

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC., ROKU, INC., and
SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

ALMONDNET. INC. and INTENT IQ, LLC,
Patent Owner.

IPR2023-01281
Patent 10,715,878 B2

Record of Oral Hearing
Held: November 22, 2024

Before KRISTEN L. DROESCH, STACEY G. WHITE, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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P R O C E E D I N G S

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JUDGE WHITE: Good morning, everyone. This is the oral hearing for IPR 2023-01281 between Petitioner Meta Platforms Inc., Roku Inc., and Samsung Electronics Company and Patent Owner AlmondNet, Inc., and Intent IQ, LLC concerning U.S. Patent 10,715,878 B2. I'm Judge Stacey White, and with me today are Judges Droesch and Howard. So welcome to the Board, and I hope you're having a happy Friday before Thanksgiving week. Let's start by taking appearances from Counsel. Petitioner, please introduce yourself and anybody else that's on the line for Petitioner.

MR. WEINSTEIN: Good morning, Your Honors. This is Mark Weinstein from Cooley, LLP representing the Petitioner Meta Platforms, Inc. And also with me is Heidi Keefe, who's Lead Counsel for Petitioner Meta Platforms. Additionally on the Webex link is Mr. Daniel Zeilberger from the Paul Hastings firm. He represents the joinder party, Samsung. And Mr. David O'Brien is from the Haynes and Boones law firm. He represents the joinder party, Roku. And I think with that, we've identified all of the appearances for Petitioner on our side.

JUDGE WHITE: Thank you. And can I assume you will be making the presentation today?

MR. WEINSTEIN: Yes, Your Honor.

JUDGE WHITE: All right, thank you. And Patent Owner, who do we have?

MR. MILKEY: Yes, Your Honors, this is James Milkey on behalf of Patent Owner with the law firm of Russ, August, & Kabat.

1 JUDGE WHITE: Okay. Welcome again to the Board. So, before we
2 get started, let's just go over a few administrative things just to make sure
3 that we're all on the same page. Recording of any PTAB hearing is
4 prohibited. The court reporter will be here and provide a transcript of the
5 hearing. It will become part of their record in the proceeding at a later date.
6 To ensure that this transcript of the hearing is clear, we ask you to identify
7 yourselves before speaking; speak directly into your microphone, wherever
8 that may be in relationship to your laptop or other computers equipment;
9 and, to identify any specific slide numbers, numbers and figures, exhibits, or
10 pertinent identifying information when you're referring to demonstrative.
11 Please mute yourself when you're not speaking. And if you encounter any
12 technical issues, let us know right away so that we can rectify them and
13 make sure that that does not impact your time. As far as the procedure for
14 today, Petitioner will open the argument and may reserve rebuttal time,
15 which may not exceed half of Petitioner's total argument time. Patent
16 Owner will then respond to Petitioner's argument and may reserve sur-
17 rebuttal time. Then that also can't exceed half of the allotted time. So, for
18 today's proceeding, we have 60 minutes of total time for Petitioner.

19 Petitioner, would you like to reserve any rebuttal time and if so, how much?

20 MR. WEINSTEIN: Twenty minutes, Your Honor.

21 JUDGE WHITE: And Patent Owner, similarly, you have 60 minutes.
22 And would you like to reserve any sur-rebuttal time?

23 MR. MILKEY: Yes, 15 minutes, Your Honor.

24 JUDGE WHITE: Fifteen minutes. I will keep a clock on my end and
25 I will try my best to make sure I give you a warning five or ten minutes
26 before your time, excluding the rebuttal time you reserved is allotted. My

1 colleagues will also be trying to keep me honest on time, but it's also helpful
2 if you guys keep an eye on your time as well. So, let's see, objections. We
3 ask that you not object while the other party is speaking, to hold on to your
4 objections until it's your turn to present, and then just let us know at that
5 time what objections you have. If you think a demonstrative or other
6 argument is objectionable, we will hear it and let you know whether it's
7 something we can deal with now or something that we'll just take under
8 advisement. If you don't have any remaining argument time and something
9 pops up, you can still just let us know and we will make sure that we take
10 note of it. Are there any questions before we get started?

11 MR. WEINSTEIN: Not from Petitioner's side, Your Honor.

12 MR. MILKEY: None from Patent Owner, Your Honor.

13 JUDGE WHITE: All right, well then, Petitioner, you may begin when
14 ready.

15 MR. WEINSTEIN: Thank you, Your Honors. During our part of the
16 argument, we're going to be referring to the Petitioner's demonstratives.
17 This is Mark Weinstein from Cooley for Petitioner, so the record's clear.
18 Exhibit 1027, those are the Petitioner's demonstrative slides. And as in most
19 cases, there are a lot of slides here and far more work created than we could
20 conceivably use. So, I'm going to be jumping around the deck, and we're
21 probably going to end up using a tiny fraction of the slides.

22 And with that, Your Honors, I want to jump to Exhibit 1027, slide 15,
23 just sort of to highlight sort of what we view as the key disputes in the post
24 institution record. Slide 15 shows sort of the main independent claim as
25 well as claim 6, and sort of the highlight of the claim language where we
26 believe the key disputes revolve around. The first dispute revolves around

1 the claim language about determining association between the device
2 identifiers, the predetermined period of time limitation, and the Patent
3 Owner makes some additional arguments about dependent claim number 6.

4 Your Honors, if we jump back to slide 5. The Baig system, which is
5 the sort of the reference for all of the instituted grounds. As slide 5 shows,
6 Baig is a system where it creates what's called a vicinity-based community
7 over the Internet. The basic idea is you can be in a location like a Starbucks
8 or an airport, and with your mobile device you can connect to a WiFi hotspot
9 and the system can identify you as part of a WiFi hotspot with a bunch of
10 other people who are nearby you. And it can put you into this, what's called
11 vicinity-based, community.

12 If you look at slide 6, Your Honor, that shows sort of the basic
13 architecture of the system where you have a number of mobile devices
14 connected to sort of a central WiFi LAN, a WiFi router access point, and
15 then it connects over the Internet to a server where the communications can
16 be adopted.

17 We'll jump to slide 8, Your Honor. Just a very, very quick
18 background of the kind of features you can see. Slide 8 juxtaposes figure 6
19 of Baig next to paragraph 76, and describes basically what the whole point
20 of this is. When you log into the Baig system and you are accessing it from
21 the same IP address, it can put you in this vicinity-based community. On the
22 right side of figure 6, you see sort of a box 606 in yellow. It shows all of the
23 users who are logged into that access, who are logged into the server and
24 using that access point. And it uses this information to put you into this
25 community. In this case, there's a bunch of people who are identified by

1 pseudonyms, Terminator, New York Girl, NJ Man, and it goes on from
2 there.

3 So, this brings us here to the first dispute, if we go to slide 16, which
4 is the determining an association, this was their lead off argument, their
5 Patent Owner response. It's sort of been deprecated in their sur-reply, but
6 we'll address it in the order in which it appears in the Patent Owner
7 response. The association determination, Your Honor, is shown in part on
8 slide 17. Slide 17 shows an excerpt of figure 7 of Baig. And this is actually
9 just a part of it. But the key step in figure 3 is step 306, which is highlighted
10 in yellow. And that, actually, that step is actually where sort of most of the
11 action is both for this argument as well as the predetermined period of time.
12 And it's sort of the key to the disputes here.

13 What happens in Baig, Your Honor, is that when you log into an
14 access point with a bunch of other people, the way Baig works is the access
15 point gets a common IP address. So, that IP address is basically what it
16 presents to the world and what it presents to the server. The system
17 basically identifies all of the login users who have logged into the virtual
18 community website via the same IP address. And that's in step 306. And it
19 puts those people into the virtual community based on those two pieces of
20 information, the fact that you're logged in and the fact that you're using the
21 common IP address.

22 So, the key issue here, Your Honor, is to show the cookie, which is
23 the device identifier. If you go to slide 18, we're relying on this reference,
24 which is Laidlaw, and we're just relying on basically the background of
25 Laidlaw. Cookies have been around for decades, long before this patent. A
26 cookie is basically a piece of information that the server sends back to the

1 client, and the client sort of sends it back to the server with every single
2 request. And so, if you ever used, sort of, any website, what happens is
3 when you log in with your username and password, it sends a cookie back.
4 And with each request that you send, it basically sends back the cookie. It's
5 a way for the website to keep track of who this person is. As we explain in
6 our papers, the web has no memory between requests. And so, this is a way
7 to maintain state.

8 So, slide 19, Your Honor, just very basic knowledge described in our
9 petition. This just gives you an example of how cookies used. A website
10 can assign you a cookie 123, and every time you visit the site, it sends you
11 back this 123 cookie. And that's designed so it can say, for example, if
12 Heidi Keefe gets assigned 123 as the cookie, every time she connects the
13 server, it's going to say 123. The server can say, oh yeah, that's Heidi; I
14 know who she is; I can provide information to her without, you know, she's
15 not an anonymous user, she's the user associated with 123. And it says here
16 in this slide 19, this basic knowledge that one of the features of cookies is
17 you can actually remember the username and password of the user. I think
18 we've all seen this on websites.

19 If you look at slide 20, this is Baig. Baig has when you log in, we
20 have on slide 20, paragraph 68, there's a, when you log in, it has a statement
21 saying a check field is provided for remembering username and password. I
22 think we've all used this when we log into websites and you click that little
23 box that says remember my username or remember me. You know, that's
24 actually an example, a textbook example of how cookies are used. So, all
25 this is sort of a wind up for saying in slide 21, the device identifier under the
26 Baig Laidlaw combination is sort of the information inside the cookies. This

1 cookie information that the server provides down to the client and the client
2 provides backup. And there is no dispute from Patent Owner, that I could
3 perceive, that there is a lack of motivation to combine, or sort of any dispute
4 that cookies were well known and that there'd be a reason to adapt the Baig
5 system for cookies.

6 And in slide 22, Your Honor, just a quick note, just to punctuate this,
7 claim 8 is a dependent claim. It actually says the device identifier can be a
8 cookie. So, there's just no dispute here that it actually can be a device
9 identifier.

10 So, the key issue, Your Honor, is whether there is an association that's
11 determined by the system between the device identifiers. And our position
12 obviously is that it is. If you, if you look at slide 23, Your Honor, from our
13 Petition, the argument is actually pretty simple. Under the Baig-Laidlaw
14 combination, the cookie, the device identifier, is actually used for a critically
15 important purpose in Baig. It's actually to determine that you're a logged in
16 user. As we mentioned before, you have to log into the Baig-Laidlaw site
17 and then once you're logged in, the IP addresses are matched against other
18 people in the same vicinity, and you're put into the actual vicinity-based
19 community.

20 If you look at slide 24, Your Honor, you can actually see an example
21 where, again, this was figure 6, where in paragraph 76 we have cited it says
22 the webpage 600 also displays a list 606 of other users present in hotspot
23 110. In one embodiment, the list includes the usernames associated with
24 users that have logged into the VCSP website. The association is the fact
25 that the device identifiers are used to cluster these users together into these
26 vicinity-based community websites, into this sort of community of people

1 you see on the right side. All these users are associated. They're all logged
2 into their Internet devices. They all have device identifiers, cookies, and
3 they're all logged in through the common IP address. I don't know if --

4 JUDGE WHITE: Counsel? So, just to make sure that I understand
5 your view of Patent Owner's argument, Patent Owner uses this analogy with
6 a Social Security number and a student. And they're saying that you might
7 need your Social Security number to get, I think, admitted to the college, but
8 you don't need your Social Security number to get into the dorm, if I'm
9 understanding that correctly. And I think the way that they are trying to
10 apply that here is they're saying you might have needed a cookie at one
11 point, but then username and other things take precedence because you're
12 not really focused on the devices, you're focused on the users, the people. Is
13 that how you understand their argument? And if so, I'd like to hear your
14 reaction to it.

