if you look at 1024,
23 there is -- yeah, you can see on 1024 each identified person. Some
24 (inaudible) Google search doesn't mean that was actually Google's product.
25 I don't see -- Google internal order. I mean, Google would be listed here

1 because their sales and all of WWGC sales would be here. And I think you
2 can assume that after -- so starting like September of 2015, any of Google's
3 sales would have. I believe that would be when they had a capacitive
4 (inaudible). I mean, I'm just not 100 percent sure on that, Your Honor.
5 But, you know, the only evidence that Patent Owner has (inaudible)
6 the public information and they have their expert where the information is
7 vague. The best information that I've come across is this spreadsheet. This
8 is the best that I can do.
9 JUDGE DIRBA: And you're saying that if I look at the spreadsheet at
10 10 -- as I said, just to make sure, to totally reiterate, I'm trying to figure out
11 how many GCV2s were sold. And if I look at the spreadsheet for items sold
12 after September of 2015, all of them after 2015? All of them after
13 September 2015 are GCV2s or only some of them are or we just don't know
14 right now? And (inaudible).
15 MR. KIKLIS: Could I be permitted for a one-minute recess? Let me
16 just consult my client, who I can get on the phone in a second and make sure
17 that I get this right. It's obviously very important to you. May I please get a
18 one-minute recess?
19 JUDGE DIRBA: Well, I'll consider that, and we'll continue your
20 argument and then we'll consider that at the end of the presentation whether
21 or not that's appropriate. You can continue.
22 MR. KIKLIS: Just take a second here to review something that was
23 sent to me. Yes. Version 1 continued to sell even after Version 2, after
24 exhibit 2043, August 27. So the numbers reflect both Version 1 and Version
25 2.

1 Some vendors do use conductive capacitive, and I just don't have a
2 (inaudible) Google Version 2 that (inaudible) sold. I have seen it in the
3 public record. I think you can do a Google search, sorry, no pun intended,
4 but I think you can do a Google search and see when they announced it. I
5 don't want to waste the Board's time and do it here, but it's public when they
6 announced it and they started to ship their product as Version 2. I just don't
7 have it at my fingertips, Your Honor.
8 JUDGE DIRBA: Okay.
9 MR. KIKLIS: Did I answer your question?
10 JUDGE DIRBA: Unfortunately, no. But I heard what you said, so --
11 and you have very limited time remaining, so you can continue.
12 MR. KIKLIS: Okay. So what I would like to do in my remaining
13 time is that -- so secondary considerations is obviously so important to the
14 Board. What I want to do is just basically run down what I had said before,
15 which is, first of all, for them to put on a secondary considerations, because
16 secondary considerations case can't overcome a strong prima facie case.
17 And I think that's what we have here. The PO -- the Patent Owner's case is
18 based entirely on the patent's sole inventor who's obligated to participate in
19 enforcement. And I would point the Board to our reply, pages 23 to 24, for
20 another reason for his bias.
21 Now, even if a presumption is warranted, and we're not conceding
22 that it is, it could be rebutted by presenting evidence that it was known. And
23 we've already presented evidence that it was known too through Compton, a
24 conductive capacitive input mechanism was used in Compton, as well as the
25 combination that we put forward.

1 Now, during prosecution, I went through this earlier, Patent Owner
2 admitted to the only concept for the input mechanism that were allegedly
3 novel. That was a portion of the electric shield that touches the center of the
4 touchscreen. For them to put on a secondary consideration case, they would
5 have to show why those features made a difference and drove sales and
6 everything else, and they can't.
7 You know, in terms of more info, these were -- there was a
8 cooperative development going on between Google and DODOcase. Right?
9 Now, consider it. DODOcase is trying to work with Google, is trying to
10 give them encouragement. They're sending them all sorts of marketing
11 information. They're introducing them to Google executives. All of this is
12 in our briefing. And so they're encouraging them. But if you're looking at
13 long-felt need, you know, capacitive conductive input mechanisms were
14 known, and so that fails as a matter of law.
15 And their copying case fails as a matter of law, too, because they
16 compared, for nexus reasons, they compared their product to claim 1. And
17 then under copying, they compared our product, Google Version 2, to claim
18 1. As a matter of law, that fails. They have to take both products and
19 compare them side by side, and they didn't. And even if you did that, if you
20 look at our reply, pages 27 to 28, they're remarkably different. I mean,
21 we've got apillow that swings forward only on the top portion, and they've
22 got this whole, you know, top to bottom electric shield that flexes out.
23 That's all there.
24 And we already talked about this a lot, but there's just no evidence
25 that, for the reasons that I discussed, that a conductive input mechanism

