

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY INTERACTIVE ENTERTAINMENT, LLC.,
Petitioner,

v.

QUANTUM IMAGING, LLC.,
Patent Owner

IPR2023-00954
Patent 8,458,028 B2

Record of Oral Hearing
Held: September 13, 2024

Before SCOTT A. DANIELS, KEVIN W. CHERRY, and
JAMES J. MAYBERRY, *Administrative Patent Judges*.

IPR2023-00954
Patent 8,458,028 B2

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The above-entitled matter came on for hearing on September 13, 2024, commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE MAYBERRY: All right. Well, good afternoon, and welcome back to the Patent Trial and Appeal Board. I am Judge Mayberry, and with me are Judges Daniels and Cherry. We are here for oral argument in IPR2023-00954, which concerns U.S. Patent Number 8,458,028, which we'll refer to as the '028 patent. In a proceeding style, *Sony Interactive Entertainment LLC v. Quantum Imaging LLC*. And we'd like to start with appearances by the parties. Who do we have representing Petitioner?

MR. BLUMENKOPF: This is Bryan Blumenkopf, Your Honor, from Morrison & Foerster on behalf of the Petitioner, Sony. With me is my colleague, Mehran Arjomand, who we heard from this morning.

JUDGE MAYBERRY: All right. Thank you. And representing Patent Owner?

MR. ROBINSON: So, Erick Robinson with Bochner on behalf of Patent Owner, and arguing today will be Homayoon Rafatijo. He's a LEAP practitioner, and I believe this is going to be his first argument with the PTAB, and actually, I believe, with any court whatsoever. Also, on the call is my partner, Jayne Piana, and there may be a couple of other attorneys that have called in.

JUDGE MAYBERRY: All right. Thank you. As specified in our hearing order, each party has 60 minutes total presenting time, but both of the parties have availed themselves of using LEAP practitioners, thank you for that, for at least a portion of the arguments, Each party will get an additional 15 minutes. So, each party is going to have 75 minutes in total

1 argument time. Petitioner bears the burden of proving unpatentability of the
2 challenged claims of the '028 patent and will go first. Petitioner may reserve
3 rebuttal time. Patent Owner will then respond to Petitioner's case. Patent
4 Owner may reserve sur-rebuttal time. Petitioner may use its rebuttal time to
5 reply to Patent Owner's responsive arguments. Patent Owner may use its
6 sur-rebuttal time to reply to Petitioner's responsive arguments.

7 MR. ROBINSON: Your Honors, Your Honors, my apologies. My
8 paralegal is reminding me that our paralegal, Colin Gold, is also on the call
9 and he's going to be assisting Mr. -- Dr. Rafatijo on with slides.

10 JUDGE MAYBERRY: All right. All right. Thank you. So,
11 before we get started, I do want to reiterate some of the (INDISCERNIBLE -
12 TECHNICAL DIFFICULTY) video hearing. That is, the main ones are
13 when you're not speaking, please mute your microphones so we don't get
14 interference. And also, when you are referring to either a slide or paper or
15 an exhibit in the proceeding, please identify the slide or paper or exhibit, and
16 then the page or paragraph number that you're referring to if we're talking
17 about a paper or an exhibit.

18 Also, if at any time during the hearing you encounter technical
19 difficulties that you feel may undermine your ability to adequately represent
20 your client, please let us know immediately. You should have some contact
21 information with our hearings team. And, you know, if you lose connection
22 or have a problem, just contact them, please.

23 Okay. Also, you probably already noticed during this hearing,
24 you'll likely see me not looking into the camera. That's because of the way
25 my setup is. The camera is placed somewhere, and then the position of my
26 Webex screen and my documents constituting the record are in other places.

1 So, I am paying attention.

2 We do have some housekeeping first. Both parties have submitted
3 objections to the slides. And I will first ask Petitioner, does your objection
4 still stand?

5 MR. RAFATIJO: Yes, Your Honor.

6 JUDGE MAYBERRY: And, Patent Owner, do your objections
7 still stand?

8 MR. BLUMENKOPF: Yes, Your Honor.

9 JUDGE MAYBERRY: Okay. Back to Petitioner. Petitioner, did
10 you meet and confer with Patent Owner concerning your objection?

11 MR. BLUMENKOPF: Yes, we did, Your Honor. We met and
12 conferred via e-mail.

13 JUDGE MAYBERRY: All right. And Patent Owner, you met and
14 conferred concerning your objections?

15 MR. RAFATIJO: Correct, Your Honor. We did meet and
16 conferred over the email.

17 JUDGE MAYBERRY: All right. All right. Great. Thank you.
18 So, with that, I have a couple of questions. You can hold on just a sec,
19 please. So, I'm going to direct these to Petitioner's counsel. Counsel, do
20 you have the objections in front of you? Patent Owner's objections in front
21 of you?

22 MR. BLUMENKOPF: No, I don't, Your Honor, but I can pull
23 them up shortly.

24 JUDGE MAYBERRY: Okay, please do.

25 MR. BLUMENKOPF: Just give one moment, Your Honor.

26 JUDGE MAYBERRY: Sure.

1 MR. BLUMENKOPF: Okay. Your Honor, I'm looking at the
2 objections right now.

3 JUDGE MAYBERRY: All right. Great. Thank you. With
4 respect to Objection Number 2, do you cite to Paragraphs 12, 42, or 39 of
5 Exhibit 1027 in any of your papers?

6 MR. BLUMENKOPF: I don't believe those paragraphs are cited
7 explicitly. However, I believe those paragraphs provide important context
8 for the portions of Mr. Green's supplemental declaration that would be cited
9 to.

10 JUDGE MAYBERRY: All right. Thank you. And same with
11 Objection Number 4, do you cite to Paragraph 127 of Exhibit 1003 in any of
12 your papers?

13 MR. BLUMENKOPF: Your Honor, again, I don't believe we cite
14 to that portion expressly, but it does provide important context for Mr.
15 Green's declaration after the portion of the petition that we'd like to discuss.

16 JUDGE MAYBERRY: Right. All right. Well, thank you. So,
17 our rulings. First, I'm going to turn to Petitioner's objection to the one slide
18 that they objected to. Although we agree that there could be some
19 misleading information, we don't think it's such to warrant striking the slide.
20 We, being the panel, know -- we know what's in the record. So, for that
21 reason, we are going to overrule that objection. So, with Patent Owners'
22 objections, Objection 1, we are going to overrule it.

23 We understand that Angles's Figure 4 may not be shown other
24 than in the context of one paragraph of Mr. Green's declaration, but still
25 figures that show Computer 12 are shown. Angles just shows -- Angles's
26 Figure 4 just concisely shows what is described in Angles with respect to

1 Figures 1 and 9 as to what is on computer 12. I think there's no dispute that
2 computer 12 has a web browser. So, for that reason, we are overruling that
3 objection. Objection Number 3 really calls for speculating what Petitioner
4 may argue during this hearing. So, we're going to overrule that objection for
5 that reason. We feel that counsel should be well aware of the requirement to
6 not present any new arguments in the hearing today.

7 For Objection 5, because we have not ruled on the motion to
8 exclude those exhibits are currently in evidence, and so we're going to
9 overrule that objection for that reason.

10 Objections 2 and 4, we are going to sustain. They are information
11 that is not in the papers. So, we will ask Petitioner not to refer to those
12 slides in the presentation today. And also submit a replacement slide deck
13 after the hearing, sometime today, or sometime in the next few days, to
14 remove the objectionable information. With that, any questions from the
15 Petitioner's counsel?

16 MR. BLUMENKOPF: No, Your Honor. Thank you.

17 JUDGE MAYBERRY: Any questions from Patent Owner's
18 counsel?

19 MR. RAFATIJO: No, Your Honor. Thank you.

20 JUDGE MAYBERRY: All right. With that, we are ready to get to
21 the main event. So, again, Petitioner's counsel, you have 75 minutes of total
22 argument time. Do you have an idea how much you would like to save for
23 rebuttal?

24 MR. BLUMENKOPF: Yes, Your Honor. I'd like to reserve 25
25 minutes for rebuttal, please.

26 JUDGE MAYBERRY: Okay. Perfect. You may start when

1 you're ready.

2 MR. BLUMENKOPF: Great. Thank you, Your Honor. And may
3 it please the Board? My name is Bryan Blumenkopf, and I'm here for -- on
4 behalf of Sony, Petitioner, in this action. And as Your Honor noted, I'm here
5 on behalf of the LEAP program as a LEAP practitioner. I want to extend my
6 thanks to the Board for allowing me to participate in the LEAP program
7 today.

8 We're here to discuss the IPR2023-00954 petition, challenging
9 U.S. Patent Number 8,458,028. This is '028 patent. The claims of the '028
10 patent are invalid, and should be canceled for the reason set for the petition.

11 Go to slide 2, please. Yeah, on slide 2, I have a brief outline of
12 what I'd like to talk about. First, I'll give a short overview of the '028 patent.
13 Next, I'd like to briefly discuss claim construction. Then I'd like to discuss
14 the two grounds of the petition, Angles and Robinson.

15 Slide 3, please. Now here's Claim 1 of the '028 patent. And on the
16 right side of the slide, we see Figure 2. That's an example that illustrates
17 some elements of the claim. Claim 1 is a method claim that recites
18 integrating business-related content into an electronic device that accesses a
19 game application. I'd be happy to go into the details of any of these claim
20 elements, but I do want to focus on the parts of the claim that are in dispute
21 here today.

22 First, the primary electronic device receives a request to initiate a
23 game application. The game application is locally executed. You can see a
24 game application in the figure in pink. It's labeled Game Application 64.
25 Then in the claim, the game application is initiated at the primary electronic
26 device. This label is Figure S62. At the step highlighted in green, business-

1 related content is automatically integrated into the game application from
2 web pages of a secondary electronic device.

3 In the figure, you see business-related content highlighted in the
4 green, and it's within a website 86 in blue. Both of them are on a Secondary
5 Electronic Device 84. It communicates with a primary electronic device 62
6 via network 70, which is shown here as a cloud. Blue in the claim, we have
7 automatically redirecting the user to the web pages. An example is the
8 website 86 in blue in the figure. And finally, highlighted in orange, the
9 method executes a user action on the business-related content. You can see
10 an example of that user 60 shown in orange in the figure.

11 Slide 4, please. There are several other challenged claims in this
12 proceeding, Claims 3 through (INDISCERNIBLE). For Dependent Claims
13 3 through 6, the Patent Owner has made separate arguments for
14 patentability.

15 Slide 5, please. But for Claims 7 through 9, the Patent Owner has
16 not raised any other specific defenses of these claims. It just relies on its
17 arguments for Claim 1.

18 Slide 6, please.

19 COURT REPORTER: I'm sorry. Is there a way you can speak up
20 because I notice that your volume goes in and out. I apologize for
21 interrupting, Judges.

22 MR. BLUMENKOPF: Sorry. I've tried repositioning my
23 microphone. Is that better?

24 COURT REPORTER: Yes, a lot better. Thank you. I appreciate
25 you.

26 MR. BLUMENKOPF: Great. Thank you for raising that. I want

1 to make sure I can be heard very clearly today. So next, I'd like to briefly
2 touch on claim construction issues for this proceeding. In the petition, Sony
3 explained that no specific instruction is necessary for this proceeding.
4 Claims are unpatentable under any reasonable interpretation. Now, in the
5 response, the Patent Owner agreed that no express construction is required,
6 with one exception, and that's the third application in Claim 7. But Patent
7 Owner, I'll use that application at Claim 7 should be construed as game
8 application based on examples of game applications in the specification.

9 Slide 7, please. Now, in the institution --

10 JUDGE MAYBERRY: Excuse me, Counsel. Yes, this Judge
11 Mayberry. Before you move off, as far as express claim construction, I'm
12 not suggesting that this could be an example of an express claim
13 construction. My understanding is the parties have pretty much said the
14 plain and ordinary meaning of these terms should be what we give to it, or,
15 as you said in the petition, said any reasonable instruction of these terms.
16 I'm interested in what the plain and ordinary meaning, as far as from
17 Petitioner's perspective, of the phrase "accessible at" in Claim 1. What does
18 that mean?

19 MR. BLUMENKOPF: Well, that's something that Mr. Crane
20 describes in his declaration where he talks about locally executed game
21 applications and explains that if a game application is locally executed at a
22 primary electronic device, that game application is accessible at that device.
23 That is, you can use that device to access that game application. Does that
24 answer your question, Your Honor?

25 JUDGE MAYBERRY: Perhaps, but I think maybe when we get
26 into this limitation a little further down the road, we can explore it a little

1 more.

2 MR. BLUMENKOPF: Thank you, Your Honor. I'm happy to
3 address. So, if we get -- if you have no further questions at this time, I'd like
4 to continue on Claim 7. And here we have the Board's decision on
5 institution. Now, institution decision, the Board agreed no claim terms
6 needs to be expressly construed. As the Board noted here, it is only required
7 to distribute terms that are in controversy and only to the extent necessary to
8 resolve that controversy.

9 Now, I saw in the Patent Owner's sur-reply they believe we're
10 proposing that the Board construed the term game application. I want to be
11 clear that that's not true. The Board does not need to construe game
12 applications because it's not necessary to resolve the parties' dispute about
13 game applications. The Board can rely on what the applicant described as a
14 storyboard example of the invention in the prosecution history. I'm going to
15 explain that a bit further when I get more into the discussion of Claim 1.
16 The Board can, of course, enter a construction for claim application if it
17 chooses to do so, but it's not required to enter any claim construction in
18 order to resolve this dispute.

19 Slide 8, please. I'd like to say a word about the level of ordinary
20 skill on this proceeding. The parties have agreed on what that level of skill
21 is here. The level of skill is high. It includes specific knowledge and
22 experience. For example, in addition to a bachelor's degree, the person of
23 ordinary skill in the art has knowledge and professional experience in
24 specific areas. Networking and network-based systems or applications, such
25 as client server and web-based systems, in the specific context of console
26 and game. Person of ordinary skill also has knowledge of online and in-

1 game advertising methods and 3D rendering and virtual reality.