15 MR. WEINSTEIN: Thank you, Your Honor. I think you have
16 actually accurately characterized what I understand we've had in this
17 argument. And we have two responses to it. I mean, first, the Social
18 Security analogy has an obvious flaw. It may be true in a dorm that you
19 don't need the Social Security number to get into your dorm room or
20 whatever, but if you look at slide 33, for example, the cookie is the exact
21 opposite. Every single time the browser is pinging that server, it is sending
22 back that cookie. So, it's not like the Social Security number. It is an
23 essential component of your access to it. So, the analogy we don't think
24 works. Again, we're assuming the Social Security number is what they're
25 analogizing to the cookie. We have a discussion in our papers that it's not
26 clear they've even made that clear. But assuming that's what the analogy

1 goes, it fails because the cookie is sent with every request. That's a
2 fundamental characteristic of cookies. And we explain that on slide 33. It's
3 all throughout our papers that you need to do it. So, it's not analogous in that
4 way.

5 The second argument, Your Honor, is even if you assume that the
6 username is being used, we explained in our papers that that's actually a
7 purpose of the cookie. So, if you go back to slide 19, we cited this in our
8 papers. One of the things that cookie can store is the username of the user.
9 So, even if their argument is, oh, the username is what's critical here, the
10 username actually can be the information that's inside of the token. So, if
11 you look at slide 19, we talk about cookies can retain information that users
12 are useful. The cookies retain the username and password of the registrar
13 user. So, even if you assume that the username is what Baig uses, and again,
14 under the Baig-Laidlaw combination, the cookie is actually what's used to
15 determine what's logged in, not the username. It's that once username gets
16 you in the door, but the cookie is how you stay logged in. But even if you
17 assume the username is still pertinent, that information could actually be
18 incorporated directly into the cookie, Your Honor.

19 And so, Your Honor, I think the other argument they make on this
20 point, aside from the analogy is that Baig places device users-- not devices,
21 into communities. And if you see slide 26. Your Honor, I think this
22 argument is kind of a non sequitur. I mean, I asked Petitioner's expert if the
23 communities actually have users or devices, and he looked at me kind of
24 strange like of course it's not, it's not going to physically transport the person
25 over the network. Of course, the device is what's being placed into the

1 community-based system. And that's borne out by the citations in Baig that
2 we have on paragraph 38 and paragraph 63.

3 I guess with that, Your Honor, we'll move to the other argument,
4 which is the predetermined period of time argument, which starts on slide
5 38. There's sort of an argument here and that there's a lot of discussion here
6 about what the specification of the patent says. But I'll step back through
7 just a minute and sort of give you a landline of what the mapping is.

8 On slide 40, this is from our petition. We explained that DHCP
9 servers are basically, DHCP is dynamic host control protocol. It's a standard
10 Internet protocol for assigning dynamic IP addresses. And this is disclosed
11 in the Sitaraman reference. And that's actually disclosed as submitted prior
12 art in the patent itself.

13 What happens is it assigns you a DHCP address and that address has a
14 lease time, which is a start and end period of time, and that's the period of
15 time that you can use the address. So, if you try to access it outside the lease
16 time, obviously it's not going to work because that address has been revoked
17 or has been assigned to somebody else. What happens, Your Honor, is if
18 you go down to slide 42 under the proposed combination, our recommend is
19 that the IP address of the access point, which is, if you see on slide 42, it's
20 that little yellow box there, that would be a dynamically assigned IP address
21 under the combination with DHCP and Sitaraman. And so, what happens is
22 that's a dynamically assigned IP address. So, that's just a, you know, run-up
23 to explaining what the predetermined period of time is.

24 You look at slide 43, Your Honor. As we said, every time you have a
25 DHCP address, you have a lease time, it has a start, it has an end. If you're
26 able to access a server using a DHCP address, you're actually doing it during

1 the lease time because you can't access it at any other time. You can't access
2 it outside the lease period. If you look, for example, on slide 44 this is not
3 disputed. This is the '878 Patent describing the prior art DHCP, how it
4 works and talks about how the assignment may expire after a predetermined
5 period of time, at which point you can get a new address.

6 And on slide 45, Your Honor, just briefly, there's no longer dispute
7 that the DHCP lease time can be a period of time. In fact, that there were
8 questions about that pre-Institution. Post-Institution, slide 45, we have a
9 footnote from their Patent Owner response. They acknowledge that the
10 DHCP lease time is an example, at least, of a predetermined period of time.
11 So --

12 JUDGE WHITE: Let me ask you.

13 MR. WEINSTEIN: Go ahead, Your Honor.

14 JUDGE WHITE: One thing about, because one of the things that
15 Patent Owner brought up is that the idea that this isn't really one specific
16 period of time, and that you can have renewals happening, and so you might
17 have something that lasts for a week and then you renew it at some point
18 during that and now it's a week and a half. There isn't a period of time.
19 What is your response to that?

20 MR. WEINSTEIN: The first thing is just to be clear, Your Honor, it's
21 not disputed that at least during the DHCP lease period you can have, it's a
22 period of time. And in terms of how long that period is, an example is
23 provided by their expert declaration. That's Exhibit 2001, paragraph 73. He
24 says they're typically a week. DHCP lease times are typically a week unless
25 you're within like an internal home network, which, in which case it could
26 be 24 hours. But he says typically outside that context, usually a week.

1 Now the argument that they're making, Your Honor, is sort of an
2 argument based on the specifications with the patent ensue, which is like
3 look, you can have this sort of renewal. And if you look at what they say the
4 embodiment they point to, it's in paragraph -- I have it on slide 51, Your
5 Honor, and I can address it directly. This is the embodiment that was cited
6 in the Institution Decision. It's the one they relied on in their Patent Owner
7 response. In the reply, in the sur-reply, they have a different embodiment. I
8 don't think it moves the ball, but we can talk about that one as well.

9 The problem with their argument, Your Honor, about these various
10 periods is that there actually isn't a period of time in the patent at suit.
11 There's no disclosure in the patent of we're going to use make a
12 determination of two devices that are accessing during a period of time.
13 They say, well look, there's these periods of time when you can access it.
14 And that's a period of time, like they have these very complicated graphs and
15 the sort of lies saying T0T1 and there's no expert support for any of it. But,
16 but nevertheless, it's very easy to see what the problem is.

17 Particular points in time, Your Honor, don't equate to a period of time.
18 If, for example, I key into my building at 9:00 a.m. in the morning on
19 Monday, I key into my building at 9:00 a.m. on Tuesday and Wednesday,
20 and Heidi keys in at 2:00 in the afternoon on Monday, Tuesday, and
21 Wednesday, there's no way to determine if the two of us were ever in the
22 building at the same time because we have no idea how long I stayed in the
23 building. I may have left the building in five minutes or stayed there all day.

24 So, the idea that these snapshots in time to disclose a period of time
25 simply doesn't work. There is no disclosure of a period of time that's used to
26 determine concurrent access. The other thing, Your Honor, I note about this

1 embodiment that they point to, which is on slide 51, this is on column 16,
2 line 30 through sort of goes to 45. The problem with this embodiment is it
3 has nothing to do with the claim limitation. The determining step is about
4 determining if two or more Internet accessing devices have access to the
5 computer system during a predetermined period of time. All this
6 embodiment shows, and this includes their sur-reply embodiment on column
7 14, all it shows is that when you're accessing an online website and you're
8 trying to get ads to it, what the system does is it tells the CAS 40, which is
9 the central ad server, which I think the parties agree is the corresponding
10 structure to the computer system in the claims. What happens, Your Honor,
11 is that it tells the CAS 40, here's my IP address and here's the date and time
12 I've accessed it. The online site says, oh, this is the IP address of the person
13 accessing my site and here's the date and time they accessed it. All it does is
14 matches these two things to say, for example, if the IP address is 123 and it
15 belongs to Heidi Keefe, the CAS can say, oh, that person who accessed the
16 online site, that's Heidi Keefe. It's just a way to prevent personally
17 identifying information from being transmitted to the online site.

18 What's keenly missing about this, aside from the fact there's no
19 predetermined period of time, there's no concept in these embodiments they
20 site where there's two devices trying to access, using a common access point
21 and trying to determine whether or not they're accessing during the same
22 period of time. So, I guess the bottom line here, it's not a written description
23 invalidity argument we're making. What we're arguing is that there's no
24 embodiment in this patent anywhere that discloses that the logic of the
25 determining step knows, or takes into account, is aware of a predefined
26 period of time. So, the argument that the CAS has to be this prescient being

1 that knows this period of time and uses it in the assessment isn't supported
2 by the specification.

3 Now we have --

4 JUDGE WHITE: Is it enough that the that the determination of this
5 association happens without any specific knowledge on the part of the server
6 about these time periods?

7 MR. WEINSTEIN: In the context of DHCP, Your Honor, our
8 position is yes. But we have another argument saying even if it is required,
9 we still think we need it. But to answer your question, Your Honor, that is
10 our position, because DHCP is not a, it's not an arbitrary period of time. We
11 used examples like, you know, Lent or Ramadan. You could map the
12 claimed a predetermined period of time to any time. It doesn't have to be a
13 DHCP address, but if it is a DHCP address, a very, very important thing
14 happens. When you access the server and you have a DHCP system, and
15 under the proposed combination, that's the design of the system, the skilled
16 artisan put the system together, made these dynamic IP addresses using
17 DHCP, for the reasons described in the Petition and for the motivations that
18 I don't believe are challenged. What happens, Your Honor, is once you have
19 a DHCP address and you're accessing the server, by definition, you are
20 accessing it during a period of time, because that's the only time when your
21 IP address, which is what you use to connect the server, is valid.

22 So, our position is that's sufficient to satisfy the claim limitation. I
23 understand Patent Owner is saying that the claim language requires it to
24 have some kind of knowledge and use it in the logic. You know, aside from
25 not being an embodiment in the specification that discloses that, we also
26 don't think the claim language says that. It doesn't say determining by using,

1 or by consulting, or by evaluating the period of time. There's, there's no
2 language in there that sort of suggests an active role of the server in
3 evaluating this period of time.

4 So, that's our position, Your Honor. But again, even if you accept
5 their position, our other argument is that is that this is not relevant because
6 the Baig system, the computer system which includes a content server, is
7 actually an ISP, or at least it can be.

8 If you look at slide 53, Your Honor.

9 JUDGE WHITE: Before we get to the ISP question, back in the
10 specification of the '878, the only reference I found to a predetermined
11 period of time was to the lease time. Is there anything else you're aware of
12 in the patent specification that would be a predetermined period of time
13 besides the lease time? That's the only thing I saw, as far as a direct
14 reference to the term predetermined period of time.

15 MR. WEINSTEIN: I think you're right, Your Honor. That's the only
16 mention I found. That's the only cite in our papers. And I think that brings
17 up our point, Your Honor, is that in the -- I agree with you. And there's
18 actually logic in the Patent that talks about renewing the, the DHCP period
19 after expires. There's also disclosures. I agree with you, Your Honor. And
20 I think that brings us to our point, which is that once you have, there's
21 nothing in the patent saying that the CAS 40 knows what the lease time is,
22 even has any knowledge of what the lease time is, let alone uses it to make a
23 determination of concurrent access by two or more Internet accessing
24 devices. So, yeah, we agree with you, Your Honor, on that point.

25 And then so the next argument, Your Honor, is the ISP argument.
26 And if we go to slide 53, just to be clear, Your Honor, their argument about

1 this knowledge point, it depends on a factual assertion. And the factual
2 assertion it depends on is this Baig content server is not an ISP, so it
3 wouldn't have knowledge of the DHCP lease time. And this is from their
4 expert declaration, the same arguments paraphrased in their Patent Owner
5 response at page 17. And just to be clear, Your Honor, they make a
6 suggestion in their Sur-reply that this is a new argument. Your Honor, this
7 is just direct rebuttal to the point they made, the factual assertion that they
8 made that the Baig content server, the Baig system, is not an ISP.

