

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS,
Petitioner,

v.

GENERAL ACCESS SOLUTIONS, LTD.
Patent Owner.

IPR2023-01147
Patent 9,426,794 B2

Record of Oral Hearing
Held: October 8, 2024

Before: KEN B. BARRETT, BARBARA A. PARVIS, and
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

APPEARANCES:

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P R O C E E D I N G S

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JUDGE BARRETT: We are on record in IPR2023-01147, Cellco Partnership D/B/A Verizon Wireless vs. General Access Solutions. This hearing today is being conducted by video conferencing. I am Judge Barrett and with me today are Judges Parvis and McMillin. And I'd like to start with the parties' appearances. Who do we have for Petitioner today?

MR. ROSENTHAL: This is Brian Rosenthal from Gibson, Dunn on behalf of Petitioner. I'll be arguing this afternoon.

JUDGE BARRETT: Thank you. Do you have anybody with you today, Mr. Rosenthal?

MR. ROSENTHAL: Not in my office, but my -- I believe that Justin Oliver will be joining from Venable. I don't see him on the line, but I believe he will be.

JUDGE BARRETT: Okay, that's fine. Thank you.

MR. ROSENTHAL: Thank you.

JUDGE BARRETT: And who do we have for Patent Owner today? I believe your microphone is muted.

MR. LEVINE: Sorry about that, Your Honor. Mark Levine from Barlit Beck will be arguing for the Patent Owner, and with me online, as you saw earlier, was Sarah Spires from Skiermont Derby.

JUDGE BARRETT: Thank you and welcome. So, everybody knows how this works, but just as a reminder, both sides will have 60 minutes total time to present their arguments. Petitioner will go first, then Patent Owner, then back to Petitioner for its rebuttal and Patent Owner for

1 sur-rebuttal. And when you first begin, if you would tell us how much time
2 you'd like to reserve, that would be wonderful.

3 We do have the demonstrative exhibits pulled up and we do have
4 access to the files. You are welcome to, if you wish, to present those slides
5 yourself, if not, just give us slide numbers and -- well, regardless to the slide
6 numbers, and we will follow along. And regarding slide numbers, please be
7 very clear about what you're talking about. That helps us follow along and it
8 will very much help us when we're preparing the decision and following
9 along with your arguments. If you're going outside the demonstrative
10 exhibits, going into the record, please give us some good, clear identification
11 of what you're talking about--exhibit number, page, column, line number,
12 things like that.

13 These hearings are open to the public and I do believe there is an
14 open line. As with the other cases in this family, I don't believe we have any
15 confidential information, but if you sense something like that might be
16 coming out, just pause, let me know, and we'll see what we need to do, if we
17 need to shut down the public line or something like that. Any questions or
18 concerns, Petitioner?

19 MR. ROSENTHAL: None for Petitioner. Thank you, Your
20 Honor.

21 JUDGE BARRETT: And Patent Owner?

22 MR. LEVINE: No, Your Honor.

23 JUDGE BARRETT: All right. Then with that, let's get started.
24 Petitioner, whenever you're ready.

25 MR. ROSENTHAL: Thank you, Your Honor. Let me just bring

1 up my demonstratives, and while I'm doing that, I'd like to reserve 15
2 minutes, please.

3 JUDGE BARRETT: Okay, 15 minutes.

4 MR. ROSENTHAL: Okay. You should be seeing now the first
5 slide of our demonstratives, Exhibit number 1025. Is that right?

6 JUDGE BARRETT: That is correct.

7 MR. ROSENTHAL: Okay, thank you. Then I'll get going. Thank
8 you, and good afternoon, Your Honors. Brian Rosenthal for the Petitioner.

9 So, as the panel knows, this is a petition about the '794 patent, and
10 I'm going to talk about what exactly the patent says, and what's in the claims,
11 there are six claims in the patent, all of which are challenged. But a theme
12 and it sort of overrides our presentation and I think is -- it overrides our
13 rebuttal to the Patent Owner's presentation, is that what we ought to be
14 focused on is the language of the claims, as informed of course by the
15 specification of the '794 patent. And instead what Patent Owners needs to
16 be doing, from the preliminary response, in its Patent Owner response, again
17 in its Patent Owner sur-reply, and as far as I can tell from the slides will be
18 doing again today, it is talking about things that are just not in the '794
19 patent, in -- they're not in the claims, they're not in the specification, they're
20 not in the patent at all, and trying to use those things to distinguish the prior
21 art. For example, over and over again, Patent Owner says the prior art
22 doesn't disclose a cellular backhaul or a cellular network in order to have --
23 for the second transceiver to connect to you, or a cellular base station. That
24 is not required by the claims, it's not written down in the claims at all.

25 They say the particular configuration of a mesh network is

1 inconsistent with the claims. The claims are totally agnostic as to how the
2 backend network is orchestrated and organized, whether it's mesh, or spoke,
3 or hub and spoke, or wheel, or daisy chain. They're totally irrelevant to the
4 claims. And most egregiously, and actually it's very evident from the slides,
5 there's probably 10 or 15 slides that Patent Owner is going to put up where
6 they have a picture of a cell phone with two transceivers inside of it. That's
7 a concept that is nowhere in this patent. The idea of a mobile device that has
8 both transceivers inside of it is nowhere in this patent, and it's certainly not
9 required by the claims. And they have labels suggesting that the patent
10 talked about 4G and 5G cellular standards on the backend and Wi-Fi in the
11 front end, again totally divorced from the patent. Those concepts are never
12 written down on this patent.

13 The patent and the claims are very simple and they're very broad
14 and they're clearly disclosed in the prior art. And what they require is two
15 things that are connected to each other. A first transceiver that
16 communicates via a wide area network protocol. A second transceiver that
17 communicates via a local area network protocol, where the second
18 transceiver monitors signal characteristics and routes information. That's
19 what the claims require. Nothing more than that. Obviously, I'm
20 paraphrasing, but they really are that simple.

21 And all of these concepts, you know, one great example is they
22 keep talking about the prior art doesn't disclose a point to the multi-point
23 communication protocol. It's nowhere in the claims. You won't find that
24 anywhere in the '794 patent, which is a terribly small patent. And you can
25 read it, you know, in a quick sitting and there's nothing in there about point

1 to multi-point protocols. This is a completely made up concept. So, that's
2 the theme that sort of runs through this.

3 What I would like to do, Your Honor, I'm just going to go to my
4 slide 2, is summarize what the grounds are and then how we'd like to tackle
5 this argument. So, there are six grounds here, four of which are based on
6 Palmer as the primary reference, and two of which are based on the
7 Hohnstein reference, or at least that's how I'm pronouncing it. So, I'm going
8 to deal with the Palmer grounds together and then I'll talk about the
9 Hohnstein grounds second.

10 So, what I'd like to do first on our slide 3 is just briefly introduce
11 what the claims really say and what the corresponding disclosure is in the
12 patent. Then I'll talk about the Palmer grounds, which is principally about
13 what Palmer does and doesn't disclose. And then we'll talk about the
14 Hohnstein grounds, which will be focused on what Hohnstein discloses.

15 So, to start with the challenged claims, Claim 1 is a good one for
16 us to base most of our discussion on. Claim 1 claims a wireless
17 communication device that has two components. And we've highlighted
18 those two components in red and green, both on our slide 4 in the claim
19 language and in Figure 1. So, you can see how this is depicted in Figure 1.
20 In red, there's a first wireless transceiver that communicates via a wide area
21 wireless communication protocol. In the green, there's a second wireless
22 transceiver that communicates according to a local area wireless
23 communication protocol. And the claims require -- I don't mean to skip over
24 language, but I'm really focused on the disputed language, the claims require
25 that that second transceiver monitor signal characteristics and route

1 information to mobile devices based on those monitored signal
2 characteristics. That's all the claim requires.

3 Now, a little background with respect to the wide area network or
4 wide area communication protocol. The patent does not describe anything
5 about that protocol. Those words are used only in the claims and in the
6 abstract. What the patent is talking about is replacing a wired connection
7 between an infrastructure network and an access point with a local area
8 network. Rather than having a wired connection, you have it be wireless.
9 And you have a geographically dispersed stations that you can then
10 communicate with wirelessly. It never mentions a wide area network
11 protocol or what the specifics of that are. It simply says that they're wireless
12 and over some distance. So, that's Claim 1. And most importantly about
13 Claim 1, Claim 1 has no restriction as to how these two devices, the first and
14 second transceiver, are connected to each other, other than that they are
15 coupled to each other. It doesn't have any restriction on how.

16 Now, on our slide 5, we list Claims 2 through 5, and these claims
17 recite how those things are coupled to each other. They can be coupled by
18 wireline. They can be removably coupled. They can be coupled such that
19 they're both disposed in a fixed station. Or they can be integrated. And by
20 the way, the patent, when it talks about integrating them, it doesn't talk about
21 putting them on a cell phone or something like that. It talks about putting
22 them both on a rack map. In other words, you've got a rack and both of the
23 devices are on the same rack. That's the only disclosure of integration. But
24 that's what Claims 2 through 5 cover. And then in Claim 6, everyone agrees
25 it's just a method version of Claim 1, rises and falls with Claim 1.

1 The last point I want to talk about before we get into the grounds is
2 this monitoring and routing limitation. The only disclosure in the patent that
3 is relevant to this, it's the only disclosure that either party has pointed to as
4 being relevant to this disclosure, is at the bottom of column 8, this is on our
5 slide 7, going into slide -- column 9. And it simply says, it's talking about
6 hand over, it's simply saying that because you have these, let's call them
7 access points or subscriber stations, that have a limited area, there may be a
8 need to hand over. And so, it says, to determine whether to hand over signal
9 characteristics are measured. It doesn't say which signal characteristics.
10 And it says that they are measured by a mobile station and reported back to
11 the WAN transceiver, the second transceiver, and thereafter, if appropriate, a
12 hand over is made. That is the only disclosure that relates in any way to
13 monitoring signal characteristics and routing based thereon. That's it.

14 JUDGE BARRETT: Mr. Rosenthal?

15 MR. ROSENTHAL: Yes.

16 JUDGE BARRETT: So, you keep saying -- I think it's -- you used
17 the word relevant, is it your position that this is an embodiment of the
18 claimed invention, because that's a question in my mind?

