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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTOROLA SOLUTIONS, INC.,
Petitioner,

v.

STA GROUP LLC,
Patent Owner.

IPR2023-01292
Patent 7,324,802 B2

Record of Oral Hearing
Held: December 11, 2024

Before MICHAEL J. FITZPATRICK, DAVID C. McKONE, and KEVIN C. TROCK, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing Wednesday, December 11, 2024, commencing at 1:00 p.m. EST, via Video-conference.

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

1:00 p.m.

MS. LOTT: We will now go on record with IPR2023-01292. It is now in your hands, Judge.

JUDGE MCKONE: All right, good afternoon and welcome. We are here for a final hearing in the parties= review, IPR2023-01292, chaptered *Motorola Solutions v. STA Group*. Let me introduce the panel. I am Judge McKone. With me are Judges Fitzpatrick and Trock.

Let=s get the parties= appearances. Who do we have appearing on behalf of Petitioner?

MR. STAVINOHA: Good afternoon, Your Honors, this is Clark Stavinoha, with Baker Botts on behalf of petitioner, Motorola Solutions, Inc. With me on the line today is Eliot Williams, lead counsel for Petitioner. I=ll be handling the argument today. And then also on the line is Paul Bartusiak, lead IP counsel for Motorola Solutions, Inc.

JUDGE MCKONE: Okay, thank you. Who do we have appearing on behalf of Patent Owner? You may be on mute.

MR. ENGEL: Good afternoon, Your Honor, it=s Jason Engel, lead counsel for the STA Group. And with me is my colleague, Kyle Kantarek. Mr. Kantarek will be handling the argument today.

JUDGE MCKONE: Okay. Is Mr. Kantarek the LEAP practitioner?

MR. ENGEL: Yes, Your Honor.

JUDGE MCKONE: And he will be handling the entire argument?

MR. ENGEL: That is correct.

JUDGE MCKONE: Thank you. So we=ve set forth the procedure for today=s hearing and our oral argument order. And according to that order, each party will have 45 minutes of total argument time to present its arguments.

Also as we just recognized, Patent Owner has a LEAP practitioner presenting the argument and thus will receive an additional 15 minutes for a total of 60 minutes.

Petitioner has the burden of proof and will go first. Patent Owner will then present opposition arguments. Then, to the extent Petitioner had reserved time, Petitioner will present arguments in rebuttal. Thereafter, to the extent Patent Owner has reserved surrebuttal time, Patent Owner may present its surrebuttal.

As we noted in the hearing order, although we are all appearing here remotely, and there is no physical courtroom, members of the public have the option to attend remotely via a public line.

In the oral hearing order, we requested that if there were any concerns about the disclosure of confidential information at this hearing, you were to contact the Board. To my knowledge, neither side has indicated the intent to present confidential information. Petitioner, can you confirm that, please.

MR. STAVINOHA: Yes, Your Honor.

JUDGE MCKONE: And Patent Owner, can you also confirm that you don=t intend to present confidential information?

MR. KANTAREK: Patent Owner confirms it does not intend to present confidential information.

JUDGE MCKONE: Thank you. For clarity in the transcript, and since all of the judges and counsel are appearing remotely, when you refer to an exhibit on the screen, please identify the exhibit number and the page number. And when you refer to the demonstrative slides, please identify the slide number.

Counsel should unmute only when speaking. If, at any time during the hearing, you encounter technical or other difficulties, please let the panel know immediately if you can so that we can make adjustments. There is also technical support listening in, and they will also try to keep their eyes out a technical problem.

Are there any questions on behalf of the Patent Owner at this time?

MR. KANTAREK: No questions on behalf of Patent Owner, Judge.

JUDGE MCKONE: Are there any questions on behalf of Petitioner at this time?

MR. STAVINOHA: No, Your Honor.

JUDGE MCKONE: Petitioner, would you like to reserve any time for rebuttal?

MR. STAVINOHA: Yes, I=d like to reserve 15 minutes for rebuttal, please.

JUDGE MCKONE: Okay. You can proceed whenever you are ready.

MR. STAVINOHA: Okay, let me just share my screen here. Okay, Your Honors, are you able to see my slides?