9 But if you go to slide 56, Your Honor, there's replete references inside
10 of the vague reference to ISP. It uses the term public network service
11 provider. Now there's no magic to public network. On slide 57, we
12 explained public network means Internet, so public network service provider
13 is an ISP. If you look in this slide here on slide 56, there's even a reference
14 on the right column here to an online service provider, which is another
15 synonym for it. Their own expert admitted, Exhibit 1023 at pages 32 to 34
16 of his deposition, online app service provider is another term that would be
17 understood in the context of providing connectivity to the Internet. So, this
18 is a system that is or at least could be part of an ISP. So, if you look at
19 figures, slide --

20 JUDGE WHITE: Counselor, even if we agree with you there, that
21 there is a disclosure of an ISP in the reference, there isn't really anything in
22 the Petition discussing what impact that would have, if it is a server within
23 the ISP. I don't know necessarily how that changes things from your view
24 because I don't really see anything in the Petition talking about what
25 modifications or anything you would make that if it's in or out of the ISP.

1 MR. WEINSTEIN: It requires no modification. I know Patent Owner
2 makes an argument in the Sur-reply that require these modifications. There's
3 no modification to Baig. Baig discloses that the virtual community service
4 provider website is provided by an ISP. So, there's no modifications to Baig
5 that are required. If you look at slide 54. This is from the Petition. We do
6 mention extensively that in fact the DHCP servers are used by the ISP, and
7 that's not disputed. Both parties' experts agree that the ISP is in fact the
8 entity that is assigning these lease times; and not just assign these lease
9 times, they have to enforce these lease times. We described this in our reply
10 that their own expert admits that look, not only does the ISP know what the
11 lease time is, it actually has to enforce it because if two people are going to
12 access an IP address it has to only allow the person who currently has the
13 valid lease time.

14 So, as far as --

15 JUDGE WHITE: Counselor, I think the question is yes, the ISP
16 would have this information, but the ISP is also going to have, for example,
17 billing software. Just because something is part of the ISP doesn't mean it
18 would necessarily impact this particular system within the ISP. And I think
19 the thing that's missing here is any argument as far as what would this mean
20 with it being in the ISP? Even if it is there, I don't know what impact that
21 would have to the server as described in Baig, it being inside of the ISP or
22 outside of the ISP.

23 MR. WEINSTEIN: So, this is a -- so there's two ways. So, in the
24 Petition we sort of laid the groundwork that in fact the ISP is the one that
25 assigns the DHCP addresses. The Patent Owner Response goes back and
26 says, look, this is not an ISP; it wouldn't have knowledge of it. In the Reply

1 we explained that they're wrong. And if you look at pages 17 and 18 in the
2 Reply, we explain that in fact basic disclosures of Baig, the DHCP server
3 could be incorporated, which is basically the system, which is being
4 incorporated into the computer system of Baig. And so, this is actually
5 described in page 18 of the Reply.

6 So, what happens is it's not a modification system, it's part of the
7 computer system of Baig that the DHCP server, which everyone agrees is,
8 can be a computer, can be incorporated into the computer system of Baig.
9 And there's no modification or adaptation. It's part of the same system, the
10 same company. So, it's yes, it may be true that an ISP may have other
11 functionalities that may have billing software or whatever, but it certainly is
12 going to have DHCP address, DHCP functionality. And that's intricately
13 connected with the connectivity to the website. In other words, you can't
14 even access the website without the DHCP lease times and without the
15 ability to enforce those lease times.

16 JUDGE WHITE: Does this question is the ISP or not in the ISP really
17 only come down to knowledge, like what the server would know? So, if we
18 determine that the server doesn't need to know the exact predetermined
19 period of time, it doesn't need to know the lease time, then this wouldn't
20 matter one way or the other?

21 MR. WEINSTEIN: I agree with you, Your Honor. The whole reason
22 we're making the ISP argument is to rebut their factual assertion that
23 assuming you agree with them on what the claim means requires, that in fact
24 it would be known. So, if you determine that the claim doesn't require the
25 server to have knowledge of lease time, the ISP argument is, I think -- it's

1 just, it's a backup in case you were to go the other way on that one. So, I
2 agree with you, Your Honor, on that one.

3 JUDGE WHITE: And just to let you know, you've got about eight
4 minutes until you start getting to your rebuttal time.

5 MR. WEINSTEIN: Okay, thank Your Honor. And so, I'll just briefly
6 cover claim 6, which is the advertising claim. They made a number of
7 arguments about claim 6. This is the one about the automatic action. It
8 starts around slide 62. And around slide 62, the argument 63, I'll go by 63.
9 That shows the two claims that issue, claim 6 and claim 1. The argument
10 seems to be that there is a mismatch that they seem to be saying, look, you
11 have, claim 1 requires an automatic action being taken with respect to the
12 second device. And in claim 6 it says the action comprises an
13 advertisement. And they're saying you're relying on two different actions for
14 purposes of these two claims. And there's sort of two ways to answer that,
15 Your Honor.

16 And just, it's not here, but claim 7 is also challenged. It further states
17 that the claim 6 wherein the automatic action comprises causing selected
18 advertising to be delivered. So, claim 6 is the selection of the advertisement.
19 Claim 7 is the delivery. And that's why the Petition deals with selection and
20 delivery together, because they're actually both part of the same. They're
21 part of the same action.

22 So, Your Honor, if you go to slide 64, the automatic action and claim
23 1 is the service of the webpage. Remember we talked about that webpage in
24 figure 6 that shows the people who are logged into the community-based
25 website. What happens is, what we're saying is like the automatic action is
26 we're using Hahn to automatically refresh the webpage. So, you know, so

1 after a period of time or automatically, the webpage can be refreshed when
2 it's updated. And there's no argument that they're making that the
3 combination is wrong or Hahn doesn't have motive to combine. But that's
4 the automatic action of figure 1 is the refreshing of the webpage which
5 causes the that user list to be sent to second device.

6 On slide 65, Your Honor, we explain here that -- we sort of give two
7 theories. One is that the advertisement is selected and delivered using those
8 same techniques. The claim doesn't require that the automatic action of
9 claim 6 be the exact same action of claim 1. It just says that the action
10 further comprises or otherwise includes selecting an ad. So, we don't have
11 to show an exact mapping between the action of claim 1, that that's the same
12 thing as the ad. But we go on in this paragraph shown on slide 65 and say,
13 look, it actually can be delivered as part of the webpage. So, the webpage
14 that's being refreshed would actually include that advertisement. So, that's
15 again our argument --

16 JUDGE WHITE: Well, here's where I can use some clarification.
17 Baig, from what I see, has sort of a bidding process in there where the
18 advertisers will say, I want to deliver an ad to women between the ages of 18
19 and 40 and I'll pay X number of dollars for it. And so, there's this bidding
20 process to figure out which advertiser is the winner, and one gets selected,
21 and that selected one gives over an advertisement and so forth. If that is
22 your selection process, how is that part of your automatic action? Because
23 the automatic action needs to be the selecting. And Baig has said this whole
24 bidding process. How are those two the same?

25 MR. WEINSTEIN: So, the bidding process actually happens way
26 before. So, the bidding process is something that the advertiser does way

1 before the ad is being selected and delivered. That's sort of like you put in
2 your bid for who do you want to target your advertising for at the time the
3 webpage of figure 6 is delivered? That's the point in time that we're talking
4 about here. It's going to select and deliver an advertisement. So, if you look
5 at slide 70, for example, we have some excerpt from both from Baig and
6 from Gerace, where basically the system will select the advertisements to
7 show. So, the selection and delivery are really part and parcel of claims 6
8 and 7. When the webpage of figure 6 of Baig is being delivered, as part of
9 that automatic action an ad is going to be selected from the corpus of ads
10 that you have and then delivered as part of that process. So, the ad gets
11 delivered, I'm sorry, the webpage gets delivered. It gets automatically
12 refreshed on the techniques of Hahn. That webpage is going to include the
13 advertising.

14 JUDGE WHITE: Well --

15 MR. WEINSTEIN: And there's no requirement -- go ahead, Your
16 Honor.

17 JUDGE WHITE: Just so, Gerace, to my knowledge, to my
18 understanding, you're only relying on Gerace to deal with the sort of
19 profiling issues of figuring out which ad you're going to get, so that you're
20 looking at the other profiles, you're not relying on it for the selection. So,
21 where there may be some consistent language here, that's not what you're
22 relying on for the selection. And so, then we look at what you've got in
23 paragraph 99, we've got provision of the advertisement, but the selection of
24 the advertisement, I'm unclear as to whether that's happening at a time
25 period or in a manner that would meet the claim.

1 MR. WEINSTEIN: Okay, let me go to the Petition and pull that up
2 real quick. It's explained in the Petition. I'll give you the cite to it.

3 JUDGE WHITE: All right. I guess, you can --

4 MR. WEINSTEIN: And then I'll further explain it if -- so it's
5 explained it basically around 63 and 64. And to be clear, Your Honor, we're
6 not arguing that the bidding process is the selection. The selection is when it
7 actually identifies, you know, that it actually presents the ad that's going to
8 be presented to the user. That is something that happens later in the process.
9 That's not something that happens when you're doing the bid. So, at the
10 point in time when the ad is being delivered, at the point in time when the ad
11 is being sort of served to the user, which under the combination we're
12 arguing would happen when figure 6, shows up. That's the point in time
13 when selection and the delivery take place.

14 JUDGE WHITE: So, are you saying that all this bidding process has
15 happened; it's in the past? But the point when New York Girl is logging into
16 the system and you need to provide New York Girl with the webpage that
17 shows the users and the advertisement, you're saying at that moment in time,
18 the system is doing a selection like, oh, Bob's Coffee Shop won the bid for
19 women 18 to 49; let me get the Bob's Coffee Shop ad and put it on the page?
20 You're saying that is the selection that we're talking about?

21 MR. WEINSTEIN: That's correct, Your Honor, I agree. I agree with
22 you, Your Honor.

23 JUDGE WHITE: And just so you know, you've got about a minute
24 left before you start getting into your rebuttal time.

25 MR. WEINSTEIN: Okay. I'll just mention one quick argument, and
26 if I eat into rebuttal time, I'm more than happy with that. There's an

1 argument in the Sur-reply. I'm not going to make a big deal whether it's a
2 new argument. I think it is. But I did want to actually sort of address it.
3 There's an argument they make that the cookie, which is the device
4 identifier, is not actually stored. They make an argument that the cookie is
5 not actually stored on the server. And I wanted to address that argument
6 because I just -- by pointing back the petition. The Petition actually
7 discloses that the cookie is stored on the server.

8 What happens, Your Honor, I'll find you the cite, Your Honor. What
9 he's pointing to is the fact that the cookie is actually stored on the client, but
10 under the combination of Baig and Laidlaw, the cookie information, which
11 is a session token, is actually stored on the server. That's how it knows,
12 using my example earlier, that if I have a cookie that says 123, it means
13 Heidi Keefe, because it matches the information from the cookie against the
14 stored association information server. That's how it actually determines that
15 the user is in fact logged in, is it matches the cooking information with the
16 stored information. And that's right around pages, it's page 21 and 22 that's
17 described in the Petition that in fact, under the proposed combination with
18 Laidlaw, the cookie information is actually stored in the session table at the
19 server and it's matched against the cookie information.

20 So, we don't disagree with Patent Owner that in fact the cookie
21 information is stored on the client device, but the information in the cookie,
22 which is a session of it, is also stored on the server. I just wanted to make
23 that clear because this is sort of the first time we've had to address that
24 argument.

25 And with that I can stop and reserve the rest of my time unless Your
26 Honors have questions.

1 JUDGE WHITE: All right, well, thank you.

2 MR. WEINSTEIN: Thank you, Your Honor.

3 JUDGE WHITE: You'll have 24 minutes left. And then Patent
4 Owner, you may begin when you're ready.

5 MR. MILKEY: Yes, thank you, Your Honors. May it please the
6 Board. I will share my screen. And this is Exhibit 2009 of Patent Owner's
7 demonstratives being displayed. And so, at a high level on the
8 predetermined period of time issue, which I think is the -- you know, we,
9 just given the number of sort of new arguments raised in Reply, we had to --
10 we were struggling to deal with the page limits in the Sur-reply. So, we sort
11 of focused down our arguments in Sur-reply a bit.