19 MR. ROSENTHAL: Well, it's the only thing that is arguably an
20 embodiment. I will say that in the District Court litigation, we made an
21 argument that I think this is correct, that there is no embodiment of the
22 second transceiver routing or monitoring, because this is all that's disclosed
23 that's even close. What General Access argued in that case is that this
24 disclosure, this paragraph, actually discloses that. So, while we disagree,
25 that is not an issue, obviously, for this panel with respect to written

1 description, but this is the only thing that Dr. Chrissan, General Access's
2 expert in this case, pointed to in his report or his deposition as supposedly an
3 embodiment.

4 JUDGE BARRETT: Well, so I appreciate you recognizing you
5 don't have the written description issue. We can't even touch that kind of
6 thing. But what we can and what we very well may have to do is claim
7 construction. And so, you don't need to necessarily get into it now. I'll let
8 you make your argument as you see fit. But as you're talking today, and
9 you're going to compare the prior art to the claims, really help me out by
10 focusing on the words of the claims and how that matches up to the prior art.

11 MR. ROSENTHAL: Absolutely, Your Honor, and that is exactly
12 the analysis and the claims as you can see on the left of our slide 7 requires
13 that the second transceiver monitor signal characteristics. So, the thing that
14 will we identified in the prior art as the second transceiver has to monitor
15 and it has to route. Now, there is a claim construction for route that the
16 District Court adopted and both parties have sort of aligned to here in this
17 proceeding which is basically it transmits along a specified path. But with
18 respect to monitoring, neither party has proposed a claim construction, so it
19 should be given its plain meaning. And what this passage at the bottom of
20 column 8 teaches about monitoring is that monitoring can be satisfied, at
21 least according to this patent in its passage, by a mobile station measuring
22 signal characteristics and reporting it back up to the second transceiver.

23 JUDGE BARRETT: Okay, a couple of points. You said
24 something along the lines of the parties have aligned to the District Court's
25 construction on routing. I don't like the phrase "aligned to." Is anybody

1 advocating for a particular construction in the PTAB?

2 MR. ROSENTHAL: So, with respect to Patent Owner, we do not
3 believe that a claim construction is necessary. We have said in our petition
4 on pages 10 and 11 that no claim construction is necessary. General Access,
5 Patent Owner in their response, has pointed to the District Court claim
6 construction and said specify or transmit along a specified path is what the
7 Court has adopted. Frankly, it doesn't make any difference to the analysis of
8 the prior art. And so, we don't believe that the PTAB needs to construe the
9 term route, and so we have not proposed a construction.

10 JUDGE BARRETT: Okay. Well, it remains to be seen whether
11 we think it needs to be construed or not, and I guess you guys will help us
12 out with that much today. Back to the specification though. What -- you
13 said, I'm not sure if you reproduced what was in column 9, but my takeaway,
14 and feel free to correct me if I'm wrong, is the challenged patent seems to be
15 talking about routing as something above the local area network level is
16 determining what local area network the mobile device, where it is at a given
17 time, and pick -- something is routing the signal to a particular local area
18 network so that it can reach the device. If I understand the claims, it's the
19 local area network transducer, if you will, that has to be doing the routing.
20 So, just take that as a statement if you like, but that's sort of my
21 understanding. And as you move through, both parties, as you move
22 through your cases, if you could help us really understand that we'd much
23 appreciate it.

24 MR. ROSENTHAL: Yeah, I mean it's a great point and you've
25 really zeroed in on a critical issue, I think, Your Honor, and that is how this

1 is -- how is it that the second transceiver performs this routing? And when
2 looking at what that means, regardless of whether there's an actual
3 construction given to routing, or just trying to understand it in its plain
4 meaning, in the context of the specification, the only guidance that the
5 specification gives with respect to the second transceiver routing, is that -- is
6 what's written down on our slide 7, which is at the bottom of column 8. And
7 that it is the second transceiver receives from the mobile station signal
8 characteristic information.

9 And then there is a sort of vague reference to thereafter if
10 appropriate the handover of communications is affected. What General
11 Access has argued, and it doesn't dispute in this proceeding at all, what they
12 have argued over and over again is that this is a disclosure of routing
13 because the only thing that the routing, as construed by the District Court
14 requires, is that the second transceiver decides whether or not to send the
15 communication packet to a mobile station, and if it does that it is
16 transmitting over a specified path to that mobile station.

17 That's the position that General Access has taken consistently in
18 this case, and it's the -- and it's in the District Court case and it's the -- and
19 they have not distinguished or tried to distinguish in any way the prior art in
20 this case on some other meaning of routing. And so, from the perspective of
21 how do we apply routing to the prior art, from our perspective if the prior art
22 has a second transceiver that receives signal characteristics, and based on
23 those signal characteristics makes a decision about whether to send
24 information to a mobile station within its range or not, that constitutes
25 routing at least as far as General Access has consistently said routing

1 applies. I don't know if that helps, Your Honor, but that's certainly the
2 approach that we've been looking at this from.

3 JUDGE BARRETT: That is very helpful, and let me say back to
4 you what I think I heard you said so we can make sure we're clear. You're
5 saying for the claim to be satisfied that the second transceiver, which I
6 would believe is the one that's operating under the local area -- the wireless
7 local area protocol, that is the thing that has to make a decision.

8 MR. ROSENTHAL: It has to make a decision not necessarily
9 about handover, but it needs to make a decision when it has a piece of
10 information, am I going to send it to Brian's mobile device or not? So, it
11 doesn't have to be the overarching orchestrator of the network, and where is
12 the mobile station registered, because the claim construction that was
13 adopted in the District Court, and which General Access has referred to here,
14 or the plain meaning, simply requires that it is making a decision about -- or
15 it is transmitting or not transmitting to a mobile station over a specified path.

16 So, if it knows that Brian's mobile is connected and it makes that
17 decision to send that packet along based on that information, it's transmitting
18 over a specified path according to how General Access has read this claim,
19 according to how they articulated what it means, and according to how
20 they've read it in the District Court litigation.

21 JUDGE BARRETT: Okay. But then again, as you proceed
22 through your argument, I'm very curious to hear about how the access point
23 or whatever you're mapping to that second transceiver, how that is making a
24 determination, and I'll continue with my transparency here. As I'm reading
25 the challenged patent specification, and maybe I'm missing it, but it doesn't

1 seem to say that that transceiver is sort of a smart device that is making
2 determinations. That something above it is telling it, send a message. And I
3 get part of that from, I believe it says, if a message is not delivered, or the
4 information is not delivered, then somebody upstream will decide, oh, the
5 device has moved to a different local area network, I need to route it to
6 another one. But that doesn't feel like the transceiver itself is making a
7 decision. It just sends out data. And maybe I'm wrong.

8 MR. ROSENTHAL: Well, no, I don't think you're wrong, Your
9 Honor. And frankly, as you know, we have urged in the District Court that
10 the claim lacks written description because it does not explicitly describe
11 whether or not the transceiver performs anything that you might consider
12 routing. One thing I'll note, and I'll get to this in a moment, we asked the
13 inventor about that very lack of disclosure during trial, the sole inventor, and
14 his answer was, why would I write down explicitly that the second
15 transceiver performs that routing when every second transceiver, every
16 WLAN transceiver in the world performs that type of routing? And so, the
17 question that's presented for obviousness is whether or not a person of
18 ordinary skill in the art would find it obvious that the second transceiver
19 performs such routing. And the inventor has said not only is it obvious, but
20 it is so obvious that he didn't even need to write it as explicitly as we would
21 all like him to have in this specification.

22 I think that's very, very telling as far as the question that the Board
23 has before it, which is obviousness.

24 JUDGE BARRETT: Were we presented with that evidence?

25 MR. ROSENTHAL: Yes, Your Honor.

1 JUDGE BARRETT: The inventor's testimony? Okay. That was
2 the trial testimony that you put into the record? Is that correct?

3 MR. ROSENTHAL: That's correct. That's part of the record, and
4 we're going to come to it in a moment on my slides, and then I'll make sure
5 that I reference the exhibit number as well.

6 JUDGE BARRETT: All right, thank you. I've interrupted you
7 enough, carry on.

8 MR. ROSENTHAL: Not at all. Thank you, Your Honor. You've
9 gotten right to the core issue, I think, that we're going to be talking about. I
10 think, honestly --

11 JUDGE PARVIS: This is Judge Parvis. I apologize. I actually
12 have a follow-on question. Looking at that -- the same limitation, this last
13 wherein clause, it would help me to understand is Petitioner's position that
14 not sending data satisfies the claim language routes information?

15 MR. ROSENTHAL: No, Your Honor. It -- routes information
16 requires sending information. And we believe what it requires is, under its
17 plain meaning, is that you are sending information according to a specified
18 path. That is the construction that we urge the District Court to adopt, and
19 it's basically the construction that the District Court adopted. So, not
20 sending information doesn't satisfy that. But deciding to send information,
21 according to General Access and the positions that it's taken in the trial and
22 in this proceeding, deciding to send information to a mobile device based on
23 the fact that it is currently attached to this local area network access point
24 constitutes that routing. And that is exactly what's disclosed in the prior art.

25 And Judge Barrett asked a question earlier about, you know, in the

1 '794 patent, the challenged patent, it seems like the routing, the intelligence,
2 the decision making is performed higher level in the network, back in the
3 central part of the network. And I certainly agree that that is the disclosure
4 in the '794 patent, that that decision making about when and whether to
5 perform a handover is certainly performed by something earlier in the
6 network as disclosed in the patent. But the claim requires that the second
7 transceiver also performs something by the name of routing. And so, when
8 looking at the specification to try to make sense of that, the only thing that
9 the specification does disclose is that the second transceiver participates in
10 that process, both in terms of deciding whether to send information to a
11 mobile device when it receives it, or deciding not to. And when it decides to
12 do so, that meets the claim element according to the way that General
13 Access has been interpreting it.

14 JUDGE PARVIS: So, how is the term "based on" satisfied?

15 MR. ROSENTHAL: Because if the -- what column 8 of the patent
16 describes, as written here on slide 7, is that the second transceiver is
17 receiving from the mobile station signal characteristics. At a certain point, a
18 threshold may be met, and it doesn't describe any of this in great detail, so
19 we have to sort of intuit what a person skilled in the art would understand.
20 A decision is made whether to perform a handover. So, if there is a
21 handover to be performed, then at that point the second transceiver would
22 not send the information to the mobile station, but would instead redirect it
23 through the network to some different access point.

24 And that's what I believe Judge Barrett was referring to on column
25 9, line 15. It says, when a handover is effectuated, information routed to a

1 mobile station but not yet delivered is rerouted to the WLAN transceiver to
2 which communications have been handed over. So, in that circumstance,
3 when let's say the signal quality goes down below a threshold and it is
4 determined by something in the network that a mobile station should be
5 handed over to a different access point, at that point it is rerouted, the
6 information that hasn't been delivered yet, is rerouted to that mobile station
7 through a different WLAN transceiver. And that, in that manner, it is based
8 on the signal characteristic.