2 Even though the parties agree on the level of skill, the Patent
3 Owner has not consistently applied this level of skill to its analysis of the
4 prior art. Here the prior art relates specifically to client server and web-
5 based systems and also to game, the specific areas where this person of
6 ordinary skill has experience and knowledge. So, the person of ordinary
7 skill can use that specific knowledge and experience, relevant to the claims
8 and the prior art, and can make inferences and draw conclusions based on
9 that knowledge and experience.

10 Let's turn to slide 9, please. I'd like to talk about Ground 1, which
11 is the Angles reference in view of a person of ordinary skill in the arts
12 knowledge. Next slide, slide 10. So, here we see Angles, U.S. Patent
13 5,933,811. Angles is a patent that was filed in 1996, which really was kind
14 of the dawn of online advertising. Angles is about providing custom
15 advertisements to a user over the Internet. The custom ads are generated by
16 an ad provider based on a profile of the user. When the user accesses
17 content from a content provider over the Internet, they get the content, and
18 they also get the custom advertisement, which gets combined with the
19 content. Angles describes various types of content, including games.

20 Next slide, please, 11. Now, Angles describes a couple of different
21 ways in which that content and the advertisement can get to the user's
22 computer. Here we see two versions, Figure 1 on the left, Figure 9 on the
23 right. And you can see they have the same basic components. We have the
24 consumer computer 12 in green, which belongs to the user. We have the
25 content provider's computer, 14, that's highlighted here in purple. We have
26 the ad provider's computer, 18 in red, and the custom advertising, 30 in blue.

1 There's also the electronic page 32, which we see just underneath the content
2 provider's computer. That's the webpage. And everything's connected to
3 that communication medium, 20 in the center.

4 Now, what happens in the Figure 1 version on the left is that
5 consumer computer 12 in green gets the webpage from the content provider,
6 14. And the consumer computer 12 gets the custom advertising, 30 from the
7 ad provider, 18 in red. The webpage 32 and the custom advertising, 30 get
8 presented to the user via a web browser on the consumer computer, 12. And
9 in the Figure 9 version on the right is the same components, but they're used
10 slightly differently. Figure 9, the content provider, 14 gets the custom
11 advertising, 30 from the ad provider, 18. And the content provider, 14,
12 sends the webpage 32 and the custom advertising, 30 from the consumer
13 computer, 12. And again, the webpage 32 and the custom advertisement 30
14 get presented to the user via the web browser on that consumer computer 12.

15 So, in both of these versions, Figure 1 and Figure 9, the consumer
16 computer 12 receives the webpage and the ad from the communication
17 medium. The difference is that in Figure 1, the consumer computer 12 gets
18 the ad directly from the ad provider 18, and in Figure 9, the consumer
19 computer 12 gets the ad from the content provider 14, who gets it from the
20 ad provider 18. Again, it's the same consumer computer, the same content
21 provider, the same ad provider, both of these versions. And the webpage
22 and the ad all get presented to the user via the web browser on the consumer
23 computer 12.

24 Slide 12, please. So, what happens once that webpage and the ad
25 arrive at the user's computer? In this figure, we can see some more detail
26 about the consumer computer 12 that's highlighted here in green. Consumer

1 computer 12 is a consumer browser module 40, highlighted in red. And the
2 text from Angles on the right, Angles tells us this can be a web browser, like
3 Netscape Navigator or Microsoft Internet Explorer. Angles also tells us that
4 this browser module 40 is how the user accesses different content providers.

5 Slide 13, please. Here we see Claim 1 again. The petition set forth
6 that each of these limitations is met by Angles. Again, I want to focus on
7 those four main limitations that are in dispute. The first one I want to focus
8 on is receiving a request to initiate a locally executed game application. The
9 parties disagree on whether Angles meets a locally executed game
10 application.

11 Slide 14, please. Here we see Angles again. And remember that
12 Angles, whether we're looking at the Figure 1 version or the Figure 9
13 version, there's that consumer computer 12 that has a consumer browser
14 module. You can see that consumer computer 12 annotated in green in the
15 figures. And like we saw on the previous slide, Angles tells us that can be a
16 web browser, like Microsoft Internet Explorer.

17 Slide 15, please. Now, in the petition, you can see this in the
18 passage on the left. The consumer browser module running on the consumer
19 computer 12 meets the locally executed game application of the claim.
20 (INDISCERNIBLE) of the slide. On the right, our expert David Crane
21 provides context. Browser-based games were well-known in the art in 2002.
22 The person of ordinary skill would have recognized that a browser on a
23 game player's computer can serve as a locally executed game application.
24 Mr. Crane explains that --

25 JUDGE MAYBERRY: Excuse me, counsel.

26 MR. BLUMENKOPF: Yes, Judge.

1 JUDGE MAYBERRY: Got a question. And I don't know if it
2 makes sense to look back on slide 14, but the way I understand the
3 Petitioner's position, and please correct me if I'm wrong, is consumer
4 computer 12 has a web browser, Microsoft Explorer. It's on the computer.
5 It's local. It is an application, and that application, the browser, like
6 Microsoft Explorer, is executed on computer 12.

7 MR. BLUMENKOPF: But that's right, Your Honor. You can see
8 that in --

9 JUDGE MAYBERRY: Content provider computer 14 is an
10 example of some -- like a provider that you access over an internet or over a
11 network that has certain content. One possible content is an online game.
12 And so, indeed, I think the example in the -- in Angles is a racing game, a
13 racing car game. So, that is on computer 14. So, I want to play the game. I
14 sit down at computer 12. I open up Microsoft Explorer on my computer. I
15 go -- Internet Explorer. I go to computer 14. I select play the racing game,
16 and all of a sudden my browser has the racing game, and I can control
17 whipping around the track using my mouse or my keys or something from
18 my computer. And it is your position supported by Mr. Crane's testimony
19 that the game application, the racing game, has become locally executed on
20 computer 12 because it's being executed within the browser that resides on
21 computer 12.

22 MR. BLUMENKOPF: I want to make one clarification, Your
23 Honor. So, there's a distinction here between a game and a game
24 application. And I think a good analogy is something like chess. You have
25 the game of chess. It's been around for over a thousand years. And you can
26 have, say, a computer -- an application that will play chess. So, the game of

1 chess versus the chess application. And what we have here, there's a
2 distinction between, say, the racing game content stored on the content
3 provider computer, then a game application which allows the user to play
4 that game. As you see in the figures, the component on the consumer
5 computer 12, that web browser, would interface with that content provider
6 14 to access the game content for the racing game.

7 JUDGE MAYBERRY: And so -- and this is where I'm really
8 getting at on -- sorry to get in such a roundabout way. Are you saying that
9 Microsoft Internet Explorer on computer 12 becomes the game application,
10 the recited game application when you access that racing game on provider
11 14?

12 MR. BLUMENKOPF: Sure. It's accessing that racing game and
13 it's enabling the user of the consumer computer to play the racing game. In
14 that situation, yes, it's acting as a game application.

15 JUDGE MAYBERRY: Microsoft Explorer is? It's not the case
16 where the application is sitting on the content provider and you're just
17 executing it in your browser. You, once again, once I sit down at computer
18 12 and access that game on content provider computer 14 through my
19 browser, my browser becomes the game application that is recited in the
20 claim?

21 MR. BLUMENKOPF: Yes, Your Honor, that's correct.

22 JUDGE MAYBERRY: All right. Thank you.

23 MR. BLUMENKOPF: So, I'd like to extend a little bit more on
24 that point, Your Honor. And again, with reference to Angles here, whether
25 we're looking at the Figure 1 version on the left, or I guess in the center of
26 the slide, or the Figure 9 version on the right, there's that same consumer

1 computer 12 that has that consumer browser module like we just talked
2 about. And again, as we saw in Angles, it can be a web browser like
3 Microsoft Internet Explorer.

4 Okay. We return to slide 15. And just to be clear again about that
5 mapping, in the petition, we did identify that the offering can be online game
6 accessible over the Internet. A consumer browser module running on the
7 consumer computer can be the locally executed game application. On the
8 right, we see support from our expert David Crane. He explains that
9 browser based games were well-known in the art in 2002. And the person of
10 ordinary skill in the art would have recognized that a browser and a game
11 player's computer can serve as a locally executed game application. And
12 Mr. Crane explains that browsers of the day had built in plug-ins like
13 Shockwave and Flash that allowed that gameplay functionality. So, those
14 pre-installed plug-ins were one way in which a web browser could act as a
15 game application. For example, executing the code for the racing game that
16 we discussed a moment ago.

17 JUDGE MAYBERRY: Thank you, counsel, for the clarification.
18 I do have a second question. It kind of goes back to my claim construction
19 question. Here on slide 15 in the box to the left, in your highlighted text,
20 you say the offering can be an online game accessible over the Internet. So,
21 now we get the accessible app language in Claim 1. So, once I sat down at
22 computer 12, I've accessed the online game over the Internet from computer
23 14. And I am running it on my browser with things like Shockwave and
24 other plug-ins that allow me to play the game. It is now -- my browser is
25 now the game application, and because my browser resides on my computer
26 12, it is accessible at computer 12, as recited in the claim.

1 MR. BLUMENKOPF: That's right, Your Honor. To be clear, it's
2 the game application that has to be accessible at the user's device,
3 (CROSSTALK) --

4 JUDGE MAYBERRY: Yes, but isn't it the case now that my
5 browser has become the game application? Isn't that what I heard you say?

6 MR. BLUMENKOPF: That's right, and the browser is accessible
7 to you at that primary electronic device with your computer.

8 JUDGE MAYBERRY: Okay, thank you.

9 MR. BLUMENKOPF: Does that answer your question, Your
10 Honor?

11 JUDGE MAYBERRY: Yes, it does.

12 MR. BLUMENKOPF: Okay. So, let's move to slide 16. On slide
13 16, we see the Board's institution decision, and the Board understood that
14 mapping. The Board understood Sony's position that initiating an accessing
15 an online game with a web browser in Angles would result in a locally
16 executed game application, like we just talked about, Your Honor.

17 Let's turn to slide 17, please. The Patent Owner doesn't dispute
18 that Angle shows a web browser accessing game content, from what I can
19 tell. What the Patent Owner does dispute is whether a web browser can ever
20 be a game application to a person of ordinary skill in the art. And you see
21 this blanket statement from the Patent Owner here on slide 17: Wrong; to a
22 PHOSITA, a browser is not a game application.

23 Let's turn to slide 18, please. Slide 18, you see a similar statement
24 from the Patent Owner's expert, Dr. Medvidovic, who says the browser
25 cannot be a game application.

26 Let's go to slide 19, please. To resolve the dispute about game

1 application, all we have to do is look at the intrinsic record. Specifically,
2 during the prosecution of the '028 patent, the patent applicant herself
3 provided a, quote, example of the invention that showed the claim game
4 application. Here's some context. So, that the '028 was rejected multiple
5 times. The applicant appealed twice to the Board. Once in 2009, and again
6 in 2011. At both times, in explaining to the Board why the application
7 should be allowable, the applicant provided the patent office some additional
8 material. A, quote, storyboard example of the invention that I called the
9 TerraZones Storyboard.

10 And you can see right here how the applicant herself described it.
11 Storyboard example of the invention was provided to the examiners during
12 the personal interview on October 8th, 2008. And a copy of the pertinent
13 portion is provided here with and listed in the evidence appendix of this
14 appeal brief why she did this. And you can see right below the highlighted
15 portion on this slide as she describes this example of the invention. A
16 primary electronic device accesses a game application to thereby locally
17 execute the game application. So, the storyboard illustrates the invention's
18 locally executed game application.

19 Look at slide 20, please. So, here's the first page of that storyboard
20 example of the invention that the applicant provided to the Board. And I
21 want to make a short logistical note here so that the version of the storyboard
22 that's available from the patent office is this black and white copy that has
23 some legibility issues. That's the version you see on the left. Unfortunately,
24 this is the highest quality version available from the patent office.

25 In the District Court litigation between the parties, the Patent
26 Owner produced the color version of the storyboard. We've included that

1 here on the right on the slides. We've included both the black and white
2 version from the prosecution history, and also the color version from the
3 litigation to make it as easy as possible for the Board to read and understand
4 the storyboard, but the content is identical across both of the versions.

5 So, let's take a look at this storyboard. This is the first page of
6 what the applicant called the pertinent portion for a storyboard example of
7 the invention. You can see it's a depiction of a web browser. Specifically,
8 you can see in that red box, it's the Microsoft Internet Explorer web browser.
9 It's the same web browser mentioned by name and address. Patent Owner
10 doesn't dispute that this shows a web browser. You can see the web browser
11 is accessing a website called Game Zone with a selection of games. The
12 game highlight in the upper left is called Chronos. Below the image, you
13 can see the applicant's text that indicates this is a website that the visitor
14 chooses a game/genre. Our expert, Mr. Crane, reviewed the storyboard
15 example, and he confirmed that is how a person of ordinary skill in the art
16 would understand this page.

17 Let's turn to slide 21, please. So, here's another page from that
18 applicant's storyboard example of the invention. This one comes two pages
19 after the storyboard page that we just looked at. And here we see Chronos,
20 and you can see it's the same figure from that previous storyboard page. The
21 text is a little tough to read, but here it says, Chronos Demo. Entire game
22 integrates 2D, 3D, video, web interaction, gamer's point of view. As Mr.
23 Crane stated in his supplemental declaration, the person of ordinary skill in
24 the art would understand this to depict the same Microsoft Internet Explorer
25 web browser shown on the previous page.

26 Let's turn to slide 22, please. So, here's what Mr. Crane concluded

1 about the -- I'm sorry, I believe that this is subject to the objection that Your
2 Honors sustained. I'll skip over to slide 23, please. So, moving on from the
3 storyboard example, what we see here, there is another example of how a
4 web browser can be a game application. That's Patent Owner's expert's own
5 textbook. It's Dr. Medvidovic. As we see here, Dr. Medvidovic
6 highlighted this textbook in his report and described it as a widely-used
7 textbook in the field of software systems architecture. In addition, you see
8 here the Patent Owner relied on it to establish Dr. Medvidovic as a person
9 of ordinary skill in the art. So, Patent Owner obviously thinks that Dr.
10 Medvidovic's authorship of this book is significant to this case.