12 But I think that the most, you know -- so we retain all of the
13 arguments that we presented in the Patent Owner's Response. But I think
14 that, sort of, the most clear issue here is the predetermined period of time
15 and specifically determining whether two devices have accessed the Internet
16 using a common IP address during a predetermined period of time. And
17 these, there are essentially two new theories in reply. The Petition didn't
18 even really get into this. And we think that this is just a clearly deficient
19 showing by Petitioner in this regard. We think that we have the better of the
20 positions on the other issues too. But the determining whether two devices
21 access the Internet during a predetermined period of time is just what we
22 believe is a very straightforward issue.

23 So, if we look at the, at the Petition, the Petition doesn't actually
24 explain how the system determines whether two devices access the Internet
25 during a predetermined period of time.

1 JUDGE WHITE: Counselor, I think that this is a key question. If you
2 could go ahead to your slide 7 that's got the claim language. I want to make
3 sure that we're all on the same place as far as understanding what we need to
4 determine.

5 MR. MILKEY: Yes.

6 JUDGE WHITE: Because what I'm hearing from Petitioner, and
7 Petitioner can jump in during their rebuttal time if it appears to be different,
8 is this idea that you're making this determination of the association and the
9 determination wouldn't happen unless things are happening within this
10 predetermined period of time. And what I think I'm hearing from you is
11 there needs to be a separate determination about the predetermined period of
12 time?

13 MR. MILKEY: Yes, Your Honor.

14 JUDGE WHITE: Is that like sort of the crux of where some of this
15 dispute is?

16 MR. MILKEY: Yes, Your Honor, I think that's, that is the crux of it.
17 So --

18 JUDGE WHITE: Can you explain your view and how we get to that?

19 MR. MILKEY: Yeah, so the system needs to make some calculation,
20 some determination as to whether two devices have access to the Internet
21 during some predetermined period of time. It could in theory be a DHCP
22 lease time. It doesn't have, you know, the patent actually talks about
23 different predetermined periods of time. It gives seven days as an example,
24 which isn't a DHCP lease period. And I'll show that.

25 Actually, before I get into this, I do think it's helpful to show this,
26 because if we look at column 19 of Exhibit 1001, and this is the very top of

1 column 19, it talks about the association being kept for no more than a
2 predetermined period of time, such as seven days. So, I think this just shows
3 that when the patent uses the term predetermined period of time, it's not
4 necessarily something that a specific determination is being applied to.
5 Predetermined period of time is a fairly generic term that means what it says.
6 But the key limitation of the patent is not that a predetermined period of time
7 exists within the system. That's not the issue.

8 The issue is whether the system is making a determination as to
9 whether two or more devices have separately accessed the Internet during a
10 predetermined period of time. And the only way any system could
11 determine something about a period of time is if it had some information
12 about that period of time. Content servers, such as Baig's content server
13 simply, one, you know, Baig does not disclose that his content server is part
14 of an ISP. That's --

15 JUDGE WHITE: Well, wait, Counselor, let me, let me back up on
16 you. I'm looking at what you've identified in 19, and it says the association
17 is kept from no more than a predetermined period of time. Is that the same
18 thing that we're talking about here in 1B? Because that's talking about how
19 long you keep these things associated. That doesn't seem to same thing as
20 determining the association.

21 MR. MILKEY: Right, I agree, Your Honor. My point is that we were
22 talking about the DHCP lease period, and this, I'm going to column four.
23 Yeah, so if we go to column four, around lines 23 or, sorry, lines 22 through
24 26, it says the assignment of the IP address usually expires after a
25 predetermined period of time, which is the DHCP list period. This also is
26 not the period of time as to which a determination is made. There's no

1 determination as to whether two devices access during this DHCP lease
2 period. In fact, the Patent is explicit throughout all the embodiments that the
3 server doesn't actually know what the DHCP lease period is because just like
4 with Baig's content server, there is no knowledge of the DHCP lease period.
5 That's not typically something that the system to have access to.

6 So, instead what they do is they, in the '878 Patent, there are sort of
7 two alternative embodiments that touch on this predetermined period of time
8 aspect. One is that they'll have a reporting period that could say be 24 hours
9 that each device will report which IP address it used in terms of, it'll be
10 which IP address it used to access the Internet. And that reporting --

11 JUDGE WHITE: And so, a post association reporting?

12 MR. MILKEY: Excuse me?

13 JUDGE WHITE: Is that some sort of a post association reporting? Is
14 that more like the thing that you have in column 19, that we've got this
15 association but we want to make sure that it's still fresh?

16 MR. MILKEY: No, it's -- the predetermined period of time is here
17 specifically there's a -- let me, hold on, it's a, well, yeah. So, this is Patent
18 Owner's slide 8.

19 JUDGE WHITE: Column 14.

20 MR. MILKEY: Yeah, 14 through 15. And this talks about the
21 periodic contact interval between the set-top box and the content server, the
22 central ad server that's delivering the ads. And so, what happens here is that
23 the set-top box is accessing the Internet using this IP address. But other
24 devices, as well, on the same local area network are accessing the Internet
25 during the -- during that periodic contact interval. So, let's say the periodic
26 contact interval's 24 hours. And so, you know, Friday at 3:00 p.m., my set-

1 top box tells the central ad server I've accessed the Internet. Now Saturday
2 at 3:00 p.m. it tells it the same thing and it says that the IP address has been
3 the same during that period of time. Now, I log on with my laptop at 5:00
4 p.m. on Friday and now the system can associate those two devices based on
5 the fact that, you know, there's this 24-hour periodic contact interval and
6 within that periodic contact interval I've accessed the Internet with my
7 laptop.

8 And so, what this talks about, if we go to the, sort of, the end of this, it
9 talks about associations between online access and set-top box IP addresses.
10 So, this is the IP address that I use with my laptop and the IP address I use
11 with my set-top box. This association can be stored for further use, or the IP
12 addresses can be associated in real time only when an STB communicates
13 with the CAS. So, this is talking about using this periodic contact interval
14 that's intentionally selected to be small, relative to the typical or average
15 time interval between reallocation of IP addresses and then an association of
16 device identifiers being made based on a determination that two separate
17 devices accessed the Internet during that predetermined period of time.

18 And again, it shows that the periodic contact interval is a way to deal
19 with the uncertainty surrounding dynamic IP addresses. Because the system,
20 and really any content server, in practice, isn't going to know what the
21 predetermined DHCP lease period is. That's not something that content
22 servers have access to. Even if Baig's content server were provided by the
23 same company as an ISP, there's no evidence that they would have been able
24 to effectively communicate this information in any reasonable way. This
25 isn't something that there's any evidence of anyone having done before or
26 after the '878 Patent. And so, you know, basically the --

1 JUDGE WHITE: Well, let me make sure that I'm following you. So,
2 you're saying that the predetermined period of time is the time period
3 between device 1's access of the server and the time between device 2's
4 access of the server?

5 MR. MILKEY: No, Your Honor.

6 JUDGE WHITE: That's the time period you're comparing to
7 whatever your predetermined period of time is. So, if your predetermined
8 period of time is 24 hours, and device 1 and device 2 have access to the
9 same LAN within 12 hours, then I can associate them?

10 MR. MILKEY: Yes, Your Honor, that's correct. So, if the
11 predetermined period of time here, the periodic contact interval for the set-
12 top box is on a 24-hour interval, and then the set-top box and my laptop
13 access the Internet using the same IP address within less than 24 hours, so,
14 you know, that's such that they would be within that 24-hour period. Then
15 yes, the system would say these have been determined to have access to the
16 Internet during this predetermined period of time, now I can associate them.
17 This is a sufficiently small interval for me to have associated these devices
18 because now I have confidence that they really are associated with the same
19 common local area network.

20 JUDGE WHITE: Okay, I think I see what you're saying here, and I
21 think this is a little bit different than we've necessarily been reading this time
22 period and discussing it.

23 MR. MILKEY: Yes, Your Honor, and I think that a key fact, too,
24 about this predetermined period of time is the specification, if you look at
25 the portions of the specification that we pointed to, it really does focus on
26 these time intervals that are calculated by the system in order to determine

1 whether, you know, the time periods between accesses were sufficiently
2 small. But one key thing is that under Petitioner's DHCP lease period
3 theory, where, you know, this is inherent or this is, you know, something
4 that -- basically, there's just no support for the Petitioner's reading of the
5 claim here, where there's sort of an inherent teaching.

6 I also want to walk through this example at 16, 30 through 48, of the
7 specification, which is that there are, there's a reporting from an online site
8 which, you know, I can access an online site with my laptop, but then my
9 set-top box is also reporting IP addresses, and then the two lists of accesses
10 are compared. And so, in an example of this, and this is, basically, these two
11 lists are compared to do cross matching of devices to deliver advertisements.
12 And so, in this example, let's say my set-top box reports that it used IP
13 address A at time 1, time 2, and time 3. And then it used IP address C at
14 time 5 and time 6. Now the central ad server knows, okay, I know that the
15 set-top box IP address was constant between these two periods of time. The
16 time between time 1 and time 3, and between time 5 and time 6.

17 So, now if an online site is telling me that Mr. Milkey's laptop
18 accessed this online site during some period between time 1 and time 3, it
19 accessed the Internet during a predetermined period of time. And now I can
20 associate that laptop with the set-top box, such that I can deliver ads based
21 on that same profile information. And the same is true between time 5 and
22 time 6. There's a period of time that can be calculated based on these
23 discrete access times such that that period of time can be used to determine
24 whether I should make this association or not. Do I have confidence that
25 this is really the same local area network that is applicable to both of these
26 devices? Or, you know, as we see here, there's this break here between time

1 3 and time 5 where, you know, presumably a different IP address was
2 assigned to my router during that period, during this period of time. And so,
3 there's uncertainty here. And if the online site is accessed by IP address B at
4 time 4.5, for example, the system might say, well, we don't really know
5 whether that's the same IP, we don't know whether that's the same local area
6 or not because we don't have a predetermined period of time that we can
7 compare that to that we feel comfortable doing.

8 So, that's how the '878 Patent works. And --

9 JUDGE WHITE: Well, let me ask you another question then. I think
10 I have a better understanding of your view of how this is supposed to be
11 interpreted. But why would the claim language not be broad enough to
12 include what Petitioner is pointing to, which is this notion of if there is a
13 lease period of whatever, and we know that the determination has happened,
14 and you've got an active IP address, which means that we're within the
15 appropriate lease period, then these accesses must have occurred within a
16 predetermined period of time?

17 MR. MILKEY: Yes, Your Honor.

18 JUDGE WHITE: Not broad enough to encompass that as well as
19 what you're talking about right now?

20 MR. MILKEY: Yes, Your Honor. And I think that the key here is
21 there is no factual -- I think that, you know, this is something that Petitioner
22 alleged in its Reply. But if you look at the actual testimonial evidence and
23 the actual evidence in this case, there are discussions from the experts, there
24 are discussions in the '878 Patent itself, but you can't actually determine just
25 based on a common IP address that two devices access the Internet during a
26 predetermined period of time. There is possible for, it's possible for an

1 access point to have -- so, again, let's talk about a DHCP lease that's
2 assigned to a Starbucks hotspot, WiFi hotspot starting Friday at 3:00 p.m. or
3 Friday at noon, let's say. Friday at noon, it assigns this 24-hour WiFi access
4 point lease. And so, the predetermined period of time, according to the
5 Petitioner's theory, is 24 hours. So, Saturday at noon, that 24 hours is up.
6 Now that's not within the predetermined period of time anymore, if I access
7 Saturday at 1:00 p.m., right. So, I access the Internet Saturday at 11:00 a.m.
8 and I have the IP address that, you know, IP address A. It's the, it's the same
9 IP address.