9 And what we'll see in the prior art, when I get to it in just a
10 moment, is that is exactly, exactly what the Palmer reference discloses.
11 What it says is it's analyzing several different signal characteristics with
12 specificity, and based on those signal characteristics, deciding whether or
13 not to roam. And what roam means is the same thing as handover, which is
14 to have the device attach to a different WLAN transceiver and route the
15 information to that transceiver and then to that mobile station. Does that
16 answer the question?

17 JUDGE PARVIS: I think I understand Petitioner's position.
18 Thank you.

19 MR. ROSENTHAL: Thank you, Your Honor. Okay. So, here's
20 where we are with respect to the disputes on our slide 8. The basic disputes
21 are, and I really think that this whole thing is going to be -- I mean I think
22 that the routing question is the more interesting one. This other stuff that's
23 around the edges doesn't seem to be a real argument, but they are disputing
24 whether or not the prior art discloses a wide area wireless communication
25 protocol, a WAN protocol. They're disputing whether or not the two devices

1 are coupled to each other. They're disputing whether the prior art discloses
2 monitoring and routing.

3 So, with that, I'd like to talk about the Palmer reference, which is
4 the basis of four of the grounds. Now, the Palmer reference is a really
5 interesting reference. I read it again last night, the Palmer reference and the
6 '794 patent, and there's such parallels between the two. They're both very
7 short. They're both describing exactly the same thing, except the difference
8 is that Palmer describes it in much better and greater detail. What Palmer
9 describes is that you have a number of buildings located throughout a city.
10 You connect those buildings wirelessly to a base or central station, and
11 within the buildings there are local area networks, wireless local area
12 networks. So, it's a very -- it's sort of a special case version of what is
13 generically described in the '794 patent. The disputes are whether or not it
14 discloses a wide area protocol, whether it has a first and second transceiver
15 coupled to each other, and whether there's monitoring and routing.

16 So, let me first talk about the wide area issue, which I think is a
17 really non-issue, but General Access has argued that there's no disclosure of
18 a wide area access protocol. To the contrary, Palmer very clearly states that,
19 and General Access likes to focus on Figure 1 for some reason. We are not
20 relying on Figure 1, we are relying on Figure 2. Figure 2 says, rather than
21 having a wired connection between some central building and their
22 buildings, have these remote connections which are identified in our slide
23 11, circled in red, and they are labeled 26. And it says that these remote
24 buildings can be within a city. It says, providing wireless coverage not only
25 within a building but also among several buildings, or even within a city.

1 So, what this is describing, and by the way Palmer specifically
2 says that the blue links, 26, are local area networks, which have limited
3 range. This is precisely -- it's actually much stronger disclosure than is
4 written down in the '794 patent of a wide area network. What it's saying is
5 inside the building we have these local area transceivers with limited range,
6 and then we have these outside the buildings, long range wireless
7 communications.

8 So, the question is, does that disclose a wireless area network
9 protocol? And the Palmer reference on our slide 12 goes further and says
10 that these wireless devices, which they call the wireless media, are using
11 industry standard network protocols. Now, there's some ink that has been
12 spilled about whether this is disparaging those protocols. I think the plain
13 language, if you read the plain language, clearly states that it's reducing
14 network connection losses by using these protocols. Otherwise, this
15 sentence doesn't make any sense. It's saying that, I don't know why, using
16 standard network protocols would cause network connection losses. That's
17 certainly not what this sentence is saying, and our expert, Dr. Almeroth,
18 explains that.

19 It's saying we are encouraging the use of industry standard network
20 protocols. General Access has been all over the place on this. First they
21 said it was disparaging protocols, and then it was saying, oh, actually it is
22 talking about protocols, but only the local protocols. And then in their sur-
23 reply they came up with a brand new argument, not supported by any expert
24 testimony or other evidence, that they say, oh that's only referring to TCP/IP
25 and not referring to any other protocols. This language is not that limited. It

1 simply says use industry standard protocols. So, you have Palmer describing
2 a wireless connection over a long distance and saying use standard
3 protocols. That clearly discloses to one skilled in the art a wide area
4 network.

5 And Dr. Chrissan, on our slide 13, admits that that's what a wide
6 area network protocol is. In fact, I was reading again their briefs in the very
7 second page of their Patent Owner response and their Patent Owner
8 preliminary response, both describe WANs in the same way. They're in
9 contrast to LANs. LANs have a small area coverage and a WAN has larger
10 area coverage. They're a relatively larger protocol. That's what a WAN is.
11 And this is from Dr. Chrissan's declaration where he says exactly that.
12 WANs connect things in a large geographical area such as a campus or a
13 city. And that's what's disclosed in the reference in Palmer. It says among
14 several buildings or even within a city. It matches perfectly with what Dr.
15 Chrissan says.

16 In addition, there's nothing magic about the word protocol. Dr.
17 Chrissan writes affirmatively what a protocol is. It's simply an established
18 rules for transmissions to and from. It's just how the two devices talk to
19 each other. So, if you have two devices communicating over a large area,
20 they have to use a protocol, otherwise they wouldn't understand each other.
21 And on our slide 15 and 16 we have quotes from Dr. Chrissan in his
22 deposition where he admitted that. He said a protocol is a set of rules for the
23 two devices to communicate and they need to have that established set of
24 rules, otherwise they won't understand each other. And he goes on on our
25 slide 16 to say that they do have to operate by an established set of rules.

1 So, the argument that General Access makes that there's an
2 insufficient disclosure of a wireless access protocol in the Palmer reference
3 is contradicted by its own expert who says there has to be a protocol.

4 General Access's argument on our slide 17 that the passage that I
5 talked about earlier is disparaging protocols doesn't make any sense. And
6 it's a complete misreading of that sentence. I understand it's not
7 grammatically sound, but it says the method would further reduce network
8 connection losses due to the industry standard network protocols. It doesn't
9 make any sense that that would be saying using network protocols cause
10 losses and that somehow we're solving that. It's simply saying in addition to
11 what we're describing here in the patent, we are also using industry standard
12 protocols. And General Access says, well that's really referring to local area
13 network protocols or wired protocols. It says right in the sentence, those
14 protocols are used by the wireless media, not by the wired media. It's
15 talking about the wireless protocols.

16 Now, frankly, with or without that sentence, the fact that there's a
17 communication over a wide area necessitates the use of a protocol, but that
18 sentence cements that a person skilled in the art would understand protocols
19 to be used.

20 And then on our slide 18, the point we're making here is simply
21 that there is no special disclosure in the '794 patent of some particular
22 protocol that's needed or some advantages of a wide area protocol. The only
23 thing that the patent says is replace a landline with a wireless connection that
24 is spread out. It doesn't say any more. It doesn't identify a protocol or how
25 it would work, or anything like that. So, the disclosure in Palmer is just as

1 robust as the disclosure in the '794 patent.

2 The second point, and I'll be brief on this one because I really don't
3 think there's much to it. On our slide 19, General Access disputes whether
4 there's a device with two transceivers coupled to each other. The claims
5 simply require a coupling. They don't require integration. They don't
6 require a tight coupling. They don't require even a direct coupling. And we
7 have identified in Palmer, item number 34, which is the first transceiver, and
8 item number 40, which is the second transceiver, and you can see in Figure 2
9 they are coupled to each other. And Dr. Almeroth explains that. There is no
10 requirement that these be integrated within a single device. And on our slide
11 21, the Palmer reference explicitly states that these two devices are
12 connected via a wired network 38.

13 Now, General Access says, well that's inconsistent with the
14 specification of the '794. Actually, it's completely consistent with the '794.
15 And General Access has not proposed any construction of device or coupled
16 or anything like that that requires something more their plain meaning. And
17 the patent explains and consistently refers to the two transceivers as two
18 different devices. It talks about one of them being the access point, or the
19 WLAN transceiver, that's number 38, and the other one called the integrated
20 access device 24. It constantly refers to these things as two different
21 devices. It says that they can be co-located, it says that they can be
22 connected via a wire, and in one embodiment it says they can be put on the
23 same rack, that's the extent of the disclosure of integration.

24 So, there's nothing about the specification that requires these to be
25 tightly integrated within the single unit. And General Access makes the

1 point that there's no embodiment within the '794 patent of a LAN connection
2 between the two devices. But that's not a requirement of the claims. The
3 Federal Circuit is very clear that the claims are not limited to any particular
4 embodiments.

5 JUDGE BARRETT: (INDISCERNIBLE).

6 MR. ROSENTHAL: Yes, Your Honor.

7 JUDGE BARRETT: Mr. Rosenthal, you were just talking about
8 the two transceivers, the two things you've mapped to the two transceivers,
9 and if you're going to get to this in a moment, feel free. Could they both be
10 using the same protocol? If you're saying they're using protocols, could it be
11 the same protocol?

12 MR. ROSENTHAL: The two transceivers cannot be using the
13 same protocol. One of them has to be a wide area protocol, one of them has
14 to be a local area protocol. And the '794 patent is clear that this is just
15 talking about connecting one protocol to another.

16 JUDGE BARRETT: Well, maybe I didn't ask my question very
17 clearly. It sounds like you were just explaining what the claim covers, and I
18 think I agree with you there. But I mean, Palmer itself, it, you know, it's not
19 a cellular network or whatever, it's at this factory or manufacturing facility,
20 whatever it is. What's to say they didn't develop their own protocol for both
21 signals?

22 MR. ROSENTHAL: Oh, that's totally fine if they developed their
23 own protocol. But the disclosure -- there's two things I would say. Number
24 one, the disclosure very clearly says that the connection from the access at
25 point 40 to the portable computers 20, that that is a local area network

1 protocol. They clearly state that. And they clearly state, and there's no
2 dispute about that -- and they clearly state that it has limited range.