11 Let's turn to slide 24, please. Now, recall that Dr. Medvidovic
12 insisted in his report that a browser cannot be a game application. Yet you
13 see here in his own textbook provided multiple examples in which a web
14 browser is acting as a game application. The excerpt on the left from the
15 textbook corresponds to Figure 4-19, which we see on the right. This
16 portion of the book comes from a chapter that describes various software
17 architecture styles. One of the styles is what Dr. Medvidovic called the
18 code-on-demand style, which is where a software program, quote,
19 downloads code from another site to be executed locally. Now, Dr.
20 Medvidovic --

21 JUDGE MAYBERRY: Counsel?

22 MR. BLUMENKOPF: Yes, Your Honor.

23 JUDGE MAYBERRY: This is Judge Mayberry. Do we know if
24 the content, you know, the content computer 14, the game content is
25 something that would be downloaded by a code-on-demand web browser, or
26 if the web browsers that are cited in Angles are code-on-demand web

1 browsers?

2 MR. BLUMENKOPF: Well, there's no express citation in Angles
3 of the code on demand style. What we see here in the textbook is that this is
4 a functionality that's known of web browsers in the art. And we see here
5 that this situation, all the game logic moves to the client machines that will
6 correspond to the consumer computer 12 from Angles, bringing the server's
7 computing resources. The server might correspond, for example, to the
8 content provider 14 from Angles.

9 JUDGE MAYBERRY: And excuse me, counsel, Judge Mayberry
10 again. Does Petitioner in its papers ever contend that it would have been
11 obvious to modify the web browser of Angles to make it a code-on-demand
12 web browser?

13 MR. BLUMENKOPF: No, Your Honor. That's not argued in the
14 petition. Petitioner does not argue that any modification of Angles is
15 required. And in particular, the way we're using this textbook in this
16 proceeding, it's not as a prior art reference. We're not arguing that any
17 limitation of the claim is met by this textbook. What we are using this
18 textbook for is to explain how the person of ordinary skill in the art would
19 understand the disclosure of a web browser from Angles. As we see here in
20 this textbook, as it was printed and disclosed here, a web browser would
21 have this functionality. I mean, you couldn't play it using a code-on-
22 demand style. And we see a few examples here.

23 JUDGE MAYBERRY: Excuse me, counsel.

24 MR. BLUMENKOPF: Yes.

25 JUDGE MAYBERRY: Are you saying that, or I'm imagining you
26 have testimony about this, a person having ordinary skill in the art would

1 understand that one, Angles identified to the web browsers. We saw
2 Netscape and Internet Explorer in that paragraph that you showed us in an
3 earlier slide, that they would understand that those web browsers were code-
4 on-demand web browsers and would function such that the game would be
5 downloaded and executed locally?

6 MR. BLUMENKOPF: Well, as Mr. Crane testified in the
7 supplemental declaration, this is at paragraph 34. The person of ordinary
8 skill in the art in 2002 would have been familiar with this code-on-demand
9 style. It would have understood that web browsers, like those disclosed in
10 Angles, were capable of being employed using this style to behave as game
11 applications.

12 JUDGE MAYBERRY: All right. Thank you, counsel.

13 MR. BLUMENKOPF: I'd like to just discuss a little bit more
14 about these versions of web browsers disclosed in the textbook. So, that
15 there's -- going back to slide 24. So, you see in this first sentence, there's a
16 client web browser downloads code-on-demand from the Lunar Lander
17 game applet. And you can see that in the figure on the right, it's highlighted
18 red. There's a web browser, and you can see the Lunar Lander Game Applet
19 within a Java virtual machine, all of which belonged to that web browser.
20 The second sentence of that excerpt says that a second browser was a
21 JavaScript Lunar Lander. You see that in the box highlighted green. It's a
22 JavaScript interpreter, which interfaces with the JavaScript Lunar Lander
23 program. And then there's a catch-all here about a third uses some other
24 form that's not detailed. You can see that in the yellow box, where it's a
25 web browser, and there's a Lunar Lander game code within that web
26 browser. So here, Dr. Medvidovic's book is describing at least three web

1 browsers that execute on client computers and from the same call Lunar
2 Lander.

3 Let's move to slide 27, please. So, to summarize, there's at least
4 three sources of evidence for how Angles' web browser could be a game
5 application. First, we have the disclosure from Angles itself, where Angles
6 discloses the consumer browser module, explained that browsers like
7 Microsoft Internet Explorer can be used to access game content. Second, we
8 have the applicant's example of the invention, which depicts that same
9 Microsoft Internet Explorer web browser acting as a game application. And
10 third, we have Dr. Medvidovic's textbook, which provides three specific
11 examples of a web browser acting as a game application. Further, Mr.
12 Crane told us in his declaration that web browsers in 2002 had specific
13 features like Shockwave and Flash plugins that enabled them to act as game
14 applications.

15 Now, earlier I mentioned claim construction. I want to return to
16 that briefly. In the Patent Owner's sur-reply, they're claiming that Sony is
17 asking the Board to construct game application. As I said earlier, we're not.
18 We don't believe any claim construction is needed to resolve the dispute.
19 All the Board has to do is rely on, for example, the applicant's example of
20 the invention to answer the question of whether a web browser can meet the
21 claim game application. So, the Board can resolve its dispute based entirely
22 on the existing record without reaching any claim construction.

23 Let's go to slide 28, please. So, here's Claim 1 again. The
24 limitation to is highlighted in purple. The locally executed game application
25 has to be accessible at said primary electronic device. And I know we
26 touched on this issue earlier. I just want to return to --

1 JUDGE MAYBERRY: Excuse me, counsel? Before we move on
2 to issue number two, I just want to ask a question about Claim 7 and issue
3 one. Because Claim 7 doesn't talk game application, it talks application.
4 So, for Claim 7, would you agree or is it your position or Petitioner's
5 position that the browser in and of itself is the application that's locally
6 executed and accessible on the primary electronic device when it comes to
7 Claim 7?

8 MR. BLUMENKOPF: Well, as Your Honor noted, Claim 7
9 doesn't mention game application. In fact, it doesn't mention games at all.
10 And so, as we've explained, a web browser can be a game application, but a
11 web browser is not always a game application. Certainly, in Claim 7 where
12 it describes application, not necessarily a game application. While a web
13 browser like Microsoft Internet Explorer is such an application. And the
14 Patent Owner didn't raise any particular response to Claim 7 other than
15 relying on its argument for Claim 1, and then advocating for a construction
16 in which the applications in Claim 7 are actually game applications, which
17 we don't believe is a function. Does that answer your question?

18 JUDGE MAYBERRY: Yes.

19 MR. BLUMENKOPF: Okay. So, let's turn to slide 29, please. So,
20 I want to talk about that limitation accessible at, said primary electronic
21 device. Here's what Sony said in the petition. In Angles, a consumer directs
22 one of the consumer computers to access an offering existing one of the
23 content provider computers, wherein the offering is locally accessible.
24 Petitioner cites to Crane's declaration where Mr. Crane explained a POSITA
25 would have recognized the web browser to do that locally executed gaming
26 application and that the claim locally executed game application would be,

1 by definition, accessible at said primary electronic device.

2 So, like we discussed earlier, Mr. Crane's view is that if an
3 application is locally executed at a computer, it's also accessible at a
4 computer.

5 Turning to slide 30. You see that here in Angles whereas we saw,
6 the consumer computer 12 has a browser module 40, which can be a web
7 browser like Microsoft Internet Explorer. It's accessible at that consumer
8 computer, at least because that's the computer that the user accesses the web
9 browser from.

10 Let's turn to slide 31 briefly. Patent Owner had advanced error
11 proposal for the limitation. Their position is that accessible at means the
12 game application has to be entirely held by the primary electronic device.
13 Now, we don't think that's a proper interpretation.

14 And if we could turn to slide 32, here we see an excerpt from the
15 prosecution history, and if the applicant wanted the claims to say held at, it
16 could have done so. And in fact, the claims did say held at, and they were
17 amended to instead recite accessible at. In fact, the applicant amended the
18 claims total of 10 times. So, it's reasonable to assume that the claim
19 language was deliberately chosen. It's not reasonable for the Patent Owner
20 to try to now roll back the claim language to held at.

21 Skip ahead to slide 34. In any event, even if the limitation were to
22 require the game application to be held at the primary electronic device, it's
23 still met by Angles. For example, returning to that storyboard example of
24 the invention, we saw a depiction of a web browser as the game application.
25 It's a little tough to read here in the slide, but the title bar says the web
26 browser is working offline. It shows the web browser is capable of

1 executing offline and accessing content held by the same computer on which
2 it's running. Now, obviously, web browsers don't typically operate offline.
3 One of their main uses is to access online web content, but this shows they
4 have that capability.

5 Turning to slide 35, there's an excerpt from Mr. Crane's
6 declaration where Mr. Crane agrees a person of ordinary skill in the art
7 would have had that understanding that a web browser is capable of
8 executing without any network connection at all.

9 And on slide 36, briefly returning to the example from Dr.
10 Medvidovic's textbook, we see here in this code-on-demand configuration of
11 web browsers, all the game logic moves to the client machines, as we
12 discussed earlier. So, that is telling us that game logic is held by the client
13 machines, which are what executed these web browsers.

14 Let's turn to slide 37. I want to talk about the limitation,
15 automatically integrating business-related content. We go to that limitation
16 number three here.

17 Let's turn to slide 38. So, here's where this was discussed in the
18 petition. Petitioner identified disclosure in Angles that business-related
19 content is customized advertisements generated by the ad computer 18. So,
20 citation to the abstract, and here's what Angles says in the abstract.
21 Customized advertisements are selected based on similar profiles that are
22 then integrated with offerings maintained by different content providers. So,
23 that's not a citation to any particular embodiment in Angles. It's just a
24 citation to how Angles discloses the invention. However, the abstract also
25 does describe this as being a preferred embodiment of the invention.

26 Skip to slide 41, please. So, in the institution decision, the Board

1 understood and acknowledged Petitioner's position. The Board said we
2 understand Petitioner to argue that invoking the browser initiates and
3 accesses the content offering, such as an online game. As such, when the
4 browser accesses electronic page 32, the customized advertisement 30 is
5 automatically integrated into the online game. That is automatically
6 integrated into the game as the web browser executes electronic page 32.
7 So, the Board recognized the automatic integration happens at the web
8 browser as it executes the web content.

9 JUDGE MAYBERRY: Excuse me, counsel. It's Petitioner's
10 position that this happens regardless of the Figure 1 versus Figure 9 in
11 Angles' configuration. So, if Angles's figure shows the advertising computer
12 up to the content provider computer, then down to the user's computer, that
13 that's still being integrated when the game is being executed on the user's
14 computer. Even though it's going -- the ad is going up to the content
15 provider?

16 MR. BLUMENKOPF: Yes, Your Honor, that's right. And the ad
17 ultimately does make its way to the consumer computer 12. And if we
18 return briefly to slide 14, I think that the figure might help just kind of re-
19 emphasize that point. You see the consumer computer 12 has that consumer
20 browser module 40 inside of it. That's the same computer -- consumer
21 computer 12, whether it's Figure 1 or Figure 9. In both cases you have the
22 web page 32 and you have the customized advertisement 30 that make its
23 way into that web browser on the consumer's computer where it's
24 automatically integrated and then it's presented to the user.

25 JUDGE MAYBERRY: And what about the claim language that
26 requires the integration to be during the execution of the game?

1 MR. BLUMENKOPF: Well, as Mr. Crane explained, it -- this
2 happens during the operation of the web browser as it happens as the
3 content arrives at the web browser and is being presented to the user at that
4 computer. It would make a lot of sense for it to be integrated with the web
5 browser while the web browser is not being executed. Does that make
6 sense? Does that answer your question, Your Honor?

7 JUDGE MAYBERRY: Yes.

8 MR. BLUMENKOPF: So, let's turn back to slide 42. So, the
9 Patent Owner argued the petition improperly combined embodiments with
10 the limitation of the Claim 1. In particular, the Patent Owner argued that the
11 petition exclusively relied on Figure 9 to meet the automatically integrating
12 limitation. But we'll add in Figure 1 for the remaining elements. And let's
13 turn to slide 43. I just want to be clear, the petition does not rely on any
14 combination of embodiments. Instead, the petition relies on Angles for what
15 it teaches to the person of ordinary skill in the art.

16 Now, Angles stages at the consumer computer 12 as a web
17 browser. As we've discussed, that web browser meets the claim locally
18 executed game application, petition silence at Angles's description of the
19 preferred embodiment in which the advertisement is combined in the web
20 browser to be offered to the prior, displayed at the consumer, like we just
21 talked about. That's the system of the Figure 1 embodiment from Angles
22 that we saw earlier here.

23 Let's move ahead to slide 45. This is back to Claim 1. And let's
24 look at limitation four, I want to discuss this briefly. This is automatically
25 redirecting said user to one of said web pages.

26 Now, slide 46. Petition explained, this limitation is met by the

1 consumer selecting a hyperlink in the web browser. As Mr. Crane states,
2 and I think it's all web users now, the web browser responds by redirecting
3 the user to the target of that hyperlink. Turning to slide --

4 JUDGE MAYBERRY: Excuse me, counsel?

5 MR. BLUMENKOPF: Yes, Your Honor.

6 JUDGE MAYBERRY: Judge Mayberry here. So, it seems like
7 there's no dispute that actuating the hyperlink requires some manual action.
8 The user moves the mouse, points it at a hyperlink and clicks a button. And
9 then the user is redirected to another website. So, in our racing car game
10 example in Angles, they talk about showing having billboards, showing
11 advertisement content, and it could include a hyperlink. So, if I'm racing, I
12 choose to take the mouse and move it over and point it to the billboard and
13 click on the hyperlink where then I am redirected to the website. Is that
14 your understanding?

15 MR. BLUMENKOPF: That's right, Your Honor. And we don't
16 dispute that clicking on a hyperlink is a manual operation. That's something
17 a user does.

18 JUDGE MAYBERRY: So, it seems to me then that you're writing
19 out the word automatically from the claim language, the automatically
20 redirecting.

21 MR. BLUMENKOPF: No, Your Honor, that's not true, respectful.
22 And the reason is that the sequence of events is you manually click on the
23 hyperlink from the web browser. But then what happens under the hood in
24 response to that clicking is what's automatic. That is, the user clicks on the
25 hyperlink. The web browser automatically redirects the user to the target of
26 that hyperlink. (CROSSTALK).