10 Now at Saturday at noon, the IP address is renewed. There's a new
11 predetermined period of time, a different predetermined period of time that
12 will run until Sunday at noon. Now I access the Internet at Saturday at 1:00
13 p.m. Now I've accessed the Internet not within any given predetermined
14 period of time. It's two different predetermined periods of time that I've
15 accessed the Internet during yet the IP address is the same and the access
16 point is the same. So, it's simply not correct that if you access the Internet
17 outside of a predetermined period, if you access the Internet --

18 JUDGE WHITE: Why would you assume that the IP address is the
19 same if it's outside of the lease period? It could have released, picked up a
20 new IP address.

21 MR. MILKEY: Yes, it could have, or it could renew it. That's the
22 point. We don't know. And the system, Baig's system doesn't know. And
23 Baig's system, frankly, doesn't care. I think we heard testimony from my
24 friend who said that it doesn't actually impact Baig's system regardless of
25 whether or not it's part of the ISP. It's just a knowledge thing. So, basically

1 the actual operation of Baig's system wouldn't change whether or not it's part
2 of the ISP.

3 And Baig's content server, you're absolutely right, Your Honor, that it
4 might be the same IP address if I access that Starbucks, right. So, that the
5 predetermined period of time or the DHCP, the predetermined DHCP lease
6 period expired at Saturday at noon. And when that ends, no one can predict
7 other than the ISP itself, other than the DHCP server, no one can predict
8 whether that will, whether that hotspot will have the same IP address or a
9 different IP address because the IP address can be renewed.

10 Here's testimony from Petitioner's expert saying that what happens at
11 the end of that predetermined lease period. Starting halfway through the
12 lease period, the client should be asking to renew the lease. And then if the
13 lease is renewed, then the same IP address extends beyond the original
14 DHCP lease period. So, in that case I can access the same hotspot during
15 two different predetermined periods of time and get -- and in that case I
16 would get the same IP address and the system, according to Petitioner's
17 theory, Baig's system would think, oh yes, you've accessed the Internet
18 during a predetermined period of time.

19 But that's not correct. There was no -- the two accesses were within
20 two different predetermined periods of time. So, the system can't on that
21 basis determine that the two accesses were within a single predetermined
22 period of time as the claim is talking about.

23 JUDGE WHITE: Well, that sounds like that would be some sort of an
24 error case. But your main line would be I've refreshed it. I have a new IP
25 address. This is a new, fresh period of time.

26 MR. MILKEY: Your Honor --

1 JUDGE WHITE: I guess, sort of, the question is what would one of
2 ordinary skill in the art know about this? Would one of ordinary skill in the
3 art look at the situation and see, okay, we're going to keep refreshing this IP
4 address at whatever interval of time, and if your accesses are happening
5 within this lease period, then we'll associate it? And yes, there are some
6 error cases where we can have some things that happen outside of the main
7 line. But this is what one of ordinary skill in the art would understand from
8 reading these references, that you would have this sort of lease period and
9 that you would have these associations and determinations happening within
10 this lease period.

11 MR. MILKEY: So, Your Honor, two points on that. First, I think it's
12 very common for IP addresses to be renewed beyond the DHCP lease
13 period. I, you know, this is deposition testimony. Again, this is slide 13 of
14 Patent Owner's demonstratives. This is deposition testimony from
15 Petitioner's expert. I wasn't leading, I was just asking what happens at the
16 end of the predetermined lease period. And without, you know, having to
17 think about it, he's just, oh yeah, well, the client router is trying to renew that
18 IP address. And then he talks about IP address renewal as sort of the
19 mainline case there. And so, it's very common for these DHCP lease
20 addresses to be renewed beyond the alleged predetermined period of time.

21 And then beyond that question, you know, how often this would
22 happen and whether this is some sort of edge case. More importantly, I
23 think this wouldn't be considered an error issue in the context of Baig's
24 server. Baig's server doesn't care whether two devices accessed the Internet
25 during a particular predetermined DHCP lease period.

1 Why, you know, why would Baig's server care whether there -- so,
2 there's this noon cutoff on Saturday where the original DHCP lease period,
3 you know, is scheduled to end and it gets renewed. Baig's content server
4 simply doesn't care whether I access the Internet at 11:55 or 12:05. What it
5 cares about is it's seeing a common IP address. And on that basis it's going
6 to assume that I'm at same LAN.

7 And there might be some error cases in Baig. For example, there
8 might be some instances in which at 11:55, I'm, you know, in one location
9 accessing the Internet and I have this IP address, and then at noon the IP
10 address, that same IP address is actually reassigned to a different location
11 somewhere else, and someone else accesses the Internet. Now it thinks that
12 I'm in the same spot as that other person. That's the error case, actually, that
13 Baig would care about.

14 And what how Baig would handle that is it's just going to figure out
15 when I access the Internet from my original location, it's then going to be a
16 different IP address and it's going to sort of recreate the -- it's going to
17 reshuffle the vicinity-based community on that basis. So, that's the actual
18 error case. There's no error case in the instance where the IP address is
19 renewed. For Baig that's just working as intended. You know, if it simply
20 does not care. This idea of a 24-hour or a 1-week DHCP lease period as
21 being relevant in any sense to Baig system is totally foreign to what Baig is
22 about and about the ideas behind Baig. There's no evidence or suggestion
23 anywhere that Baig would care at all about whether the original DHCP lease
24 period involved, sorry, whether the accesses were within the original DHCP
25 lease period. Rather, what Baig cares about is do the IP addresses line up.

1 And there's no sort of determination as to any given predetermined period of
2 time in Baig. And that's sort of the --

3 JUDGE WHITE: But don't the --

4 MR. MILKEY: -- fourth (phonetic) thing here.

5 JUDGE WHITE: The time period, doesn't it go to, sort of, the
6 accuracy of the association. So, if you connected to this LAN and then
7 somebody else connects to it, let's go in absurdist case, two years later, then
8 the association probably wouldn't be accurate. And I think that neither Baig
9 nor the '878 would want to associate these two things that are so far apart in
10 time. Wouldn't the idea of looking at this lease period sort of deal with that
11 particular issue? Isn't that what we're getting at and isn't that what the claim
12 language is getting at is this idea of we've got to have these things accessing
13 in a manner in a time that would cause this association to be meaningful?
14 And that's what the time period is about. And yes, there's some edge cases
15 where something odd could happen --

16 MR. MILKEY: Yeah.

17 JUDGE WHITE: -- and you couldn't have moved around, but one of
18 ordinary skill in the art would understand that is what's going on here?

19 MR. MILKEY: Well, Your Honor, I think that, yes, the case of two
20 years, certainly no one would want to associate IP addresses on that point
21 because they would have changed in that point. But what I want to
22 emphasize is that any sort of staleness issue of, you know, we're only going
23 to take into account thing, you know, devices that have accessed this hotspot
24 within the last hour or something like that, that's not a theory at all presented
25 by the petition. The Petitioner has only relied on this DHCP theory of this
26 predetermined DHCP lease period that Baig's content server doesn't know

1 about and frankly doesn't care about. Even if, even if it was part of the ISP,
2 the only theory that they presented is that there's this predetermined DHCP
3 lease period. It would typically be a week in these hotspots. And there's
4 simply no evidence that Baig's content server knows or cares about how this
5 works. And again, this is --

6 JUDGE HOWARD: I'm sorry, this is Judge Howard, just to make
7 sure I understand your point. I think I do. Is that in looking at whether or
8 not you have the same ISP address, that's not going to tell you whether or
9 not you're within the original DHCP lease period or renewal, and therefore
10 you wouldn't bother to make that determination because you can't know it, if
11 it's accurate or not?

12 MR. MILKEY: That's correct, Your Honor. The common IP address
13 itself doesn't tell you anything about whether you're within a given
14 predetermined DHCP lease period. And --

15 JUDGE HOWARD: I'm sorry, and then to continue, because you
16 can't know just from the common ISP address that you're within the original
17 lease period or renew lease period, you're never going to make that
18 determination, and therefore that's not making the determination of the same
19 time -- of the predetermined time period?

20 MR. MILKEY: That's correct, Your Honor. And this brings up a
21 point I want to make, which is that this is really rendering the claim
22 language redundant in this way, because the claim talks about using the
23 stored association detection information to determine that the two or more
24 Internet accessing electronic devices have separately accessed the Internet
25 during a predetermined period of time via a common IP address. And the IP
26 addresses in the '878 Patent claims are dynamically assigned IP addresses.

1 So, the claim is already reciting that we're determining that this access
2 was made via a common IP address, via a common dynamic IP address.
3 And so, this determination has already been made. But then there's this
4 separate recitation that it's determining that this access happened during a
5 predetermined period of time. And so, what Petitioner's theory does here is
6 it just reads out during a predetermined period of time. It gives no
7 patentable weight to this term whatsoever.

8 Under Petitioner's theory, if you have access via common dynamic IP
9 address and it's the same dynamic IP address, you've inherently determined
10 that this access happened during a predetermined period of time. That's not
11 true as a factual matter, as we've shown, that the Petitioner's expert admitted
12 that wasn't true, but it's also just inconsistent with the claim language.

13 JUDGE HOWARD: This is Judge Howard. Just to be clear, your
14 understanding of the claim limitation is you actually have to make this
15 determination that it's within a predetermined period of time; it's not enough
16 that coincidentally it's just within that predetermined period of time?

17 MR. MILKEY: That's correct. And that goes to the determining
18 aspect of the claim. Well, actually, specifically it's this word here, determine
19 that the two or more Internet accessing electronic devices have separately
20 accessed the Internet during a predetermined period of time. So, if, if that
21 determined word were not there, then this sort of, oh, they happen to have
22 accessed the Internet during this predetermined period of time, that maybe
23 could fly in that scenario. But when this word says you have to determine
24 that this was the case, it can't just be some happenstance coincidental issue.

25 The reply's ISP theory is something that is completely new. The
26 original petition just said that it went to this inherency idea implicitly for that

1 oh, because the devices happened to have accessed the Internet during a
2 DHCP lease period, then this determination must have happened. But in
3 fact, if you look carefully at the petition, there's no actual discussion of how
4 the determination happens. It just sort of assumes that if devices access the
5 Internet during a DHCP lease period, then the limitation is met, with really
6 no explanation or theory on this.

7 But the reply's ISP theory fails. I think that first of all, I just want to
8 briefly cover this. Their whole theory as to how Baig's content server is an
9 ISP, is based on this term service provider. I think everyone, if you look at
10 Baig, if you look at the context of talking about like website services. And
11 for instance, Petitioner Meta is a service provider. It provides social media
12 services to many people. It does that over a public network, it does it over
13 the Internet. However, it's not an Internet service provider. You know, I
14 don't get my Internet service connectivity from Meta. I get that through
15 Comcast, I get it through Verizon, someone like that. So, service provider,
16 meaning Internet service provider. That's not factually supported by Baig.

17 And in fact, Petitioner admitted, Petitioner's expert admitted at
18 Exhibit 2008, 41, 6 through 12, that Baig doesn't even talk about how
19 Internet connectivity is provided, and that's beyond the scope of Baig. So,
20 Baig being an Internet service provider, that's not supported. It's also
21 inconsistent with the idea that Baig needs to request geographical
22 information from its users. Because it sort of is a matter of common sense
23 before we even get into the deposition testimony. If an ISP is providing
24 Internet service to a location, it has to know what location that user is at so
25 that they can properly provide Internet service to them. So, if you're an ISP,
26 you don't need to request Internet -- you don't need to request geographical

1 information from users if you're an ISP. Yet at the same time, Baig at
2 paragraph 57 says that the server requests the user geographical information.
3 And of course, if you know accurate geographical information as an ISP,
4 you wouldn't want to request potentially inaccurate geographical information
5 from a random user. And Petitioner's expert acknowledged that if an ISP
6 such as Verizon provides Internet connectivity to two different locations,
7 such as his home in Martha's Vineyard or a public hotspot at Seattle SeaTac
8 Airport, Comcast would have some way of back-tracing and finding out
9 what the location is at. But critically, even if Baig's content server were part
10 of an ISP, there's no actual theory in the Petition or the Reply as to how this
11 would change the operation of Baig's logic at all, the determination logic
12 that they need to rely on.