3 In contrast, they then describe the connection between 34 and the
4 back office, these links 26, and they talk about it spanning across an entire
5 city, and they don't have any suggestion that it's limited in range. And so,
6 the idea that those would be the same protocol doesn't make a lot of sense.
7 Just because you have different protocols -- when you're going over different
8 distances, you use different protocols, there's different error recovery, there's
9 different transmission requirements, and so, there's a different approach
10 depending on the distance of the signal. So, is it theoretically possible that
11 there's some undisclosed sort of secret protocol that could apply to both? I
12 suppose it is, but the natural reading of Palmer, when it describes one
13 network as be very short in distance, and the other one being very long in
14 distance, and that they were using industry standard protocols, that suggests
15 otherwise. In fact, the fact that they are talking about industry standard
16 protocols, Your Honor, very clearly suggests that they haven't developed
17 their own communication protocol for these networks. They're using
18 industry protocols, and what they're describing is, you've got a back-end
19 communication, and a front-end communication, and they've explicitly said
20 that the front-end has a low range, and the back-end has a wide range. And
21 it's for those reasons that Dr. Almeroth opines that not only is it disclosed,
22 but it certainly is rendered obvious that you would have a wider protocol for
23 the back-end and a local protocol for the front-end.

24 JUDGE BARRETT: All right. Thank you. That's helpful. You
25 have about seven minutes left. It's been a pretty hot bench, but --

1 MR. ROSENTHAL: No problem. I totally understand. So, and
2 thank you for that. And so, the last point I want to make with respect to this
3 coupled point is on claims -- the claim differentiation. Claims 2 and 3
4 actually say that the two devices are coupled to each other, or that they are
5 connected by a wireline. And General Access acknowledges that. So, the
6 idea that they have to be integrated just cannot be right.

7 And then finally, I think this is the most important slide on this
8 point, on slide 25, Claim 5 depends from Claim 1, and Claim 5 requires
9 integration, not Claim 1. And we're not arguing that Palmer discloses Claim
10 5, which requires integration. So, we don't think there's anything to this
11 argument that there's no integration. However, if for some reason the Board
12 were to find that Claim 1 does require integration, putting those two
13 components of Palmer together would just have the natural results of doing
14 so. And as MPEP talks about in citing In re Larson, how taking two
15 components, and putting them together is typically obvious unless there's
16 some surprising benefit of doing so. And Dr. Almeroth explains that it's
17 simply a design choice. So, a person skilled in the art would readily be able
18 to understand the advantages of putting these things together if that's a
19 requirement of Claim 1, which it is not.

20 Then I want to talk about the monitoring and routing. And I'll
21 probably end here because I think this is the most important piece. In
22 Palmer, Palmer undisputedly talks about measuring signal characteristics.
23 On our slide 29 and in column 5 and 6 of the reference, it talks about
24 measuring specific signal characteristics, signal to noise ratio, signal strength
25 and others, and then making decisions based on that to roam or not. This is

1 exactly parallel on our slide 30 to what's in column 8 of the '794 patent.

2 There's no difference at all between how Palmer works and how '794 works,
3 except Palmer does it in a lot more detail.

4 Now, Dr. Almeroth explains that the patent, I'm going to talk about
5 slide 30, the patent has a reference, and this is to your point earlier, Your
6 Honor, you said show me how the second transceiver does the monitoring
7 and the routing. The reference, the Palmer reference says that these steps of
8 determining whether to roam or not can be done anywhere. It can be done
9 by the mobile station, or it can be done centrally by the network or a central
10 host processor. And if you look on slide 31 Dr. Almeroth explains that in
11 the context of the Figure 2 embodiment the only network that is referred to
12 is 38 of which the access point is a member. And so, when it says the
13 network, it's referring to the access point 40. And he also explains why that
14 makes sense. Which device is communicating with the mobile station? The
15 mobile station is making these measurements and reporting back. The
16 device that's getting those reports is item number 40, and that is what we're
17 pointing to is the second transceiver.

18 So, he explains that what would have been the most logical
19 component to handle the monitor. Even Dr. Chrissan on our slide 32
20 admitted that the monitoring and routing might be performed by this black
21 box here, but he says it couldn't be performed by this box here. It doesn't
22 make any sense. The Palmer reference clearly states that the monitoring and
23 routing can be performed by any of the components, either the mobile
24 station, or the network, or even as far back as the central processor. And
25 when he refers to the network, he's referring to the items in item 38,

1 including the access points, number 40. The same is true of the routing. I'm
2 not going to repeat myself with respect to routing, it's all the same argument.
3 Palmer explains where the routing takes place, and it can be at the network.

4 I do want to bring up this point, which I alluded to earlier on our
5 slide 39. Dr. Struhsaker, the sole inventor, testified at trial, and we included
6 this as Exhibit 1023. It wasn't in the original petition because it hadn't
7 happened yet. But we included it once it happened. And he testified
8 unequivocally that this type of routing being performed by the second
9 transceiver is not only obvious, it's so obvious that he didn't have to write it
10 down in the patent. So, we asked him -- I actually asked him, you didn't
11 write anything in this patent about the second transceiver performing the
12 routing?

13 This is the point you were making earlier, Judge Barrett. You were
14 asking I don't see the routing being performed by the second transceiver. It
15 seems earlier in the network. And so, we asked him, you didn't write that
16 down in this patent. And he said, it's not written like that. And we said, it's
17 not written in any words. And he said, that concept is sitting there in the
18 document as WLAN. Any person skilled in the art at that time would know.
19 And we asked him, the patent doesn't describe at all the WLAN performing
20 this routing function, right? And he says, because all WLANs perform that
21 function. Why would I describe to you what I could look up in a textbook?
22 So, he's saying, not only is it obvious, it's so obvious, I didn't even need to
23 write it down in this patent. So, now General Access is arguing that this is
24 the point of distinction over the prior art that somehow, this is the golden
25 part of this claim, when the inventor of the patent said the opposite. And

1 that, it's just not credible.

2 And so, if routing means anything in the context of this patent, and
3 the way that General Access has articulated, it means that when a device
4 moves out of the range of one of the WLANs to a different one, and the
5 WLAN makes a decision to send it to that device or to reroute to a different
6 WLAN, that that decision and that sending, pursuant to a specified path, is
7 done by the second transceiver, is disclosed in Palmer because it says the
8 network can perform that function.

9 JUDGE BARRETT: You are at your 45 minutes.

10 MR. ROSENTHAL: Thank you, Your Honor. I do want to briefly
11 touch on -- I'm not going to talk about Mahany, unless it comes up in the
12 rebuttal, but I do just briefly want to go over my time and eat into my
13 rebuttal time to talk quickly about the Hohnstein reference. So, Ground 2
14 relies on Hohnstein, and the main point that I want to make on Hohnstein is
15 this. Hohnstein discloses two devices in its network, distribution points,
16 which are number 40, and access points number 22. I want to be real clear
17 about this. The claimed wireless communication device that we are pointing
18 to in our reading is item 22.

19 And I like the bottom left in our slide 52. The bottom left portion
20 of Figure 1 is the place to focus on. Because there what you see is item
21 number 22, the access point, it's got a backhaul connection, 42, which is
22 wireless, and it's got a local connection, 28, that goes to mobile devices.
23 That's the same architecture as what's claimed. You've got a back-end and a
24 front-end. And this is described in our slide 53 on the Figure 11 as being a
25 singular component that can be mounted on like a streetlamp or something,

1 that has two components, the back-haul system, which is back-haul and folks
2 know that back-haul typically means long areas, and the access system,
3 which is the local access system. That's an omnidirectional antenna.

4 And the very bulk of General Access's arguments that you're going
5 to see here today, that we've seen in the briefs on Hohnstein. It's all about
6 the base station. The base station isn't cellular. The base station doesn't
7 have one-to-many protocol. The base station isn't configured in the right
8 type of network topology. The base station isn't even an element of the
9 claim. In fact, the institution decision in this case held that on the present
10 record, the base station isn't an element of claim. It's simply describing
11 communication capabilities and invited the parties to brief that issue. And
12 rather than briefing the issue, General Access accepted it. So, there's
13 nothing more to the claim than that the first transceiver has to communicate
14 with a base station that also communicates with other transceivers. That's it.
15 There's no requirement of a one-to-many protocol. There's no requirement
16 of an integrated front-end. There's no requirement of cellular. None of that.
17 So, the vast majority of General Access's arguments on Hohnstein are totally
18 irrelevant to what's actually written down in the claim.

19 The last point I want to make on Hohnstein is General Access
20 disputes whether or not there's a disclosure of a wide area network. But it
21 admits that the links, the backhaul links that I pointed to earlier are
22 microwave links. And microwave links are long distance links. They're not
23 local area links. And so, their expert admitted that these are microwave
24 links. We've submitted evidence in our slide 58, Exhibit number 1018 that
25 show these go long distances, sometimes over 100 miles. So, a person

1 skilled in the art, as Dr. Almeroth explained, seeing those types of links
2 would understand that that would likely be a wide area network.

3 A lot of the other points that I have on these slides we've
4 addressed. The only other thing I want to point is on slide 63. The other
5 arguments that General Access makes that Hohnstein is a mesh network,
6 irrelevant to the claims. That Hohnstein uses a single wireless technology,
7 that's contrary to what Hohnstein says. It says it has a backhaul link and a
8 local access link. And that somehow the '794 excludes multiple base
9 stations. That's just totally irrelevant to the claims. The claims merely talk
10 about one base station, that doesn't exclude the possibility of having more
11 than one base station.

12 And Your Honor, with that I'll cede the rest of my time for the
13 rebuttal. And if you could just let me know how much I have left for the
14 rebuttal that would be great. Thank you, Your Honor.

15 JUDGE BARRETT: I have you down for 10 minutes.

16 MR. ROSENTHAL: Thank you very much.

17 JUDGE BARRETT: Patent Owner, you may begin whenever you
18 are ready. And if you could tell me how much time you'd like to reserve.

19 MR. LEVINE: Your honor, I'd like to reserve 15 minutes for sur-
20 rebuttal time.

21 JUDGE BARRETT: Okay.

22 MR. LEVINE: And I am going to share our slides. Can you see
23 that okay?

24 JUDGE BARRETT: Yes, we can.

25 MR. LEVINE: Great. Thank you, Your Honor. So, there isn't a

1 dispute between parties that the '794 patent, all of the instituted claims
2 require a device with two transceivers. The first one for the wide area
3 network communication and the second transceiver for the local area
4 network communication. And that's shown as in the claims. It's also shown
5 in Figure 1 of the '794 patent, which was on slide 4 of Petitioner's slides.

6 The key point that I want to stress today, and then I'll get to other
7 points, is that none of the prior art relied on by the Petitioner shows the
8 monitoring of communication with mobile stations by the second
9 transceiver. You might see monitoring somewhere or another, but you don't
10 see it by the second transceiver as required in the claims. And that's
11 important because the claims require it. And monitoring is more than just
12 information passes through a device and is acting as a bridge or switch and
13 sent it to some higher advice. It's more than that. There has to be some sort
14 of decision-making, observing, in order for there to be monitoring. It's not
15 just the info passing through.