1 JUDGE MAYBERRY: Yes, and I did understand. That's where
2 you drew the line. When the user lifts up on his or her finger from the
3 clicking button, it becomes automatic at that point. But can you give me an
4 example of a redirecting that then wouldn't always be automatic? Can you
5 have a manual redirecting?

6 MR. BLUMENKOPF: Sure, Your Honor. If you imagine a web
7 browser, if you type in a particular URL into the title bar, you're telling the
8 web browser --

9 JUDGE MAYBERRY: When I hit enter, and it automatically
10 redirects me?

11 MR. BLUMENKOPF: Well, at some level, some behavior, I
12 suppose, is automatic. But if you look at a hyperlink, for example, as many
13 of us know, if you look at a hyperlink, it's not obvious what the web browser
14 is going to do. You can't, in a lot of cases, tell what the hyperlink is going to
15 be or where it will take you until it's been clicked on and until the web
16 browser has redirected you to whatever the target is.

17 JUDGE MAYBERRY: So, your distinction is that it's automatic
18 because it might just have a hyperlink that says, visit our store, and I go and
19 click on it and I don't know if it's going to send me to Macy's or Amazon or
20 some other website. So, when I release my mouse button, everything
21 happens automatically, as opposed to typing into my browser Amazon.com
22 and hitting the return because I know it's going to Amazon. Is that your
23 distinction?

24 MR. BLUMENKOPF: Another important factor, Your Honor, is
25 the language redirection. An example where you type in a URL of a title
26 bar. I'm not sure there's a redirection there compared to when you click on a

1 hyperlink, the web browser is taking you from your initial direction,
2 whatever you clicked on, it's redirecting you to whatever the target of that
3 hyperlink is. So, I don't believe it's reading out the claim language. I
4 believe it's describing an operation where there's a manual input to a web
5 browser and then the automatic redirection happens in response. Does that
6 answer your question?

7 JUDGE MAYBERRY: Yes. Well, let me ask this in a slightly
8 different way. I believe in your papers you discuss, and there's examples in
9 the prosecution history where there was a reference that was cited against
10 the applicant. It was a jigsaw puzzle application where you clicked on the
11 puzzles and you said, oh, this piece goes in the corner. This piece is an edge
12 piece. Oh, these two pieces fit together. And the way the game is played is
13 the user takes his or her mouse and clicks on a piece and moves it to where
14 it's supposed to go. And the ultimate goal for the user is to complete the
15 jigsaw puzzle. Are you familiar with that reference?

16 MR. BLUMENKOPF: Yes, Your Honor. I believe that's the
17 Czepluch reference.

18 JUDGE MAYBERRY: Exactly. And there's an action, though, in
19 that reference that says, unbeknownst to me, I click on one of the pieces that
20 I'm trying to move up to the corner. And it's actually a hidden hyperlink,
21 and it sends me to a webpage. So, I didn't know that it was a hyperlink at
22 all. I just knew it was a puzzle piece that I thought went into the corner. But
23 the game tricked me into sending me to a website because I clicked on it.
24 You would agree that that's distinguishable from the example we had in
25 Angles, where I knew there was a hyperlink and I intended to click on it, and
26 I wanted to go to the store. That was on that advertisement.

1 MR. BLUMENKOPF: Well, Your Honor, I think whether the user
2 recognizes that as a hyperlink or not, there's still a manual operation where
3 you click on it. Whether it's labeled as a hyperlink or whether it's a puzzle
4 piece or whether it's an image or some other web element that is actually a
5 hyperlink. Once the user clicks on that, as we saw in chat block, there is an
6 automatic redirection that happens in response. And in the situation of the
7 prosecution history, the Board agreed that that chat block does, in fact, teach
8 the automatic redirection based on that hyperlink action.

9 JUDGE MAYBERRY: Okay. Thank you, counsel. And I will
10 say you are coming up against your time, and I know you haven't spoken at
11 all about Robinson.

12 MR. BLUMENKOPF: That's right, Your Honor. I'm mindful of
13 the Board's time. I want to skip briefly to Robinson. There are other issues
14 that are in dispute, but I want to make sure we hit Ground 2. So, if we can
15 go to slide 63, please. So, this is Ground 2, Robinson in view of the
16 knowledge of the person of ordinary skill in the art. Robinson's U.S. patent
17 that is filed in December 2000. Robinson is all about how can we enhance
18 downloaded software applications, and enhance them in a way that allows
19 for advertising comment to be integrated into those downloaded
20 applications. Robinson's idea was providing 3D computing environment
21 features that could be appended onto those downloaded applications.

22 Now, let's get to slide 65. And here I want to discuss the locally
23 executed game application limitation of Claim 1. And there's an illustration
24 here how Robinson meets this limitation. You have a user 410, requests a
25 downloadable software application from an e-commerce client. That's 420
26 here in Figure 4. There's an e-commerce front end and back end that

1 provide that requested application to the user's client machine, which is 460.
2 That's shown here in the green on the slide. But they append on to what
3 Robinson calls a 3D client. That's shown as 465 highlighted in red.

4 User can execute the downloaded application with the 3D client
5 kernel appended to it to run a 3D client environment. The 3D client kernel
6 also communicates with a registry. That's box 450. And that can help
7 deliver ad content to the application. And on the right in the same slide, we
8 see an example of that 3D client environment. This is Figure 9 from
9 Robinson. And that persistent client window 912 is acted on the user's
10 desktop. It can be used to deliver advertisement content and other
11 information. Robinson describes this window as a persistent presence on the
12 user's desktop. Further, Robinson explains the 3D computing environment
13 can include avatars that can be used in the context of online games.
14 Robinson gives examples of games like Quake and Diablo that made popular
15 in use of avatars. So, the application here is a game application, at least
16 when it's being used to provide online games. And it's locally executed by
17 that client machine 460. And that's how the locally executed game
18 application limitation is met.

19 JUDGE MAYBERRY: Excuse me, counsel. How is this used to
20 access online games? And how does it become a game application?

21 MR. BLUMENKOPF: Well, as I said, so Robinson describes a
22 number of applications or a number of features that can belong to this, the
23 3D client kernel ended on for this download of application. It gives the
24 example of online games specifically. For example, it describes, like I said,
25 the 3D client kernel can enable avatar functionality that explains the avatars
26 are a popular feature in games.

1 JUDGE MAYBERRY: And just so I'm clear, counsel, you
2 understand that one paragraph in Robinson that talks about avatars and has a
3 sentence that mentions on-site -- online games to be that the kernel generates
4 an avatar that's going to play one of those online games? Or it's going to be
5 the embodiment of the user playing those games?

6 MR. BLUMENKOPF: I want to clarify a couple of things, Your
7 Honor. First is that, Ground 2, it's not a 102 argument. We're not claiming
8 that Robinson anticipates Claim 1. It's an obviousness argument, and we
9 have to consider the level of ordinary skill in the art that the parties agreed
10 on. And if you recall, the parties agreed the person of ordinary skill in the
11 art has specific in console and gaming and network applications. And so,
12 with that one paragraph -- or so for Robinson, to somebody without any
13 particular skill, might convey one thing, but to a person of ordinary skill in
14 the art with the specific experience and knowledge, will teach that, yes, that
15 this can be applied to online games based on, for example, the user's
16 knowledge and avatars in games like Quake and Diablo, which were
17 specifically mentioned in Robinson.

18 JUDGE MAYBERRY: And I'll tell you my trouble, counsel.
19 How are we integrating ads? How is it going to be automatically integrated?
20 How is it going to be, they're going to be automatically redirection. It seems
21 to me that Petitioner's position is to think that one reference about online
22 gaming and requiring the person having ordinary skill in the art, essentially
23 build -- and I'll be blunt, using the claim as a blueprint, build a game that
24 then falls within the scope of the claim. And that really seems like what it is
25 to me, so can you give me the quick two minutes of why I'm wrong?

26 MR. BLUMENKOPF: I understand your concern, Your Honor.

1 And with respect to the limitations, automatically integrating and
2 automatically redirecting, there is specific disclosure in Robinson of how the
3 3D server registry 450 can provide ad content into, for example, the
4 persistent client window 912, which we saw automatically integrated into
5 that window, which is displayed to the user. And further --

6 JUDGE MAYBERRY: I do understand that on Figure 9. I'm
7 sorry to interrupt you. But you see it plainly in Figure 9. So, in my 3D
8 desktop, I have no problem with that happening. But so, is it Petitioner's
9 position that given the disclosure of gaming and avatars, all of a sudden the
10 game that results, including these games that they specifically name, is going
11 to have a persistent client window in it? So, when the avatar is strolling
12 around the game, it is going to encounter the persistent client window in an
13 advertisement and then can somehow select that advertisement. So, it's now
14 going to be part of the game because that's what's in the claim. It seems like
15 you're, again, taking the 3D office example of Robinson and just saying
16 magically it would be a game and it would have these features that have
17 been disclosed for the office.

18 MR. BLUMENKOPF: Well, to be clear, Your Honor, so there's
19 disclosure of avatars and there's specific examples of how you would
20 implement that. There's disclosures of automatically integrating ad content,
21 which can include hyperlinks that will automatically redirect the user. There
22 isn't any particular requirement in the claims that those features interact with
23 each other in a particular way other than what's recited. For example, there's
24 no requirement that the avatars interact with the ad content, or any of these
25 other features that. We're not taking the position that there is. Does that
26 answer your question?

1 JUDGE MAYBERRY: I think you're now into your rebuttal time,
2 so you can use the time as you see fit. I just wanted you to know that you
3 are.

4 MR. BLUMENKOPF: Thank you, Your Honor. I'd like to reserve
5 the remainder of my time.

6 JUDGE MAYBERRY: All right. Thank you. I do have you, and
7 correct me if I'm wrong, about 22 minutes left?

8 MR. BLUMENKOPF: That's right, Your Honor. Thank you.

9 JUDGE MAYBERRY: All right. Thanks. Okay. And with that,
10 Patent Owner's counsel, you can proceed when you're ready.

11 MR. RAFATIJO: Good afternoon, Your Honors, and may it
12 please the Board. My name is Homayoon Rafatijo, and I have the privilege
13 and honor to be before you and my first oral hearing as a LEAP practitioner.

14 I would like to start with limitation 1[D] in Angles.

15 JUDGE MAYBERRY: Excuse me, counsel. Do you know how
16 much time you'd like to reserve for rebuttal?

17 MR. RAFATIJO: Sure, Your Honor. Thank you for asking that. I
18 would like to reserve 20 minutes.

19 JUDGE MAYBERRY: All right. Thank you. Please proceed.

20 MR. RAFATIJO: Sure. So, I would like to start with limitation
21 1[D], automatically redirecting. And as you correctly pointed out, Your
22 Honor, Petitioners are focusing on the hyperlink mouse click in Angles.
23 And if we can go to slide 110, the Angles describe these redirections that it
24 occurs only if the user wishes to obtain more information. Now, we believe,
25 Your Honor, this redirection is neither automatic nor integrated into the
26 game application as specifically required by the claim language.

1 Now, slide 57, and I apologize that I have to go back to one of the
2 earlier slides. If we look at slide 57, Petitioner and the Board, Your Honors,
3 noted that an automatic process does not require users initiation or
4 intervention. Now, and we believe Angles' hyperlinking does not teach
5 limitation 1[D]. To be clear, Your Honor, we did not say it is not teaching
6 1[D] because of the mouse click. No, we say Angles' mouse clicks depends
7 on the user's wish to obtain additional information. But if a game by design
8 requires mouse click for users to play the game, then the user is redirected
9 because of the game play. The process is still automatic and integrated into
10 the game.

11 Now, if we can go to slide 58, please. When we asked Mr. Crane
12 what is automatic, he said, well, it's opposite of manual. And then we gave
13 him a hypo that's identical to the scenario happening in Angles. And he
14 described that process as manual click, manually click to obtain more
15 information.

16 And if we can go to slide 59, the specification, Your Honor, is very
17 clear that it is the game application that automatically redirects the user, not
18 the user itself. But of course, game play necessarily requires executing
19 game-related action by the user. And for that user may use mouse,
20 keyboard, controller, or anything. But that doesn't become -- the process
21 doesn't become manual just because the user is playing the game. The
22 process is automatic because it is the game algorithm that redirects the game.
23 And if you can go to slide 60, and Your Honors recognized this in a
24 decision.

25 JUDGE MAYBERRY: Excuse me, counsel. Judge Mayberry
26 here. I did understand -- I think I understood your point that it's the game

1 that causes the automatic redirection, not the wish of the user. But I also
2 thought I heard you say clicking -- using a mouse to click isn't, that it could
3 be automatically redirecting. And the method steps that I see in Claim 1, I
4 don't see anything where it says that it's the game application that does this
5 automatic -- that triggers the automatic. It's just one of the method steps.
6 And I guess I'm not sure why the user clicking and then having the game
7 send you someplace wouldn't be automatic. Like as we discussed with
8 Petitioner's counsel, as soon as you let go of that mouse button you are
9 redirected to a website.

10 MR. RAFATIJO: Correct, Your Honor. Thank you for that
11 question. So, here's the distinction. It says automatically redirecting said
12 redirection is integrated in the game application. Now, when this redirection
13 is integrated in the game application means the game application does the
14 redirection. Because integration happened at the code level, at the software
15 level happened, Your Honors. And so, for the user to be automatically
16 redirected, it is the game application. The redirection must be built in the
17 game code, the game software. Now, Your Honor pointed out --

18 JUDGE MAYBERRY: Excuse me, counsel. Let me ask a
19 hypothetical to see if we can understand the distinction here. Angles talks
20 about this racing game, and I'm playing it. And they talk about putting --
21 integrating ads into the game, such as putting it on a billboard. So, as I'm
22 racing around the 24 hours of Le Mans game, I've got a billboard that says,
23 you know, click here for a Ferrari racing jacket. And I move my mouse, so I
24 intend to do it. I move it and I click, and it sends me, redirects me to Ferrari
25 merchandise, and I can buy a racing jacket. But the hyperlink is integrated
26 in the game. It's every time I take a lap, I see the billboard, and it's right

1 there. So, it's part of the game play, because I encountered every single lap.
2 So, I guess I'm interested why that's not integration as well, because it's then
3 put into the web browser coding by including that hyperlink that I can now
4 see and click on.