13 In the Reply, they really only talk about the content server being part
14 of an ISP and saying, okay, well, if the content server is part of an ISP, then
15 it would know the predetermined period of time, and that way the limitation
16 would be met. But the limitation doesn't say knowing a predetermined
17 period of time. It says determining whether two device accesses were within
18 a predetermined period of time. And as I've kind of already discussed, if
19 we're talking about this, what you could call an edge case, but is a really
20 common instance of lease renewal. Baig's server simply doesn't care
21 whether two devices access the Internet during a given DHCP lease period
22 because the DHCP lease periods can be renewed and the IP address can be
23 renewed beyond that lease period. So, whether I'm before or after that noon
24 cutoff when the DHCP lease is renewed, Baig's content server doesn't care.
25 All it cares is that the IP address is the same or that the user is at the same

1 location. And the predetermined period of time is really irrelevant in that
2 instance.

3 JUDGE WHITE: All right. Counsel, you've got about 10 minutes
4 before you start getting into your rebuttal.

5 MR. MILKEY: Okay, thank you. And then the other issues that there
6 would need to be some sort of an information sharing scheme between
7 Baig's DHCP server and the content server. Whether or not the content
8 server is part of an ISP, obviously it's not the actual content server website
9 that's providing the DHCP service. So, there would need to be some sort of
10 information sharing scheme to which like relevant information could be
11 shared. I'm not really sure what relevant information would be shared
12 because as we've already discussed, Baig's content server doesn't really care
13 what, you know, whether two devices access the Internet during a given
14 DHCP lease period.

15 But you know, with our, with our Reply, sorry, with our Patent Owner
16 Response, we submitted expert testimony that says that ISPs didn't have
17 established systems for ISPs to share DHCP lease period information with
18 content servers. And even assuming an ISP would have had no objection to
19 providing these access point DHCP lease duration information to content
20 servers, you know, there's no evidence that someone would have been
21 motivated to do this or that they would have had a reasonable expectation of
22 success in doing this.

23 In Petitioner's Reply, they said, well actually an ISP would have
24 shared this information with content servers because it would have been part
25 of the same system. But they don't explain how you would do it. They don't
26 explain why you would have been motivated to do that. They don't even

1 explain how this would have changed the operation of the system in any
2 relevant way such that this simply just isn't a motivated combination that we
3 can look at and say yes, this change would have been obvious because they
4 haven't really proposed any change. They're just saying some sort of
5 awareness would have occurred. But in terms of how it impacts the system,
6 how it actually impacts the way that Baig's content servers (inaudible), I
7 have no idea what they're proposing in terms of how this would actually
8 change the operation of Baig system in that way.

9 Finally, an ISP simply wouldn't need to use the claimed invention of
10 common IP address in predetermined periods of time to figure out whether
11 two users should be grouped into a vicinity-based hotspot. Again, as a
12 matter of common sense, and as Petitioner's expert admitted, ISPs already
13 know where their users are coming from. They don't need to look at
14 predetermined periods of time or ISPs to figure out are these two accesses
15 coming from the same location. They would just know that location without
16 having to do that specific analysis. And so, if Baig's content server were
17 part of an ISP and naturally had all of that information, there would certainly
18 be no reason to use the claimed invention of, you know, why go, why have
19 this roundabout way of comparing IP addresses, calculating whether they're
20 within a certain period of time when you can just say, oh yes, I see these two
21 users coming in, they're coming from the same location, so I will group them
22 together. And that, that's certainly how the system would operate if, if that
23 were the case. And you know, you know, this is a new theory that they
24 raised. So, that, but, but at the end of the day, it just, it's really, I think,
25 unsustainable.

1 I'll briefly talk about the determining association of device identifiers
2 issue. You know, they're raising this new theory at the hearing that it's not
3 really the cookies that are device identifiers, it's actually the information
4 stored in the cookies that are device identifiers. That's not consistent with
5 their actual theory. They say that the cookies themselves are device
6 identifier, in the petition. They don't say the information stored in the
7 cookies are device identifiers. For example, they talked about a username
8 being stored in a cookie. And so, the usernames are associated in Baig and
9 therefore the cookies are associated.

10 But, you know, usernames have never been alleged to be device
11 identifiers, for example, and Baig doesn't store the cookies on its server.
12 Baig stores cookies on the web browser. It might have information about
13 the cookies on its content server. But again, information about the cookies
14 has never been alleged to be a device identifier. It's always been the cookie
15 as the device identifier. So, there's no disclosure of how these device
16 identifiers, the cookies are associated, because Baig doesn't even have the
17 cookies.

18 These are like, you know, we can talk about Petitioner's expert use
19 this analogy of a cookie is a key that you use to get into the server. Well, if I
20 have, you know, if I have two different keys that access the same lock, the
21 lock isn't associating the keys in order to get into the house. The lock is
22 checking each key individually. It doesn't even, you know, it's not making
23 any association between any two given keys. And by the way, this is in
24 pretty stark contrast to the teachings of the '878 Patent, which talks about
25 creating an association or link by linking the device identifiers or tags within
26 a database, which isn't done in the proposed combination or by placing

1 linking codes or information identifying the link devices within the
2 identifiers, cookies of each of the devices itself. So, like for instance, each
3 cookie might have a reference to another cookie in this specification
4 featuring. But that's not what the proposed combination entails.

5 There's also this, the claim 6 and similar claims argument about the
6 automatic action of the independent claim not matching the automatic action
7 of the claim 6 and similar claims. The issue here is not exactly that the
8 automatic actions don't match. It's that the automatic actions don't comprise
9 what need what they need to comprise. So, in claim 1 there's an automatic
10 action that's recited. And in claim 6 the automatic action has to comprise
11 selecting an advertisement.

12 In the Petition and as Petitioner's expert confirmed, the automatic
13 action of claim 1 is alleged to be sending the information that's in box 606
14 and figure 6 of Baig. This is the user list. It's a discrete part of Baig's
15 website. It's the user list and it can be independently updated from the rest
16 of the website. And that's what Petitioner and its expert said was the
17 automatic action of claim 1. And --

18 JUDGE WHITE: Counselor, just to back right back up where you
19 were, go one slide back where you just were with the --

20 MR. MILKEY: Right here?

21 JUDGE WHITE: No, no. Right there. But it says right above -- no.

22 MR. MILKEY: Oh, sorry.

23 JUDGE WHITE: The one with testimony that we were just talking
24 about, right? Yes.

25 MR. MILKEY: Yes.

26 JUDGE WHITE: Slide 39 in your deck.

1 MR. MILKEY: Yes.

2 JUDGE WHITE: It says right in that paragraph that sending the user
3 list as part of a webpage to the second, the mobile device, over the Internet.
4 So, if we're sending the user list as part of the webpage, that webpage,
5 according to Petitioner, would be what includes the ad, and that ad was
6 selected based on who is accessing.

7 MR. MILKEY: Right. So, of course, the user list is part of Baig's
8 webpage. That's not disputed. The issue is that different parts of the
9 webpage can be sent at different times. It would be pretty inefficient and
10 sort of nonsensical every time you had a user list update to resend the entire
11 webpage. You know, the webpage contains lots of graphics. You know,
12 advertisements typically include audiovisual content, certainly at least image
13 content. And resending things like that every time a user list is updated is
14 not something that a person of skill in the art would have wanted to do.

15 JUDGE WHITE: Well, Counselor, let me, let me make sure that my
16 understanding is lining up with everyone else's. My understanding is when
17 New York Girl, I think that was one of the usernames on there, gets onto the
18 system, it's going to clock her as an 18 to 49-year-old woman and give her
19 the ad to whatever service has bid to have 18 to 49-year-old women. And
20 let's say Terminator, or what was it, New Jersey Guy is an 18 to 49-year-old
21 man and there's some advertisement that's already bid on sending
22 advertisements to an 18 to 49-year-old man. So, when you're sending the
23 webpage to New Jersey Guy, I think was the username on there, you would
24 send New Jersey Guy the webpage that's got the advertisement for an 18 to
25 49-year-old man. So, the act of, the automatic action of sending this
26 webpage would include a selection of the ad that's appropriate for that user.

1 And that would -- so, that is what my understanding of Petitioner's argument
2 is. Is that an incorrect understanding of what's happening? Or is that
3 insufficient?

4 MR. MILKEY: Yes, Your Honor. So, that is correct on initial login.
5 Yes, when I initially log into the website, I'm going to get an ad sent to me at
6 that time. The issue though is that for the automatic action limitation, and
7 this is starting at the Petition at page 46, what they map to for automatic
8 action is to update to the user list. See, it talks about, for example, consider
9 the scenario of the second device belonging to New York Girl who is
10 already connected to the access point and viewing list 606 on the webpage.
11 And at some point later, another user, Terminator, at the first device
12 connects to the at the same access point and logs in. It would have been
13 obvious that list 606 is shown to New York Girl on her second device would
14 have to be updated at some point display Terminator. But it is unclear from
15 Baig how updates are triggered. And then they say it would have been
16 obvious to implement Baig such that list 606 gets updated automatically, for
17 example, by the server automatically sending an updated or refreshed
18 version of the webpage when users are added to the access point vicinity
19 group.

20 So, what they're pointing to for the automatic action is not initial
21 login, it's the automatic update when new users who are not you join the
22 system. That's what they're talking about with the automatic updates to the
23 user list. And so, the transmission of the original advertisement is not, that's
24 not something that they've alleged to be the automatic action.

25 JUDGE WHITE: Counsel.

26 MR. MILKEY: That's on a theory --

1 JUDGE WHITE: Based on what you're pointing to, they talked about
2 the refreshing of the entire webpage. And wouldn't that include a refreshing
3 of the advertisement?

4 MR. MILKEY: No, Your Honor. I think a refreshed version of the
5 webpage just, well, they're not explicit here, but certainly the way that a
6 POSITA would have wanted to update the user list is not to update the entire
7 webpage. Updating the user list itself, I think, is fairly understood to be a
8 refreshed version of the webpage, even if you don't literally retransmit all
9 the content of the webpage, including an advertisement. And also, by the
10 way, when a user, when a new user joins the server, let's say that I'm logged
11 on and then NJ Man joins, there's no motivation or there's no articulated
12 motivation for why the server would select an entirely new advertisement
13 just because someone new joined to the server. That's not something that is
14 motivated or has even been alleged that there would be the selection of an
15 advertisement on that basis, even if the advertisement was newly delivered
16 on that basis. So, you know, the idea that a new ad is going to be selected
17 every time someone joins or leaves the server, that's not how a POSITA
18 would understand the system to work. And there's no evidence that that
19 would be the case.

20 JUDGE WHITE: Let me ask you to make sure I got the right
21 understanding. Is the same ad shown to everybody or is there a different ad
22 for each individual?

23 MR. MILKEY: I think the Petition is a little unclear on that point, but
24 I think, if I understand their theory correctly, I think that different ads would
25 be shown to different people. Because if I have my profile information is
26 male and an advertiser only wants their ad shown to females, it's not going

1 to show that ad to me. So, I think different ads are shown to different
2 people. And you know, there's, there's no suggestion that a new ad would be
3 shown based off of someone else logging into the site. That, you know, my
4 ad would be removed and replaced with a different ad at that point.

5 JUDGE WHITE: So, if everybody has their own individual ad,
6 changing the composition of who's logged in wouldn't change the ad?

