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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,[1]
Petitioner

v.

DODOTS LICENSING SOLUTIONS LLC,
Patent Owner.

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

Record of Oral Hearing
Held: July 12, 2024

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

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

APPEARANCES:

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

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

1:00 p.m.

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

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

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

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

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

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

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

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

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

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

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

any questions they have regarding spelling.

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

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

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

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

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

MR. RENNER: Thank you, Your Honor.

JUDGE FENICK: Sorry. One second.

(Pause.)

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

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

confirming.

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

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

JUDGE FENICK: Okay, thank you.

MR. RENNER: Thank you.

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

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

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

MR. REYNOLDS: Yes.

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

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

JUDGE FENICK: Mr. Reynolds?

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

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

Renner, would you like to reserve time for rebuttal?

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

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

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

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

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

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

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

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

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

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

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

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

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

Those are just getting the NIM to request and receive and generate content. And then an electronic display is where it would put the content and you have processors to perform what's going on.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

these unbounded and flexible enabling fully configurable frames.

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

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

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

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

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

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

JUDGE FENICK: Fair.

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

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

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

We think that by changing or making configurable the position and

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

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

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

JUDGE FENICK: Not for me, thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 engine essentially to turn that data into HTML code. So you're not losing
2 that data. That data actually goes into a structured markup language,
3 HTML, and is now in its form.
4 So Brown's HTML instructions are generated from that data stored in
5 the registry. And most tellingly, we think DoDots offered HTML as an
6 example within the disclosure embodiments that it has in its own
7 specification. You look at their patents, 803, for instance, Column 8, 36-45,
8 it discloses that the HTML is a suitable form for NIM template. And
9 likewise, Column 13, lines 10-13, they even cite the Microsoft publication
10 on DHTML in support of this.
11 And we offered testimony from Dr. Greenspun to reinforce this at
12 paragraph 58. Where he says it's clipped at center here, he says that
13 DoDots's arguments, they can't be reconciled with their own patent as the
14 record is without evidence of any meaningful difference between the
15 relevant aspects of the two languages.
16 We think that speaks both to the construction and the satisfaction of it.
17 As for the construction, it demonstrates that DoDots urge is a construction
18 that would have you exclude its own disclosed embodiments, which is
19 always a danger. And as to the satisfaction by Brown and its combinations,
20 DoDots disclosure confirms that it's at least obvious that the claimed NIM
21 template and distributed data structure featured by Brown's HTML
22 instructions are obvious in view of them.
23 So we think the record is relevant testimony as well and
24 complementary corroborating evidence. And so Slide 44 helps us with that.
25 It shows us the relevant testimony from, for instance, Dr. Greenspun. It was

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

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

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

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

JUDGE FENICK: Not for me, thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 works now or a way you could do it. And additional to that, I've now got I
2 enhanced the teaching. I'm not just filling in that kind of, if you will,
3 implementation gap. I've actually got -- if I'm going to bring Brown in, I'm
4 going to bring in what it's really telling me to do and I'm going to improve
5 things.
6 And so with that, the theory of Brown is you're going to separate out
7 again that template and that content, which is 100 percent applicable, 100
8 percent beneficial to our readers of Brown. And with that, the combination
9 is born. There's a lot more detail to it, but that's at the heart of it. I want to
10 make sure we really got that now.
11 All right. So with that combination, I want to be clear. And if you
12 look back at the petition, we are clear. We go back and looked at it and
13 confirmed it that we're not talking about changing out parts of Brown with
14 implementation details of Wecker. I suppose somebody else. Some other
15 petition somewhere else might do that I don't know where.
16 We weren't talking about that. But we were proposing very clearly in
17 our petitions was Brown's got it. It's got the goods. It does what it does.
18 But what you're going to do is you're going to now understand a little better
19 about the other end of that location, I'll call that conduit. And you're going
20 to understand how to do this. Well, by virtue of splitting those two things up
21 that Wecker dearly holds to its heart to improve bandwidth, stay with Brown
22 otherwise.
23 So we're staying with Brown's. You name the other features we just
24 got done talking about. You'll see that there's confusion sewn in that this
25 conversation about, well, if you bring Wecker's, what is it called. I can't

remember what it's called.