1 drove sales because, number one, it wasn't required. And number two,
2 there's just no way of knowing of all the WWGC members which ones had it
3 and which ones didn't.
4 I have about eight minutes remaining, Your Honor. If there's no
5 more questions on secondary considerations, I'd like to go back to what I call
6 this hyper technical Kondo argument.
7 You know, we didn't take the expert's deposition and we didn't find a
8 declaration or anything to respond, and there's a very easy reason why.
9 Because in their briefing, they attack Kondo. Now, remember, they
10 canceled 41 claims over Kondo. If they were so defective, why would they
11 have canceled so many claims? But they attack Kondo itself. And if you
12 read their briefing, on pages 23 to 25, you'll see they attack Kondo, and they
13 come up with a summary sentence that says, "And, therefore, it would be
14 incompatible with Chu." They never discussed Chu. Right out of the MPEP
15 and the Federal Circuit, you can't attack a 103 combination by attacking
16 individual references. It's the teachings that's --
17 JUDGE DIRBA: Counsel?
18 MR. KIKLIS: Yes, Your Honor.
19 JUDGE DIRBA: You've reached time, but I'll let you finish your
20 sentence.
21 MR. KIKLIS: That's -- well, you can't attack them individually.
22 So with that, I want to thank the Board for their attention to this
23 matter and respectfully request cancellation of all challenged claims. Thank
24 you, Your Honors.
25 JUDGE DIRBA: Thank you, Mr. Kiklis.

1 Mr. Alexander, according to my records, you have 12 minutes
2 remaining in your surrebuttal, and you can begin when you're ready.
3 MR. ALEXANDER: Thank you, Your Honor. I want to respond to
4 the question you asked me about whether we argue that Keller, Petitioner's
5 expert, is not a person of ordinary skill in the art. In our surreply at page 2,
6 the header for section 2 says Keller is not a person of ordinary -- is not a
7 POSA. And there's more discussion there, including a sentence, "Petitioner's
8 expert has no substantive experience with touchscreens."
9 So I'll leave it there unless you have further questions.
10 JUDGE DIRBA: I do have a further question. I did see that in your
11 surreply, which is why I was asking the question. What I didn't see is a
12 corresponding argument in your Patent Owner response.
13 MR. ALEXANDER: Okay. I'm sorry, I didn't understand you were
14 not interested in the surreply. So I'm going to rest on the briefing on that
15 issue as to whether -- as to our position on Keller.
16 JUDGE DIRBA: Okay.
17 MR. ALEXANDER: So I want to respond to, as Petitioner's counsel
18 said, I was wrong about there not being evidence of other works with
19 Google Cardboard members using something other than the capacitive input
20 after the Google Version 2 was introduced. He pointed to exhibit 2043 and
21 said it was -- somebody could have used it. It would have been allowed for
22 at least a period of time. I believe they later changed that and said you have
23 to use the capacitive touch input one way or the other. Initially, it was
24 theoretically possible for somebody to use something other than the
25 capacitive input.

1 But what he didn't provide any evidence of is that anybody actually
2 did that. As discussed in our briefing, Google specifications for the V2
3 Viewer actually showed detailed specifications for the capacitive input
4 mechanism. This is discussed, for example, at exhibit 2004 at paragraphs 51
5 through 54. Exhibit 2062 at paragraph -- sorry, at page 9 discusses the
6 Google specifications for the conductive pillow and the conductive strip. So
7 that's consistent with the arguments that we are making, the Patent Owner is
8 making, that what was actually being used in the market was the capacitive
9 touch input and that is what Mr. Buckley testified to, for example, at exhibit
10 1023, 159 at lines 16 to 25, where he says the products with this capacitive
11 touch button quickly became the most prominent ones once Google
12 introduced that V2 Viewer.
13 And I apologize for bouncing around, but since it's my surrebuttal, I
14 want to address the points that Petitioner's counsel raised. I want to talk
15 about the exhibit 1024. That's the spreadsheet. I had said that they did not
16 provide any explanation of it, and Petitioner's counsel relied on a -- I mean,
17 I'm not sure it's appropriate to reference this in this oral argument, but since
18 Petitioner's counsel did, I want to respond. They put in a supplemental
19 declaration from a Google employee to authenticate exhibit 1024. But that
20 supplemental declaration, which is not of record, it doesn't matter even if it
21 were, because it includes no explanation of what the numbers in exhibit
22 1024 mean. It does not shed any further light on that question of what's a
23 GC1 Viewer versus what's a GC2 Viewer?
24 In discussing exhibit 1024 and the briefing, Google's discussion of
25 its internal sales information, Petitioner's counsel here tried to give some