5 MR. RAFATIJO: Thank you for the question, Your Honor. I
6 would like to point out that you just -- in your description, you said the
7 hyperlink is integrated in the game. The claim requires the redirection be
8 integrated into the game. The act of redirection. Just putting in a hyperlink
9 in an electronic page and hoping that the user somehow clicks on it, that
10 doesn't mean that the redirection is integrated into game. Yes, hyperlink is
11 integrated, but the redirection is not.

12 And, Your Honor, you mentioned the car race in Angles. I want to
13 be very clear. Angles references the car race game in discussing Figure 9.
14 And if you look at Angles's Figure 9, in Angles's Figure 9, there is no
15 redirection, Your Honor. There is simply no communication link between
16 the advertising provider computer and the consumer computer. So, to be
17 clear, that example of the car race game and integration does not even
18 disclose into redirection. And that's why, Your Honor, the Petitioner uses
19 Angles's Figure 1 for redirection. And Angles specifically discloses that
20 example in the context of Figure 9.

21 Now, you mentioned about the puzzle assembly game with my
22 learned friend on the other side. That's actually the point. The point is it's
23 the user in order to play the puzzle game needs to essentially click on the
24 mouse and move the pieces of the puzzles. Now, the examiner, if you can
25 go to slide 61, please, the examiner there says, but it is the game that forces
26 the user to be redirected because otherwise the prior art would not -- the

1 game would not generate any profit because the user may choose not to be --
2 to click on the hyperlink. And so, therefore, if, and this was the
3 understanding that the Board blessed, so they're showing you a snippet from
4 the Board's appellate decision, but they don't show you with what statement
5 of the examiner, the Board agreed. The Board agreed with this
6 characterization that the prior art automatically redirects because this
7 redirection happens by the game algorithm behind the scene and the user's
8 only playing the game. There is no user's wish involved in the redirection.
9 And redirection actually happens, not just simply putting a hyperlink there,
10 the redirection must occur.

11 JUDGE MAYBERRY: Excuse me, counsel. You would agree,
12 though, that here, as you correctly said, the examiner is talking about the
13 prior art. It isn't the prior art that would define the scope of the claim. The
14 examiner is saying that the forced redirection that's done in the
15 Czepluchgame falls within the scope of automatically redirecting, but it
16 doesn't necessarily limit the scope of automatically redirecting to being
17 forced. I mean, you would agree to that, right?

18 MR. RAFATIJO: I agree, Your Honor. But what I'm pointing out
19 is that the redirection must be integrated into the game, and the redirection
20 must happen at -- and this integration happen at the software level. Simply
21 putting a hyperlink and leave it to the user to just click on the hyperlink,
22 which their experts describe as a manual process, that doesn't mean that the
23 redirection either happens automatically or is integrated into the game.

24 And, Your Honor, if we can go to slide 117, a POSITA
25 understands that Angles' redirection is a choice given by the game developer
26 to the user. It is initiated directly by the user. It is not integrated into

1 Angles' content provider offerings because the offerings do not cause the
2 user to be redirected, absent a user manual click as Mr. Crane characterized.
3 So here, what it boils down to, Your Honor, is whether the game, this
4 redirection happens automatically, and whether it is happening -- the
5 redirection is integrated into the game. And we believe Angles does not
6 disclose such a thing. Now, if --

7 JUDGE MAYBERRY: Thank you, council. One, again, follow-
8 up, or perhaps restating that a different way. If we do not agree with you, if
9 we think that a hyperlink that is integrated into the web page that is running
10 the game that a user must manually choose to click on, but then once clicked
11 on is redirected to another web page, is automatically redirecting, then you
12 would agree that Angles teaches that, correct?

13 MR. RAFATIJO: Well, Your Honor, I would say that if you --
14 Your Honors found that by simply putting a hyperlink somewhere in the
15 content and without requiring the game to redirect the user, that would meet
16 the limitation that we disclose. I think I should agree with you, but as I said,
17 Your Honor, we don't believe just simply putting a hyperlink, that means
18 that the redirection is integrated. The claim does not talk about
19 hyperlinking. The claim talks about redirection being integrated. The act of
20 redirection must be integrated. And this must happen automatically,
21 divorced from a user's wish.

22 JUDGE MAYBERRY: All right. Thank you, counsel.

23 MR. RAFATIJO: Sure. If I can go to slide 65, please. I would
24 like to briefly talk about Angles' two embodiments here. We have two
25 embodiments, the preferred embodiment, and an alternative embodiment.

26 Now, in discussing the preferred embodiments, Your Honors, we

1 have a content provider sending content to the consumer computer,
2 consumer computer transferred to the advertisement provider and received
3 contents from advertisement provider, and somehow that content is getting
4 combined at the consumer computer level. And notably, there is no
5 communication link, Your Honor, between the advertisement provider
6 computer and the content provider computer.

7 Now, if we go to slide 68, please, we have maintained throughout
8 that Angles consistently uses the term combination, not integration, in
9 describing what happens at the consumer computer level. And in slide 69,
10 now here again, you see, it says the consumer combines the customized
11 advertisement with the electronic page.

12 Now, Your Honors, during the oral hearing, the other side
13 represented that you did not rely on any of the combination of embodiments
14 of Angles, and they only rely on Figure 1, but they never showed you, Your
15 Honors, that Figure 1 in Angles discloses integration. We don't believe
16 Figure 1 in Angles discloses any sort of integration. In order to make their
17 case, and on a slide 44, Petitioner showed you the testimony from the expert
18 that is relevant to Figure 9 in Angles, but there is no evidence that Figure 1
19 in Angle talks about integration. It carefully uses the word combination.
20 And now, Your Honors, we believe combination and integrations are two
21 very different concepts when it comes to software rule, and only Figure 9 in
22 Angles teaches integration.

23 If I can go to slide 75, please. As Dr. Medvidovic testified, the
24 difference between Figure 9 and Figure 1 in Angles that the embodiment in
25 Figure 9 allows for the content or advertisement to be directly incorporated
26 into the content provider offerings. Such a thing cannot happen in Angles.

1 If we can go to slide 76, please. And here, Dr. Medvidovic clearly
2 states that it is only Figure 9 that offers disadvantage of integration. And if
3 we can go to slide 108, please. So, and again here, Dr. Medvidovic, after
4 discussing Angles in great details, he testified that only Figure 9
5 embodiment is capable of integrating advertisement into online games. But
6 that integration, Your Honor, happens prior to sending the integrated form of
7 the game to the user. Now, by Angles' own words, integration only occurs
8 for Figure 9. And if you review the disclosure of Angles with respect to
9 Figure 9 on column 21 and column 22 of Angles, it repeatedly uses the word
10 integration. It never uses the word combination. And there is a reason for
11 that.

12 In a bigger picture, Your Honor, if I may borrow from my
13 chemistry background as a former professor of chemistry, integration and
14 combination may be simply explained by drawing an analogy to
15 combination and dissolution. Oil and water, you can combine them. You
16 cannot integrate or dissolve oil into water. And this is not -- integration,
17 Your Honor, happens at the software level. And this is not our position.
18 Their experts if you can go to slide 106, please. Their expert, Mr. Crane,
19 testified that integration has to occur within the game code itself. Now, in
20 Figure 1 Angles, the game code itself is not accessible to the users.

21 If we can go to the next slide, slide 107, because as Dr.
22 Medvidovic testified and described, and I'm going to get to this when I'm
23 discussing limitation 1A, there is a difference between a game being locally
24 executed and a game being accessible at the user's device. An online game
25 can be locally executed by using a browser, but the game code is not
26 accessible to the user. And a POSITA would readily understand this

1 because to make any changes to a code or software of an online game, these
2 games, these software codes are encrypted. The user cannot integrate
3 anything into the game. Therefore, the combination that happens in
4 Angles's Figure 1, which takes place at the users, at the consumer computer
5 level, never involve or entail integration.

6 And if we can go back to slide 105, a dictionary definition, Your
7 Honor, clearly says integration should happen at a software level. It's
8 combining two different software in order to create a new whole, a new
9 functional unit, a new system. Just right now in this call, Your Honors, my
10 image is combined with your image in a displayable form, but my image is
11 not integrated into your form -- into your image. The combination happens
12 at the interface, user interface level, whereas integration happens at the code
13 level as Mr. Crane testified, Your Honor.

14 Now, the key point is also this. The integration described in the
15 '028 patent in the abstract is clearly consistent with what POSITA and Dr.
16 Medvidovic understands. The abstract is --

17 JUDGE MAYBERRY: Excuse me. Counsel, on this integration
18 stuff. So, we need to automatically integrate the business-related content
19 into the locally executed game application during execution. It seems like I
20 thought I heard you say that if we are running an online game from --
21 executing an online game from the browser and it is being locally executed,
22 it is the locally executed game application. So, I just need to integrate it
23 into the web page. So, why isn't, for example, when we get a hyperlink that
24 goes into the billboard on the -- that I can see when I'm doing the racing
25 game, why isn't it that automatically integrated because it's in the code of the
26 web page?

1 MR. RAFATIJO: Your Honor, hyperlink is integrated.
2 Redirection has not been integrated.

3 JUDGE MAYBERRY: No, I'm sorry we're -- I thought we're
4 talking about automatically integrating business related content.

5 MR. RAFATIJO: Correct. Because you just gave me an example
6 about hyperlinking, Your Honor. I apologize if I misunderstood your point.
7 What I am saying, in order to have business related content integrated into
8 the game. It must become part of the game. And this happened at the
9 source code level, at the software level, and the '028 patent clearly states the
10 player exposed --

11 JUDGE MAYBERRY: With all due respect, counsel, I don't see
12 how that's even possible. The claim says it's integrated into locally executed
13 game during the execution of the game application. When you're executing
14 a game application, when you're executing any application, you can't do
15 something into the code. The game's running. You're running the
16 executable. But here we're talking about a game that's being run, an online
17 game, being run locally on my computer in a web browser. And I am
18 getting business content sent to the browser and integrated in. So, now when
19 I'm playing my game, I see the business content. I see the eat more chicken
20 on the billboard because it's a Chick-fil-A advertisement. That's the
21 business-related information. It is integrated into my web browser as I play
22 the game.

23 MR. RAFATIJO: Your Honor, I believe you and I are saying the
24 same thing. Yes, in the context of an online game, which Angles's Figure 1
25 discloses, that such a thing is an impossibility. It's not possible at all to
26 integrate anything into an online game. That's why we are saying the game

1 applications disclose in our claim is a locally executed game application that
2 is accessible at the user's device. Now, if the user has access to the game
3 software, such integration could happen. That's why we are saying Figure 1
4 in Angles, by Angles' own choice of word, it uses the word combination, not
5 integration.

6 Now contrast that with Angles' disclosure of Figure 9, the
7 advertisement provider sends advertisements to the content provider.
8 Content providers have access to the code. And now at that level,
9 integration occurs. And then once the integration occurs, the content
10 provider sends down the content to the user. So, that's the whole point of
11 my argument, Your Honor, that Figure 1 Angles does not teach integration
12 because the user, as you just correctly pointed out in your example, does not
13 have access to the game code. It's just running or executing the game locally
14 without having access to the game code. That is what --

15 JUDGE MAYBERRY: Doesn't Petitioner rely on Figure 9 for the
16 teaching of the integration in the petition? I'm looking at Petition 24 and 25.

17 MR. RAFATIJO: Correct, Your Honor, but they have abandoned
18 that theory in the reply. They said, we are going to rely on Figure 1. And let
19 me tell you this, Your Honor, that's the whole point of our POR and sur-
20 reply. They have not offered any evidence for motivation to combine. They
21 exclusively, Your Honor, rely on Angles's Figure 9 for limitation 1[C], but
22 rely on Angles's Figure 1 for all other limitations.

23 And all we asked them, where is your evidence of motivation to
24 combine? Instead of providing evidence or pointing to any language in
25 Angles that says the two embodiments are interchangeable, the two
26 embodiments are equivalent or anything like that, they said, we are going to

1 focus on embodiment one in Angles, and that's why the reply shifted focus
2 from Angles's Figure 9 to Angles's Figure 1. If they are going to stick with
3 what they said in the petition, first there is a problem. There is no evidence
4 of motivation to combine.

5 And as a matter of fact, Your Honor, we provided evidence, 30
6 paragraphs of Dr. Medvidovic explaining great details why there is no
7 motivation to combine for these two different network structures. And if I
8 can point your attention to slide 75. So, here you can see Dr. Medvidovic,
9 sorry, slide 77. I'm sorry, Your Honor. In this slide and the next two slides,
10 Dr. Medvidovic describes the differences, fundamental differences, between
11 Angles's Figure 1 and Angles's Figure 9. And he concludes on slide 80, that
12 a POSITA reading Angles would perceive the embodiment depicted in
13 Angles's Figures 1 and 9 as vastly different. Adopting one effectively
14 teaches away from the adoption of the other. The idea that a POSITA would
15 be motivated to combine these two distinctly different embodiments stems
16 from impermissible hindsight reasoning.

17 So, they had this testimony, 30 paragraphs, Your Honor, and they
18 did not come up with once a single paragraph that rebut this testimony. As
19 this stands right now, this testimony is unrebutted. And instead, they shifted
20 argument to focus on Figure 1. And, Your Honor, and even if we forget
21 about, even if we let that happen, even if we turn a blind eye on lack of
22 evidence for motivation to combine, it's still Angles's Figure 9, Your Honor,
23 does not meet our -- Figure 9 does not meet our limitation.

24 If I can direct your attention, Your Honor, to slide 92, they are
25 arguing that the timing of integration is irrelevant. Well, how can it be
26 irrelevant, Your Honor, when the claim specifically says the integration

1 must occur during execution of the game?