JUDGE MCKONE: Yes.

MR. STAVINOHA: Great. Okay, well, I will go ahead and get started then. Turning to Slide 2 of Petitioner=s demonstratives, this IPR concerns the 802 Patent which relates to methods and systems for managing communication in a communication network. Now, in the 802 Patent, a communication system receives a plurality of messages from a plurality of channels which sometimes overlap in time.

And moving to Slide 3, in general the focus of the 802 Patent is the idea that when two received messages overlap in time the higher priority message should be played first while the other message is stored and played later. As we=ll see, this concept was well-known in the prior art.

Moving to Slide 9, we have here a summary of Petition 3 grounds. Ground 1 shows that Claims 1 through 21 would have been obvious based on Ohel, which is Exhibit 1004. Ground 2 shows that Claims 1 through 7 and 11 through 21 would have been obvious based on Nigawara, which is Exhibit 1007. And Ground 3 shows that Claims 3 and 8 through 10 would have been obvious over Nigawara in view of Doolin, which is Exhibit 1008.

Now Patent Owner disputes aspects of grounds one and two but does not present any separate argument for Ground 3.

Turning to Slide 10, we have a summary of the disputed issues here which primarily relate to Claims 1, 5, 7, and 11. As you can see, there=s quite a few. So I=m going to jump right in starting with Ground 1 based on Ohel, which is Exhibit 1004, and specifically, whether Ohel discloses the claimed first and second entities in Limitations 1A and 1B.

So moving to Slide 15, we have here claim elements 1A and 1B which are the two elements involving receiving overlapping messages on

respective dedicated channels dedicated to different entities. Patent Owner=s only argument for Claim 1 in Ground 1 concerns whether Ohel discloses the first entity and second entity recited in these limitations. It does, using nearly identical language.

Looking at the excerpt here on Slide 15, which is from Ohel=s Paragraph 42, Ohel specifically teaches receiving overlapping messages from a first transmitting entity and a second transmitting entity. And moving to Slide 16, Ohel also teaches that these messages are received on respective channels from among the plurality of channels as claimed.

Ohel discloses a multiple channel data recorder which is embodied in a communications Unit 1, which is shown on the right-hand side of Slide 16 in Figure 2. That unit has a plurality of wireless communications transceiver units, two through eight, that enable communication over separate channels.

And moving to Slide 17 now, Ohel teaches that these channels are dedicated to receiving messages from respective entities such as a dispatcher and another specific user.

For example, Paragraph 60 of Ohel, reproduced on the left of Slide 17, describes the first Simplex Unit 2 that operates on a given channel, and a second Simplex Unit 3 that operates on a channel different from the given channel.

Ohel explains that the first Simplex unit can be set to a dispatch channel, and the second Simplex Unit 3 can be set to a particular channel of another specific user for direct two-way communication.

So in other words, the first Simplex Unit 2 set to the given channel is dedicated to receiving communications from a dispatcher, while the second Simplex Unit 3 is dedicated to receiving messages from another specific user.

Petitioner=s expert, Mr. Williams, testified that it would have been understood that Ohel's dispatch channel is a channel dedicated to communications with a dispatcher.

Patent Owner doesn=t contest that assertion. Instead, Patent Owner only challenges whether a dispatcher is an entity within the scope of the claims. The 802 Patent confirms that it is.

Moving to Slide 21, Patent Owner=s argument that a dispatcher is not an entity is not consistent with the intrinsic record. Patent Owner seems to be seeking a negative limitation, and there is simply no basis for that in the intrinsic record for the 802 Patent. Rather, consistent with the Board=s preliminary determination, the 802 Patent establishes that dispatchers and users, such as those disclosed in Ohel, are entities.

Moving to Slide 22, I want to talk briefly about the claim language which merely recites a first entity and a second entity. Ohel uses substantially the same language, and nothing in the claim scope narrows the scope of entity to exclude a dispatcher. Patent Owner=s suggestion that an entity might be limited to groups, localities, and units has no literal support in the claim language.

Additionally, the term itself is broad. You know, as we can see here from Patent Owner=s own dictionary definition, Exhibit 2002, entity is defined as a being or an independent, separate, or self-contained existence.

