

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROKU, INC.,
Petitioner,

v.

ECOLINK INTELLIGENT TECHNOLOGY, INC.,
Patent Owner.

IPR2023-00792
Patent 10,692,340 B2

Record of Oral Hearing
Held: August 1, 2024

Before CHRISTOPHER L. OGDEN, STEVEN M. AMUNDSON, and
JASON M. REPKO, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing on Thursday, August 1, 2024, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE REPKO: Thank you. This is an oral hearing for IPR2023-00792. I'm Judge Repko, and I'm joined by Judges Ogden and Amundson. Our primary concern is you're right to be heard, but anytime during this if you have any technical problems with the video hearing where you feel it undermines your ability to represent your client, please let us know immediately. So if there are technical difficulties, please email or call the hearing staff. As soon as we're aware that someone gets disconnected, we'll pause the hearing and we'll reconnect, and then we'll resume at which -- at the point which you believe you're disconnected.

When you're not speaking, please mute yourself. Also, when you do speak, please identify yourself at the start of your remarks so our court reporter can get an accurate transcript. At the end of the hearing please remain on the line because the court reporter may have some questions for you.

Feel free to present how you feel comfortable (inaudible). Also, we have a copy of the demonstratives, so you don't need to share them with us during the presentation by screen sharing, for example. But feel free to do that if you want to.

There are members of the public listening to the oral arguments today. So if there's any confidential information, I don't think there is, but if there is, you need to let us know so we can make sure you don't violate that confidentiality.

At this time, we'd like counsel to introduce themselves and anyone with them. So I will begin with Petitioners.

1 MR. McKEOWN: Good afternoon, Your Honor. Scott McKeown of
2 Wolf, Greenfield & Sachs for Petitioner Roku, Incorporated.

3 JUDGE REPKO: Will you be presenting fully today? Will you be
4 handing it off to anyone?

5 MR. McKEOWN: I'll be presenting. I'm the only one present on
6 behalf of Petitioner.

7 JUDGE REPKO: Thank you. And Patent Owner's counsel?

8 MR. LUKAS: Hi. Good afternoon. James Lucas on behalf of
9 Ecolink Intelligent Technology, Incorporated, the Patent Owner. With me in
10 my conference room is Ben Gilford, but I will be presenting.

11 JUDGE REPKO: Thank you. The hearing order gave each party 60
12 minutes to present their arguments. Since we don't have a clock we're going
13 to look at, I'll time you and try to give you a warning when you have about
14 five minutes remaining. Both parties may reserve some rebuttal time, but
15 you may not reserve more than half your total time unless there's a special
16 circumstance we could bring to our attention.

17 Now, Petitioner's counsel will begin, followed by Patent Owner's. If
18 you have objections, please raise them during your rebuttal.

19 So with that, I'm going to invite Petitioner's counsel to begin. I need
20 to know how much time do you plan to reserve to rebuttal?

21 MR. McKEOWN: Thank you, Your Honor. I'll reserve 25 minutes.

22 JUDGE REPKO: Thank you. You may begin.

23 MR. McKEOWN: I'm going to share my slides here just because I
24 only have so many windows on my computer. Okay.

25 MR. McKEOWN: So Petitioner's demonstratives are on the screen,
26 you should be able to see those.

1 JUDGE REPKO: Yes, thank you.

2 MR. McKEOWN: So, just starting Petitioner's demonstrative number
3 2, we see grounds at issue in this IPR. One is *Lamb* in view *Williams*. The
4 other is *Sharma*. And I'll briefly discuss both of those.

5 But I realize the panel is up to speed on what is a very simple
6 technology here. This is an alarm system. But I'll just briefly walk through
7 the claims, the independent claims that are in dispute here, and the relative
8 embodiments embraced by those claims.

9 So, just starting with Petitioner slide 3, at claims 16 and 11 there on
10 the screen. Claims 1 and 11, claims 6 and 16 will stand up altogether. What
11 I have up there is the method claims. There are corresponding apparatus
12 claims with these same limitations. There's no dispute that these claims are
13 linked. The method claims just so happen to fit on one slide more easily.

14 So, just starting with claim 16, you see a yellow box in the figure
15 underneath the claim. So this is corresponding to the preamble security
16 panel. So, as you can see in figure 1 on the bottom of Petitioner's slide 3,
17 there is a security system that has a central security panel found in that
18 yellow box. We have a red box around sensors of the system. And those
19 sensors as recited up there in claim 16, that would be a barrier alarm device.
20 So, for example, on that window illustrated there in figure 1, on that door
21 would be essentially a read switch.

22 And the way that the system operates, as shown in claim 16, is the
23 barrier alarm device is monitoring that door or window barrier. When that
24 read switch is triggered by moving one of those sensor elements relative to
25 the other and changing that magnetic field, there is a signal created in 2016,
26 and that's called the first alarm signal, which is indicative of that barrier

1 being opened. And once that barrier is open, the next element in claim 16,
2 the central security panel will make a responsive determination.

3 So the language is responding to the first alarm signal by
4 determining whether a human being has been indicated to be inside the
5 premises in proximity to the barrier. And if there is a human in proximity to
6 the barrier, then the central security panel there will, in the next element,
7 start a countdown timer, but it only does so when it is determined that the
8 human being has been indicated to be inside the premises. And then the
9 claim goes on to talk about what happens when the timer expires.

10 And so, just taking a step back at a high level, the reason the system
11 operates this way, as you might have surmised, if you are internal to your
12 home or your business and your alarm is armed for guests and you open a
13 window, rather than triggering an alarm, this system will determine if there's
14 a human inside the premises in the vicinity of that alarm. In other words, is
15 this a potential false alarm by someone that belongs inside the building? So
16 that's the entire idea around this claim, around the system, is the concept of,
17 well, if there would otherwise be an alarm trigger, let's check the human
18 proximity. And if there is, let's set a timer. And that timer will allow the
19 person internal to that business or home to go to the panel, type in a code,
20 and avoid, you know, essentially triggering the security response, which
21 might, you know, call the police, for example. So that's the embodiment of
22 figure 1.

23 Moving over to claim 11, the other embodiment of claim, and you see
24 down at the bottom of the page there a sensor package, essentially. So you
25 see the purple box there is a motion detection component, and then you have
26 the two blue elements, which is that sort of traditional read switch. And so

1 by virtue of having these two sensors in one package, there's also a processor
2 in there.

3 And so going up into claim 11, you will see the barrier alarm device
4 will indicate that it's been opened by virtue of that read switch assembly.
5 There will also be a determination by that red box, that dual package sensor,
6 if there is anyone in the vicinity based upon the input that's coming into that
7 motion detector illustrated by that purple box. And if that is the case, and
8 the processor in that two-sensor package makes that determination, then that
9 package, that two-sensor package, will transmit what's called in that bottom
10 paragraph a timed alarm signal to the central security panel, to that yellow
11 box in the overall system. And that timed alarm signal as described in the
12 claim, initiates a timer associated with the security panel.

13 So on the one hand, on the left-hand side of the page, we have the
14 central security panel itself determining when to start the timer. On the
15 right-hand side of the page, in claims 1 and 11, we have the sensor making
16 the termination to initiate that timer and transmitting the signal to that
17 central security panel to start that time.

18 So those -- that's the basic concept of the claims. Those are the
19 embodiments. Before getting into the prior art, you've probably seen in the
20 Patent Owner's briefing and the Patent Owner's slides, there's a lot of
21 argument about claim construction. So I just want to walk through what are
22 essentially the two main issues that Patent Owner is disputing before getting
23 into the mapping of the prior art.

24 And so the first claim issue relates to that language in claim 16, a
25 first alarm signal that monitors the battery of a premises, the first signal
26 indicative of the barrier being opened. And relative -- so that claim

1 language relative to claim 11, which recites in that bottom paragraph, "a
2 timed alarm signal to the central security panel," so we're transmitting a
3 timed alarm to the central security panel for the purpose of initiating the
4 timer. So the first claimed issue is the Patent Owner is arguing that these
5 two signals are the same. This claim language means the same thing.
6 There's multiple problems with the that argument.

7 First and foremost, the claim language itself is different, right? The
8 first alarm signal is described as being indicative of the barrier being opened.
9 The timed alarm signal in claim 11 is described as being for the purpose of
10 initiating a timer associated with the security panel. So, you know, we have
11 this sort of threshold issue that we know from the Federal Circuit that, well,
12 when claims have different language, right, they're presumed to have
13 different meanings. There's no explanation in the record to overcome that
14 presumption of how these signals could mean the same thing. Nothing
15 whatsoever. And Patent Owner's expert certainly mentions that case law,
16 and then provides no explanation as to how these two very different terms or
17 very different functions could be, in essence, the same signal.

18 And, you know, again, going to the point of the language of the
19 claim, the first alarm signal is indicative of the battery being opened. The
20 timed alarm signal is for starting time with different functions, different
21 signals, you know, different words.

22 Going back to claim 16, even setting aside the different functions in
23 the claims themselves, we also see that the countdown timer is determined
24 by that yellow box, right? So what comes into the yellow box is a signal that
25 a window or door is open. And then the yellow box determines, well, is
26 there anyone in the vicinity, right? On a pole, some motion detector in some

1 sense, see if anyone's in the vicinity. For the timer it's only started when
2 both of those determinations are made. There's no situation where the first
3 alarm signal initiates a timer on its own. It may lead to a timer, depending
4 upon if someone's in the vicinity or not, but it doesn't initiate a timer, and
5 that's what the claim requires.

6 Also, in claim 16, you'll see in that third element, "starting a
7 countdown timer when it is determined that the human being" is on the
8 premises. So that first alarm signal does not initiate a timer. It is the
9 combination of signals as determined by that yellow box that the central
10 security timer will start that timer.

11 I asked the Patent Owner's expert during cross examination how he
12 could possibly interpret these two very different claim terms meaning the
13 same thing. And his testimony was that, well, he would understand claim 16
14 to initiate a timer the minute the first alarm signal comes into the yellow
15 box, and thereafter if there was a determination that someone was in
16 proximity to that open barrier, then the timer would be truncated.

17 I asked him where the support was for that instruction in the
18 specification. He admitted there was not any. And more importantly, that's
19 the exact opposite of what this claim requires. So the countdown timer is
20 only started when it is determined that the human being has been indicated
21 inside the premises. So as to the first dispute, there's just no way to interpret
22 these very different claim terms, very different signals with very different
23 functionality, as both being a timed alarm signal.

24 The second claim issue gets to the meaning of timed alarm signal
25 itself, what you've seen in the petition as well. Timed alarm signal means
26 what the claim recites, which is it is a signal for initiating a timer associated

1 with the central security panel in the alarm system. That's the construction
2 that Petitioner applied to the grounds.