1 explanation of how those numbers were calculated, but the actual briefing in
2 this matter didn't include any such explanation of the calculations. So I don't
3 think it's appropriately introduced here, even if it made a difference, which
4 we don't believe it did.
5 Petitioner's counsel also tried to explain the increase in shipments of
6 Google Cardboard viewers after the Version 2 was introduced by
7 referencing advertising or marketing. But again, there's no evidence of that
8 sort of thing in the record. That was made in Petitioner's reply and it solely
9 relied on attorney argument, no evidence from any knowledgeable Google
10 person on that topic. So it's not appropriately considered to rebut the
11 secondary considerations argument.
12 There was a suggestion of bias on Mr. Buckley's part. I won't go
13 into the details of why since there's a confidentiality issue, but I will just
14 note that people in a similar position testify in legal proceedings all the time.
15 While the Board will make its credibility determinations, the accusations of
16 bias that -- if the accusations of bias that Petitioner's counsel has made here
17 prevented somebody's testimony from being considered, then we would
18 wipe out a lot of witnesses and legal proceedings in pretty much every
19 proceeding that goes on around the country.
20 So the Petitioner's counsel argued that we have to show that the
21 particular features of the claimed invention around the input mechanism
22 made a difference, you know, in the success of the invention. First, I don't
23 think that's true because we believe we're entitled to a presumption of nexus.
24 But even if it were true, we have submitted evidence that it was that
25 invention around the specific input mechanism that Mr. Buckley developed,

1 that Disney did a success (phonetic), and that comes from Google's
2 employees themselves. I won't bring up the emails again, but they all
3 described it as genius and complimented him, praised him for it. So we have
4 provided that sort of evidence.
5 Finally, the accusation that we somehow inappropriately made the
6 comparison. Mr. Buckley's declaration, exhibit 24, says right out that
7 Google's GC2 copied the DODOcase product. So we did put in evidence
8 that Google copied the DODOcase product. We appropriately provided
9 claim charts mapping the DODOcase product to the claimed invention and
10 the Google product to the claimed invention. That serves to show the
11 relevant copying, so we're focusing on the relevant features. So we don't
12 believe there's anything to that argument.
13 With that, unless the Board has any questions, I will end and thank
14 you for your time and consideration. We ask that the challenges to the
15 claims at issue be rejected.
16 JUDGE DIRBA: Thank you Mr. Alexander. And thank you, also,
17 Mr. Kiklis, for both of your discussions today and your presentations. They
18 were very helpful and very informative to the Board.
19 Are there any final matters to discuss before we adjourn?
20 I will, before asking you that question, I will ask counsel to remain on
21 the line after we conclude, so that if there are any questions that the court
22 reporter has regarding spellings of names or other references, that you're
23 able to answer those.
24 Mr. Kiklis, is there anything final that needs to be addressed before
25 we adjourn today?

1 MR. KIKLIS: No, Your Honor.

2 JUDGE DIRBA: And Mr. Alexander?

3 MR. ALEXANDER: No, your Honor.

4 JUDGE DIRBA: Excellent. Thank you both again for your

5 presentation today. We're adjourned.

6 MR. KIKLIS: Thank you, Your Honors.

7 MR. ALEXANDER: Thank you, Your Honors.

8 (Whereupon, the proceedings at 4:18 p.m. were concluded.)

IPR2023-00707 (Patent 9,420,075 B2)
IPR2023-00708 (Patent 9,811,184 B2)
IPR2023-00709 (Patent 10,528,199 B2)
IPR2023-00711 (Patent 11,093,001 B2)

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