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

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

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

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

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

1 people of skill trying to perform that.
2 Slide 21. With Brown's Figure 4 already focused on downloading
3 desktop icon components, the teachings from Wecker really just qualify
4 Brown's existing disclosure by explicitly teaching the content and
5 downloading the template. And to that extent, it's obvious from Brown or
6 the combination.
7 And Slide 22, as mentioned, Wecker separates template from content
8 to enable updates to time, critical information, those stock tickers that
9 actually names a stock ticker during peak trading, for example. And that
10 was the same example you might remember in in Brown. And that allows
11 maximum efficiency as well as the flexibility and the subscription.
12 Now, Dr. Greenspun, Slide 23 again, is where we -- Slide 22, sorry, is
13 where we are. Dr. Greenspun and Dr. Schmidt before him, they both
14 observed that a POSITA would have been motivated to apply Wecker's
15 theories to Brown and its HTML code segments for really a host of reasons.
16 I'm going to pause in this slide for the second, make sure it's available to
17 you.
18 This is the slide where, really, you see Greenspun testifying as to the
19 host one, two, three, four, five different reasons that would help to motivate
20 somebody if they're thinking about that. And they're in the bold in his
21 testimony up top.
22 One, improve data transfer times, which makes sense. Two, increase
23 usability. Again, make sense. Three, standardize interfaces across different
24 devices. Reduce client side storage requirements. And capitalize on the
25 growing need to display internet content in a customizable way, which

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CEO.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. IN: Okay, perfect. Thank you.

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

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

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

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

MR. REYNOLDS: The same, 10 minutes.

JUDGE FENICK: 10 minutes?

MR. REYNOLDS: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 secondary considerations.
2 And again, I didn't show on here the tech bubble bursting. I mean,
3 that's what did it. It's a six sigma event that but for that goes DoDots. If we
4 go to Demonstrativee 5, in the petition, they rely a lot on these high level
5 compatibility arguments. So both references mentioned Windows 95 or both
6 references mentioned CDF. But if you recall, this is the Y2K era. I mean,
7 we didn't even know that our own applications were going to work
8 overnight.
9 So if you see here a sticker Best Buy had, you put on your computer,
10 you know, to remember to turn it off for the new year. And, you know, as
11 an article here in CNET notices, it took years. Windows wasn't even
12 committing to having Windows 95 fully compliant. So the computers didn't
13 just work together because they mentioned CDF or because they both
14 mentioned HTML.
15 If we go to DoDots 6, it's our pleasure to introduce Dr. Selker. We
16 submit that he is a very credible witness. Sometimes you get experts that are
17 dodgy in depo. I encourage you to read his deposition. He's the complete
18 opposite. So much so that he caught himself complimenting Microsoft.
19 And, you know, Petitioner points this out every time they can. What he
20 really accomplished from Microsoft or what he really said on Microsoft is he
21 complimented what they are trying to do.
22 He mentions that Bill Gates was hoping to kill the browser. And as
23 we'll see in just a second, Bill Gates failed to do that. But he gave a credible
24 response. And I ask you to just please read page 31-36 of this deposition,
25 because it is just a very credible off-the-cuff surprise when he says, look at