7 MR. MILKEY: That's correct.

8 JUDGE WHITE: Okay.

9 MR. MILKEY: And in terms of the selecting versus delivery theory,
10 again, we think that this idea that transmitting the entire webpage as being
11 the automatic action is a new theory. But there's this conflation of delivering
12 the advertisement and selecting the advertisement. And again, the selection
13 of the advertisement is, even if you're going to sort of resend the ad every
14 time, you know, you're going to, let's say you're going to do the inefficient
15 way of every time a new user logs in, you'll resend the entire webpage.
16 There's no reason that you would need to reselect the ad. You would just
17 use the previously selected ad and send that. But --

18 JUDGE WHITE: Wouldn't it be contingent on the understanding that
19 it's one ad per person, because if it's an ad for the entire group, wouldn't it
20 select the ad that's most appropriate to whatever group is currently assigned -
21 -

22 MR. MILKEY: From --

23 JUDGE WHITE: -- currently in there?

24 MR. MILKEY: So, one, I don't think this, I think that Baig is very
25 clear that it's, you're at least basing it off of profile information of individual
26 users. Even if, though, if it were sort of a group ad, it would be sort of

1 strange to every time a new user logged in or left that you would be
2 changing the ad based on that composition. That would be, you know, result
3 in ads being cycled up pretty consistently. And you know, that would be
4 pretty distracting for users, I think, to have their ad, let's say that there's 20
5 people at the hotspot and they're logging in every minute or so. That would
6 be pretty distracting to have your ads.

7 JUDGE WHITE: Is that what we complain about with ads is that they
8 are distracting and always changing?

9 MR. MILKEY: I actually think that, Your Honor, that most websites
10 have, when you are on a website, it will actually keep the ad mostly for the
11 duration of you being on that website. It's, you know, it's rare that there
12 would be some sort of like mid-visit update to that advertisement. And I
13 think that the fact that people complain about changes to ads is a reason why
14 you wouldn't want to do that. You'd want to, you know, create some sort of
15 consistent user experience. Maybe you would update the ad every 30
16 minutes or something like that. But that's not the type of thing that's alleged
17 to be the automatic update that Petitioner is relying on.

18 But I'm happy to answer any other questions, Your Honors, but
19 otherwise I will reserve the rest of my time for rebuttal.

20 JUDGE WHITE: Okay, you have, all right, about seven minutes left
21 for the sur-rebuttal. Mr. Petitioner, you have about 24 minutes.

22 MR. WEINSTEIN: Thank you, Your Honor. I think the first one is I
23 want to go to the Patent Owner's slide, which is Exhibit 2009, which we
24 talked about before about the whole predetermined period of time limitation.
25 I want to start with --

26 JUDGE WHITE: What slide number was it again?

1 MR. WEINSTEIN: Slide 8, Your Honor.

2 JUDGE WHITE: Okay, thank you.

3 MR. WEINSTEIN: Exhibit 2009. So, one of the things you heard
4 from Patent Owner, this is another excerpt they cited in their Sur-reply, and I
5 think it's consistent with the primary embodiment that they cite. The
6 problem with relying on this, the determining step, Your Honor, is sort of
7 multifold. What's happening here, I think with respect to Patent Owner, I
8 think they're misunderstanding what's happening here. What's happening
9 here is, you see from the very first sentence of this the television ad can be
10 directed to the STB that most recently reported to CAS 40, the common IP
11 address, the online access from which the site was accessed.

12 The bottom line is when you access an online site, you're accessing it
13 from an IP address. You've also reported that IP address to the CAS 40. So,
14 basically the CAS 40 knows I've accessed this IP, I've accessed, I have this
15 IP address that's been assigned to me. You're accessing it using the online
16 site, using the IP address.

17 What happens is the CAS uses these two pieces of information. The
18 reported IP address that it got from the STB and the IP address that got from
19 the online site to say, ah, there's a match here. IP address 123 belongs to
20 Heidi because it's the one that was reported to me. So, the one that online
21 site has, it's the same one. It's basically a way of matching the user on the
22 site with the profile information on CAS 40. The next sentence, in fact, of
23 this passage is not highlighted, says the IP addresses can already be
24 associated when the user profile information is used or the association can
25 be created when it's received or afterwards.

1 What's happening here, Your Honors, it needs to associate the person
2 is accessing an online site at a particular moment in time. The CAS needs to
3 determine what profile does that belong to. That's all we're talking about
4 here, Your Honor, if you look at column 12 of their Patent. I'll just read into
5 the record, column 12, line 67 to column 13, line 3, Exhibit 1001. It says, all
6 that is required is an association between the online access IP address and
7 the STB address to enable delivery of television ads based on the user's
8 online views without relying on PII. All we're talking about here is
9 matching the user. So, when you access an online site, CAS 40 knows who
10 that person is. That's all it is.

11 There is no concept in this slide 8 here, Your Honor, if you look at it,
12 there's no concept of determining how a second device is accessing at the
13 same time. There's simply no concept. There's an STB accessing the device
14 and you have to correlate if the online access by that device matching the IP
15 address of the -- that's in the CAS 40 the passwords they relied on, the right
16 side you're on are only just -- all it says is, look, when you do this matching
17 thing, they may mismatch because the date CAS 40 has, it might not be up to
18 date because at some point you may have gotten a new IP address. There
19 might be a mismatch between the IP address the CAS 40 has that was
20 reported to it because it's out of date, and the one the online access has. And
21 so, what happens is, look, that you may have a mismatch, and the patent
22 doesn't even address that problem. It doesn't solve it. All it says is, well, if
23 you ratchet down the interval and you make it less, you'll make it less likely.
24 So, it actually doesn't even solve this problem.

25 So, you not only don't have a disclosure of a predetermined period of
26 time being used to determine, you know, when two devices are accessing,

1 you also don't even have a predetermined period of time, because the access
2 is determined at the time of access. There's nothing predetermined about
3 what they're talking about. Even if it's a period of time, it's not
4 predetermined. It's based on sort of the time of access. So --

5 JUDGE WHITE: Counselor, this may be all well and good, but we do
6 have a predetermined period of time in the claim.

7 MR. WEINSTEIN: That's correct, Your Honor.

8 JUDGE WHITE: So, what are we to do with that language? Because
9 the way I understand Patent Owner's argument is that since we're dealing
10 with dynamic addressing, and that's already in the claim, that your way of
11 reading it is sort of reading out this predetermined period of time altogether.
12 Because everything that you're talking about is something that's necessarily,
13 that you're going to be dealing with just because you have dynamic
14 addressing.

15 MR. MILKEY: Right.

16 JUDGE WHITE: And that you're not giving the proper weight to this
17 actual phrase.

18 MR. WEINSTEIN: I understand their argument, Your Honor. We
19 obviously respectfully disagree. The problem with their argument is, Your
20 Honor, we're not saying that DHCP lease time is the only predetermined
21 period of time that can satisfy the claim. And I think they're not saying the
22 same thing either. This is not a situation where we're interpreting the claim
23 in a way where the claim language is superfluous. There are predetermined
24 periods of time that have no connection to access. I mean, we use examples
25 in our patent saying if your predicted period of time was the Christmas
26 holiday, that has absolutely nothing to do necessarily with whether you can

1 access the server. The DHCP is a unique period of time in that when you're
2 using a DHCP lease time, if you're accessing the server, you have to be
3 accessing it during the lease period. It's not an inherency argument, it's an
4 argument that that's simply the way DHCP functions. The other issue, Your
5 Honor --

6 JUDGE HOWARD: Sorry, this is Judge Howard. But the DHCP
7 lease time can be extended by renewal, correct?

8 MR. WEINSTEIN: It can -- we're not disputing it can be extended.

9 JUDGE HOWARD: And you wouldn't know about that when you're
10 first getting the lease time. So, that wouldn't be, that renewal period isn't
11 part of a predetermined time. So, I'm just trying to understand how do I
12 know, just because I have the same IP address that I know that it's within the
13 same original lease period?

14 MR. WEINSTEIN: Well, the first problem, Your Honor, is I think
15 there's an assumption in your question that I respectfully disagree with, and
16 this is Patent Owner uses the term in their Sur-reply, a given period of time.
17 They sort of inserted that language in the claim. The claim, let's assume you
18 have to have knowledge of that there's a predetermined period of time. The
19 claim doesn't even require that the server know what the period of time is.
20 The period of time is not referenced anywhere else in the claim. There's no
21 antecedent basis. It's not referenced any kind of claim. It just has to
22 determine that the access has occurred during the predetermined period of
23 time. It doesn't even necessarily have to know what that time is. So --

24 JUDGE HOWARD: So, what you're saying, if I understand your
25 position is your understanding of the claim term is the determination just

1 needs to be made during a predetermined time period, but it doesn't need to
2 determine that it's within that predetermined time period?

3 MR. WEINSTEIN: I think that's right, Your Honor, but I think
4 secondarily, I think because we're operating in a -- the proposed combination
5 system was designed specifically built with DHCP addresses in mind, that
6 the determination does take place because the access is necessarily
7 happening during that period of time. Now, you mentioned the renewal
8 period. And I should mention, I think Judge White noted this. This is a true
9 edge case. And we all know from the case law, the *HP v. Mustek* case,
10 remember that simply because a prior art reference sometimes but not
11 always meets the claim supposedly doesn't stop it from disclosing this. Even
12 in the --

13 JUDGE HOWARD: I agree with you about that. And to me, if it's a
14 matter of coincidence, I think that the case law that you cited is completely
15 appropriate. But if you actually have to make a determination that it was
16 within the same, within a predetermined time period, if a person of ordinary
17 skill in the art is going to know that there are renewal periods, why would
18 they think that just because it has the same IP address, it's within the
19 predetermined time period?

20 MR. WEINSTEIN: Well, I mean, the problem, the scenario that
21 Patent Owner has set up, Your Honor, is a situation where we're talking
22 about where if two users, one user is sort of straddling the lease period
23 renewal, that seems to be the argument they're making. And I just would
24 note, Your Honor, that the lease period is a week. The Baig system is
25 operating in a vicinity-based community. People are there temporarily.
26 Airports, Starbucks, they're not hanging around for weeks and weeks at a

1 time. So, so the idea that there's going to be a user who is on and they
2 straddle the lease period, that's beyond an edge case. The other problem,
3 Your Honor, is when you look at slide 8 and the example they have, they
4 have the example where there may be a mismatch, they don't solve that
5 problem either. They acknowledge that's a problem that they're only
6 addressing, maybe reducing it by increasing the intervals. So, the patent
7 doesn't require that you solve this problem. It doesn't --

8 JUDGE WHITE: Well --

9 MR. MILKEY: -- at all.

10 JUDGE WHITE: Counselor, though, the language that we're looking
11 at right now requires the device to determine that two or more Internet
12 accessing electronic devices have separately accessed the Internet through a
13 router during a predetermined period of time. So, does that not require a
14 determination that this thing has happened?

15 MR. WEINSTEIN: The claim does require determination, that
16 condition is true, Your Honor. That's, that's correct.

17 JUDGE WHITE: So, where are we getting the determination that
18 these devices have access during this predetermined period of time?

19 MR. WEINSTEIN: So, if you --

20 JUDGE WHITE: Determining?

21 MR. MILKEY: I understood, Your Honor. So, if you assume that the
22 claim requires that the computer system have actual knowledge, you get that
23 from the ISP, from the fact that the ISP is the DHCP server that's managing
24 the IP addresses. If you don't, if you secondarily from that, Your Honor, you
25 get it from the fact that the system was designed intrinsically. Every IP
26 address that's in the system is a dynamic IP address. There's no -- under the

1 (inaudible), there's no static IP address. They're all dynamic, they're all
2 subject to lease periods. So, the determination in a DHCP context is a
3 determination period of time because you can't even have got -- you can't
4 even have knocked on the door of the server, you couldn't even make that
5 connection unless you're within the lease period provided by the DHCP
6 server, which again, the claim doesn't require.

7 We don't think the claim requires that it know what's the period of
8 time. It certainly doesn't require that it know the actual beginning and
9 ending point of the period in time. And again, why we're talking about this
10 specification, Your Honor, so much is because there's no embodiment they
11 can point to that suggests that's a limitation of the claim. And so, when you
12 read this claim, you have to read it in light of the specification. There's no
13 thing they can point to that shows this is an actual limitation of the claim.

14 Your Honor, on the, on the ISP point, Patent Owner made an
15 argument that, well, the system can identify the location; the system may ask
16 the person to identify the location. Yeah, that, I don't know what the
17 relevant, of that, is. The IP address and the physical address may not be
18 strictly correlated. I don't think asking the user for the address or a friendly
19 readable name of an address or a name like Starbucks necessarily means that
20 it's not an ISP or just operated by ISP. They keep arguing, Your Honor, in
21 their sur-reply and today that we haven't motivated the combination, we
22 haven't motivated the change, we haven't motivated the alteration. You
23 know, there is no alteration. Baig itself says it's a public network service
24 provider.