2 Now, if I can go to slide 94, please. Here, Petitioner's expert
3 agrees with us. He says, when we ask him, can a customer in Figure 9
4 execute the electronic page before the electronic page is sent to the
5 customer, the expert says, no. Then we ask him, so what's the process of
6 integration? Can you please let us know how integration happens? He says,
7 it is incorporated before being submitted down to the consumer computer.
8 And if you can go to the next slide, please. And again, here it says there is a
9 customized advertisement that is incorporated into the content information at
10 the content provider level, which is then forwarded to the user computer.
11 So, if integration happens before sending down to the consumer, as he
12 agreed, and execution does not happen until it is sent to the consumer,
13 Angles' integration in Figure 9 is not happening during the execution.

14 So, and Dr. Medvidovic also agrees and extensively testify about
15 this. In slide 96, he says the specification for '028, he relies on that part, that
16 the game application is initiated and then integrates business-related content.
17 So, the integration in our claim should happen at the user's device, whereas
18 in Angles' claim, integration happens at the content provider level.

19 So, and this is, again, further emphasized by Dr. Medvidovic in
20 slide 98, please. But he says, in Angles's Figure 9, which is the only
21 embodiment in Angles capable of disclosing integration, the integration
22 happens prior to the consumer computer executing the electronic page.

23 So, in conclusion, Your Honor, we believe, Your Honor should
24 reject the mix and match approach in the petition for failure to offer a
25 motivation to combine evidence, should reject Petitioner's shifting argument
26 on procedural grant.

1 If we can go to slide 91, please. There are new arguments based
2 on Figure 1 raised only in the sur-reply, and this should not be permitted.
3 And then, even if you forget about this procedural posture, even if you let
4 that go, Figure 1 in Angles does not disclose combination -- integration, only
5 discloses combination. And Figure 9 in Angles only discloses integration,
6 but that integration is not during the execution of the game. And so, I'd like
7 to pause here and open the floor for any questions, otherwise I would
8 proceed to limitation 1A.

9 JUDGE MAYBERRY: Yeah. Thank you, counsel. I do have one
10 question. I just want to try and understand the whole combination thing.
11 So, if I'm doing the embodiment of 1, of Figure 1 in Angles, and I'm getting
12 my webpage. And it's a game, an online game. And I'm executing it on my
13 computer and I'm getting information coming from the advertising provider,
14 not from the content, getting an advertisement combined with that. Are you
15 saying that it's going to be something like a pop-up window or something?
16 Something that's not in the game?

17 MR. RAFATIJO: Correct, Your Honor. It's going to be just a
18 combination in a displayable form as Angles specifically states. You have a
19 combination of two windows, probably on the left side of your screen, you
20 are playing the game. And then you have -- so essentially, and then on the
21 right side of your window you have this advertisement. And they are put
22 together, coupled together in a displayable form. So, it's an interface, user
23 interface manipulation. Integration, as their expert testified and Dr.
24 Medvidovic agreed, must happen at the software level.

25 JUDGE MAYBERRY: All right. Thank you.

26 MR. RAFATIJO: And, Your Honor, now with your question, I

1 was reminded that they are relying on a sentence in the petition that they
2 used from abstract in Angles. If we can go to slide 87, please. So, they cited
3 this sentence highlighted in red, and they say they try to tie this sentence to
4 Angles' preferred embodiment, which is Figure 1. But by its own language,
5 this sentence does not point to Angles's Figure 1. It says the integration
6 happens with offerings code maintained by content providers.

7 So, essentially Angles here points to Figure 9, because it's the only
8 environment in Angles when the advertisement is sent to the content
9 provider. And while the offerings are maintained by, kept at the content
10 providers computer, integration occurs. As I showed to you, Your Honors,
11 moments ago, Figure 1 in Angles -- in Angles's Figure 1, there is no
12 communication between Angles' advertisement provider and Angles'
13 content provider. So, the content the advertisement sent to the customer and
14 the combination, not integration, happens while the content or the offerings
15 of the content provider is running on the consumer computer's device.

16 Now, the next sentence is this sentence highlighted in green,
17 Angles starts talking about the preferred embodiment. And in describing the
18 preferred embodiment, again Angles carefully uses the word combined, says
19 the custom advertisement is then combined with the offerings. Why
20 combination and not integration? Because the customer, the consumer, does
21 not have access to the code. The only way you can integrate something into
22 the content providers offering if you -- is when the advertisement is sent
23 directly to the content provider.

24 So, with that, I'd like to go to limitation 1[A] and slide 118, Your
25 Honor. So, I would like to flag at another shifting argument injected by the
26 Petitioner at the reply stage. In the petition, they argued -- they relied on

1 Angles' online games accessible over the internet. And the decision
2 understood them to say the consumer accesses the online game using a
3 browser running on the consumer computer. So, there's no discussion about
4 accessible ads in Your Honor's decision on the institution stage.

5 We pointed out that online games are not accessible at the user's
6 device. In reply, as my learned friend on the other side admitted, they are
7 saying that the web browser is the game application. Now, if I can take you
8 back to slide 13, please. It is important to understand why -- how they can
9 capture a web browser into the claim. They are saying that they're not
10 offering any construction, but they do, Your Honor. At the petition and the
11 decision and the response, we all said no constructions required for any of
12 the terms in Claim 1.

13 At the reply stage, they provided construction for the game
14 application. They said game application is a program designed in the
15 performance -- designed to assist in the performance of a game. In sur-
16 reply, we said no, we don't need to construe the term game application. If I
17 can go to the next slide. They are piggybacking on the dictionary definition
18 of an application to come up with this definition for the game applications.
19 This is application is a program designed to assist in the performance of a
20 specific task. Therefore, game application is a program designed to assist in
21 the performance of a game.

22 And if you can go to slide 15. But if you take their words for this,
23 Your Honor, everything is a game application. Even operating system.
24 When I asked Mr. Crane on a deposition, well, sir, do you believe operating
25 system assists in the performance of a game? His response is highlighted in
26 red. He agreed. He says an operating system is a program assist to assist the

1 program -- is designed to assist the program -- to assist a program as a game,
2 or in performance of a game. But, Your Honor, operating system is not a
3 game application. So, they are trying to broaden the claim so that so to
4 capture the prior art.

5 So, if we can go to slide 16, please. And a POSITA readily rejects
6 this. Dr. Medvidovic said a game application is an application that is a
7 game. And he strongly disagreed that anyone, and he said he would be
8 surprised if anyone says the game -- a browser is a game application.

9 So, on slide 18, Your Honor, so, it is important to recognize why
10 they are changing this position. Because at the petition stage, Your Honor,
11 they equated locally executed and accessible ad, which is against the well-
12 entrenched principles of the patent law that different words in a claim needs
13 to have different meanings. As you can see here, they are saying the locally
14 executed game application would be by definition accessible at said primary
15 electronic device. They do not distinguish between these two terms.

16 And if we can go to slide 19, please. When we asked their expert,
17 okay, so what is the accessible act, he referred us to his definition for locally
18 executed. He said it's the same thing. If we can go to slide 23, Your Honor,
19 please. So, in POR we established that the two terms locally executed and
20 accessible at have different means. Locally executed, Your Honor, we are in
21 agreement with the Petitioner. It means running the game locally on the
22 user's device. So, there is no disagreement as to that. The disagreement is
23 as to term accessible at and it's slide 24. They claim language, it says, it
24 itself says accessible at. It doesn't say accessible over as they characterize it
25 in the petition. It doesn't say accessible from. It doesn't say accessible
26 through. It doesn't say accessible by. It says accessible at. And this means,

1 Your Honor, that the game application is resident on the user's device. Or in
2 other words, the user's device holds the game application.

3 JUDGE MAYBERRY: Excuse me, counsel. A couple of
4 questions about that. First, going to take it baby steps. You would agree
5 that the browser is locally accessible at the user's site, user's computer?

6 MR. RAFATIJO: Yes, Your Honor. The browser is an
7 application -- when installed, the browser is accessible at the user's
8 computer.

9 JUDGE MAYBERRY: And so, back to your criticism of
10 Petitioner's position that accessible at and locally executed amount to the
11 same thing. Well, if we have a browser that is locally executing the
12 program, well, it's on the computer. So, it is locally accessible at that
13 computer when the browser is executing the online game. At least that's
14 how I understand Petitioner's position. So, the act of executing the game
15 locally on a browser makes the game accessible because the browser's on the
16 local computer.

17 MR. RAFATIJO: So, Your Honor, but the game application is not
18 accessible at the user's device. The claim requires that the game application
19 be accessible at the user's device. And if I can take a look, Your Honor --

20 JUDGE MAYBERRY: Well, counsel, excuse me. Can you
21 explain then the whole story for lack of a better term, the storyboard
22 example where the applicant told the examiner, this is an example of the
23 game, of the claimed invention. And this is the browser-based gameplay.

24 MR. RAFATIJO: Sure, Your Honor. If I can take you to slide 35,
25 please. So, they are showing you one slide out of the 10 slides provided to
26 the patent office and the examiner, and they try to say that this web browser

1 was referred to as a game application. Absolutely not, Your Honor. First,
2 Your Honor, I'd like to show you slide 37.

3 JUDGE MAYBERRY: Well, counsel, before we do that, can we
4 look at slide 35?

5 MR. RAFATIJO: Sure.

6 JUDGE MAYBERRY: Down at the bottom. Website, visitor
7 chooses game/ genre. When I see that, I think I am going to go to a website,
8 which is over a network from my local computer, and I am going to choose
9 which type of game. A mystery game, an adventure game, a sports game, a
10 sci-fi game. So, I am sitting at my local computer running a browser, but I
11 am going to execute an online mystery or adventure or sports game. That's
12 what this is telling me.

13 MR. RAFATIJO: So, Your Honor, yes, I'm going to address that
14 in slide 37 first. Can we go to slide 37? So, first it says it's working offline.
15 So, there is no network. There is no internet, Your Honor.

16 JUDGE MAYBERRY: Yes, but counsel, that's just because that's
17 the image that they took to give to the examiner. It's clearly, to me anyway,
18 designed to work as a website online. You argue that it was meant to
19 operate offline as a local -- running a game locally on my own computer, but
20 I'm just using a browser as the tool. I think that's quite disingenuous. This
21 clearly says that it is a website, and when the applicant argued to the office
22 that this is an example of the game of the claimed invention, they argued to
23 the office that accessing an online game through a website is an example of
24 the claimed invention. I don't see how you can get away from that.

25 MR. RAFATIJO: So, Your Honor, I respectfully submit to you
26 that the game application that was represented to the patent office is Chronos

1 demo, and in none of the slides from slide 125 to slide 131, which actually
2 shows the game in the prosecution history, you do not see it Internet
3 Explorer mark or a title bar. It's because the game is not a web-based game,
4 Your Honor.

5 JUDGE MAYBERRY: Excuse me, counsel. I just want to make
6 sure we're clear. You're representing to us that the slide that we saw on 35
7 had said website visitor chooses game/genre was not meant as a game that
8 would operate over a website. That is not the claimed invention. That is the
9 representation you are making to the Board?

10 MR. RAFATIJO: Yes, Your Honor. And if I may, Your Honor,
11 add a couple of sentences to that. The website, the Board website, on the
12 bottom of that slide comes from the fact that, and this is part of the
13 prosecution history, and I think that this is not cited in our brief. But now
14 that Your Honor asked, I need to say this.

15 The website is the TerraZone website. It was a commercial
16 website launched by the applicant at the time to capture licensing deals and
17 capture sponsors for her invention. And as a matter of fact, a lot of pages in
18 the prosecution history references a way back or internet archive that's
19 showing that these are the pages from that website where the applicant
20 shows to the rest of the Board what her invention is.

21 So, what you see, Your Honor, on the Board website is because the
22 TerraZones.com was a website entered into the record as even reference as
23 one of the -- as part of the prosecution history. That's why you see the word
24 website there, Your Honor. But if I can please point you to slide 30.
25 Apologies, Your Honor. If I can point you to slide 44, the game application,
26 Your Honor, that the applicant was referring to in her remarks on page 107

1 and 108 of the prosecution history, is actually Cronos Demo. It's not the
2 browser. You do not see a browser here, Your Honor. Slide 45, please.
3 And their expert admitted that there is no browser, no Internet Explorer title
4 bar displayed here.

5 Slide 46, please. Petitioner is caught on a double stick. On one
6 side, they're trying to tell you that the web browser is the game application.
7 But then on slide 47, please, they say the game here is the Cronos game
8 chosen by the user. So, the web browser is not the game. The game is the
9 Cronos Demo. If you can go to slide 49, their expert admitted, Your Honor,
10 that the game that is initiated is here, right, at page 125 of the prosecution
11 history. This is the game, not the web browser, Your Honor. And to the
12 extent that Your Honor would like to say, or the other side would like to say
13 that this is a browser-based game, there is no Internet Explorer, mark, or title
14 bar, in any of the pages from 125 to 131. And if you can go --

15 JUDGE CHERRY: Excuse me. You're representing to us that this
16 did not run in the Internet Explorer?

17 MR. RAFATIJO: Yes, Your Honor, that's my representation to
18 you.

19 JUDGE CHERRY: Did you -- what kind of investigation did you
20 undertake to reach that -- be able to make that assertion?

21 MR. RAFATIJO: Your Honor, the other side have all the
22 production that we produced during the discovery period in the litigation.
23 And all of these pages that they handpicked, the colorful pages, around those
24 big numbers, you're going to see the TerraZone websites. And TerraZone --
25 and a marketing tool put together in form of a PowerPoint by the inventor
26 and the applicant when she was running the TerraZone website, and all the

1 stuff that she did to come up with a way to sell her invention. At no point
2 she mentioned that we have online games or not online games. To the extent
3 that I am -- I recall those parts of the production that you produced to the
4 other side. And they deposed, they deposed the applicant here, they
5 deposed the inventor. And at no point did the inventor say, this web browser
6 represents my invention. So, if I can't take it -- that's a bad way to do it.

7 JUDGE CHERRY: I mean, I don't -- I feel like we're getting really
8 far afield of what's in the briefs and what's in the record here. I mean we --
9 there's no, none of that evidence is before us, right? You didn't submit her
10 deposition.

11 MR. RAFATIJO: Your Honors, because this issue was raised with
12 the reply and we could not submit any evidence with our sur-reply to show
13 that what really this web browser is.