1 what these patents did.
2 Yeah, he didn't know about DoDots. Who cares? That's not -- I
3 mean, not everybody in the world has to know about something for it to be
4 famous or successful. But he looked at these patents and he was surprised
5 he didn't think that this was going to work and they made it work.
6 If we go to DoDots 7, this was the internet. And I think counsel
7 pointed to this. I mean, dial-up modems, even computers were using dial-up
8 modems at the time. They were usually working off of like, you know, 14.4
9 kilobit modems. And, you know, that means that HTML files took like 6 to
10 7 minutes on a desktop to render. Then there are these mobile devices. And
11 these mobile devices, this Palm Pilot, this two-way pager, that two-way
12 pager is the exact pager described in Buchholz.
13 These devices were extremely limited capability. They couldn't put
14 multiple fully controllable frames on them if they wanted to. But they're in
15 every obviousness combination in this case.
16 If we go to DoDots 9, this is Petitioner's second expert, Dr.
17 Greenspun. He's talking about prior to 2007. Prior to 2007 introduction of
18 the iPhone, the typical mobile device was ill-suited to rendering
19 conventional web page. Okay. This is -- I think I've identified seven. This
20 is the first fundamental weakness that defeats every ground in the IPRs.
21 There's no reason to combine these references because the structure, they
22 claim they rely on the structure of Buchholz, which is a pager.
23 And Wecker was very concerned with sending the smallest bits of
24 information possible to a PDA, personal data system. But that was the
25 image I showed before. None of the combinations, none of the

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

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

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

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

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

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

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

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

1 That's what makes it possible because if you look at -- Dr. Selker has
2 some great testimony on this. In the '407 declaration, that would be DoDots
3 2010, I ask you to just look at a few couple paragraphs. I think it's 48-52.
4 And he describes how Active Desktop is tied to Microsoft and Internet
5 Explorer. That's tied to the operating system and parts of the operating
6 system. The Dot template wasn't. It's just a data file that can be sent and
7 moved around.
8 And so it's easy to develop. It's easy to share. It's easy to move. It's
9 very lightweight. That is what made these inventions, the Dot template.
10 And you don't need to take my word for it because we've cited in our
11 surreply the testimony of John Kembel, George Kembel, who explained that.
12 And then Dr. Selker, they completely ignored this testimony, but he goes
13 through in his declaration and maps it onto a representative claim.
14 So anyway, I got off a little bit on the side tangent there. But if we go
15 to DoDots 15, these guys became famous for what they did. This is Fortune
16 Magazine. And I want to point out here the date. So it's February 21, 2000.
17 So this is about two and a half years after Active Desktop was released. And
18 they're quoting Bill Gates as saying he wished the browser would go away.
19 So we've got whole publications about how we get this browser to go
20 away years after Active Desktop. The thing is nobody thought Active
21 Desktop made the browser go away. What they did is they hid the box that
22 goes around it. And then they stuck it on the desktop and you couldn't even
23 use it until you closed all your other windows so you could see it. But
24 everybody was still solving this problem in the year 2000.
25 And this recognizes that the winners of people who market on the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

it's a characteristic of the frame. It doesn't say anything about a control. Like, I can resize myself, but that doesn't tell me what the control is, what I need, or how I stretch myself out. So the resizable, you know, that isn't a control characteristic.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

from the template.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TriVascular case. It applies directly to Brown and Wecker.