3 Patent Owner doesn't argue that construction per se. You know, they
4 certainly dispute the claim construction, but they more -- they argue mostly
5 in their briefing about what the time alarm is not -- they don't say really
6 anywhere what it is. And primarily their argument is, well, a timed alarm
7 signal is not a bypass signal or a timed alarm signal is not a status signal..
8 But the petition doesn't match the timed alarm signal to either of those
9 signals. So the second claim construction issue is wrapped up with the
10 strawman argument that somehow the grounds of this IPR rely on the bypass
11 signal, which is just not the case.

12 So unless there's any argument on those issues, I'll now switch over
13 to the mapping to the prior art.

14 JUDGE REPKO: Yeah, if you'll tell us about your view of Patent
15 Owner's construction. I guess you're thinking of it as more of an argument,
16 but it's possible, I guess, to define that claim term using a negative
17 limitation, right? It's not a status -- it's not a barrier signal.

18 So, I mean, do you think that Patent Owner is proposing a
19 construction here? Is that how you view it? And if so, I guess maybe this is
20 the second part of the question (inaudible) second part of your presentation.
21 Does your proposed combination still meet that limitation, the negative
22 construction, if you will?

23 MR. McKEOWN: I would say that the Patent Owner -- and I'll put a
24 slide up here in a minute, nut they -- like I said, their construction of timed
25 alarm signal is more taking issue with the Institution Decision. And they
26 argue repeatedly that, seemingly, whatever a timed alarm signal is, it's

1 definitely not a bypass signal. There's no dispute there. We didn't match the
2 timed alarm signal to a bypass signal.

3 They also argue that a timed alarm signal is not a status signal. No
4 dispute there. We didn't match the timed alarm signal to a status signal. So
5 in that respect, the argument about what the timed alarm signal isn't really
6 has no relation to the ground.

7 And I don't know if that answers your question, but maybe if I get
8 into the actual mapping, it will become clear there.

9 JUDGE REPKO: Yeah, maybe I'll ask it a different way. Do you
10 think we need to construe this in our final decision?

11 MR. McKEOWN: I think the construction is what's in the claim. It's
12 the plain meaning, the timed alarm signal starts the timer. I don't know that
13 the Board needs to go beyond that, and that's exactly what the prior art
14 shows.

15 JUDGE REPKO: Thank you. I have no further questions on that.

16 JUDGE OGDEN: Mr. McKeown, this is Judge Ogden. I'm not sure I
17 quite understand Petitioner's argument as to what it positively means
18 because the claim, it contains language that seems to talk about an intent for
19 what the timed alarm signal is used for: for initiating a timer -- was used for
20 the purpose of initiating a timer in claim 11, I believe is how it's phrased. So
21 it seems to be saying what the timer is used for. But how does that fit into
22 these claims specifically? Does it matter what the timed alarm signal is used
23 for? Does that have any relevance to what the claims mean? Or does it --
24 this is just a statement of intent?

25 MR. McKEOWN: Well, you know, in an electrical sense, the timed
26 alarm signal is just like a signal that says do something. Right? It's a

1 control signal. And that's what we explained in the briefing, that timed
2 alarm signal is a control signal that when you transmit it, the central security
3 panel recognizes that control signal to start the timer process.

4 And I don't know if I'm answering your question, but, you know, the
5 debate about what a timed alarm signal is, at least from the Patent Owner's
6 side, is a little bit, I think, academic in that, as I pointed out, it doesn't really
7 have any relation to the grounds. Right? The grounds show the exact same
8 two sensor arrangement. They show a control signal going to a panel, and
9 the secondary reference shows that it was known in the prior art to use that
10 control signal to initiate a timing.

11 So maybe this will become a little bit more apparent as we get into
12 the grounds, but we have given in our construction meaning to that language
13 that, you know, there is a timed alarm signal that is transmitted to the
14 security panel, no one is disputing that, for the purpose of initiating time or
15 associated with the central security panel, only one. So, you know, there is
16 some correlation of the function to the other features of the claim. And as I
17 mentioned, there are also apparatus claims. So whether the timer requires
18 that, you know, whether the timer signal itself needs to embody some special
19 kind of function, I don't know that that's been briefed. You know, we mostly
20 focus on a control signal and what it is doing when it's coming into that
21 central security panel. In the case of the combined prior art, it certainly
22 initiated the timer. So whether or not that language in the claim is given
23 weight or not, we've shown that there is at least a signal transmitted that
24 initiates a timer. So, you know, maybe, like I said, it's more helpful if I
25 jump to the mapping to, you know, draw this out.

1 JUDGE OGDEN: Well, following on that, if there is a connection --
2 and by the way, I recognize there are slight differences between the claims.
3 That claim 11 does seem to have some additional language there where a
4 decision is made based on, at least in part, on the timed alarm signal. I'm not
5 sure something similar exists in claim 1. It just talks about transmitting a
6 timed alarm signal which has a particular purpose, and it doesn't -- the claim
7 doesn't otherwise say what it doesn't otherwise actually require, as far as I
8 can tell, initiating a timer. It just requires transmitting a signal for that
9 purpose. Right? So I'm wondering if a person of ordinary skill in the art
10 would, in the absence of any of any other downstream effects of the timed
11 alarm signal, at least in claim 1, but a person of ordinary skill in the art
12 inferred that maybe the timed alarm signal itself has to contain some
13 functionality that would in some way cause the initiation of a timer signal.
14 For example, would it have specific instructions to initiate a timer signal or
15 something similar to that?

16 MR. McKEOWN: Well, and I guess the short answer is whether you
17 construe the claims to just require transmitting the signal, a timed alarm
18 signal that has some functionality, whether or not it initiates a timer or not.
19 You know, I would submit that the prior art would teach both instances. In
20 any event, there's certainly nothing in the claim to require, for example, the
21 timed alarm signal have a certain flag bit or a certain voltage level that's
22 recognized for initiating a timer. I think one of skill in the art would
23 understand that if there is a control signal transmitted for purposes of
24 starting a timer, right, there's some coordination on the other end of that
25 transmission to recognize that signal. And so if the construction is that there
26 just needs to be a signal that has some recognition on the other end that's

1 relating to timing and the function of initiating the timer is unnecessary. The
2 prior art would be both of those constructions in any event.

3 So with that, maybe it's just helpful to jump into the mapping. So
4 I'm talking about *Lamb* versus *Williams* here first and foremost on
5 Petitioner's slide 5. I think it's noteworthy to understand that *Lamb* is a
6 priority, is in the priority chain of the '340 patent itself. So you see the very
7 same figures, the very same arrangement of sensors, you know, the hardware
8 is all the same. The only thing that was added in the '340 patent was this
9 idea of a timer that's initiated by this timed alarm signal, the way that *Lamb*
10 operates and is borne out in the grounds is *Lamb* (inaudible) bypass signal.

11 So if there's human detection, if there's an open barrier, what *Lamb*
12 said is, well, let's do one of a couple of different things. Maybe we ignore
13 sensors for a while, maybe we disarm the alarm. So there's some options on
14 what to do with that bypass signal. And then the CIP came along in the '340
15 and they added the disclosure of this concept of a timed alarm signal, which
16 you might think of at a high level as just a timed bypass signal, right?
17 Instead of disarming the alarm or ignoring that open barrier indication,
18 there's now this timer and we're looking for someone to, you know,
19 potentially confirm that it is not a real alarm, for lack of a better term. So
20 that's *Lamb*.

21 *Williams* is the same alarm environment. You see the, you know, 17
22 there, the control panel. You see 13, which is that barrier device. You see
23 14, which is the motion detector. And *Williams* explains that it initializes
24 the timer and waits for reception of a code. So this is the same exact idea as
25 20 in the '340 claims. This idea of, well, if we have a barrier being opened
26 and we have someone inside the premises, perhaps they're authorized,

1 perhaps not. Let's confirm that by giving some indication from the person
2 inside. And in this case, it would be entering either a code at the control
3 panel itself or there may be a device that you might be carrying to send that
4 code to the control panel very quickly. So that's what *Williams* teaches in
5 the exact same environment as *Lamb*.

6 And so on Petitioner's slide 6, I would submit that this is probably the
7 most important slide that you will see today because it essentially repeats all
8 of the Patent Owner's arguments because it explains what the actual ground
9 is. So you see a quote there from the Petitioner that page 17 of the petition,
10 so I'll just read it quickly, and it's the top box. "*Lamb* discloses a system,
11 including a barrier alarm device that, in response to determining that a
12 barrier has been opened and a person is inside the premises, transmits a
13 'bypass signal,'" that's how *Lamb* operates, "to a security panel to ignore
14 future alarm signals and/or disarm the system because the detected human is
15 considered an 'authorized person'."

16 So as I said, transmit that bypass signal. We've modified the
17 language shown in that last sentence, it would have been obvious to modify
18 (inaudible) to "instead transmit a timed alarm signal and wait for perception
19 of an authorized code from an authorized device." So that is the ground.
20 We are not relying on *Lamb*'s bypass signal. We're relying on the
21 modification to that control signal as part of *Williams*.

22 And you see the lower most box on the screen explains that
23 motivation explicitly. A POSITA would have been motivated to, this is in
24 the middle of the box on Petitioner's slide 6, "been motivated to verify -- and
25 not assume -- that a potential alarm was triggered by an authorized person as
26 taught by *Williams*." So where the bypass signal has that, you know, sort of

1 security hole, as originally taught by *Lamb*, *Williams* teaches in the TSM
2 sense, in the same environment that there is value, and it's right there on the
3 page, "to enhance security and provide significantly greater personal
4 protection to individuals occupying a secure space by only negating a
5 potential alarm, and also protected while still avoiding false alarms," which
6 is the focus of *Lamb*.

7 So whether it's in a KSR sense of known techniques to improve
8 similar systems in the same way, or an explicit teaching under the old TSM
9 test (phonetic) of enhanced security, still avoiding cross the lines in the same
10 exact context. This is textbook 103.

11 But most importantly, and again, I think this is why this slide is the
12 most important one you'll see today, is that statement on the page of the
13 actual ground. So we're modifying *Lamb* to "instead transmit a timed alarm
14 signal." They wouldn't have to rely on a bypass signal.

15 JUDGE REPKO: Again, stop on that slide. I have a question.

16 MR. McKEOWN: Sure.

17 JUDGE REPKO: It's saying here, I'm looking at the *Williams* box,
18 where you say *Williams* teaches the an improvement "by way of a timed
19 alarm signal". In your reply you say the combined teachings teach a timed
20 alarm signal. And then moments ago, you explained that the timed alarm
21 signal is limited by what's in the claim. The claim says how it's used, and,
22 you know, what the purpose is. So is it that the proposed combination is
23 relied upon to teach and suggest the timed alarm signal? Or is it that
24 *Williams* alone teaches the timed alarm signal, and then it's incorporated in
25 *Lamb*? How do you do view this combination?