16 So, I'm going to address this point first, and then I'm going to talk
17 about some of the other differences. So, let's start with Palmer, and I'm
18 going to turn to slide 32 of, now, I'm (CROSSTALK) --

19 JUDGE PARVIS: This is Judge Parvis.

20 MR. LEVINE: -- slides. Slide 32 shows, this is an example of the
21 claim. It doesn't have to look like this in the graphics. But what is shown
22 that I want to focus on, is the language that's in the box in the middle.

23 JUDGE PARVIS: This is Judge Parvis. Can you hear me?

24 MR. LEVINE: I'm sorry.

25 JUDGE PARVIS: This is Judge Parvis. Can you hear me?

1 MR. LEVINE: I couldn't hear you, I'm sorry.

2 JUDGE PARVIS: Can you hear me now?

3 MR. LEVINE: Yeah, I'm making it louder on my speaker. Go
4 ahead.

5 JUDGE PARVIS: I just wanted to let you know that I'll have a
6 question and at any point in the presentation, if you're comfortable and you
7 can provide an answer, that would be great. You mentioned that a key point
8 of the dispute in Patent Owner's view is whether the prior art teaches the
9 monitoring. And the question I'll have for you is, if we were to determine
10 that the claim is as broad as the Petitioner argues with respect to monitoring,
11 and that information -- that monitor signal characteristics, providing that
12 information by, for example, the subscriber unit to the second transceiver is
13 enough. And is that -- does that end the inquiry, or is there a separate issue
14 relating to routing? And you don't need to address that now, but just
15 whenever it is comfortable for you.

16 MR. LEVINE: Sure. And the basic response is that the claim
17 requires the second transceiver to do the monitoring. It doesn't require, say,
18 anything else to do monitoring. And if the second transceiver, in the prior
19 art, if the prior art shows monitoring by some central device, like it only and
20 not the second transceiver, then that is the end of the story. Then you don't
21 need to go look at the other disputes between the parties. That's enough to
22 show that the claim is novel. I don't know if that answered your question,
23 but that's how I understood it.

24 JUDGE PARVIS: My question was more along the lines if we
25 interpret the claim the way Petitioner argues, is there another dispute in

1 Patent Owner's view, or does resolving that issue end the inquiry?

2 MR. LEVINE: Well, the way I understood, and I may have -- I
3 was trying to write down how, you know, the parties -- the Petitioner did not
4 request claim construction of the word monitoring, and obviously there was
5 just questioning of the Petitioner about that. I thought that the Petitioner
6 agreed that the monitoring required some sort of decision making by the
7 second transceiver as set forth in the claim. And with that, that's of critical
8 importance, because you don't find that in the prior art. You have to
9 monitor, and you have to route based on that monitoring, and that's not
10 something that you find in Palmer or any of the other references, as I'll get
11 to.

12 JUDGE PARVIS: I think I understand Patent Owner's position.
13 Thank you.

14 MR. LEVINE: Great. Thank you.

15 JUDGE BARRETT: Before we move on, I want to piggyback on
16 that, because you've been talking about monitoring requiring decision
17 making, I believe, and I don't know if that's Patent Owner's position or
18 you're just telling us what Petitioner's position is. But you seem to argue
19 that merely passing information through the transceiver doesn't count. The
20 specification, whether it's an embodiment or not, it seems to be talking about
21 the transceiver merely passing information through up to some other,
22 something upstream that then makes a determination.

23 MR. LEVINE: Yeah, I don't know if that's right. I mean, I'm not
24 saying that you can't have some determinations made upstream, but the --
25 and I put up on slide 35 of Patent Owner's slides, and that has the quote from

1 the columns 8 into 9 of the '794 patent. And it talks about how the
2 determination, remember, the claim requires that the monitoring is done by
3 the second transceiver, and there it's talking about of how the determination
4 of handover is made responsive to the measurements, and, you know, it's
5 measured and then reported back to the transceiver and appropriate control
6 circuitry. So, it's more than just -- it's not through the transceiver to the right
7 circuitry. It's reported to both, and you can have some determinations made
8 by the transceiver. Some can be made up above, such as going to a different
9 transceiver. But in terms of what the transceiver can do, the idea is that that
10 transceiver is monitoring. It's not just a pass-through device.

11 JUDGE BARRETT: Okay. I understand your argument. I'm not
12 sure that I necessarily agree with your reading of the specifications, but I
13 understand your position.

14 MR. LEVINE: Yeah, and in fact, if you look at -- it's more than
15 just the specification. The claim requires that the second transceiver monitor
16 and then, you know, the various characteristics, and then based on the first
17 signal characteristics and second characteristics, routes the information.
18 There's no reference to this just passing it through. Someone else upstream
19 is making all the decisions and then the routing is being done by, you know,
20 up above. I mean, it's being done by the second transceiver, and it's based
21 on the information that is received in doing the monitoring.

22 So, it's the combination of both things. It's the monitoring and the
23 routing based on information received in the monitoring that's required by
24 that last limitation of Claim 1. And what you have in Palmer is nothing of
25 the sort. In Palmer, let me move up to slide 34, in Palmer, you know, what it

1 shows is it talks about the monitoring that can be done, and it said this
2 determination could be made by the wireless communication device 20.
3 That is the equivalent of the -- and we're talking about the mobile stations in
4 the claim according to Petitioner. So, wireless communication device 20
5 doing it doesn't work, it doesn't show the second transceiver. They're saying
6 the second transceiver is this access point 40.

7 Now, what is it -- it says alternatively monitoring can be done
8 centrally by the network or central host processor. Well, everyone agrees, I
9 think, that the central host processor, which is up in building 33, that's not
10 the second transceiver. So, the question becomes when there's a reference to
11 the network, does that include device 40?

12 And I think the answer is no for two reasons. First of all, and
13 maybe most important, the reference is to centrally. You see that term
14 there? It may be performed centrally, for example, by the network. One
15 thing we know about these access points 40 is they are not central. They're
16 not doing something centrally. They're spread around geographically.
17 That's the idea of access points in that kind of system. So, when they are
18 spread around geographically, they're not making the decision because here,
19 the alternative to the device 20 itself doing the monitoring is for some
20 central monitoring to be done, and that's not device 40. And device 40 is
21 what's alleged to be the second transceiver.

22 So, let's turn then, I'm going to turn to slide 38. Palmer says that
23 access point 40 is a bridge from the mobile device -- from the devices, the
24 wireless communication devices 20 to the wired network 38. By the way,
25 when our expert Mr. Chrissan referred to the unmarked box in Petitioner's

1 slide, they had an unmarked box being what's above and slightly to the left
2 of number 40. Actually, the unmarked box that Mr. Chrissan is referring to
3 is this box right below 34.

4 So, before you get to the wired network and up above 34, so when
5 it's referring to that part of the network generally, but that is central as
6 opposed to the parts that get to each access point. The little boxes above
7 access points 40, the big box so to speak that's below antenna 34 is
8 something that is more central. And that is why the monitoring could be
9 done there, according to the claim -- to the specification of Palmer, because
10 it says the monitoring if it's not done by the devices themselves, device 20,
11 it's done centrally, and that's why it could be central.

12 So, what it described, Palmer describes access point 40 as a bridge,
13 and Dr. Almeroth, the expert for Petitioner, in his initial declaration before
14 we had, you know, this whole dispute, he agreed that the access point is a
15 bridge, and all it's doing is forwarding the packets. Now, what he does is he
16 says that's consistent with the above-presented dictionary definition. And
17 what he was referring to in that dictionary definition is, and now I'm
18 showing slide 40, is the dictionary definition from Newton's Telecom, which
19 was Exhibit 1011, which describes what a bridge is, and it says classic
20 bridges are relatively dumb devices that accept data packets, perhaps
21 buffering them and forwards them. That's all it's doing. That is not
22 monitoring. Being a bridge to just forward data from one place to another is
23 not what's involved in monitoring.

24 Now, the Petitioner, in their slide 39, quoted from, and this was at
25 toward the end of their presentation, quoted from the inventor testimony,

1 where he said the idea of routing in a LAN is known. And that's fine. But
2 that's not really the point here, the core of the question here. The question
3 here is whether monitoring and subsequent routing by a second transceiver
4 in this kind of device that is known, and he didn't address that. He just
5 talked about routing generally. Routing generally being known doesn't do it.
6 The key here is they have to show that Palmer or other devices have both
7 monitoring and routing by a second transceiver, and here you don't have
8 that.

9 I'm going to turn then to other devices, or other prior art patents,
10 and the fact that they don't describe the monitoring by the second transceiver
11 either. And I'm going to start with Hohnstein, and we'll go to slide 59. In
12 Hohnstein it shows the subscriber unit 26 monitoring a signal channel
13 transmitted by access 22. Now, it says the signaling channel can be
14 controlled by a central supervisor. It says that near the end here of the quote.
15 Now, none of this is showing monitoring by the second transceiver which is
16 shown to be, or which is explained to be or argued to be by the Petitioner,
17 access point 22. Here, the subscriber unit 26 is what is alleged -- is what
18 Petitioner says is like the mobile station. So, the mobile station doing
19 monitoring isn't the same as what's in the claims. And the central supervisor
20 that's controlling the signaling channel according to the language of
21 Hohnstein, that's not the second transceiver either. So, essentially what
22 Hohnstein is showing is monitoring and/or routing by either a lower level
23 device or a very high level device, but not by what is being alleged to be the
24 second transceiver which here is what they're saying is its access point 22.
25 So, you don't have the routing or the monitoring by the second transceiver

1 for the same reasons.

2 On Mahany, there's no allegation that Mahany shows monitoring
3 or routing. And then finally on Agrawal, the only monitoring that's done is
4 by the mobile transceiver in a in a cellular system because it's showing a
5 cellular system. That's different than a wireless transceiver in a local area
6 network doing monitoring of a mobile station. So, showing monitoring of a
7 cellular device by a base station in that kind of system is not the same. And
8 there's no suggestion by any anything that provided by the Petitioner that
9 seeing how a cellular system monitor -- a base station monitors the cellular
10 devices. It tells you how you have monitoring by a second transceiver in a
11 local area network.