14 JUDGE CHERRY: But it wasn't part of the prosecution history, so
15 why would that be relevant?

16 MR. RAFATIJO: Your Honor, if I can take you to the remarks
17 that the applicant made on page 107 and 108 of the prosecution history to
18 the examiner, that would make this even clearer. If you can go please to
19 slide -- and I'll explain why this is in the prosecution history in a bit.

20 If you can go to slide 51, please. The applicant's remark on page
21 107 says, in use a primary electronic device accesses the game applications
22 to thereby locally execute the game applications. The game is Chronos
23 Demo. And then next slide, slide 53, please. The applicant says that
24 business related content is integrated into the game. And again, you see the
25 Chronos Demo game here without any Internet Explorer title bar. And you
26 see the brands, the sponsor.

1 So, when the applicant is talking about automatically integrating
2 into the locally executed game, there applicant is talking about this
3 sponsorship in the Chronos Demo game. That is not a web based game right
4 now. You can see that. And then on slide 55, the applicant gives examples
5 to number 60 and number 70 and I produced number 6C here for an example
6 of automatically redirecting into PJ's club. So again, you can see the
7 Chronos Demo minion on the left corner. So, this is the game application.
8 Now, your question is why we see that browser page there. And we briefly
9 discussed this in our sur-reply. If we can go back to slide 41, please. Here
10 you see that, --

11 JUDGE MAYBERRY: Excuse me, counsel.

12 MR. RAFATIJO: Yes.

13 JUDGE MAYBERRY: I just want to let you know you have five
14 minutes remaining in your original 55 minutes.

15 MR. RAFATIJO: Sure, Your Honor. You're seeing here two blue
16 boxes that we highlighted. On the left, you see a file explorer TZWebsite, a
17 windows file explorer. And on the right, you see an Internet Explorer tab,
18 tzflashindex. Now, if we can go to slide 42, please. As we explained to in
19 our reply, this indicates to a POSITA that the user first opens the content of
20 the directory on the user's personal computer on a file explorer. Then used
21 the WebView feature of the Internet Explorer to show the same content
22 that's in the directory in an Internet Explorer.

23 And at the time of the invention, if we can go to slide 43, please,
24 their expert admitted that as of 2002 you could use a web browser to browse
25 files and folders on a computer. And if you see the graphics there, Your
26 Honor, that's the intended purpose of a WebView feature in the Internet

1 Explorer. The WebView feature in the Internet Explorer allows the user to
2 design the graphics of how things are displayed in a directory, if the
3 directory is viewed in Internet Explorer. And as their expert pointed out,
4 Your Honor, here we have a file name.

5 If we can go back to slide 39, please. Their expert said, what you
6 see on top on the title bar is a file name. It is not a URL. It's a file name that
7 is residing on the user's device. So, this web browser is nothing but a big
8 view feature of the directory and the content of the directory that already
9 resides on the user's device. So, Your Honor, we do not believe a web
10 browser is a game application. And if you take them at their words, the web
11 browser could be any kind of applications. Their expert, for example,
12 testified, Your Honor, that web browser can be a word processing
13 application because it assists in the performance of word processing. We
14 don't think that is right, Your Honor.

15 The game application is different from the web browser. And that
16 is, if I can take you to slide -- to the -- let me -- slide 20 -- I believe it's slide
17 27, please. Numerous representation -- numerous examples from the
18 prosecution history shows that the game application needs to be held or
19 resident on the user's device. And Figure 1 in '028 patent shows that the
20 game application is distinct from the web browser. So, they're trying to
21 equate web browser and game applications, whereas Figure 1 in our patent
22 shows that the two are different. If I can show quickly slide 4.

23 JUDGE MAYBERRY: Excuse me, counsel.

24 MR. RAFATIJO: Yes.

25 JUDGE MAYBERRY: I think what I'm most concerned with is
26 that you are essentially asking the panel to undo an express amendment that

1 was made by the applicant. You crossed out, held or hold and added
2 accessible at. And you want us to undo that. And I, for one, have trouble
3 with that. The applicant had a reason for making that amendment. And it
4 was to not use held at. And now you want us to interpret it to mean held at.
5 I'm troubled by that.

6 MR. RAFATIJO: Your Honor, it's important. Thank you for your
7 question, Your Honor. It's important to note that the amendment from held
8 to accessible. So, it was held at, now it's accessible at, was not proposed in
9 response to a rejection or distinguishing prior art. And it only was made to
10 capture what was already in the specification and was not represented by
11 held at. Look, at 2002, Your Honor, held implied physical media, like CD-
12 ROM, floppy disk, DVD-ROM.

13 Whereas, in our -- in the specifications, there is a scenario that the
14 game application is stored digitally, stored digitally on a remote site. And
15 we cited that and it was on a slide 27, I believe, if we can go back to slide
16 27. So, the second -- the first two last on the righthand side said the game
17 application through a local web browser with the game application being
18 stored on a remote site. So, accessible includes not only physical media, but
19 also when you have stored internally on the memory of the device.

20 But if I can go back to slide 4 quickly, and that would be the last
21 argument I'm going to make at this point. Here we have game application,
22 completely different from the web browser. Web browser is on the
23 electronic device 14. Game application is held or is accessible at Primary
24 Electronic Device 2. So, you cannot -- we cannot equate the web browser
25 and the game applications when the intrinsic record separate them and
26 distinguish them. So, if Your Honors do not have any questions, I'm going

1 to reserve my time for the rebuttal.

2 JUDGE MAYBERRY: All right. Thank you, counsel. I did -- do
3 you want to remind you that you did not address the Robinson ground at all.
4 You did that purposefully?

5 MR. RAFATIJO: Oh, no, Your Honors, I thought I can respond to
6 the Robinson ground during my rebuttal. I was under the impression that I
7 can allocate my time however way I fit -- I see through.

8 JUDGE MAYBERRY: Well, counsel, to be clear, you may
9 discuss the Robinson ground during rebuttal, but only to the extent that you
10 are rebutting something that Petitioner's counsel brings up in their rebuttal.

11 MR. RAFATIJO: Okay. So --

12 JUDGE MAYBERRY: But you can't save it for something that
13 would be an argument that would have been in your response. So, to this
14 regard, you might want to continue on if you want to.

15 MR. RAFATIJO: Sure. And if I can have a few more minutes
16 than I address Robinson too. If we can go to slide 137, please. So, they
17 have not identified any game application, Your Honors. First, they said that
18 3D computing environment in Robinson is a game application. And as you,
19 Your Honors, correctly pointed out, this is just a 3D desktop. If we can go
20 to slide 138, Robinson itself says that this is the 3D computing environment,
21 and I'm reading from the blue highlights. It's a desktop 360 degree 3D
22 dimensional room inside a monitor. How can this be a game application?
23 Well, they're trying to sell it as a game application because it's perhaps
24 assisting the performance of a game. Of course, a user can play a game on
25 every single monitor. So, why this is a game application, I'm not sure.

26 Slide 139, please. Robinson clearly described this as a user

1 desktop, not as a game application. And if you can go to slide 140, and Mr.
2 Crane, their expert, clearly said this is a virtual desktop, and this is a window
3 within the 3D desktop. So, it's not a game application. When the persistent
4 client window 912, is a window within a 3D dimensional desktop.

5 So, if you can go to slide 141, now they are trying to rely on the
6 client kernel, that window in the desktop, to say, well, that is a game
7 application because it assists alongside the game applications. If you can go
8 to slide 142, please. They are showing you the screen boxes, the programs,
9 and then the window, and they say this window assists in the performance of
10 the programs. But that's nowhere in Robinson. This is just pure reinventing
11 of the wheel, the wheel by the Petitioner.

12 If I can go quickly to slide 143, and as we represented to Your
13 Honor, as we submitted to you, this is only a virtual desktop. And as you
14 understand, and everybody, a POSITA understand it, a desktop has
15 programs, a desktop has folders, but in this desktop is different. It's three
16 dimensional and it has a window for delivery of advertisement. That doesn't
17 make this a slide, that doesn't make it at all a game application or assisting in
18 performance of any game applications. They have not shown that, Your
19 Honor.

20 And I think with that, I'm going to rest because I'm going to save
21 my time. Thank you.

22 MR. BLUMENKOPF: All right. Good afternoon, Your Honors.
23 So, Mr. Rafatijo made a lot of points. There's a lot of things --

24 JUDGE MAYBERRY: I'm sorry, counsel, could you hold on for a
25 second?

26 MR. BLUMENKOPF: Oh, yes, of course, Your Honor. Sorry.

1 JUDGE MAYBERRY: All right.

2 MR. BLUMENKOPF: Okay. So, continue on?

3 JUDGE MAYBERRY: Hold on counsel. No, no, no. As far as
4 the parties go, we're going to take about five minutes break to stretch our
5 legs. We've been sitting and listening or talking for quite a while. So, I
6 have 41 after the hour right now. So, we will pick this up at 46 after the
7 hour, or just for five minutes.

8 COURT REPORTER: Okay, we're going on record. Okay. We're
9 going on record and the time is 3: 46 p.m.

10 (Whereupon the above-entitled matter went off the record at 3: 41
11 p.m. and resumed at 3: 46 p.m.)

12 JUDGE MAYBERRY: With that, Petitioner's counsel, you may
13 begin your rebuttal. You have 22 minutes.

14 MR. BLUMENKOPF: Well, thank you, Your Honor. And there's
15 a few things that Mr. Rafatijo mentioned that I want to make sure I address
16 for the Board. I want to make sure the record is clear. The first of those are
17 ways to automatically redirecting limitations. And I want to pull up the
18 Patent Owner's demonstratives, slide 59. I heard Mr. Rafatijo refer to that
19 slide in particular. And I see in the language that he's actually highlighted.
20 You can see the intent of this as an example of automatically redirecting.
21 This is a citation from the '028 patent. It says, user actions within the game
22 cause the game application to automatically redirect the user to a customized
23 corporate website.

24 And so, that's a great analogy for what the web browser in Angles
25 says. Where you have a user action when you click on a hyperlink and then
26 it causes the game application, the web browser, to automatically redirect the

1 user, it even says that, a customized corporate website. So, I think it's a
2 great example you picked out for how you can have a web browser
3 integrated hyperlink functionality like Microsoft Internet Explorer, and have
4 that automatic redirection behavior entirely within the scope of what the
5 Patent Owner, or will put the applicant as described as user actions.

6 I heard Mr. Rafatijo make a comment about automatically
7 redirecting and Angles not being integrated into the game. But I'd like to
8 direct the Board to the claim language. So, slide 7 from the Patent Owner's
9 demonstratives. And so, what's important here, you can see the
10 automatically redirecting at the end. It's not automatically redirecting as part
11 of a game. It says part of the user executing, say, the game application. And
12 actually, I don't see the word game here at all, except in the game
13 application.

14 I mentioned earlier an example of chess versus a chess application.
15 And Your Honor, we spoke earlier about the race car example from Angles,
16 where you have a race car game, but then you have a web browser, which is
17 the game application that helps you play the game. And Mr. Rafatijo
18 referred numerous times to a game or an online game. He was telling us that
19 if you have a game stored at the content provider of 14, that can't be
20 customization because you can't automatically redirect while executing that
21 game. But again, the claim here says game application. As we explained,
22 the game application in Angles is that web browser of a client's computer 12.
23 And as we've shown, the automatic redirection happens at that web browser
24 via the operation of the hyperlinks. Microsoft Internet Explorer is
25 specifically mentioned in Angles that has the same micro link functionality.

26 So, another issue that I heard Mr. Rafatijo mention refers to what

1 the petition cited to from Angles. And I saw arguments related to, say, the
2 petition is relying on a combination of embodiments from Angles. And that
3 explained before, that's not the case. And I want to make sure that's clear to
4 the Board here.

5 And I think we addressed this point in our reply, but just for
6 clarity, I want to get into more detail. So, first, to be clear, the petition
7 doesn't argue that Angles anticipates the claims under section 102. Grounds
8 are obviousness in view of Angles, and the knowledge of the person of
9 ordinary skill. As we explained in the reply, Petitioner does not rely on any
10 combination of embodiments. The petition pointed to the preferred
11 embodiment, which Angles explains corresponds to Figure 1 for every claim
12 element.

13 Now, Patent Owner never spent a lot of airtime just now, and in his
14 briefing explaining how Figure 1 and Figure 9 are not combinable. But none
15 of that is relevant here. As I said, the petition doesn't rely on any such
16 combination. But even so, whether you can physically combine these two
17 figures has no legal relevance. The test for obviousness is relevant.

18 JUDGE MAYBERRY: Excuse me, counsel. I'm sorry to interrupt
19 your rebuttal, but I did want to point out that, you know, page 24 of the
20 petition, which is addressing limitation 1[C] of the automatically integrating
21 step, it does rely on Figure 9.

22 MR. BLUMENKOPF: Yes, Your Honor. Well, so the petition on
23 element 1[C] it cites to Figure 9, does not rely on Figure 9. The Petition also
24 cites to the abstract in its description of aspects that occur regardless of
25 whether it's Figure 1 or Figure 9. For example, the abstract explained to add
26 computer 18 as a plurality of web pages, generates customized

1 advertisements. And those advertisements are selected based on consumer
2 profiles, integrated with offerings maintained by different content providers.
3 And Mr. Rafatijo cited to that same language. And that's true whether we're
4 talking about Figure 1 or Figure 9.

5 JUDGE MAYBERRY: And counsel, if we disagree with you and
6 think that that language in the abstract about integrating the offerings is
7 describing the embodiment of Figure 9 and not Figure 1, does that mean that
8 you do not have any teachings directed to the environment of Figure 1 to
9 address element 1[C]?

10 MR. BLUMENKOPF: No, it's not true, Your Honor. So, if you
11 look at the context of this limitation from Claim 1. And again, I refer to
12 slide 7 from the Patent Owner's demonstratives. So, the limitation is not just
13 automatically integrating business content, but it's integrating it into said
14 locally executed game application. Now, the said is important. That's
15 referring to the same locally executed game application that the Petitioner
16 already discussed, for example, for elements 1[A] and 1[B]. And as the
17 petition explained, that's the web browser of the single computer as well.
18 And that's, as we explained, that's true whether we're talking about Figure 1
19 or whether we're talking about Figure 9.