1 MR. McKEOWN: So as the sentence in the top box explains, so
2 *Lamb* already has a control signal, which is called a bypass signal. What
3 we're saying is to modify that signal for the purpose of initiating a timer as
4 caught by *Williams*. So William teaches the value of behind the line in that
5 same security environment. *Lamb* already has the control signal that's
6 looking at both the barrier and a motion detection and determining to do
7 something. Right? There's both a barrier open and someone in the vicinity
8 of that barrier. And so we're saying, given that arrangement is there and
9 there's already a signal there, we're saying modify it to -- you know, from the
10 bypass signal to be a signal that's recognized having time or functionality.
11 Whether the claims require initiation or nothing, that ground would need
12 either of those interpretations.

13 JUDGE REPKO: Okay. Thank you. That answered my question.

14 MR. McKEOWN: So just getting to Petitioner's slide 7, you know,
15 the Panel certainly understood what the grounds were. There you see it.
16 Petitioner argues that "a person of ordinary skill in the art would have been
17 motivated to modify *Lamb* to transmit a timed alarm signal in view of
18 *Williams*. So there's no dispute that the grounds do not simply say -- use the
19 language "bypass signal," full stop. Otherwise there wouldn't be a secondary
20 reference, right?

21 But nonetheless, that is essentially most of the arguments that the
22 Patent Owner makes and like I said, it's entwined with the claim
23 construction argument that a timed alarm signal is not a bypass signal.
24 Again, we don't rely on the bypass signal alone for initiating the timer. It's a
25 signal that is modified with teachings of *Williams* based upon the existing
26 control structure as taught by *Lamb*.

1 So that's the *Lamb-Williams* ground. I'll switch over to *Sharma* very
2 briefly, which is a very similar arrangement. You can see on the left-hand
3 side of Petitioner's slide 8, there is a door contact sensor 172. There is a
4 motion contact [*sic*] sensor 174. Right. So we have the door contact and the
5 motion detector, and you see the flowchart on the right-hand side. So when
6 there is both a door open at step 254, there's motion detected at step 256.
7 That will then branch off into a couple of options, one of which is a timed
8 exit mode. And so what happens when *Sharma* enters the timed exit mode is
9 it initiates a timer just like the '340 patent. Just like the combination of
10 *Lamb* versus *Williams*.

11 As explained -- sorry, that was Petitioner's slide 8 if I said it was 9.
12 So now I'll turning to Petitioner's slide 9, a little more explanation of how
13 *Sharma* operates. The signal to enter the timed exit mode is a timed alarm
14 signal because the signal is generated in response to detecting a door open
15 and motion within the perimeter just like the '340 patent does and then
16 continuing on in those steps that I just mentioned. The signal initiates the
17 timer (inaudible) or initiating, you know, associated asks (inaudible) the
18 security panel in the claim.

19 Once again, the ground was certainly understood at Institution. This
20 is Petitioner's slide 10. Petitioner sufficiently explains the term "signal" is a
21 timed alarm signal because it's discussed above. *Sharma*'s system generates
22 a signal and enter a timed exit mode in response to detecting the open door
23 and motion. So the claims require nothing more than starting a timer, at
24 least the language talking about the purpose, whether or not that's limiting or
25 not, again, does not impact these grounds. The claims do not state anything
26 else. The security response is recited separately in some cases. In the

1 dependent claims, it's at least with respect to the timed alarm signal that may
2 lead to an alarm. If an authorization code is not entered at security panel or
3 coming in from a remote, it may not. So the claims, at least with respect to
4 the timed alarm signal, it's just starting. A time of what happens later will be
5 dictated on, for example, user inputs and the like.

6 So maybe it's helpful in just jumping into the grounds quickly. The
7 *Sharma* briefing is very brief. Patent Owner has only made one argument in
8 one page of its Patent Owner brief as to why *Sharma* doesn't meet the claim.
9 So we'll just jump to Patent Owner's slide 43 for this argument.

10 JUDGE REPKO: Before you do that, I just have a question about just
11 something you didn't talk about. I want to make sure you have an
12 opportunity to discuss it. (Inaudible) immediate alarm signal
13 communication in claim 2?

14 MR. McKEOWN: Yes.

15 JUDGE REPKO: Do the parties agree on the meaning of that claim
16 term?

17 MR. McKEOWN: Well, yeah, let me just -- I think the easiest way
18 to explain that is to just go to Patent Owner's slide 11. Maybe we'll do that
19 first, which talks about immediate. So there's Patent Owner's slide 11
20 talking about that there is, you know, there's the language "immediate." So
21 what does that mean? And so if we go back to the mapping made in the
22 petition, so on your screen you see the petition at page 42, you have the bold
23 language up top, which is the immediate alarm signal recitation. And then
24 directly underneath that it states "e.g., when the barrier alarm device detects
25 that a human being is not inside the premises being monitored and proximity

1 to the barrier, the barrier alarm device sends an alarm signal to the security
2 panel that are mapping to immediately."

3 And if you compare that to the patent itself, and so if that patent on
4 the screen, column 7, starting with background line 35, a block 1020, "When
5 the security system is in the (inaudible) home mode in response to
6 determining that a battery has been opened and that a human being is not
7 inside the premises in proximity to the barrier, processor 300 generates
8 immediate launch signal and provides it to the transmitter." That is virtually
9 a word-for-word correspondence with what is meant in the petition. So just
10 again, going back to the petition in the box on page 42, that parenthetical at
11 the bottom identically tracks what was defined in the '340 patent itself as
12 immediate outline statement.

13 JUDGE REPKO: The parties disagree on what is meant by the word
14 "immediately." Like how immediate? And that plain meaning you just
15 showed on that slide, the word "immediately" was emphasized (inaudible)
16 the meaning of that?

17 MR. McKEOWN: There is a statement in the '340 patent itself where
18 I think it explains five (inaudible), but the claim is not that precise. And like
19 I said, the correspondence with the mapping here on the page is identical
20 with respect to the explanation, the broader explanation from the patent itself
21 as to what's immediate. In other words, if there is a barrier being opened
22 and no one is detected inside, there's an alarm. When there's a barrier open
23 and someone is detected inside, there's a delay. So "immediate" is omitting
24 that delay as explained at column 17 of the patent, which I just had up there
25 on the screen.

1 JUDGE REPKO: So I guess it sounds like you disagree because I
2 think that's maybe a little bit different than the way Patent Owner used that
3 term. That the characterization (Inaudible) disagree with the way (inaudible)
4 the word "immediate"?

5 MR. McKEOWN: I don't -- yeah, I don't know that the Patent Owner
6 characterizes it with any specificity other than to argue that the petition
7 doesn't say what "immediate" is. And you know, again, going back to the
8 petition at page 42, it's in the same paragraph. Right? An immediate alarm
9 signal is mapped above and below there's a parenthetical with a direct
10 explanation of that claim limitation, which, you know, again, corresponds to
11 column 17 of the patent which states that an alarm, after a barrier has been
12 opened where there's no one in human proximity, generates an immediate
13 alarm system. So whatever Patent Owner thinks the immediate alarm signal
14 means or could have meant had they decided to claim specific seconds is
15 irrelevant to the claim, which just states "immediate" and which has to
16 embrace the embodiment here at column 17, lines 35 through 40. That's
17 defined as being immediate. And that's our mapping in the petition. So
18 there's no way around that.

19 JUDGE REPKO: Okay. Thank you. You're getting into your
20 rebuttal time.

21 MR. McKEOWN: Sure, and that's fine. So just going back to
22 *Sharma*, as I mentioned, *Sharma* starts a timer based upon the same key
23 sensor input as claimed. There's only one page in the Patent Owner's brief
24 disputing the *Sharma* mapping. And I'll pull that up here in Patent Owner's
25 slide 43.

1 So what they say here on the left-hand side is, you know, essentially
2 we've mapped to the timed exit mode. That is true. And on the right-hand
3 side they highlight but in the timed exit mode, the processor ignores, right,
4 signals that come in once you're in that mode. And what we've explained in
5 the briefing, and this was confirmed by Patent Owner's own expert, is that,
6 well, the '340 patent does the same thing. So when that timer is running, if
7 barriers are being opened, those sensors are ignored. And that was
8 confirmed by the Patent Owner's expert. At exhibit 1012, page 50, right
9 around lines 20 through 21, he said additional signals are ignored.

10 But even had he not said that, the claims don't say or require any
11 special treatment of signals (phonetic) that are coming in once the timer
12 starts. So this is the only argument against *Sharma*. And because the '340
13 patent operates in the same way, there's no way to essentially distinguish
14 that argument.

15 And again, just going back to Petitioner's slide 10. Find it here
16 because I closed it, sorry. Oh, here we go. So just, again, the ground for
17 *Sharma* is that it starts a timer. The fact that the signals are ignored from
18 sensors once that timer is started, that operates the same way as the '340
19 patent. So that's not a distinction. And this also gets back to Patent Owner's
20 argument that, you know, somehow a system where additional sensor input
21 is ignored means that *Sharma* is now somehow teaching a bypass. And
22 *Sharma* explicitly teaches starting a timer. So it's not a bypass signal in the
23 sense of where I'm allowing a timed alarm signal as recited in the claim and
24 sensor operation once that timer started is not only not mentioned anywhere
25 in the claims, but, in fact, the '340 patent operates in the exact same.

1 So just I'll finish up here with a couple of Patent Owner's slides. So
2 going to Patent Owner slide 5, again, you see this argument. "The Board
3 should hold that each of a bypass signal that causes an alarm system to be
4 disarmed is not the 'timed alarm signal' or a 'first alarm signal'." Again, as
5 we know from Petitioner's slide 7, the ground does not map to a bypass
6 signal that causes an alarm system to be disarmed. The '340 patent is also
7 disarmed when the timer is running, by admission of its own expert. So
8 neither one of those arguments is correct.

9 And then, as we pointed out, a first alarm signal is very different
10 from the timed alarm signal. And I think this is illustrated most clearly on
11 Patent Owner's slide 8. So just looking at Patent Owner's slide 8, which has
12 added its own annotations there, on the right-hand side of the screen, you see
13 the Patent Owner highlighting at the top of that figure what a status signal is.
14 And we can see from that status signal in the very next step that a barrier is
15 open and the processor determines that the barrier was open. That is not
16 only the status signal, but that maps directly to the first alarm signal as
17 claimed.