12 One other -- one final point on the routing, or the monitoring of the
13 routing. The handover example in the specification is an example but that
14 should not be imported into the claims. That includes having a -- that
15 necessarily includes the LAN transceiver sharing information with devices
16 further up in network but the claims don't require that. The claims should
17 just say the monitoring and the routing is done by the second transceiver.
18 I'm not saying you can't have additionally some monitoring done by some
19 higher central level. That claims don't -- they're agnostic as to that, but they
20 say that at least some of the monitoring and routing is done by the second
21 transceiver, and you don't see that in Palmer, you don't see it in Hohnstein,
22 you don't see it in Agrawal, and there's no claim that you have that in
23 Mahany.

24 JUDGE BARRETT: So, are you -- is it your position that the
25 description in the specification that is not an embodiment of the claimed

1 invention?

2 MR. LEVINE: It may be an embodiment, but it's not necessary --
3 it doesn't necessarily show what is in Claim 1 of the -- or it should be
4 imported into Claim 1 of the patent. It is an example. It is
5 (INDISCERNIBLE).

6 JUDGE BARRETT: It's an example of the claimed invention, the
7 monitoring and routing within the meaning of Claim 1?

8 MR. LEVINE: Well, it's an example of part of the invention, but
9 not in -- Claim 1 isn't -- there's a lot of things in the specification that can go
10 beyond what's in Claim 1. Claim 1 is a specific invention, and the reference
11 to any routing that's done by some central device is something that it can be
12 part of -- that routing can be done is part of Claim 1, but it's not -- Claim 1 is
13 not that requires the addition that you have -- that some may have
14 monitoring and routing done by the second transceiver. Even in that
15 embodiment, the second transceiver may be making decisions to route.

16 So, the key is that you have to have the second transceiver being
17 involved in monitoring and routing, as the claim specifically says. It doesn't
18 say the second transceiver providing information to a central device that
19 monitors. It says the second transceiver is monitoring. Now, you can have a
20 central device monitoring as well, but to meet the claims, and to disclose the
21 claims, you have to show the second transceiver monitoring. And that's
22 what you don't have in the prior art.

23 JUDGE BARRETT: Is there -- let me come at it a different way.
24 Is there a description in specification of the challenged patent that clearly
25 gives me an example of that second transceiver doing routing and

1 monitoring?

2 MR. LEVINE: There's nothing beyond what's shown at the bottom
3 of claim 8 -- at column 8 into the top of column 9 that the both parties have
4 referred to.

5 JUDGE BARRETT: All right. Thank you.

6 MR. LEVINE: So --

7 JUDGE PARVIS: This is Judge Parvis. I have a question. Is
8 routing simply sending information?

9 MR. LEVINE: Well, routing is sending -- yes, it is information.
10 Yes, it is sending information, but it's routing the information. There has to
11 be, you know, two a particular -- to some device, but yes.

12 JUDGE PARVIS: So, as long as information is sent or transmitted
13 to a device, that satisfies the routing limitation. Is that correct?

14 MR. LEVINE: For the routing itself, you know, there is a District
15 Court construction and that's a construction that the other -- the Petitioner
16 did not ask for determination whether that's appropriate or not appropriate
17 here. We did not address that as well, so the parties aren't arguing that that
18 construction should be applied here. So, for the routing that's done here, it is
19 information sent. The key is not just, is there a routing? The key is, who is
20 it that's deciding on that routing? And the claim requires, and you can see
21 this in slide 66, that it is the second transceiver that's routing information
22 based on the signal, the first signal characteristics and second signal
23 characteristics. And by referring to, based on those characteristics, that's
24 certainly suggesting that it is the second transceiver having some sort of
25 smarts or decision making ability and not just being a dumb bridge that

1 gets -- forwards information up and then gets a decision and then
2 implements it below. The suggestion from, or the import of the claim
3 language is that the second transceiver is doing some monitoring and routing
4 and the routing has to be based on those characteristics.

5 JUDGE PARVIS: So, the routing is just sending information
6 based on the characteristics and termination? Is that correct?

7 MR. LEVINE: It has to be based on the first signal characteristics
8 and second characteristics, and it has to be the first -- second transceiver
9 that's doing the routing, and it's not just any, you know, it's the second
10 transceiver that is monitoring each of those characteristics, and then based
11 on those characteristics routing the information.

12 JUDGE PARVIS: Thank you.

13 MR. LEVINE: So, the key is that it's the second transceiver not
14 just receiving information from a central device. Hey, go ahead and route or
15 an instruction to route or how to route, it is that it's doing the monitoring and
16 otherwise it would have just said second transceiver receiving for signal and
17 second -- characteristics in second. The, you know, the idea here of the
18 monitoring is that the monitoring is that you're seeing what those
19 characteristics are. Now, routing can be done by, you know, it's not, it could
20 be beyond sending, it could be changing modulations, changing channels,
21 you can see the signal is not strong enough. So, you're changing the channel
22 to try to get a better signal. It's not just send information, it's doing
23 something that makes changes, some kind of decision making that's
24 involved.

25 JUDGE PARVIS: Has Patent Owner argued -- you have made

1 arguments with respect to how the term routing should be construed?

2 MR. LEVINE: Routing requires some sort of decision making,
3 and it's decision making on how that information is sent. And the
4 information -- you know, example. An example would be changing the
5 channel, but -- so it's not -- it is sending information, but there is decision
6 making involved in where and how it is routed, how the data is sent. So, it is
7 sending the data, but it's how you send the data. Do you send it over channel
8 one? Do you do it over channel five? There are different ways to send it, so
9 it's sending the information, absolutely. But it's how to send it, and the
10 second transceiver has to be involved in some way in that decision making
11 based on the plain language of the last limitation of Claim 1.

12 JUDGE PARVIS: Has Patent Owner argued in the papers that
13 routing should not have a specific construction? Or has Patent Owner relied
14 on the plain meaning of routing?

15 MR. LEVINE: Well, I think that the Patent Owner had -- that
16 there was argument in the District Court about that, and there was a specific
17 construction that was given. But that's not something I think the parties, you
18 know, the other side didn't ask for specific construction of routing. In our
19 papers, we didn't require that there be a specific construction of routing
20 either.

21 JUDGE PARVIS: Okay. So, Patent Owner has not offered a
22 specific construction of the term routing in its papers?

23 MR. LEVINE: I don't think the other side has offered a specific
24 construction of monitoring or routing in the papers.

25 JUDGE PARVIS: Thank you.

1 JUDGE BARRETT: One more question to follow up on that.
2 We've been talking about the District Court's constructions and things like
3 that. At least some of them I believe are in the record. I don't know that
4 they all are. What is the status of the District Court litigation, and
5 specifically, are these claim constructions, are they final in the District Court
6 or are they still subject to being modified?

7 MR. LEVINE: Well, I guess they're as final as anything can be in
8 a District Court. You know, so there was a trial, there was a jury verdict.
9 The Court struck the jury verdict and ordered a new trial. So, those
10 constructions are there and they are what they are. You know, I'm not -- you
11 know, obviously, any time they're coming up to another trial. I'm not saying
12 I don't know what will or won't be raised, but they are the constructions that
13 are there for now at least.

14 JUDGE BARRETT: Okay. I certainly don't know what issues are
15 going on in the District Court, but what I was envisioning is, I don't know if
16 there was an objection to jury instructions, but if something like that
17 includes a claim construction, that seems like something that the District
18 Court Judge may be revisiting. And that's my concern. I'm hearing a lot
19 about District Court constructions. If those aren't finalized, I don't think we
20 would necessarily just adopt a District Court construction without some kind
21 of analysis, but I certainly wouldn't want to do that and then have it changed
22 next week.

23 MR. LEVINE: Yeah, I'm just saying, there was a trial, so they
24 were final before the trial, and the instructions were given to the jury based
25 on whatever constructions there were. There's going to be another trial. I

1 don't have any -- parties file things all the time, so I don't know what will or
2 won't be filed, but they were certainly finally going into the trial.

3 JUDGE BARRETT: Thank you. I understand.

4 MR. LEVINE: That's, unless the Court has more, I am done with
5 the argument on monitoring and routing for now. And I'm going to turn to
6 the argument on coupled to.

7 So, on coupled to, starting with slide 23, the key here is whether
8 there is the -- the claim itself generally is for a wireless communication
9 device that includes the second transceiver, wireless transceiver, coupled to
10 the first wireless transceiver. And one is the second, one is the transceiver
11 for the local area network, and one is for the wireless area network. Now,
12 do they have to be in the same device? They do, because the claim itself, the
13 preamble says it's for a wireless device. So, it has to be in the same device.
14 But maybe more important is that, and I'll get back to this in a second, Claim
15 5 is more limited than Claim 1. Claim 5 requires that there be an integrated
16 device. So, whether or not you have in Palmer or other references coupled
17 to in some convoluted way, and I'll get to that, Claim 5 you don't have in
18 Palmer. Not even alleged to have the integrated device. And you don't find
19 that in the other references as well, as I'll talk about.

20 So, first let's start with, and I'll turn to slide 26. And slide 26
21 shows you what Palmer has, and Palmer has, and I talked about this earlier, a
22 lot of access points around. They're geographically dispersed, that's how
23 access points work. And when you have then in slide 27 is the allegation is
24 that in the red box that you have the access point 40 being coupled to remote
25 antenna 34. But the thing is that you have things in between. You have this

1 unmarked box below 34, you've got the wired network 38 in between, and
2 then you get to access point 40. When you have two different things in
3 between access point 40 and antenna 34, that's not having a two transceivers
4 that are coupled to one another. It would be like having a wired network at
5 home, you know, and I have my computer, I have my printer, and I have a
6 smart TV all connected to the wired network at home. You wouldn't say
7 they're part of the same device, and at a minimum, and you certainly,
8 certainly wouldn't say that they are part of an integrated device. And the
9 same thing here. When you have these wired, I'm sorry, access points 40,
10 points 40 all over, because that's how they're described as geographically
11 dispersed, you wouldn't say they're part of the same device as this wired -- as
12 this remote antenna 34.

13 Now, Claim 2 has the reference to a wireline connection, but
14 having a wired network is different than a wireline connection. A wireline
15 connection is having a cable that connects two things. And it is not having a
16 wired network like the example of a printer and a computer and a TV that
17 are all on the same wired network at home. That doesn't make them part of
18 the same device.

19 And then as I mentioned, Claim 5, whatever you believe about
20 Claim 1, Claim 5, the integrated device is not shown by Palmer, and in fact
21 Petitioner doesn't even argue that. Now, what Petitioner does say is that it
22 would be obvious to combine antenna 34 with a single access point 40, but
23 there's no reason to, of all the access points out there, there would be no
24 reason to take the antenna and combine it with just one of the access points.
25 It's not simply a design choice. Putting two transceivers in the same device

1 rather than having the ability to communicate with one another over a
2 network are very different things as Dr. Chrissan explained, in paragraphs 79
3 to 80 of his declaration, Exhibit 2007.