25 We presented ample evidence that that would be understood by a
26 person of ordinary skill in the art, as an ISP. All of the arguments they made

1 in their Patent Owner response were based on the factual predicate that Baig
2 was not an ISP, was a completely separate entity. So, we refuted that.
3 There's no modification at all.

4 Your Honor, just two more points to address briefly. The cookies and
5 device identifiers. The argument they made in sur-reply saying, well,
6 cookies aren't stored. Again, Your Honor, I think it's a distinction without
7 significance. In page 22 of our Petition, we explained that and I'll just read
8 the sentence in the record. It would've been obvious that the session cookie,
9 session token in the cookie, quote, a device identifier, would have been
10 electronically stored in a session table. And it goes on from there. There is
11 no material. I don't -- the distinction between the cookie and the session
12 token stored in the cookie. We think that the distinction without
13 significance.

14 The information that constitutes the cookie information, which is the,
15 you know, whatever you identify as a session token that is being stored in
16 the server. They can't dispute it. That actually has to be matched between
17 the cookie that sent to the client to serve in order for the system to even
18 function.

19 The last point, Your Honor, is on claim 6. They pointed to, I think
20 Your Honor, Judge White got it correct. The mapping of the Petition, and
21 they even quoted that language, was refreshing the webpage. The argument
22 I hear Patent Owner trying to make is that somehow you would refresh only
23 the user list. And in the sur-reply, they make an argument that, oh, it would
24 be like an HTML frame and you're only going to update that little, tiny piece
25 of the webpage, you're not going to refresh the entire webpage, therefore, the
26 ad's not going to be presented. Your Honor, that's not the mapping. I

1 understand that that's what they -- that's how they think in the sur-reply, it
2 should be implemented. But the mapping in the Petition on pages 46 and 47,
3 which they quoted, was a refresh of the entire webpage. And that webpage
4 would include, in fact, would include the ad that's presented on the page.

5 JUDGE WHITE: Well, let me ask you a question. Is the ad the same
6 for everybody? And I guess, does that matter? Does it matter, in your view,
7 whether the ad changes as the composition of the community changes? And
8 --

9 MR. MILKEY: It wouldn't --

10 JUDGE WHITE: -- would it actually change?

11 MR. WEINSTEIN: I don't think it would matter, for our purposes.
12 There's no -- there's other parts of the claim that require that the ad be
13 selected based on the profile information. So, I think in actual practice, and
14 they're not arguing or disputing that all those other limitations that we're
15 relying on Baig for are met. So, I think in a practical standpoint, it would
16 probably present different ads to different people because obviously the
17 demographic group may be different.

18 I think for the argument they're making here, I don't think that
19 distinction makes any difference. I also think even within a particular user,
20 like if a user is there and they're getting updates, they're not going to see the
21 same ad all the time. The ads are going to cycle. For example, in paragraph
22 104 of Baig, it talks about the fact that you can target an ad to females at
23 between the times of 6:00 and 8:00 p.m. So, it actually gives an example
24 where an ad will only be presented during a period of time. So, even within
25 an individual user, the ads won't always be the same. And I agree with
26 Counsel for Patent Owner that between the users, I think the ads will be

1 different because the profile and demographic information may also be
2 different.

3 But again, going back to your point, Judge White, I don't think that
4 actually matters for purposes of the argument they're making because the
5 automatic action is the refreshing of the webpage, which would include the
6 advertising. Whether it's the same advertisements presented previously or a
7 new advertisement really makes no difference from the standpoint of the
8 claim.

9 I know I may have more time, Your Honor, but I'm willing to sort of
10 forego it if Your Honors don't have any additional questions.

11 JUDGE WHITE: I think I'm good. I don't know about the rest of the
12 Panel.

13 JUDGE HOWARD: I have no further questions.

14 JUDGE WHITE: Okay. Well, then there's no further questions for
15 the Panelists. If you'd like to rest there, you can.

16 MR. WEINSTEIN: Thank you, Your Honor.

17 JUDGE WHITE: Thank you. Patent Owner, you have seven minutes
18 left for your sur-rebuttal.

19 MR. MILKEY: Okay, thank you, Your Honor. So, I want to just
20 focus on this predetermined period of time issue. I think that, again, we
21 believe all the other arguments are correct, but I really think that this is just a
22 complete deficiency of the petition. I want to first point out that my friend
23 just argued that the determination just needs to be made during a
24 predetermined time period and doesn't actually need to determine whether
25 two accesses were within a predetermined period of time. Your Honors, I
26 would submit that that's not the plain meaning of the language, but

1 particularly not the plain meaning to a person of ordinary skill in the art in
2 the context of the intrinsic record, because both experts have agreed that
3 limitation 1B of the '878 Patent, which is the determining during a
4 predetermined period of time, you know, determining whether two accesses
5 were within a predetermined period of time limitation does not describe
6 when the determination is made.

7 This is Exhibit 2003, spanning lines 822 through 910. And just to
8 really distill this issue, I asked Petitioner's expert, so, is it your opinion that
9 limitation 1D requires that the system determines whether or not the access
10 is by the two electronic devices occurred within a predetermined time
11 period. And Petitioner's experts said yes. So, Counsel's argument is just
12 inconsistent with their own expert testimony that you actually have to make
13 a determination as to whether two accesses were within a predetermined
14 period of time.

15 They could then go on to say that you don't require knowledge of the
16 predetermined period of time. But that simply doesn't make sense. So, for
17 example, if I have a system, if I have a claim that says determining whether
18 two accesses occurred on a Friday, but then the system doesn't know when
19 Friday is, it's -- of course I can't -- that system cannot determine whether two
20 access has happened on a Friday. Friday is just a stand in here for
21 predetermined period of time. There's some specific predetermined period
22 of time and some determination has to be made with respect to that
23 predetermined period of time. If the system doesn't know or have any idea
24 of when that predetermined period of time is, which is the case with Baig's
25 content server. Then of course, that limitation can't be met. Even if the
26 system knows when Friday is, for example, that knowledge still doesn't

1 inherently mean that the limitation is met. You still have to make a
2 determination as to whether the two axis has happened on Friday. But just
3 as a baseline necessary criteria, you would at least have to know when
4 Friday is in order to make that determination of a predetermined period of
5 time.

6 They also state that there's nothing that we can point to in the Patent
7 that talks about this predetermined period of time being used in this way.
8 But that's not right, because there is a periodic contact interval that is, if it's
9 periodic, that means it happens on a recurring predetermined interval basis.
10 So, there's a predetermined period of time there. We also walked through
11 the example of the predetermined period of time can be calculated based on
12 the difference between, you know, in discrete points in time. One thing I'll
13 note is that throughout any of the briefing and throughout the argument,
14 Petitioner has never pointed to anything in the specification of the patent that
15 even arguably supports their interpretation of predetermined period of time
16 is something that is just inherent or, you know, doesn't need to be calculated
17 at all, other than something that would just be totally right out of the claim.

18 In terms of reading the predetermined period of time limitation out of
19 the claim. They're saying that because in their proposed system, the system
20 is built with dynamic IP addresses in mind, then this limitation is met. Well,
21 if we look at the '878 claim, the claim system, or the claim method, it's
22 obviously built with dynamic IP addresses in mind. The claim specifically
23 recites storing dynamically assigned IP addresses in a system and
24 determining whether they're common. So, they're saying that, sort of, Baig
25 discloses this based on the design of the system. But then we're not reading
26 out predetermined -- this determining during a predetermined period of time

1 limitation in the '878 Patent. That's not correct. They're clearly reading it
2 out under the exact same logic that they're applying to Baig's system.

3 They also say that they're not arguing inherently for Baig, but that's
4 the natural, that's sort of the logical conclusion of their argument is that if
5 you can point to a DHCP lease period as being the predetermined period of
6 time, and if that's what you're mapping to the predetermined period of time,
7 then the presence of dynamic IP addresses will necessarily meet the
8 determination during a predetermined period of time limitation, then it's
9 inherent within the '878 Patent claim 1. And they haven't, I don't think,
10 really explained why that wouldn't be inherent within the claim other than to
11 sort of say, well if we map, if we had a bad infringement mapping, if we
12 mapped the predetermined period of time to, you know, the Roman Empire's
13 duration, then there would not be infringement. Well, yes, you could have a
14 really bad claim mapping, but that doesn't mean that, you know, there
15 wouldn't be inherent infringement based on the DHCP lease period. So, I
16 don't really understand their argument on that point.

17 Also, I think during oral argument they mentioned that in the
18 proposed combination, every single IP address used to access Baig's system
19 would be a dynamic IP address. That's not something they've ever alleged
20 and that's not something that's realistically possible sort of as a common
21 sense matter. Baig's content server can't just replace all static IP addresses in
22 the world with dynamic IP addresses. That's not something that anyone
23 could ever do. Static IP addresses continue to exist. People still use static IP
24 addresses to this day. And to say that every single IP address that's used to
25 access Baig's content server would be a dynamic IP address one that's not a
26 theory in the petition. And there's certainly no reasonable expectation of

1 success in replacing all static IP addresses in the world with dynamic IP
2 addresses. So, if that's sort of their distinction over the '878 Patent, that's -- I
3 -- that at least wouldn't establish obviousness.

4 Finally, even if Baig's content server were part of an ISP, as we've
5 discussed, that's not something that's motivated or has have a reasonable
6 expectation of success. What I should say about that more specifically is
7 that one, I don't think that Baig discloses that its content server is part of an
8 ISP, but if it were part of an ISP, what would need to be motivated and have
9 a reasonable expectation of success is that the content server would still need
10 to use DHCP lease periods in making a determination. That would need to
11 be motivated, that would need to have a reasonable expectation of success.
12 Petitioner has not explained how Baig's content server, even if Baig's content
13 server is part of an ISP, first of all, they haven't explained how it would use
14 DHCP lease period to make this determination and they haven't explained
15 why you would want to do that. I think they said that, you know, being
16 outside of the DHCP lease period is sort of an extreme edge case that
17 basically Baig wouldn't even care about. We agree that Baig wouldn't care
18 about this. So, why would be make this claim determination? I don't think
19 that that makes any sense.

20 And so --

21 JUDGE WHITE: Counselor, your time has expired, so I'll give you a
22 brief moment to sort of wrap things up.

23 MR. MILKEY: Yes, Your Honor. If we go to, I just want to point
24 out one thing, one final thing is this is Exhibit 2003 at 12, 5 through 19,
25 which this is Petitioner's expert admitting that regardless of whether Baig's
26 system is accessed via a static IP address or a dynamic IP address, it doesn't

1 actually change the logic of Baig's server. So, this just shows the Baig's
2 content server really doesn't care at all about whether two device accesses
3 were within a predetermined DHCP lease period. If it cared about this,
4 obviously the logic would change between it being a static IP address system
5 and a dynamic IP address system. And regardless of whether the access is
6 via static or dynamic IP address, the proposed combination with Baig is the
7 same either way, and thus Baig's, the proposed combination does not make
8 the claim determination.

9 So, unless you have any further questions, Your Honors, thank you
10 very much for your time.

11 JUDGE WHITE: Are there any further questions from the Panel?

12 JUDGE HOWARD: I have no questions.

13 JUDGE WHITE: Okay, Judge, you're muted.

14 JUDGE DROESCH: Oh. I do not have any questions either.

15 JUDGE WHITE: All right, well, I want to thank the parties for their
16 excellent presentations. You've given us a lot to think about. We will issue
17 the final written decision in due course. And with that, we are off the
18 record. Court Reporter, please let us know anything you need some
19 assistance with any questions.

20 Ms. DROESCH: Thank you.

21 MR. WEINSTEIN: Thank you, Your Honor.

22 JUDGE WHITE: All right, well, thank you.

23 (Whereupon, the proceedings at 12:02 p.m. were concluded.)

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