18 If you look down further in the chart, right, the barrier open signal at
19 1002 does not start the timer except 1,000 feet. As I pointed out, the barrier
20 is open. The processor, whether it's at the central security panel or internal
21 to the two sensor package, has to figure out if there's someone in proximity
22 before initiating the timer. That's the entire point of the system. There's no
23 circumstance where a barrier open signal comes in and starts a timer. That
24 would sort of eviscerate the entire point of the convention of, well, let's
25 make sure no one is inside setting off the alarm first before we do that. So in
26 some cases, the barrier open leads to an alarm. In some cases, if someone is

1 internal to the premises, the timer is started. But in no case does a first
2 alarm signal or, in this case, a simple status symbol -- status signal indicating
3 a barrier has been opened, ever start the timer.

4 And then I'll just finish up on Patent Owner's slide 16, which I think
5 shows the efforts to which Patent Owner will go to to create the straw man
6 argument about the petition somehow relying on a bypass signal. So
7 remember I said that Petitioner's slide 7 was all you really needed, you
8 know, to decide this case, the most important, slide you'll see today. And
9 Patent Owner cites to the same portion of the petition with just an
10 incomplete sentence at that bottom left-hand side portion there. So what you
11 see there, and you can compare this to the Petitioner's slide 7, it's just half
12 the statement cut off in the middle of the sentence, and then they underline
13 "transmits a 'bypass signal'" to somehow argue that the ground relies on the
14 bypass signal as being the timed alarm signal. But again, we know from the
15 Petitioner's slide 7 that this is not the case.

16 So there you see on the screen, Petitioner's -- excuse me, Petitioner's
17 slide 6. So Petitioner's slide 6 has the full statement. And you see the entire
18 last sentence was cut off from that box in the Patent Owner's on the slide. It
19 would have been obvious to a person of skill in the art to modify *Lamb* to
20 instead transmit a timed alarm signal. So going back to Patent Owner's slide
21 and the statement that somehow the mapping was to the bypass signal itself
22 is just plainly false. And all of the arguments relating to that intertwined
23 with the claim construction fall based upon the obvious misrepresentation.

24 So unless there's any further questions, I'll reserve whatever time I
25 have for rebuttal.

26 JUDGE REPKO: I don't have any further questions. My colleagues?

1 MR. McKEOWN: All right, let me stop sharing here. There we go.

2 JUDGE REPKO: All right. So it looks like you have about -- you
3 were on for 43 minutes, so 17 minutes left for rebuttal.

4 MR. McKEOWN: Thank you.

5 JUDGE REPKO: Next, I will invite Patent Owner's counsel to begin,
6 and I'll need to know how much time you would like to reserve for rebuttal.

7 MR. LUKAS: I'll reserve 10 minutes, please, Your Honor.

8 JUDGE REPKO: Okay. Sounds good. You may begin.

9 MR. LUKAS: Good afternoon. James Lucas on behalf of the Patent
10 Owner. I'm going to get into some claim construction. I'm going to start
11 with claims 1 and 11. But before I do, I wanted to address some background
12 and some of the points that -- a couple of points that are pretty important for
13 my presentation that Petitioner made.

14 I wanted to reiterate that it is Petitioner's burden to prove that the
15 claims are not patentable and it's also Petitioner's burden to prove prior art.
16 And I think that's going to be kind of important here.

17 There was some discussion by Petitioner that the petition does not
18 map the bypass or status signal to the alarm signals, to the timed alarm
19 signal and the first alarm signal. That's incorrect. I want to just get that out
20 of the way. I'm going to show you that the reason that that's important is I
21 had to like really summarize what Petitioner would like the Board to do is to
22 ignore the claim language, to not construe any of the claims, so that it can
23 argue all of the signals that are mentioned in the '340 patent and in *Lamb* are
24 the same thing, they mean the same thing. And so, you know, don't construe
25 anything. Just let us argue that every signal means the same thing. The
26 problem with that argument is the claims do matter and what they mean does

1 matter and they have to prove that the correctly construed claims render the -
2 - excuse me, that the prior art renders are correctly construed claims
3 unpatentable.

4 So first off, there was discussion about that -- I'm looking at the
5 petition and that's paper 2 at page 17, and this was discussed. This is the
6 motivation, this relates to ground 1 and *Lamb* and where there's a discussion
7 very clearly at page 7 that *Lamb* is transmitting a bypass signal to central
8 security panel 116 to ignore future alarm signals and/or disarm the system
9 because the detected human is considered an authorized person. And there's
10 some citations. And then there's a further statement, it would have been
11 obvious to a POSITA to modify *Lamb* to instead transmit a timed alarm
12 signal and wait for reception of an authorized code from an authorized
13 device as taught by *Williams* to enhance system security.

14 You go further on in the petition and it gets even more clear. I'm at
15 page 39 of paper 2 discussing claim 1, and I'm going to get into claim 1 first.
16 But we're right down in the middle at 1-G. It's discussing the transmission
17 of the timed alarm signal. And they say, "e.g., transmit to the receiver
18 associated with security panel 116 C-1-C (phonetic), a bypass signal. So
19 they are right there reading the timed alarm signal -- reading a bypass signal
20 on the timed alarm signal, right there very clearly. So that was in the
21 petition and that was an incorrect statement.

22 There was also discussions about that status symbol -- status signal.

23 JUDGE REPKO: Before you go on, I just wanted to back up to just
24 what you said. If you go on to the next page, on page 41 of the petition they
25 talk about how it was obvious to modify *Lamb* to transmit a timed alarm
26 signal as taught by *Williams*. So wouldn't you read that as, you know,

1 they're using the word "timed alarm signal" there and they're talking about
2 modifying what they just described in *Lamb*. Is that a fair reading of the
3 petition on 39 and 40?

4 MR. LUKAS: That is, but later on in the reply, it's very clear that
5 they -- and I can get to that, that they say the ground is based on *Lamb*'s
6 control signal. Very clear. Do you want me to go right there?

7 And even if it wasn't, we just heard that the modification is for the
8 purpose of modifying a bypass signal, which is not an alarm signal as we'll
9 get into, for the purpose of initiating a timer. Okay. So really, at very most
10 they're modifying a purpose. It's still the same exact signal. It's still a
11 bypass signal.

12 But I do want to address the reply, which is paper 15 of Petitioner.
13 And at 14 of paper 15, about halfway down, the ground modifies the *Lamb*
14 control signal. I do want to note, to start a timer, control signal was never
15 mentioned in the petition. It was only in response to Patent Owner's taking
16 issue with the fact that they're reading a bypass signal on an alarm signal that
17 they now change the name to control signal in the reply. It's never
18 mentioned also in *Lamb*. So right there, to start a timer.

19 And then if you turn to the next page at 15 of the reply, whether or
20 not *Williams* contemplates status signals distinct from alarm signals is about
21 halfway down, the ground is based on *Lamb*'s bypass signal. It says control
22 signal, but we all know they're reading the bypass signal. So I think that's
23 very, very important. It's going to be important for claim construction. It's
24 going to be important for the invalidity grounds. It's also going to be
25 important because of we don't believe they can prove, if they get their

1 construction, that they can prove that *Lamb* is prior art based on that broad
2 construction.

3 I did want to go to one other place, just to give you an example of
4 reading a status signal or a bypass signal on an alarm signal. I'm back at the
5 petition paper 2 at 47, and it's about halfway down. And now we're
6 discussing claim 6, Petitioner is, and the first alarm signal. And here
7 halfway down, "If a barrier has been opened, then the barrier alarm device
8 transmit a barrier status signal to . . . security panel 116." So there again, the
9 statement that they -- the petition doesn't map bypass or status signals to the
10 alarm signals is incorrect.

11 And now I think that those are the main points I wanted to address
12 from Petitioners opening remarks. And then I'd like to get into claim 1,
13 which I think it was touched on and I enjoyed hearing that it's a -- the
14 discussion that it is an apparatus claim. And we can just put up claim 1, I
15 think that is slide 4. There you go.

16 I think what's really important, and it came up with -- this is an
17 apparatus claim. This is -- and that's very important. And this is an
18 apparatus claim that claims a barrier alarm device. Okay? You can see that,
19 see it right there at the top. And claim 11, which is the other barrier alarm
20 device related claim, also talks about them using or -- the barrier alarm
21 device. But what's really important here is this claim covers only the barrier
22 alarm device and it recites transmitting a timed alarm signal from that barrier
23 alarm device to a receiver of a security panel. It's not claiming the security
24 panel and that's it. Okay. That is very, very important as we get into the
25 claim construction and other discussions about the grounds.

1 I wanted to get into -- and I'm first going to address timed alarm
2 signals and Petitioner's construction. And related to my comments, well,
3 why do we think this construction is wrong? There's a lot of reasons. It's a
4 non-construction. It repeats words already included in the claims. It adds
5 functional and purpose language that's already included the claims, and it
6 never defines what an alarm signal is. So it renders alarm signal
7 superfluous.

8 The reason that's important, and we're going to get into it, it's
9 because the '340 patent and *Lamb*, because it's related, discuss so many other
10 types of signals that are not alarm signals. And so that's really -- that's why
11 this is very important. And I'm going to -- I'd like to just kind of discuss
12 those other signals. There's a lot of briefing, but I think it really helps to
13 give you some context of why we think it's important.

14 First, we think it's important because, as I just showed you, they're
15 using status signals. They're using bypass signals to read on the timed alarm
16 signal and the first alarm signal. So I think it's important for that. They
17 have to be different things. Okay. But let me get into that really quickly.

18 Status signal is not an alarm signal. I think that's the most important
19 thing I wanted to bring up here. It's -- and if we can go to -- if we can -- just
20 briefly exhibit 1001, which is the '340 patent. I'm at column 11 and about --
21 I think it's 39, and it's discussing status signals, but it's very clear that a
22 status signal just notifies or indicates when there's a state -- a change in state
23 of one or both of the devices, the human detection or the barrier status
24 device. That's what a status signal does. It only tells you whether there's a
25 change in state, status, condition, et cetera. That's important. That's not an
26 alarm signal.

1 And then I also wanted to get into bypass really quickly. I'm back at
2 the exhibit 1001, which is the '340 patent, and I'm at column 8 and I think
3 it's at 23 through 26, where it's very clearly defining the bypass signal is an
4 instruction to central -- the remote location 116 to ignore future alarm
5 signals generated by the barrier alarm device or to disarm the system. So a
6 bypass signal is not an alarm signal. I mean, it even says there in the
7 definition, it's ignoring future alarm signals. So it can't be the same thing as
8 alarm signal. So that's a bypass signal according to the '340 patent. That's
9 important. Those are not alarm signals.

10 Okay. We asked -- well, I want to get to the last signal would be a
11 signal to disarm the entire system -- entire alarm system. That's also not an
12 alarm signal because if the system is disarmed, it can't alert, it can't provide
13 security response. I think that's obvious. That's common sense. So it's also
14 -- an alarm signal is also not a disarming signal or a signal to disarm the
15 system.