4 So, for this, and especially for the integrated device part of it, what
5 Petitioner does is Petitioner refers to Mahany. And I'm going to turn to
6 Mahaney, that's slide 61. What Mahany shows -- is Mahany shows this
7 optional WAN transceiver that's there in dotted lines. And it says that you
8 could use that, and it's in Figure 48 of Mahany, and it says, you can use that
9 instead of the LAN transceiver. And then the example it's given is when
10 you're going too far away for the LAN transceiver to work, you could use a
11 WAN transceiver. But this is not an example of two different transceivers
12 that are part of an integrated device where they are communicating to one
13 another, where data flows into one transceiver, and then goes out of the other
14 transceiver. These are examples of alternatives. You have the LAN
15 transceiver and the WAN transceiver as alternatives with the WAN to be
16 used when LAN is not working or not available due to distance. And that --
17 and Dr. Chrissan discusses that at paragraph 122 of his declaration, Exhibit
18 2007.

19 So, what you see in Mahany is not an integrated device with two
20 transceivers that are communicating like what's described in the claims of
21 the patent, especially Claim 5 of the '794 patent. Instead, what you have is
22 you have this alternative device. So, you're using one or the other, but
23 you're not putting them together to be something where it's an integrated
24 device for where they're communicating to one another as required. That's
25 the argument on coupled to, which applies to many of the grounds. And

1 with that said, I'm going to turn to the last of our three arguments in my
2 remaining time, which is the wireless wide area communication protocol
3 argument.

4 JUDGE BARRETT: I have you at about 11 minutes or so left I
5 think.

6 MR. LEVINE: All right. Thank you, Your Honor. And the
7 claims require the use of two different communication protocols. The
8 wireless wide area wireless -- the wide area communication and the local
9 area communication, WAN and LAN. One for the first transceiver and one
10 for the second transceiver. We'll start with Palmer. Palmer doesn't discuss
11 these separate protocols. And Petitioner's argument here is based on the
12 network and its geography. It's not based on the protocol that's used.

13 So, I'm going to start with slide 18. And in slide 18 we have the
14 Petitioner, you know, as we've talked about, alleges that the connection
15 between central antenna 32 and remote antenna 34 is via what wide area
16 network or WAN protocol. But the link between them, RF link 26, isn't
17 described that way. It just says that you can connect them somehow. You
18 can connect them actually wired or wireless, it has different options, but I'm
19 sorry -- but it's talks about wireless, but in Figure 2, wired with Figure 1, but
20 explains that it gives another possibility, which is in what's below, which is
21 wireless communication device 20 that communicating with access point 40.

22 It says there you could use a wireless wide area network as an
23 alternative. It doesn't ever describe using wireless wide area network for the
24 RF link 26 between 32 and 34. So, what we see, I'm going to go to slide 22,
25 in Palmer, there's a -- Petitioner says, well, it refers to network protocols,

1 and does refer to network protocols, but the only network protocols it
2 mentions are things like TCP/IP or others, which have to do with the --
3 which apply to wired networks as well as wireless networks. They're data
4 network protocols. They're data protocols, not wireless media protocols.
5 So, the fact that there's a reference to industry standard network protocols
6 doesn't tell you that there is an indication that you should use WAN in
7 connection with the link between 32 and 34. In fact, the only time it
8 discusses WAN, as I mentioned, is in a different link.

9 So, the main argument, I think, that you see from Petitioner on this
10 is the geographic area, that if it can cover a city, it is -- it must be a WAN
11 protocol. But what you see in the definition of WAN that was set forth by
12 Petitioner, provided by Petitioner and referenced by Dr. Almeroth, their
13 expert, it refers to -- it defines WAN as larger than a local area network or a
14 metropolitan area network. So, a metropolitan area network can cover a city
15 as well. And what you don't see in Palmer is any discussion of using, even if
16 you can cover a city, of that it would be using a WAN, a wider area network,
17 as opposed to a metropolitan area network protocol.

18 JUDGE BARRETT: What about the other part of that definition,
19 larger than served by a local area network, something larger than a LAN?
20 Doesn't that encompass what's Palmer has?

21 MR. LEVINE: Well, it says "or a metropolitan area network,"
22 something like a geographic area larger than that served by a local area
23 network or a metropolitan area network, both. And I don't know if we could
24 parse is the or an alternative or, you know, but I think when it's talking about
25 it's bigger than a LAN or a metropolitan area network, it suggests that it's

1 bigger than both of them.

2 At a minimum, you know that a WAN, you know, a metropolitan
3 area network, that's kind of self-explanatory of a metropolitan area. So,
4 when Palmer discusses the possibility of getting something that can be
5 useful even within a city, you don't know that it necessarily is describing
6 WAN protocol as opposed to metropolitan area network protocol. It doesn't
7 tell you or describe any protocol that's used between antenna 32 and antenna
8 34. And the wide area network protocol, as Dr. Chrissan described, gives
9 you not only a set of established rules, but its rules on communication
10 between devices. Devices have to be using the same rules in order to
11 communicate with one another. If one is using metropolitan area network
12 rules and the other is using wide area network rules, they don't
13 communicate. And what Palmer does not describe is that you'd use wide
14 area network rules in connection with this, the link between 32 and 34.

15 JUDGE MCMILLIN: Mr. Levine, this is Judge McMillin. It
16 seems to me that you may be implying or stating some special meaning to
17 wide area wireless communication protocol. Didn't both parties tell us to
18 apply the plain and ordinary meaning to all the terms of the claim? So,
19 rather than maybe we all today know what a wide area wireless
20 communication protocol is, and we would have some ideas to that set of
21 rules, but for this claim, aren't we just looking at something that's a wide
22 area of wireless communication set of rules, and not something that has
23 some particular meaning as we understand it today?

24 MR. LEVINE: Yes, Your Honor, we are. And the point is when
25 you then look at Palmer and what it's describing, when it's describing, hey,

1 you could use this in a way so that you can use it for not only a building, but
2 for amongst several buildings and even within a city, that doesn't necessarily
3 tell you that it's using a wide area network set of rules because there are
4 other set -- there's another set of rules that can work even within a city. So,
5 you don't need to define wide area network as used in the claims. It's more
6 about what is it that Palmer is disclosing, which is where the experts have
7 given different opinions.

8 JUDGE MCMILLIN: Isn't the wide area -- the city alternative in
9 Palmer -- a wider area than the building?

10 MR. LEVINE: Sure, but so is a metropolitan area network, and
11 the claims require use of a particular protocol. And the point is that Palmer
12 isn't describing or disclosing use of that protocol, the WAN protocol. It's
13 using -- use of a protocol that can work within a city and there are different
14 protocols that can work within a city. That's the point.

15 JUDGE MCMILLIN: I understand. Thank you.

16 MR. LEVINE: All right. That's all I have for now and I'll reserve.
17 How much time do I have left?

18 JUDGE BARRETT: Let me see, you are at 42 minutes, so that
19 will be 18 minutes left.

20 MR. LEVINE: All right. Thank you, Your Honor.

21 MR. ROSENTHAL: Your Honor, may I proceed?

22 JUDGE BARRETT: You may whenever you're ready.

23 MR. ROSENTHAL: Thank you. So, I have a number of points
24 that I want to make in rebuttal. I'm going to start with the monitoring piece.
25 First of all, what I heard counsel say a number of times is that monitoring

1 requires some kind of intelligence, and then routing requires some kind of
2 decision making. And over and over he was asked, are you proposing a
3 construction for those terms? And of course, they are not. And if they
4 wanted to require some kind of intelligence in the routing or intelligence in
5 the monitoring, it was incumbent upon them to make that argument in the
6 briefs. This idea of intelligence in the monitoring or intelligence in the
7 routing is nowhere in their papers. That's a brand new argument today and
8 it's not even one that counsel wanted to say here's a construction thing that
9 requires that. Monitoring -- and that's point number one.

10 Point number two is I thought there was a pretty clear question
11 from Judge Barrett, does the example at the bottom of the column 8, the top
12 of the column 9, meet Claim 1 or not? And after asking that question two or
13 three times, I still didn't understand what counsel was saying, whether the
14 answer is yes or no. So, I will tell you, according to their expert, it is. In
15 Exhibit 1017, which is Dr. Chrissan's testimony, page 58, lines 10 through
16 12. He was asked about that very passage, and he said, that's the example at
17 the start of column 8, line 61, that's the one example of monitoring signal
18 characteristics to route information. Answer, yes.

19 So, that's the only disclosure, and counsel admitted there's no other
20 disclosure, that is the only disclosure in the patent of the claim to monitoring
21 and routing. And the only thing that's disclosed is that the mobile station
22 sends measured characteristics back to the transceiver. There's no disclosure
23 of the transceiver having intelligence or making any kind of, you know,
24 smart decisions about what to do with that. In fact, as Judge Barrett opened
25 the questioning up about on column 9, it is suggested to the contrary that the

1 brains of the operation is earlier in the network, not at the second
2 transceiver.

3 And so, when confronted at, this is my third point, counsel said,
4 what does routing really mean? And he said, it just means sending
5 information to the mobile station. And that idea is clearly stated in Palmer.
6 Palmer undeniably states that there is monitoring and sending information to
7 the mobile station based on that monitoring. And the way that it's based on
8 that monitoring is it's constantly measuring the signal characteristics, the
9 signal quality, the signal strength, all of those things that we talked about,
10 and if it's okay, then the transceiver will send information to the multiple
11 station. If it's not, it will get rerouted to a different access point.

12 JUDGE BARRETT: Does the -- hold on a minute. What does the
13 rerouting? You said if it's not going to go where it needs to go, there's
14 rerouting. What device does the rerouting?

15 MR. ROSENTHAL: Well, I guess it depends -- in Palmer, it really
16 can be any of the devices because Palmer makes it very clear, and I'm just
17 about to talk about that, where this whole algorithm of Figure 3. Figure 3 in
18 Palmer sets forth a multi-step process of measuring the signal characteristics
19 and then making a decision to roam. And then what Palmer says is that can
20 be done in one of three places. It can be undone by the mobile station, so it
21 can make the decision itself. It can be undone at the central access
22 processor. Or it can be done by the network. And the question is, what does
23 it mean by the network? And what would it render obvious, not necessarily
24 what's inherent. But if we look at slide 34 of counsel's presentation, I'm
25 going to bring up counsel's presentation if I can. Thank you, appreciate that.