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

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

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

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

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

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

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

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

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

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

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

1 you know, contains a URL.
2 And so in their reply, I believe, Petitioner uses the word Wecker's
3 subscription model. Wecker uses the word subscribe or some version of it
4 one time. And he's talking about conventional technology that a desktop
5 uses, right? But the point of Wecker is to send files to a mobile device. So
6 it's just this example of just matching terms or making up terms to kind of
7 try to make these things go together. But they don't go together.
8 They also say part of a channel. We mentioned that in obviousness.
9 Wecker doesn't use that term. Brown doesn't use the word channel. The
10 only channel in Brown is in the CDF acronym. And again, that's a very
11 specific thing. HTML instructions are organized by tags, usually separated
12 by those angled brackets.
13 The components in Brown. Counsel mentioned getting these
14 components, the Brown Figure 4. And by the way, Brown Figure 4 was not
15 relied on in any of the petitions. Okay. So and on reply, they only relied on
16 Figure 4 as part of the motivation to combine, based on how similar they are.
17 So this new argument that somehow Brown can get its own, quote-
18 unquote, templates, is a new argument undeveloped. But it's also defeated.
19 I'll get there in two slides. Because the only testimony of record that talks
20 about downloading these individual tags, because what they call the NIM
21 templates are those individual tags that are in the same file counsel went
22 through line by line. So they're the same file. It's called Desktop HTT in
23 Brown. And their alleged templates are separate sets of lines.
24 The only testimony of record from Dr. Selker, who analyzed Brown,
25 and said Brown is absolutely incapable of receiving fragments, lines of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 downloading, rendering as parts of channels. And what we did is slide --
2 DoDots Slide 40.
3 So the terminology here is in no order. It's just stuff we found in their
4 briefing about Brown's disclosure, tags, URLs, CDF file, URLs in them,
5 techniques, subscribing to channels, downloading, implementing, requesting,
6 storing, Wecker's disclosures, and then these reasonable expectations which,
7 I mean, those are just, those are bald and conclusory anyway.
8 And if you just search their demonstrative slides, the only time they
9 mentioned reasonable expectation or predictability is in one that they
10 admittedly failed. And so they're submitting these new arguments on
11 Wecker because they're aware of these issues. But this is just a visual
12 depiction.
13 KSR tells you how obviousness works. And you have an adjustable
14 pedal, which is known. You have a technique, you know, you put the sensor
15 on the pivot point, and then you have a disclosure of that sensor. And then
16 you have a reasonable expectation of success because it's taught of why you
17 put it on there by Rickson and Smith references. That's an elevator speech
18 of obviousness.
19 I mean, there's nothing in this record, nothing that really explains what
20 makes these patents obviousness. It's just all this terminology they rely on
21 all over the place.
22 Okay. So I'm just going to quickly do the fully configurable part. So
23 if we go to DoDots 42, this is how Brown works. They relied on Figure 4,
24 that's how you find a component. When you choose a component, you heard
25 counsel say data is sent to the registry. He's absolutely right. You're not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 That's their sole basis for it.
2 We pointed out on reply that they're different, or on response that
3 they're different. And on reply they say, well, hold on, Buchholz is
4 completely silent on these templates. And their expert says, Buchholz would
5 need more information. Now that's their burden. That was what they were
6 trying to show, that these things were similar. So they've completely failed
7 their burden.
8 On the next slide, DoDots 54, we've shown they don't address view
9 characteristics at all. It's just very cursory. I mean, you can look through,
10 but what they settle on is just accordingly Shimada satisfies this feature
11 simply because it can be -- content can be observed, viewed in the frame.
12 And that doesn't apply to claims.
13 DoDots 55, Shimada is a Hitachi pad. They made servers. Okay. So
14 the important part of Shimada is this screen configuration device which sits
15 on a remote network. DoDots 56, the templates that they found in their
16 search sit on that server. That's why they don't rely on it. They've got to
17 find something else in Shimada, not the actual template.
18 And then on 57, the templates they find, they start piecing, again,
19 different lines or fragments of HTML to claim it's a template. But they're all
20 the end result, the thing that's just a webpage. And I just want to make sure
21 because I think they did something tricky in their demonstrative.
22 If we go back to Slide 53, this quote here, they cut off the part about
23 Buchholz and Shimada being in HTML. And they cut off the part about thus
24 Dr. Schmidt explains. And they started their quote with a POSITA. And
25 they didn't show that they were making 'A' a capital. It's on Samsung 93.

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

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

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

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

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

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

implementation details. We'll go straight --

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

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

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

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

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

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

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

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

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

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

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

MR. RENNER: Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. RENNER: Please.

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

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

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

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

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

JUDGE TROCK: Thank you.

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

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

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

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

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

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

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

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

MR. RENNER: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUDGE OBERMANN: It's where?

MR. REYNOLDS: In the agreed upon construction.

JUDGE OBERMANN: Okay.

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

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

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

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

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

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

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