16 JUDGE REPKO: I just want to stop you there for a moment.

17 MR. LUKAS: Yeah, sure.

18 JUDGE REPKO: So in your construction, is this a negative claim
19 construction? Like a barrier, it's not a barrier, it's not a status signal, it's not
20 all these other signals. Is that your proposed construction for this or is it
21 more just like Petitioner was arguing the plain meaning and the claim itself
22 defines how that signal is being used for the purpose and all of that? So how
23 should -- how do you propose the Board treat this in their final decision? Do
24 we need to, you know, analyze it under its (inaudible) in the way that you
25 argue has this negative limitation?

1 MR. LUKAS: Well, to be clear, I think it's -- I can respond to that.
2 We made clear -- I would generally agree negative limitations are not
3 preferred. I think the Board is aware of that. That being said, the reason we
4 brought that up is we wanted to bring the Board, I guess, to a position where
5 it could see that the petition was relying on signals that couldn't meet what
6 an alarm signal is. I think that's first and foremost.

7 And then secondly, the Board -- because we have a dispute on the
8 construction, we do have to define it and we do have to define what alarm
9 signal is. In the context of like a timed alarm signal, if you ask me, I did
10 this, it's a signal that has to indicate an alarm condition exists and that a
11 security response, or an alert is what Petitioner used, should be triggered
12 after a period of time, if not canceled. I think that's probably our best
13 definition. But it also cannot be a status and it cannot be a bypass and it also
14 cannot be a signal to disarm the system. It has to indicate an alarm condition
15 exists and that there's a security response that will be triggered in the case of
16 a timed alarm after a period of time, if it's not canceled. It has to give
17 meaning to what alarm is because we have all these other signals that are not
18 alarm signals in the '340 patent.

19 JUDGE REPKO: Does the claim itself kind of capture that meaning?
20 So, for instance, let's just say we disagree with you about whether Petitioner
21 is mapping it to a bypass signal or not or some of these other signals. And
22 we want to try to resolve the meaning of the term "timed alarm signal." The
23 claim already recites that it is for initiating a timer associated with the
24 security panel, and then later on, which I think your slide here is admitting,
25 is the processor. The processor limitation also, you know, discusses the
26 signals as well and how it's being used in the context of the rest of the claim.

1 There's a response to the barrier status detection device. It's been opened
2 and then it transmits the timed alarm signal to the receiver only when it's
3 determined at the human detection device. So, I mean, there's already a
4 purpose and the use recited in the claim. So what more do we need to add
5 to that under your view of the meaning of "a timed alarm signal," that term?

6 MR. LUKAS: Yeah, so let me respond to that. That's a great
7 question. So I believe that it does have to be defined. I think we have a
8 disagreement, both parties have a disagreement of what it means. I don't
9 think -- like we're looking at claim 11. I don't think this defines what a
10 timed alarm signal is. I think this is generally providing some purpose or
11 function language, but that's it. It's not telling you that this is a specific type
12 of signal that is notifying you that there's an alarm condition and that a
13 security response should be triggered if it's not canceled. That's what an
14 alarm signal is, and I think it does have to be defined. Just repeating the
15 function language that proceeds -- that follows it is not enough. We have to
16 actually talk about what this structural signal is. And I think that would be
17 my response to why we have to actually define that term or limitation, the
18 timed alarm signal.

19 As we're going to get into, this function language has no patentable
20 weight, also. But I think the term needs to be construed because there is a
21 dispute and because the '340 patent talks about so many other types of
22 signals. And this claim and the other claims we get into specifically claim a
23 type of signal that's discussed in the '340 patent over other types of signals
24 that are discussed. So it has to be construed.

25 JUDGE REPKO: And I'm looking also at claim 12, you know.
26 Thinking about that dependent claim 12. I wanted to bring up the

1 notification of and the notice. Claim 12 seems to kind of capture that a little
2 bit, doesn't it? I mean, we have the security response there. It causes a
3 security response. So if we need that limitation about notification, if we add
4 that limitation to claim 11, how do we reconcile that with the language of
5 claim 12, which expressly discusses that security response?

6 MR. LUKAS: Well, I think 12 depends on 11, right? Yes. And so
7 the difference is here, this is immediate. So this is an immediate security
8 response, immediately notifies you that an alarm condition exists. What
9 happens in 11 is it's saying there's an alarm condition, but you have time to
10 cancel it, so there wouldn't -- so there doesn't have to be a security response.
11 That's the way I would respond to that. Whereas in 12 you don't have time,
12 it's immediate. You have to -- an alarm signals, a security response signals.
13 So I think that's the big difference. Whereas in 11 you're still talking about a
14 timed alarm signal. So something is being -- a signal being sent notifying
15 you or indicating that an alarm condition exists and that a security response
16 will be triggered if it's not canceled. So that's how I reconcile it.

17 JUDGE REPKO: So you do see the concept of a security response to
18 be in claim 11, to be covered by claim 11. Claim 11 is limited to a security
19 response. Even though it's not expressly recited, the term "alarm signal"
20 requires a security response in some way. The signal must be part of --
21 excuse me, the signal must be connected to a security response.

22 MR. LUKAS: Well, yeah, because I think the reason it's discussed in
23 12 is because it's immediate. It's telling you it's happening right now.
24 You're getting a security response in 11, and in 1 it's a timed alarm signal.
25 So it's saying there's an alarm condition, but you have time to cancel before
26 the security response is triggered.

1 The point, though, is, and I think you're -- they're both alarm signals.
2 And so -- and I'm going to get into this, but I believe, and I think I heard it
3 from Petitioner, there is no dispute that an immediate alarm signal is defined
4 as, you know, an alarm condition exists. The signal's telling you an alarm
5 condition exists and there must be an immediate security response. I think
6 that's -- and I heard the questioning. I don't think there was a clear answer.
7 But I did get that Petitioner did say an alarm sound, another word for a
8 security response happens basically immediately. So I did hear that from
9 Petitioner. And I think Petitioner does not dispute, and I know the Board
10 talked about it when discussing with Petitioner, does not dispute our
11 construction of immediate security -- excuse me, immediate alarm. And so I
12 think, again, you have to have consistency across, you know, alarm signal
13 and -- you know, alarm signals and all the different claims. I think they have
14 to talk about an alarm condition. There is some difference, as we just got
15 into, about when that security response happens.

16 JUDGE REPKO: Thank you. I have no further questions on that.

17 MR. LUKAS: Okay.

18 JUDGE OGDEN: Mr. Lukas?

19 MR. LUKAS: Sure.

20 JUDGE OGDEN: This is Judge Ogden. I was just wondering, maybe
21 you could help me understand what the structural difference in claim 1,
22 which is directed to a device, as you know before, what's the structural
23 difference in the transmitter in this claimed barrier alarm device? If you
24 send a timed alarm signal versus if you send some other signal in some other
25 format, it's interpreted a different way. What difference does that make to
26 the structure of the recited transmitter?

1 MR. LUKAS: I would say the structure is the same. I think the
2 transmitter is the same, and I don't think there's any disagreement on that. I
3 think the signal is the same. I don't think -- I don't know if I fully understand
4 your question, but you're saying we're talking about claim 1 and what's the
5 difference as to -- I guess maybe -- are you asking whether the transmitter
6 has to be different to send different types of signals? Is that what you're
7 asking?

8 JUDGE OGDEN: What I'm saying is that for the worst (phonetic)
9 timed alarm signal, for the content of the timed alarm signal to have any
10 structural relevance to claim 1, so that it has any patentable weight, doesn't
11 the structure of the transmitter have to be different depending on what type
12 of signal you're sending? And if so, you know, what is that structural
13 difference?

14 MR. LUKAS: Yeah, I don't know if that's -- I don't think the
15 transmitter has to be different. I think what happens is it's -- the way I
16 would believe it goes is there's different things maybe put into the signals
17 that are interpreted at the other end, you know, by the, for example, the
18 security panel or something else later down in the alarm system. I don't
19 think that -- I think the transmitter can likely send multiple different types of
20 signals. I don't think that's off record, but I think that's my belief.

21 JUDGE OGDEN: And then what does it matter what the content of
22 the signal is, you know, whether it's a timed alarm signal or, you know, any
23 of the other types of status signals, any of the other types of signals that
24 we're talking about?

25 MR. LUKAS: Well, because --

26 JUDGE OGDEN: (Inaudible).

1 MR. LUKAS: Yeah, because I think this claim is specifically saying
2 it's a transmitter for transmitting a timed alarm signal other than other types
3 of. That's what it is. It's transmitting a timed alarm signal. That structure --
4 the structure is the timed alarm signal, also. It's not just the transmitter. The
5 claim is claiming all of that. There is functional language in the claim, and
6 we'll get into that. But those two items, the transmitter and the timed alarm
7 signal, I would say are both structural elements that need -- and that's why
8 we need to define them. The signal has to be defined. It has to be defined as
9 to why it's different than a status signal and a bypass signal. I hope that
10 answers your question.

11 MR. LUKAS: Well, it seems -- this seems a little bit arbitrary
12 because, you know, whether something's interpreted as a timed alarm signal
13 by some other unclaimed part of a system, you know, you could send a
14 signal, any type of signal it seems like, as long as the other part interprets it
15 as a timed alarm signal. Right? So does it really matter? You know, say it
16 comes -- arbitrary set of bits. Does that have any relevance to the structure
17 of this claim here? That's what I'm trying to get at.

18 MR. LUKAS: Yeah, I mean, I think it would -- there would be
19 specific, yeah, components that make it a timed alarm signal. I agree with
20 that. I mean, I think you said, what does it matter? I mean, my first answer
21 is it matters because it was claimed. It's in the claims. It's a specific claim
22 element. They didn't claim status signal, even though that's all over the '340
23 patent. They didn't claim --

24 JUDGE OGDEN: Sometimes claims include statements of purpose or
25 intended use, and we regard those often as not having patentable weight.

1 MR. LUKAS: I agree with that and I'm happy you said that. I agree
2 with that. I don't think this is -- timed alarm signal is not a purpose element.
3 It's a specific type of signal. And I mean, I think you can just go to the '340
4 patent and read all about the different signals that they talk about. They all
5 have specific structures and they're all different. And I think that's why we
6 think it shouldn't be that any signal can mean anything. I mean, it has to --
7 they specifically, the Patentee specifically claimed a timed alarm signal
8 instead of claiming other types of signals. I think that would be my
9 response.

10 JUDGE OGDEN: Thank you.

11 MR. LUKAS: Okay.

12 JUDGE AMUNDSON: This is Judge Amundson. I had a follow-up
13 question on that. It seems to me, and you can correct me if I'm wrong, but in
14 the context of the '340 patent, a signal is a signal. There's no real structural
15 differences among the signals. What's different is their names that denote
16 their functions. Do I have that right or am I off base there?