1 No worries. So, I have slide 34 of their presentation hopefully showing on
2 screen. Can you see that?

3 JUDGE BARRETT: Yes, we can see it now.

4 MR. ROSENTHAL: Okay. And so, this is what counsel came up
5 with and said, this is what we think the network is referring to. And it
6 pointed to this central host processor. That is nowhere in the entire patent
7 referred to as a network. There's nothing that describes that as a network
8 anywhere. In Figure 2 the only thing that is described as a network is
9 network 38, this wired network of which these access points 40 are
10 members. These little unnamed boxes, those are just connection points into
11 the network. Imagine I'm like an ethernet point. And so, you have access
12 points 40 that are connected to this network. The network itself is just an
13 ethernet cable, or a back claim or something. It doesn't do anything.

14 And so, when Palmer says that the network can perform all of
15 these steps, the only network that is referred to in Figure 2 is that network
16 which is comprised of these access points 40. And it's also comprised of the
17 box that is underneath item number 34. Those are the things on that
18 network. And General Access's expert conceded that one of those items on
19 the network can perform the monitoring and the routing, but certainly not
20 40. And what we just heard by the way, for the very first time, it's not in
21 their briefs, is General Access's counsel say, well the reason is because it
22 says central. Well, access point 40 is central to -- in relation to the remote
23 devices that connect to it. Just like your Wi-Fi router at home is central to
24 all of your wirelessly connected devices. So, when it says that the network
25 can make those decisions, that's what it's talking about. But in any event, the

1 claims don't require that decision making. They require monitoring, which
2 as the only example in the patent says, can simply mean receiving the
3 information from the mobile unit. And they require routing, which counsel
4 just said simply means sending the information to the devices along a long
5 path.

6 And so, there aren't any special definitions that the parties have
7 proposed, or that General Access has proposed. And under the plain
8 meaning, this disclosure states that the network, i.e., these items 40 in
9 network 38, which is the second transceiver, perform the routing. And Dr.
10 Almeroth explains that at length in his declaration.

11 The next point I want to make is, with respect to the inventor
12 testimony. General Access, we raised this inventor testimony in our reply.
13 General Access never responded to it in their sur-reply. It just ignored it,
14 and the very first time we heard any response to it was today. And what
15 counsel said was, Mr. Struhsaker wasn't talking about the claim language, he
16 was talking about routing generally. And that's just not true. If we go to my
17 slides, and we go to slide number 68 as an example, where we also
18 reproduced the language, we're specifically asking about the claim language.

19 And in fact, it was in the context of saying, why didn't you write in
20 this patent anything about the second transceiver performing routing to the
21 first and second mobile stations? We're not asking about routing as a
22 general matter. We were specifically focused on because we were asking
23 him, why didn't you provide written description support in more detail? And
24 his answer with respect to that limitation, was that limitation is performed by
25 all WLANs. So, I didn't need to write it down. General Access is now

1 saying that there's some magic to it, that there's some intelligence and
2 decision making to it. But that's not what the inventor said under oath at
3 trial.

4 Okay. I do want to talk about the coupled to limitation, briefly.
5 General Access's counsel kept saying, well, Palmer doesn't disclose an
6 integrated device. We're not even advancing Palmer for Claim 5. In fact,
7 that's the point. The point is that Claim 1 does not require an integrated
8 device. Only Claim 5 does. Claims 1 through 4 and 6 require any coupling,
9 and there's no argument in this brief. And I'm sure the panel is well aware
10 that sometimes people make an argument that the word coupled to should be
11 narrowly construed to require a direct coupling. And you can't have an
12 intervening pieces.

13 But General Access has not advocated for that construction in this
14 case. Had it done so, it would have had to support it, and we would have a
15 debate about it. It has not done so. So, the question about whether it's
16 coupled is a broad one. Is it coupled directly or indirectly? And there is no
17 question that in Palmer item number 34 is coupled to item number 40. That
18 it is coupled by two wires, or three wires, instead of one wire is of no
19 moment at all to the claims. In addition --

20 JUDGE BARRETT: Counsel, your time is about up if you want to
21 take a minute or two just to wrap up.

22 MR. ROSENTHAL: Yes, Your Honor. I guess the last point I
23 want to make is on WAN, and I will be very, very brief. And that is simply
24 they made a brand new argument that somehow wireless -- or wide area
25 access requires some specific protocol. And they also made the argument

1 that if you look at the dictionary definitions, it's different than a metropolitan
2 area protocol. The question is in this context of the '794 patent. The plain
3 language of these claims simply requires a local part and a wired part
4 relative to each other. We have identified within the building there is a
5 limited area network, outside the building there is a much wider area
6 network. And their own expert has said that wide area networks are ones
7 that go across. Even a campus, that doesn't even need to be as wide as that.
8 So, at a minimum, it renders a wide area network protocol obvious, even if
9 it's not inherent. We're not arguing inherency here.

10 So, I guess in sum I will say this, Palmer, which we think is by far
11 the strongest ground here, Palmer clearly discloses the same thing as '794,
12 which is you've got one smaller network, one larger network on the back
13 end. Both wireless, they have to talk to protocols, and they do exactly the
14 same roaming or handover based on the signal characteristics. The only
15 difference is Palmer does it in a lot more detail. So, under the plain
16 language of claims, Palmer at least renders those claims obvious. Thank
17 you, Your Honor.

18 JUDGE BARRETT: Thank you. Patent Owner, whenever you are
19 ready.

20 MR. LEVINE: All right. I'm just sharing here. There we go. So,
21 I think I'm going to use less than my 18 minutes that are remaining. That's
22 the good news. I want to make two points on monitoring, and then briefly
23 talk about the coupled to point.

24 First point on monitoring, which is, what does it mean? What does
25 monitoring mean? Now, neither party offered a definition of monitoring.

1 And the reason is, it's plain and ordinary meaning. And the key thing here,
2 and maybe this was getting lost in the back and forth between the Judges and
3 myself, is the discussion in the specification of the '794 patent at the bottom
4 of column 8 into the top of column 9, has some reference to routing. It
5 doesn't even use the word monitoring. It doesn't describe what monitoring
6 is, what monitoring means, and when the specification is silent on that, that's
7 an example of where you use the plain and ordinary meaning.

8 And whatever monitoring means, it is more than just being a dumb
9 bridge and just getting data and forwarding it to something else. And the
10 language of the claim implicitly requires that because the language of the
11 claim requires that you take the -- you monitor certain characteristics and
12 then based on those characteristics, route.

13 So, the focus here is, that's why the focus here, we made arguments
14 on monitoring and routing, but the focus is on monitoring because that's the
15 plain and ordinary meaning, and it's more than just being this dumb bridge.
16 And that's all you have in Palmer. All you have in Palmer is access point 40
17 acting as a bridge. It says that. And you have Dr. Almeroth -- and Mr.
18 Rosenthal didn't respond to this at all, saying it's a bridge. That's all it is.
19 It's a bridge, which is what Palmer says itself in the spec. And a bridge is
20 this dumb device that just takes data and forwards it. And the very
21 definition of monitoring, the plain and ordinary meaning, is when you're
22 monitoring, you're looking for something. You're not just getting
23 information and forwarding it.

24 So, then you get into, well, is that all you have in Palmer? And
25 that's the second point I have. And in Palmer, as I discussed, the only

1 monitoring that is discussed is doing it by the device 20 itself, and that's not
2 the access point, or doing it centrally by the network or a central host
3 processor. Well, no question a central host processor is central. But I made
4 the point that, well, these access points 40 are all over the place, and when
5 they're all over the place, geographically that's not doing it centrally. And
6 Mr. Rosenthal came back and said, well, it's central for that particular device
7 20, but it's not centrally for Figure 2, which is what's being discussed here on
8 the left side of slide 34 for -- in the specification of Palmer, when it's talking
9 about performing centrally. One example is central as processor, and the
10 other is the network. And what Mr. Rosenthal ignores is this box beneath 34
11 that's not just a point like to get to the access points, like the little boxes in
12 the wired network 38. This is a box that is above the wired network. It's
13 from 34, it goes to the wired network. So therefore, what you have is you
14 have something, a place where it could be done centrally. But Palmer is not
15 describing having these geographically dispersed access points 40 doing the
16 monitoring at all. It's giving three choices, none of which are geographically
17 dispersed access points 40 doing the monitoring. Those are the two points
18 on monitoring.

19 On coupled to, the only thing that --

20 JUDGE BARRETT: Sir, before you move on, so you were just
21 focusing on monitoring, saying that's really the dispositive issue that sort of
22 ends the case. On the routing aspect, do you disagree with Petitioner's
23 position? I hate to put words in their mouth, but things like roaming, hand
24 off, those constitute the act of routing?

25 MR. LEVINE: You know, I don't think that you have to define

1 routing in order to decide the case. I think you can do it, you know, just
2 apply whatever plain and ordinary meaning is. But monitoring is where our
3 focus is. And you don't have monitoring by access points 40, or any of the
4 other prior art for that matter.

5 Briefly then, on coupled to, we are not advancing -- so, Mr.
6 Rosenthal said, well, we're not advancing Palmer for Claim 5. Okay. And
7 I'll leave the arguments as they were on Claim 5 with respect to, you know,
8 the other claims, Claims 1 through 4 and 6. We went through that. There's
9 nothing to really respond on there. But on Claim 5, okay, they're not using
10 Palmer, but they're using Palmer plus other things. They're using various
11 combinations. And the point is that Palmer doesn't show an integrated
12 device. And as I discussed, the only other thing they have to show to argue
13 there's an integrated device is Mahany. And Mahany doesn't show an
14 integrated device where the WAN and the LAN talk to each other and
15 provide data, the LAN transceiver or the WAN transceiver, provide data to
16 one another. Instead, it's one being instead of the other. One being an
17 alternative to the other, which is something that's very different.

18 So, that's, so even if for some -- even if the Court -- the PTAB
19 were to knock out the other claims, Claim 5, that the integrated device would
20 survive, because it's not shown in Palmer, it's not shown in Palmer versus
21 Mahany or any of the other accommodations.

22 Unless there are more questions, that's all I have.

23 JUDGE BARRETT: I am seeing none from my colleagues, so I
24 think, I think we're comfortable at this point. This case has now been
25 submitted. All right then. We are concluded. Thank you for your time

1 today. Have a lovely afternoon.

2 (Whereupon the above-entitled matter went off the record at 2:57

3 p.m.)

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