And the specification of the 802 Patent confirms this broad interpretation of entity.

Moving now to Slide 23, we have Figure 1 of the 802 Patent which depicts an arrangement very similar to Ohel=s communications unit receiving messages from a dispatcher and a user. In 802, Figure 1, Emergency Communication System 102 is in the center of the figure.

As you can see, it=s depicted the channels, so they=re circled in green on the slide here connecting the emergency communication system to a police dispatcher, two fire dispatchers, as well as individual users and an IP phone.

Patent Owner=s expert, Dr. Akl, confirmed during deposition that these connections are examples of a plurality of communication channels on which messages are received. I apologize, I don=t have a slide for that, but that=s Exhibit 1033 at Page 30, Lines 9 through 15.

Patent Owner=s interpretation, which would exclude a dispatcher from the claimed entity, would read out this embodiment of Figure 1 which the federal circuit has made clear is improper.

Turning now to Slide 24, the 802 Patent also confirms that the communication system receives messages from a dispatcher. For example, at Column 3, Lines 54 through 63, which is part of the description of Figure 1, the 802 Patent discloses that the emergency communication system is connected to dispatchers and that the system receives messages on a plurality of communication channels.

And further, looking at Slide 25, the specification expressly discloses that the invention can operate between any two processes or entities

including users, devices, functional systems, or combinations of hardware and software.

So accordingly, each of the elements that the emergency communication system operates between in Figure 1, including the dispatcher, would have been understood to be an entity for purposes of the claims.

JUDGE TROCK: Counsel --

MR. STAVINOHA: And also looking --

JUDGE TROCK: -- this is Judge Trock. It=s Judge Trock.

MR. STAVINOHA: Yes, Judge Trock?

JUDGE TROCK: I just want to slow you down a little bit here.

MR. STAVINOHA: Okay.

JUDGE TROCK: So are you asking us to determine a distinction between entities and users? And if so, what would that be?

MR. STAVINOHA: I think that the entity --

JUDGE TROCK: Are you suggesting that they=re one and the same?

MR. STAVINOHA: I=m suggesting that an entity can be a user. It=s not limited to a group, locality, or unit as Patent Owner suggests in its argument.

JUDGE TROCK: So your argument is that an entity can be a single individual, am I reading you correctly?

MR. STAVINOHA: So a user is a type of entity. And an individual would be an example of a user.

JUDGE TROCK: Yes. And that would include that dispatcher as a single person, is that correct?

MR. STAVINOHA: Yes, that=s correct.

JUDGE TROCK: All right, thank you.

MR. STAVINOHA: Now if there are no further questions, I=ll move on to the next point I wanted to make here which is simply that the specification doesn=t limit the scope of an entity to a group, locality, or unit.

You know, instead it merely says that in existing systems, this description from Column 1, Lines 15 through 25, is part of the description of the background art. It states that a communication channel may be dedicated to a group locality or unit. It doesn=t say that they must be dedicated to a group, locality, or unit.

And then my last point on this issue is that the prosecution history also does not disclaim a dispatcher or user from the scope of an entity. It merely provided non-limiting examples and importantly makes clear that an entity may include any number of users which would include one user.

And if there are no further questions, you know, I=d like to just conclude by reiterating that Ohel=s express disclosure of first and second entities, and that those entities can be a dispatcher and a user, just as contemplated by the 802 Patent discloses Limitations 1A and 1B.

I=d like to turn now to the next disputed issue which relates to Claim 5. So jumping ahead to Slide 47, Claim 5 recites wherein the type of received messages being one of a group comprising audio, video, text, and image, Ohel discloses Claim 5 at least because it discloses receiving audio and video messages. Notably the district=s work --

(Simultaneous speaking.)

JUDGE MCKONE: Ohel doesn't describe making any decisions based on whether a message is video, as opposed to text, as opposed to audio, correct?

MR. STAVINOHA: I wouldn=t necessarily agree with that, Your Honor. We have testimony from Dr., or excuse me, Mr. Williams shown here on Slide 48 that describes a person of skill in the art understood prioritization of messages based on the use of the APCO transceiver to be prioritizing received messages based on being audio type messages.