17 MR. LUKAS: Well, I mean, I don't really -- there's pure functional
18 language and then, I mean, I think there's also, like, when I talk about our
19 construction, I mean, what is it? It's indicating something. The timed alarm
20 signal is indicating something. It's indicating you have an alarm condition.
21 I think that's -- I don't know if that's necessarily -- I don't look at that as
22 functional language.

23 Now, do I look at -- there's some other language here. For initiating
24 a timer associated with the security panel, I think that is functional language.
25 But the specific -- as we went through, each of those signals have specific, I
26 would call them more structural meanings. And so I don't necessarily agree

1 that they all mean the same. I think you said they might just have different
2 purposes. I mean, I think this is a claim -- this is an apparatus claim and it's
3 talking about a specific type of signal. And I think it needs to be defined.

4 JUDGE AMUNDSON: All right, thank you. I think I understand
5 your point.

6 MR. LUKAS: Okay. I do want to go through, and just to wrap up
7 the section about status versus -- and, you know, kind of we keep coming to,
8 we discussed this with Petitioner's expert, and I think this is kind of -- there
9 was reference to a POSITA, and we discussed it with Petitioner's expert.
10 This is exhibit 2004. I'm going to run through really quickly.

11 On that 111, 10 through 13, and there's a discussion of *Lamb* signals,
12 which is obviously related to the '340. And the question is talking about
13 barrier status signals and human status signals. And Petitioner's expert said
14 it's not an alarm signal. It is different than a barrier status signal and it's
15 different than a human status signal, right there. So that's a discussion of
16 *Lamb*.

17 But I wanted to get into -- I wanted to get into the '340 patent. And
18 we -- again, discussing with Petitioner's expert, I'm at exhibit 2004, page
19 126, and I'm at lines 1 through 6. And the question was, "It's your
20 understanding that in accordance with the '340 patent," this kind of exhibit
21 1001, this relates to the last question, "that a barrier status signal and a
22 human status signal is different than an alarm signal?" Petitioner's expert,
23 one of the skill in the art, "Well they're different terms and they appear to
24 have different meanings."

1 And then we go on at lines -- page 126, lines 12 through 15. "Is it
2 your understanding that in accordance with the '340 patent the alarm signal
3 has a different meaning than the bypass signal?"

4 "Yes."

5 That's just an example. There's a bunch of other quotes from the
6 Petitioner's expert where he makes very clear that they are different
7 elements. Different elements. So I wanted to show you that.

8 And I think just to conclude that if Petitioner's construction is
9 adopted, and that's on slide 6 again for Patent Owner, status, bypass,
10 disarming signal, they'd all be included in this definition and everything the
11 patent -- the '340 patent talks about will be thrown away. This is a claim
12 that is specifically directed to a timed alarm signal. That is mentioned
13 numerous times in the specification and it needs to be construed by the
14 Board correctly. Right.

15 And then I just wanted to -- because there was discussion of -- and
16 this is addressed and it's kind of a way to conclude on Petitioner's
17 construction at paper 19, which is Patent Owner-certified, at page 8 through
18 12, Patent Owner gets into this, and I wanted to just talk about this because I
19 think it's really, really important for the Board to consider this. It is also
20 Petitioner's burden to show that *Lamb* is prior art. The '340 patent, the
21 patent at issue, is a continuation in part of *Lamb*. And if the Board finds that
22 this -- the construction of Petitioner is right, then everything is -- in claims 1
23 and 11 and 2 and 12 is included in *Lamb* and there's no new matter in the
24 '340 patent and *Lamb* is not prior art. And I wanted to just address that
25 really quickly at --

26 JUDGE REPKO: I think they said the timer was (inaudible).

1 MR. LUKAS: Excuse me?

2 JUDGE REPKO: With respect to *Lamb* (inaudible) to the '340
3 patent. We heard from Petitioner that they felt the timer aspect was added in
4 the continuation (inaudible). That's the difference. That seems to be what
5 (inaudible) their whole (inaudible).

6 MR. LUKAS: Yeah, so let me get through this. They do say that, but
7 the problem is claims 1 and 11 don't talk about the timer. They're limited to,
8 as we said, they're limited to the barrier device. And I think that's why they
9 kind of -- one of the reasons they really avoided that in that presentation,
10 claim 1 is -- if we go back to claim 1 -- well, let me just show you.

11 Right there at slide 4, claims -- claim 1 is limited to a barrier device.
12 Okay? What is in the barrier device? Okay? So at claim 39 -- excuse me, at
13 slide 39, we go into, you know, remind the Board about the burdens on prior
14 art. And I'm just going to go quickly here. And then we look at the
15 construction of Petitioner's and we get rid of all the purpose language that
16 the Board -- I was kind of -- I enjoyed hearing that doesn't have patentable
17 weight, and I agree with you. I agree with everyone. It doesn't. So you're
18 left with a signal and an alarm system. And I don't think there's really any
19 dispute that *Lamb* has a signal and alarm system.

20 Petitioner argued all throughout the petition and the reply that *Lamb*
21 discloses all the structural components of the barrier alarm device,
22 everything. That would include the sensors, the signal generation
23 mechanisms, the transmission mechanisms. And that reply, that's at paper
24 15 at 10; the petition, paper 2 at 13. So there's no dispute. I heard it again
25 that the timer was the only thing added by the '340, but the timer is not in
26 claim 1 and 11. Okay? It's not. And so they're -- so my point is, if you go

1 with their construction, they can't prove -- they basically argued themselves
2 out of the PTAB here. They can't prove that *Lamb* is prior art because it has
3 a signal and alarm system. Okay? They never -- and, you know, there's our
4 basis.

5 Same core features. Again, we use *Lamb*'s signal, not *Williams*.
6 Reply at paper 15, page 15, they're using the ground is based on *Lamb*'s
7 signal. So, therefore, if you go with their construction, *Lamb* cannot be
8 shown to be prior art. It has that. And that's all in our -- that's laid out
9 clearly in our surreply 8 through 12. And that provides another wrinkle. I
10 think it comes down to either they can't show claims 1, 2, 11, or 12 are
11 invalid and unpatentable based on *Lamb* because it's not prior art or the
12 (inaudible) provides, you know, Patent Owner's construction, the correct
13 construction, and they can't show it under the correct construction.

14 I want to get into -- how much time do I have?

15 JUDGE REPKO: You're about 36 minutes into the arguments here.

16 MR. LUKAS: Okay. Thank you very much. Appreciate it. Yeah, so
17 just at slide 40 of the Patent Owner's, they're not proposing modification,
18 anything in *Lamb*'s sensor transmission or anything like that. It's just all
19 they're proposing is that it initiates a timer. It's still the same signal. And if
20 you go with their construction, *Lamb* cannot be prior art.

21 So I wanted to get into Patent Owner's construction, a timed alarm
22 signal. I want to focus again on claims 1 and 11 and both the grounds that
23 relate to that. We talked a little bit about what we think is the correct
24 construction. Again, it can't be a status signal. For a timed alarm signal, it
25 can't be a status signal, it can't be a bypass signal, it can't be a signal to
26 disarm the entire system. It has to be a signal that indicates an alarm

1 condition exists and that a security response should be triggered after a
2 period of time.

3 And I think there was a question about, well, about alarm signal and
4 the security response issue. And if you look at slide 5, there's a quote from
5 exhibit 1001 at 6, 5 through 10, and I'm interested in the later part, but it
6 says, "The timed alarm signal allows an authorized user to open a monitored
7 door," whereupon a timer is started "giving the person a fixed time period in
8 which to cancel a security response" by the security panel. So, again, a
9 security response was initiated and it can be canceled within a fixed amount
10 of time. I think that's consistent with our construction.

11 And then we touched on this briefly. At slide 11 for Patent Owner
12 we discussed how we proposed that the meaning of an immediate alarm
13 signal is an alarm signal -- is a signal "that instructs the security panel to
14 initiate a security response immediately." And that's it. That was never
15 rebutted, undisputed by Petitioner. It sounded like Petitioner agreed with
16 that again today. I think he just switched "alert" -- or instead of -- used
17 "alert" instead of "security response." But the point I want to make again
18 here is if an immediate alarm signal has to initiate a security response
19 immediately, then the other alarm signals need to discuss the initiation of a
20 security response.

21 JUDGE REPKO: Can you clarify that for me? So the immediate
22 alarm signal instructs the security panel to initiate a security response. The
23 timed alarm signal in your view also instructs the security panel to initiate a
24 security response, just not immediately?

25 MR. LUKAS: It --

26 JUDGE REPKO: (Inaudible).

1 MR. LUKAS: Yeah, I would -- the one thing I would add is, and it's
2 not clear from this construction, is I think it has to indicate an alarm
3 condition exists for immediate and to initiate a response immediately. With
4 respect to the timed alarm, it would be that it's -- an alarm condition exists, it
5 has to indicate that, and that a security response should be triggered after a
6 period of time if it's not canceled. And I think that's consistent with the '340
7 patent at Patent Owner's slide 5.

8 JUDGE REPKO: Okay.

9 MR. LUKAS: And, I mean, that -- you read right there, it's saying
10 you have to initiate and a secure response should be triggered if not
11 canceled. So that's -- that would be our construction and where we -- you
12 know, how we reconcile those two.

13 JUDGE REPKO: And then in claim 13, it says generating and alert
14 when the timed alarm signal is transmitted, okay, and then the alert
15 indicating that a security response will be initiated. So here we're also kind
16 of incorporating this aspect of indicating a security response being initiated.
17 But you're saying that's just -- it's kind of redundant in a way.

18 MR. LUKAS: Yeah. So an alert is different. I know it's been used
19 interchangeably with a security response. But here, this is something that
20 they're talking about. It can be a visual alert, an audible alert, whereas the
21 security response is, I guess, what creates -- what's the word? Your security
22 response is different as well. Yeah, like calling the police or something like
23 that. So this is something that maybe an alert is different than a security
24 response. And I think that's, I mean, that's borne out from the claim, too,
25 that they have different meanings.

1 JUDGE REPKO: Well, yeah, the alert's different from the security
2 response here or indicates a security response. But what about the alert and
3 then the timed alarm signals? Right? You have a -- the alert indicates that a
4 security response would be initiated unless that condition happens. Right?
5 So there's some relationship here or maybe overlap is a better word?

6 MR. LUKAS: No, I think there's --

7 JUDGE REPKO: (Inaudible).

8 MR. LUKAS: It's consistent because, look, what's happening is now
9 you just have a -- you have a dependent claim that's saying, look, not only
10 are you saying you're going to -- there's an alarm condition and a security
11 response will be initiated if you don't cancel it, but along with that, you're
12 getting an alert. You're getting an audio -- audible or visual alert, too. And
13 it's kind of keying it off of the alert now versus, you know, the earlier
14 claims. That's all it is. It's just dependent claiming where they're adding
15 additional features. And this time we're adding an alert, but it's consistent.
16 It's very consistent with claims 11, 12, 1 and 2.