20 And the petition specifically cited to Figure 1 for support for that
21 locally executed game application. So, even if the Board were to conclude
22 that for 1[C], the petition is pointing to Figure 9 and is not describing the
23 Figure 1 embodiment, all that the Board has to do is to look at the rest of that
24 limitation where it talks about the locally executed game application to see
25 that we actually are pointing to Figure 1 expressly to meet that limitation.
26 Does that answer your question, Your Honor?

1 JUDGE MAYBERRY: Thank you.

2 MR. BLUMENKOPF: So, I also want to address a few points that
3 Patent Owner made about officially or allegedly changing positions on claim
4 construction over the course of the proceeding. And I'd like to direct the
5 Board to slide 13 from the Patent Owner's demonstratives. And I'm mindful
6 of the Board's ruling on the objections that we raised to the slide. I want to
7 respect the Board's ruling on that decision -- or on that objection, but I did
8 want to provide context for this slide. I think it's a little misleading the way
9 the slide is framed, and I think it's a little misleading the way Patent Owner's
10 counsel described it to the Board just now. And I want to make sure that
11 we're being clear for the record.

12 So, I think it was pretty clear in my opening, we're not asking the
13 Board to construe the term game application. We never had it in the
14 petition. We didn't do it in our reply. And on this slide, though, I think it
15 doesn't quite fairly represent that position. Here we see five quotes
16 supposedly taken from the record, in the setting we see a quotes game
17 application. For four of these five quotes, we see the petition, the
18 institutional decision, Patent Owner's response, and the sur-reply, indicating
19 that no express construction is necessary.

20 But under the Patent Owner's reply, we see, quote, a program
21 designed to assist in the performance of a game. And I think the implication
22 here, and this is supported by what Mr. Rafatijo just told the Board, is that
23 Petitioner changed its tune after the petition and decided to ask the Board to
24 construe game application in accordance of this quoted language. Now, that
25 quoted language does appear in the reply at pages 9 and 25, but this slide
26 and the Patent Owner are -- missed the context for that, which makes it good

1 that we have not asked for a construction of this claim term. We have not
2 changed our position on this. Instead, this is a dictionary definition that was
3 applied by our expert, Mr. Crane, the supplemental declaration at paragraph
4 10. And the reply explains how that definition is consistent with our
5 analysis of the prior art.

6 I'd like to provide that language in its original context, and this is
7 from page 9 of the reply, which is cited on this slide by the Patent Owner.
8 And page 9 said, for example, consistent with dictionary definitions in 2002,
9 a POSITA would have understood an application to be, quote, a program
10 designed to assist in the performance of a specific task. TerraZone's web
11 browser fits squarely within this definition, because it is a program designed
12 to assist in the performance of a game, each of the Chronos game chosen by
13 the user.

14 Now, there's nothing here about asking the Board to construe the
15 term game application. Our reply does, the show of a web browser from the
16 storyboard is consistent with dictionary definitions. That other citations, the
17 reply at 25 is similar. As the Petitioner explained, Robinson's 3D computing
18 environment is used for online games. Its client kernel is installed on the
19 user's desktop environment, assisting in the performance of such online
20 games. This is consistent with the definition of game application described
21 above, a program designed to assist in the performance of a game. Again,
22 all we did was explain how the Robinson prior art is consistent with that
23 same dictionary definition. We did not ask the Board for a construction.

24 So, I think it's pretty clear the Board in context, we haven't
25 changed our position of claim construction at all throughout this proceeding.
26 Sorry to take the Board on that detour for the record, but I think it's

1 important to set the record straight on this issue.

2 So, I heard a number of comments from the Patent Owner related
3 to the applicant's storyboard example of the invention, and about the web
4 browser that was depicted. I'd like to first -- I heard a number of surprising
5 statements, and I'd first like to ask the Board if there's any clarification I can
6 make regarding the web browser or the storyboard example of the invention,
7 or how we're applying that to issues in this case.

8 JUDGE MAYBERRY: Nothing specific, but please feel free to
9 provide anything you'd like.

10 MR. BLUMENKOPF: So, there's a couple of points I wanted to
11 raise related to the web browser. If you take a look at, this is slide 42 of the
12 Patent Owner's demonstratives. So, you hear the Patent Owner describing
13 what it calls a WebView feature in Microsoft Internet Explorer. First, there's
14 no actual citations to the record here. As far as I can tell, this is attorney
15 argument. But more importantly, I heard Mr. Rafatijo describe a number of
16 things that Microsoft Internet Explorer could do or that web browsers could
17 do that may or may not relate to playing games.

18 And this is one example where it talks about a web browser being
19 used to browse directories and files residing on a user's computer. And I
20 think that the Board, I think, was appropriately skeptical of a claim that a
21 web browser is for browsing global content. I think we've all used web
22 browsers. Web browsers are for accessing online content. Judge Mayberry,
23 I think he made a similar comment in this discussion.

24 And the bigger point here, though, it doesn't matter how many
25 things a web browser can do. A web browser is a complicated application.
26 You can use it for many different things. Filing your taxes, renewing your

1 driver's license, downloading football scores, any number of things that may
2 or may not relate to games. We're not claiming a web browser is
3 (INDISCERNIBLE) as a game application. A web browser is sometimes a
4 game application. And if you look at the '028 patent, there's language
5 entirely consistent with that. Specifically, if you look at column 5,
6 beginning at line 65, of Exhibit 1001, it's the '028 patent. Here the pattern
7 gives an explanation of a game application. It says the game application for
8 a web browser player to access more than task-oriented games, the
9 application may present the user on a platform to access business sites run
10 by a sponsor, chat areas, reading area, educational areas, areas specific to
11 sponsor reward programs, shopping areas, and other areas in addition to the
12 game area. Player may be allowed to view video clips or answer closed
13 questions.

14 This is the whole host of things that this web browser -- or a game
15 application can do in the '028 that may or may not relate to playing games at
16 all. And whether or not Internet Explorer has features like WebView feature
17 or whether it can do things that are unrelated to playing games, that's entirely
18 consistent with a game to claim game application.

19 I'd like to turn the slide 13 of the Patent Owner's demonstratives.
20 So, here Mr. Rafatijo made a comment about game application and about
21 the definition of Mr. Crane applied for game application. He was trying to,
22 I think, be a little facetious about this and claimed this is an absurdly broad
23 definition. We see a definition here about application, program designed in
24 the system performance of a specific task, and he's highlighted such as word
25 processing, accounting, or inventory management. But the most important
26 thing here is what this is a definition of application. It doesn't say game

1 application. I think the person of ordinary skill would understand based on
2 this dictionary definition. You can have a word processing application. You
3 can have an accounting application. You can have an inventory
4 management application. Nobody is claiming that a game application is all
5 of these things. It sounds like it's the Patent Owner, not the Petitioner, who
6 is trying to apply an absurdly broad definition of this term.

7 Let's turn to slide 15 from the Patent Owner's demonstratives. We
8 see a similar issue here, and this is from the definition of Mr. -- for the
9 deposition of Mr. Crane on his supplemental declaration. Mr. Crane was
10 asked, is operating system assisting in the performance of the game? And
11 Mr. Crane says, I would say an operating system could be a program
12 designed to assist a program -- to assist in the performance of the game.
13 When I heard Mr. Rafatijo quote this language, he transformed that
14 testimony. He didn't use the word could, could be. And it's actually the
15 most important part of his testimony. And that Mr. Crane testified in a
16 number of places, not that an operating system is a game application or that
17 it is this or that, but that it could be. Right, it could be.

18 We saw that the -- Mr. Crane has some questions about, well,
19 couldn't Chronos be the game application in the storyboard example of the
20 invention. And what Mr. Crane admitted was, sure that that could be
21 another example. It doesn't undermine that the web browser is also the
22 (INDISCERNIBLE) applications or what we understood to be a game
23 application by the person of ordinary skill. And so, Patent Owner, who
24 selected this particular example, this storyboard, this depiction of a web
25 browser and use that to configure the port, but this is what my invention is.
26 Patent Owner's own words.

1 Let's take a look at slide 17 from Patent Owner's demonstratives.
2 Sorry. I'm looking for the right excerpt I'm looking for. I'm sorry. I can
3 move on. I can't find the exact excerpt from the Patent Owner's
4 demonstratives I was looking for.

5 Let's take a look at slide 108 of Patent Owner's demonstratives.
6 We're seeing an excerpt from Dr. Medvidovic's declaration where he
7 discusses integrating --advertisements into online games. And I wanted to
8 highlight this slide because this I think is an example of something we saw
9 throughout the Patent Owner's argument just now, and completing games
10 with game applications. We see here Dr. Medvidovic's declaration. He's
11 referring to integrating advertisements into online games. And as I
12 mentioned earlier, the claim doesn't mention online games. Doesn't mention
13 games at all. It's game applications. Dr. Medvidovic did not address
14 integrating advertisements into game applications, like the web browser that
15 we saw from Angles.

16 And with that, Your Honors, the Petitioner rests. Nothing further.

17 JUDGE MAYBERRY: All right. Thank you, counsel. It doesn't
18 look like we have anything else for you. So, that brings up Patent Owner's
19 counsel, you have 14 minutes. Oh, I'm sorry. Are they asking something,
20 say something? Okay. So, Patent Owner's counsel, you have 14 minutes.

21 MR. RAFATIJO: Thank you, Your Honor. And I would like to
22 start with the distinction between Figure 9 and Figure 1. And the fact that
23 you pointed out, Your Honor, petition at page 24-25 exclusively rely on
24 Angles's Figure 9 for automatically integrating. And as I explained to You
25 Honor, that sentence in the abstract points to unequivocally points to
26 Angles's Figure 9. So, the only problem left that they have not addressed is

1 whether there is a motivation to combine Angles's Figure 9 and Angles's
2 Figure 1. And still, up until this point, I have not heard any reason to believe
3 that Angles's Figure 1 and Figure 9, a POSITA would combine Angles's
4 Figure 1 and Figure 9. We do not say they are uncombinable, per se.

5 We're saying you did not meet your burden because you have not
6 offered evidence of motivation to combine. And they should have provided
7 that evidence. Instead, as you heard from the other side, they shift to Figure
8 1 only at the reply stage.

9 And, Your Honor, they are saying that they are not proposing any
10 construction. Well, simply, we asked them, so how could you justify a web
11 browser being a game application? And they would say in response, well, a
12 browser is a game application because it is a program designed to assist in
13 the performance of a game. So, therefore, in order to justify why that
14 browser is a game application, they need to resort to this definition to this
15 broad construction.

16 Now, Your Honor, about the TerraZone's web browser, I would
17 like to point out that, yes, a web browser can be used to view content, but as
18 their expert admitted, it can be used to browse files and folders residing in a
19 user's memory. And that's exactly why we believe. And that one slide, 123,
20 on the prosecution history, the use of web browser is only to illustrate the
21 graphics of the director, the content of the director residing on the user's
22 device.

23 Now, Your Honor, they are trying to say, it's talking about a game
24 applications, not an online game. But, Your Honor, online game is a game
25 applications. The only questions left is whether the game application in
26 Claim 1 is an online game. And the answer is no, Your Honor. If we can go

1 to Petitioner's, slide 3, this is their slides, Your Honor. And they have this,
2 they share the understanding that Figure 2 in '028 patent is the embodiment
3 corresponding to Claim 1.

4 And in Figure 2, Your Honor, here, you just see an electronic
5 device that is accessed by the user and the game application resides on that
6 device. Whereas, in '028 patent Figure 1, if we can share Patent Owner
7 slides, let me, yes, 5, slide number 5. This figure corresponds to an online
8 game. Now, Your Honor, even if Your Honors do not agree with me about
9 the TerraZone's Internet Explorer website that you saw in the prosecution
10 history, a user can go on a website to download the game. And the game
11 when downloaded becomes accessible at the user's device.

12 Otherwise, Figure 1 in '028 patent corresponds to online games.
13 And I believe we have mutual understanding with Petitioner that Figure 1 is
14 inapplicable to Claim 1. The only figure that's applicable is Figure 2. And
15 ironically, in Figure 2, unlike Figure 1, you do not see a web browser that
16 picked it. So, therefore, the web browser is not required for the game to
17 be -- the game in Figure 2 is not a web browser-based game. And that's why
18 in prosecution history, pages 125 to 131, when the game is executed and the
19 game is running, Your Honors cannot see an Internet Explorer title bar
20 because that game Chronos Demo is not running on the web browser. It's a
21 game application running independent of the browser.

22 Now, your honor, they are -- they are -- I heard the counsel said
23 that the automatically redirecting because the hyperlink is there and the
24 game causes. And I think it was one of the portions of the specification that
25 we relied upon. But that portion clearly says the game related action or the
26 actions of user within the game causes the game to redirect the user. So, it is

1 the game that causes the redirection based on game related actions of the
2 user.

3 Now, the only question left for Your Honors to decide is whether a
4 user who just wishes to obtain additional information and for that purpose
5 click on a hyperlink that has nothing to do with the game, would be
6 automatically redirected and that said redirection is integrated in the game.
7 The answer is no, Your Honors. The said redirection is not integrated into
8 the game because the game does not cause the redirection. It is the user that
9 causes the redirection.

10 I would like to see if Your Honors have any questions for the
11 Patent Owner at this time.

12 JUDGE MAYBERRY: It does not look like we do, counsel.

13 MR. RAFATIJO: Okay. So, Your Honors, I would like to add
14 that a game that is downloaded from a website, that game can be accessible
15 at the internal memory, digitally stored, and locally executed. Whereas an
16 online game only, as quote unquote, accessible over the Internet is not
17 accessible at the user's device. And that's why we believe the game
18 applications Claim 1 has nothing to do with online games. It's because the
19 way the claim is structured in a way that doesn't teach online games and this
20 understanding is shared by Petitioner citing Figure 2 in their demonstratives.
21 So, so with that, I believe a Patent Owner rests.

22 JUDGE MAYBERRY: All right. Thank you very much, counsel.
23 This is Judge Mayberry. We do want to thank the parties for their thorough
24 presentation of their cases today and for addressing the panel's questions.
25 And with that, this case is submitted and we are adjourned.

26 COURT REPORTER: Okay. We're going off record, and the time

- 1 is 4:13 p.m. Eastern Standard.
- 2 (Whereupon the above-entitled matter went off the record at 4:13
- 3 p.m.)

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