17 JUDGE REPKO: Okay. It's consistent, but it's also further limiting
18 because you're saying the alert indicates -- it doesn't really say anything
19 about audio or anything like that. It just talks about it in terms of security
20 response. So to answer my question I want to know what it's limiting the
21 claim to. How is it limiting the independent claim?

22 MR. LUKAS: Well, this is a claim that's adding the feature of an
23 alert. So it's still consistent. And I agree with you, it does, it repeats some
24 of the language, but it's adding the feature of an alert. It's saying -- so I
25 guess you could send a timed alarm signal and you could -- there might not
26 be anything that goes along with it in the earlier claims. Now -- when that's

1 sent. Now when you're sending that, you're also getting let's call it a beep or
2 a couple of beeps or something like that. That's what the alert is. That's
3 what's being added at 13.

4 JUDGE REPKO: Well, the claim 13 is not reciting a beep. It did say
5 generating an alert and the alert initiates -- indicates that a security response
6 has been issued, which is what you're saying the timed alarm signal does in
7 part, at least. And the immediate alarm signal also incorporates that concept.

8 MR. LUKAS: Well, I mean, we mostly talked about --

9 JUDGE REPKO: (Inaudible).

10 MR. LUKAS: No, we mostly talked about timed alarm. Timed alarm
11 at my construction that I've given you is that it notes an alarm condition
12 exists and says that a security response -- indicates that a security response
13 will be triggered after a period of time if it's not canceled. This is still
14 consistent with that, but it's adding the alert and tying the alert to the security
15 response. That's it.

16 JUDGE REPKO: Okay. So the alert necessarily isn't expressly
17 defined only in terms of what it indicates or when it's triggered or generated.
18 The term "alert" has an other meaning in audio or other things that we're
19 going to read in some specifications here.

20 MR. LUKAS: Yeah, you will find it. And I can -- and you also will
21 find the experts talk about this, too. But it's another term. It's different. It's
22 just like -- it's just an additional claim to, hey, maybe there's a voice that
23 says, you know, the alarm might go off in a certain amount of time. It could
24 be something like that. That's the alert. So, it -- but it is consistent the way I
25 read it. But, yes, that's good question, though. Yeah.

1 JUDGE REPKO: Yeah. I mean, the way you're looking at claim 1
2 and claim 11, and there could be an argument here that the timed alarm
3 signal is really just for initiating the timer. It doesn't indicate anything else
4 other than just initiating the timer, and that's its sole responsibility. And the
5 timed alarm is really just, you know, captured in that.

6 Okay. I guess the way you're arguing, you don't view the claim in
7 that way. You've always got concepts like security response and these other
8 things kind of further limiting a timed alarm signal that aren't necessarily
9 recited in claim 1 and 11.

10 MR. LUKAS: I would -- yeah, I think you have to define what an
11 alarm signal is. And I think an alarm signal is not just a generic signal, and
12 it's not just a signal that initiates a timer, it's a specific type of alarm signal
13 that has to -- and we think of just -- if you think very basically, I guess,
14 alarm, what's an alarm? It has to, you know, indicate there's an alarm
15 condition. The timing aspect is that it will trigger a response if it's not
16 canceled over a period of time. That's -- for both of the -- for the time to
17 launch signal, I think that's got to be the construction. That's the correct
18 construction. And using that construction, and there's no dispute about this,
19 using that correct construction, Petitioner cannot show the prior art meets the
20 claims 1 and 11 and the dependents. And I'm going to get into that right
21 here. That's --

22 JUDGE REPKO: Okay. You're at about 48 minutes into your
23 argument. I just want to kind of let you know where you're at time-wise.

24 MR. LUKAS: Forty?

25 JUDGE REPKO: I think I have like 48 minutes.

1 MR. LUKAS: Okay, good. Yeah. So let me just -- I can go through
2 these quick. But, again, defining timed alarm signal, a signal that indicates
3 an alarm condition exists and that a security response should be triggered
4 after a period of time, if not canceled. Can't be a status signal, can't be a
5 bypass signal, can't be a signal to disarm. It can't be any of that.

6 And then we just go to at slide 16, we're talking about claims 1 and
7 11 and ground 1 and we're talking about *Lamb*. They're just relying on a
8 bypass signal that starts a timer. That's it. That's all they're doing. And
9 that's not an alarm signal. So that's at slide 16.

10 Then we go to ground 2, *Sharma*. I want to get to this really quickly.
11 Same concept here, they're relying on only a signal -- a timed exit mode
12 signal. And this is at slide 43 and you can see it's the petition. I think what's
13 really important here is this can't be an alarm signal. A timed exit mode
14 signal, that's shutting down the system. Okay? It's de-arming, I guess,
15 because -- and the way you can tell, there's a great example here at the
16 "e.g.," at the petition at 67 and 68. We're initiating a 30- second timer before
17 the system is rearmed. It would only be rearmed if it was disarmed. And so
18 that's what a timed exit mode signal is doing. It is shutting down the alarm
19 system. It cannot be an alarm signal that is indicating an alarm condition
20 exists. That makes no sense. And that a security response should be
21 triggered after a period of time. You couldn't get an alarm signal sent if the
22 system is shut off.

23 So that's ground 2. And that's why we think they can't meet there on
24 ground 2.

25 And I just wanted to go back really quickly to *Lamb*.

1 JUDGE REPKO: Counsel, you are at time. You're getting into your
2 rebuttal time here, so (inaudible) minutes.

3 MR. LUKAS: Okay, I'll go in a couple minutes. Thank you.

4 Yeah. So at *Lamb*, which is exhibit 1009, I think I'm at -- it's page 2.
5 It's the end of paragraph 10. But I like the discussion. It kind of -- because
6 this is what we were talking about in *Lamb*. This is their prior art reference
7 where *Lamb* talks about the barrier status signal and the human status signal
8 to a remote server, the remote server for generating an alarm signal if the
9 remote server determines that the barrier has been opened from the barrier
10 status signal, and the human being is not in proximity to the barrier from the
11 human status signal. So you're right there from their own prior art reference,
12 you have *Lamb* talking about status signals and alarm signals. They're
13 different things.

14 *Lamb* does the same thing at paragraph 29, discusses bypass signals
15 and differentiates those from alarm signals.

16 Okay. So I just -- I want to touch on this. And those arguments are
17 all undisputed because they do not -- Petitioner does not argue with Patent
18 Owner's construction in any way.

19 I wanted to go through -- we now get to -- I just wanted to touch on
20 the claims 6 and 16. I think there's this one I can just deal with really
21 quickly, and I wanted to make sure you're aware of it. And that's at slide 20
22 right here. So there was discussion about the claims being the same in -- 6
23 and 16 being the same. They're not. I want to make that very clear.

24 Six talks about measuring an elapsed time and determining whether
25 the last time has exceeded a predetermined time. And then claim 16 talks
26 about starting a countdown timer. And I want to make sure we're very clear.

1 Like, when we're measuring an elapsed time, it's kind of like starting a
2 stopwatch and determining whether you exceed or go over a preset time.
3 And then starting a countdown timer is like starting at a number or a time
4 and counting down from that number until you reach zero. So there are
5 differences in those two claims and that's at Patent Owner's slide 21.

6 And then if you look here, this is Petitioner's analysis for claims 6
7 and 16. You can see right there on the left, the petition at 51 that talks about
8 upon expiration, setting an alarm, and then just incorporating claim 16's
9 analysis. Well, claim 6 requires measuring an elapsed time, and they're only
10 using a countdown timer evidence, and so, therefore, they can't show that
11 claim 6 is met by the prior art combination. I want to make that -- that's an
12 easy one.

13 And then finally, motivation to combine. There's no motivation to
14 combine, and they haven't really provided any of it. We go through the law
15 and then we talk about it, 28, Patent Owner's slide 28, "Modifying *Lamb's*
16 security panel to initialize a countdown timer." Okay? And then their sole
17 reason at 29 is to enhance security. Well, that has no relevance to their sole
18 modification.

19 We go through at slide 30 and 31, all the drawbacks, there's no
20 benefits. We presented all of this.

21 And then our expert at slide 33 and 30 -- 30, 34, 35, and 36 and 37
22 provided lots of testimony that's never been rebutted about why this
23 combination would not work, and that was never rebutted. And so we say
24 that they also can't prove a motivation to combine. And to be clear, that's --
25 all that testimony is in a deposition in his expert report, exhibit 2003, page

1 40 all the way through 60, and none of that's rebutted. So we would ask that
2 the Board confirm the patentability of all the claims.

3 Any questions?

4 JUDGE REPKO: You have about four minutes left of your time.

5 MR. LUKAS: All right, I'll reserve that. Thank you.

6 JUDGE REPKO: Petitioner, you got 17 minutes for your rebuttal.

7 MR. McKEOWN: Thank you. You should be able to see the slides
8 back up there. So just a couple points here, and maybe we'll just look at
9 Petitioner 3, which has some of the language that was discussed tonight.
10 And I just wanted to point out there were some discussions in the last
11 exchange with Patent Owner's counsel about what to do with some of the
12 functional language, and whether that language in the claim is given weight
13 or not doesn't really matter for these trial grounds. As we pointed out, *Lamb*
14 teaches a control signal as modified by *Williams*. It's a timed control signal.
15 So that additional functionality about initiating a timer, whether that's given
16 patentable weight here does in any way undermine the grounds which would
17 still be reading on these claims in any event.

18 So with that, just going back to what I mentioned earlier was the
19 most important slide in the presentation today, Petitioner's slide number 6.
20 As is clear, we relied upon the modification of *Lamb* with the timing and
21 teaching of *Williams*. That is perfectly clear here.

22 That was perfectly clear on the next slide, in the Institution Decision
23 of the petition on slide 7. That is the ground here. What Patent Owner just
24 did in its presentation is to essentially double down on this argument that it's
25 not really a modification of *Lamb* to change the timed (phonetic) signal, but,
26 in fact, is something else. And they pointed to the reply, but as is their habit,

1 they pointed only to the excerpt from page 15. You know, this is the first
2 paragraph, excuse me, on page 15.

3 Whether or not *Williams* contemplates status signals the same from
4 alarm signal, the ground is based on the control signal and I think Patent
5 Owner as well. What they really meant here was bypass signal. And, no,
6 that's wishful thinking. We use the term "control signal" here because the
7 architecture of *Lamb* teaches sending a control signal. We are modifying
8 that control signal, which happens to be a bypass signal with the teachings of
9 *Williams*, and that is abundantly clear directly above, again, on page 14
10 where this is reiterated. The ground modified *Lamb* -- the *Lamb* control
11 signal to start a timer as caught by *Williams* is right there, so there's no
12 confusion.

13 And the paragraph the Patent Owner is pointing to on page 15 is
14 responding to arguments in the Patent Owner's brief about certain signals of
15 *Williams* somehow having some kind of impact on the ground as presented.
16 And we pointed out here that, no, we're generally relying on *Lamb* central
17 signal functionality as modified by *Williams*.

18 So, again, I don't think that the petition relies on any signal argument
19 is fooling anyone, but nonetheless, just wanted to make sure that was clear.

20 I want to go to this argument Patent Owner made about the prior art
21 status of -- if I can find it. Yeah, it'd be on Patent Owner's slide 39. So a
22 couple points here.

23 First and foremost, *Lamb* is prior art for the reasons stated in the
24 petition. We provided exhibit 1008, which is a redline that shows all of the
25 differences between what *Lamb* and the '340 patent is, which is the timer and
26 the associated timer functionality. Right? You can't have timer

1 functionality without a timer. So that's number one, *Lamb* is clearly prior
2 art. That is not (inaudible).

3 Second, this argument --

4 JUDGE OGDEN: Mr. McKeown?

5 MR. McKEOWN: Yes?

6 JUDGE OGDEN: It doesn't seem to me that the timer functionality is
7 really incorporated, at least in an obvious way, in claims 1 and 11 because
8 there's no recited element that does the timing. It's directed to parts of a
9 larger alarm system that send a signal that has something to do with the
10 timer, but doesn't itself seem to really involve any timer functionality. Can
11 you speak to that and how that relates to *Lamb* being prior art?

12 MR. McKEOWN: Well, whether or not the claims require timer --
13 specific timer functionality, whether that's, you know, interpreted as
14 intended use, there is still a teaching of a control signal for timing purposes,
15 which would be absent in many events as shown in that redline. So whether
16 it's just the timer or whether it's the functionality, there is no concept of a
17 timer in the earlier *Lamb* reference. There's a bypass signal instead, and so,
18 you know, it would still be prior art, number one.

19 Number two, I would point out that this argument was raised in the
20 surreply, so it's waived in any event, so we can't reach that issue regardless.

21 And, you know, I would also point out, just looking at Patent
22 Owner's slide 39, that this argument, the functional claim language, does not
23 have patentable weight. Certainly that is true in the context of the claims.
24 We're not talking about claim language here. As you can see on Patent
25 Owner's slide 5, they're attacking our proposed construction. So, you know,
26 if their position is that dysfunctional language can't be given weight in our

1 claim construction, then necessarily it can't be given weight in their actual
2 claim itself. So, but again, it doesn't matter if it was raised late and, in any
3 event, *Lamb* has no timing features whatsoever.

4 JUDGE OGDEN: Well, assuming that for the moment that we decide
5 that it's not an untimely argument, I'd like to put to you the same question I
6 asked Mr. Lukas with respect to claim 1. What -- how is the structure of
7 claim 1 any different? If you replace the word, you know, "timed alarm
8 signal," and it's, you know, a statement of what it's intended to be used for,
9 which is to initiate a timer, if we just replace that signal with some other
10 arbitrary signal, you know, say they're both just a set of bits and it's just
11 arbitrary, you know, what those bits are, but one has a meaning, that is a
12 timed alarm signal and some other signal doesn't. Does it make any
13 difference if we just switch those two things in the claim? Does it make any
14 structural difference to what is claimed in claim 1? And if there is no
15 structural difference, then how is *Lamb* prior art?

16 MR. McKEOWN: So, first of all, if for some reason that argument
17 was deemed not to be untimely, I would request additional briefing to
18 answer that, because that was the last brief file and the burden is on
19 Petitioner. So if that were to be the case, we would discuss additional
20 briefing on that point. But I don't know that it's necessary.

21 I would say that the claim requires a signal be transmitted, that's
22 clear; that that signal is identified as having timing functionality. So I think
23 that at a minimum, the claim has to be given that meaning in accordance
24 with the specification. You know, the timed alarm signal, while it may be a
25 label, it still has to be read in the context of the specification. It's not itself
26 functional language. So I would think that at a minimum, there has to be

1 some meaning given to the word "time" in that passage there in claim 1.
2 And if that is given meaning, again, which wouldn't be coming from any
3 disclosure found in *Lamb*, then *Lamb* would still be prior art.

4 JUDGE OGDEN: Well, couldn't we say that the term "time" has
5 meaning, but the meaning is just related to the content of the signal or the
6 intended use of the signal?

7 MR. McKEOWN: No, I think it would have to be related to what the
8 transmitter is doing. Right? The transmitter is transmitting a signal and that
9 transmitter would have to have some presumably code-based structure to
10 determine what signal is (inaudible) and in this instance it's a timed alarm
11 signal. So at a minimum there would need to be some structure of the
12 transmitter to be able to designate or differentiate between a timed alarm
13 signal and perhaps another type of signal that it transmits.

14 In the case of the barrier alarm device, for example, the early
15 exchange talked about alerts that it transmits. Right? It could be a beeping
16 sound, it could be a flash on the sensor itself. So that transmitter could be
17 involved in a number of different transmissions and at a minimum there
18 would need to be some structure differentiating the signals going to the
19 control panel and what before. Otherwise the system wouldn't operate.

20 As to -- just moving on to if there's no further questions on that. And
21 again, I would reiterate if that argument on not being timely in accordance
22 with the Administrative Procedure Act and our right to be heard and provide
23 appropriate evidence on arguments, given that that was raised late, we would
24 require additional briefing.

25 On *Sharma*, there was a quick discussion on that, which I think
26 echoes what I said earlier. And this was the patent on slide 43. Right. That

1 *Sharma* was disarmed and that came from the alarm signal. Again, that's
2 exactly the way the '340 here operates. When that timer is running, those
3 sensors are ignored. And so in that respect, there's no alarm that can go off
4 in that timeframe, whatever that time of duration is. So it's also defined,
5 that's not a distinction over *Sharma*.

6 And just finishing up on a couple points. With respect to the claims
7 that recite immediate, as I mentioned earlier, we map in the petition to the
8 exact definition that's used in the '340 patent, like I said, practically word for
9 word. There's just nothing, there's no daylight there.

10 As to dependent claims 6 and 16, there's no specifics in those claims
11 as to how a timer elapses. If you count up time's passing; if you count down,
12 time is passing. There's no detail either in the claims or the specification to
13 distinguish any particular methodology, starting at 10 and going to 0 or
14 starting at 1 and going to 10, for example.

15 Just a couple slides that were mentioned at the end of Patent Owner's
16 presentation starting at Patent Owner's slide 30, what they identify as
17 significant drawbacks. You know, many of these are (inaudible) significant.
18 They argue a user must carry around a personal device when inside the
19 premises while the system is armed. That's highly inconvenient. It's also
20 inconvenient to walk downstairs from your bedroom when the central
21 security panel is far away. We pointed out in the briefing that Patent
22 Owner's specifications tout the use of remote controls. I think, if I
23 understand Patent Owner's argument, the word "remote control" is not used
24 in *Sharma*, but it is a portable device that provides control remotely. So I
25 don't think that's going anywhere.

1 The next bullet, false alarm if the device is broken, malfunctioning,
2 et cetera. You know what you do when your remote is broken? You get a
3 new one because you don't want to walk all the way downstairs to the
4 security panel. There would be no false alarm because you would just walk
5 to the panel. So I could go on there, but they aren't significant.

6 Through all that, no evidence of any benefit. As I pointed out,
7 *Williams* specifically notifies what when Ronald Reagan coined the term
8 "trust but confirm," *Lamb* just assumes that, right, everyone's authorized.
9 *Williams* points out that that's a security risk and that fixing that enhances
10 security. That's certainly a benefit. Patent Owner just takes the position that
11 all of this is under (inaudible) rather than actually responding to the briefing.

12 So given the ground *Lamb* in view of *Williams* and *Sharma* have not
13 been disputed in any meaningful regard, given the Patent Owner is still
14 arguing the any signal theory, which bears no relation whatsoever to the
15 ground of this proceeding, we would submit that the claims have been
16 demonstrated to be unpatentable and we would request the Board to cancel
17 them in due course. Thank you.

18 JUDGE REPKO: Thank you. I have no further questions. Do my
19 colleagues have any further questions at this time?

20 JUDGE OGDEN: Go ahead.

21 JUDGE REPKO: Thank you. Patent Owner, you have four minutes
22 for your rebuttal.

23 MR. LUKAS: Okay. Thank you, Your Honors. I'll make it quick.

24 A bypass signal from *Lamb* that starts the timer is still a bypass
25 signal and not an alarm signal. The '340 patent makes a distinction between
26 a bypass signal and an alarm signal. An example is exhibit 1001 at column

1 823 through 26, where it talks about the bypass signal being "an instruction
2 to ignore future alarm signals generated by the barrier alarm device or to
3 disarm the system." So right there, a bypass signal cannot be an alarm
4 signal.

5 Discussing claims 1, 2, 11, 12, and *Lamb* not being prior art, I would
6 say that my response to that argument -- to the response is that it was -- it's
7 Petitioner's burden to show that *Lamb* is prior art. They argued in their
8 petition that there was no construction necessary. And that's at page 13 of
9 paper 2. In their reply, they proposed a construction for numerous terms,
10 and Patent Owner responded in the surreply. And that's when the argument
11 about *Lamb* came about. They never moved to strike and it's their burden to
12 show that *Lamb* is prior art. They did not.

13 And I want to just touch on something that was raised. The timer
14 associated with the security panel is not in the barrier alarm device, and
15 that's extremely important, for example, for claim 1, which is claiming a
16 barrier alarm device. And so based on that, the fact that it's only claiming
17 barrier alarm device, they can't show that *Lamb* is prior art. That's
18 confirmed by paper 15, their reply, at page 6. In claim 1, "The timer is
19 associated with the security panel of the alarm system," right there.

20 Ground 1 at page 10 of paper 15, ground 1 only relies on *Williams'*
21 control panel timer disclosure.

22 And then again at paper 15, pages 14 and 15, ground is based on
23 *Lamb's* control signal. And under Petitioner's proposed construction, *Lamb*
24 is not prior art to claims 1, 11, 2, and 12. And we ask that the -- at the very
25 least that the petition be denied on ground 1 and claims 1, 11, 2, and 12
26 because Petitioner was able to show that *Lamb* is prior art.

1 We also asked that the Board affirm the patentability of all the other
2 claims and grounds. Thank you.

3 JUDGE REPKO: Thank you. Any further questions? Do my
4 colleagues have any further questions of Patent Owner?

5 JUDGE OGDEN: No.

6 JUDGE REPKO: Thank you.

7 MR. LUKAS: Thank you.

8 JUDGE REPKO: The oral hearing is concluded.

9 (Whereupon, the proceedings at 3:02 p.m. were concluded.)

IPR2023-00792
Patent 10,692,340 B2

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