JUDGE MCKONE: That=s just because the -- that=s a typical dispatcher channel, right. And if the dispatcher was on Simplex 1, then Simplex 1 would probably be higher priority, correct?

MR. STAVINOHA: That would be one use case, I think, for Ohel=s system. But with respect to the claim, you know, it merely says, well, the plain language of this Claim 5 merely says that the type of received messages being one of a group comprising audio, video, text, and image, which Ohel plainly discloses. You know, the claim --

JUDGE MCKONE: But Claim 5 isn=t by itself though, right? It depends from Claims 4 and 1.

MR. STAVINOHA: That=s correct.

JUDGE MCKONE: But Claim 1 seems, at least to me, to say that a decision is made based on the type. Am I reading that wrong?

MR. STAVINOHA: Well, Claim 1 says that the messages are prioritized based on a predefined parameter. Claim 5, or excuse me, Claim 4 recites that the predefined parameter is the type of received message. And, you know, Patent Owner hasn=t challenged our mapping for Claim 4.

And, you know, this additional limitation of Claim 5 doesn=t limit, you know, it doesn=t state prioritizing based on the type of received message. It just says, you know, wherein the type of received message being one of a group comprising audio, video, text, and image. So I think --

JUDGE MCKONE: So Claims 1 and 4 together though would seem to prioritize based on type. And then Claim 5 is just narrowing what type can be. Isn=t that the correct reading of Claim 5?

MR. STAVINOHA: It=s one possible reading. I don=t know that I would say that it=s the only situation that would fall within the scope of Claim 5. You know, as I was going to mention, Patent Owner and Dr. Akl have argued that receiving messages of at least one of the types specified in Claim 5 is sufficient to, excuse me, falls within the scope of this claim. And, you know --

JUDGE MCKONE: That=s what you=re saying, is the District Court position, right?

MR. STAVINOHA: Correct, yes.

JUDGE MCKONE: And you=re agreeing with the District Court position on this point?

MR. STAVINOHA: We=re saying that, you know, this claim, the plain meaning, it says that the type of received messages being one of a group comprising audio, video, text, and image, and we think that Ohel renders this obvious based on both this District Court interpretation as well as Patent Owner=s IPR interpretation based on Mr. Williams' testimony regarding prioritization based on the use of the APCO transceiver.

JUDGE MCKONE: Okay, so just so I know where we stand, should we adopt Patent Owner=s District Court, we=ll say District Court construction of Claim 5? Because that=s really what we=re talking about here. Should we adopt Patent Owner=s District Court construction of Claim 5 as the correct construction?

MR. STAVINOHA: Yes, Your Honor. That=s what we propose.

JUDGE MCKONE: Okay. So you agree with that, you think that that=s supported by the intrinsic evidence?

MR. STAVINOHA: I think that the plain meaning of this claim, you know, it recites the type of received messages being one of a group comprising audio, video, text and image. And that=s consistent with what we=ve shown in the prior art.

And, you know, to the extent Patent Owner=s IPR interpretation is followed, we think Ohel renders the claim obvious under that interpretation as well.

JUDGE MCKONE: Okay.

MR. STAVINOHA: And that covers about everything I wanted to touch on for Claim 5. So unless there are further questions, I=ll move on to Claim 7 and Slide 50 of Petitioner=s demonstratives.

Disputed Claim 7 recites further -- it depends from Claim 1 and recites further comprising, informing an operator the time of receipt of a message while playing the first message and the second message.

Now the Petition, and Mr. Williams explained that it would have been obvious to inform the police officer operating Ohel=s communications unit

of the time of receipt of a message while playing the first and second messages.

Those positions are based on Ohel=s extensive disclosure regarding use of time stamps. And looking at Slide 51, Ohel=s disclosure that it=s a communications unit has a display and functionality to go to a specified time stamp.

Turning to Slide 52, Patent Owner doesn=t dispute the petition=s arguments or Mr. Williams testimony regarding informing Ohel=s officer of the time of receipt of a message. Instead, Patent Owner argues that Ohel fails to render Claim 7 obvious, because the dispatcher does not receive the time of receipt.

Now, this argument fails, at least because Claim 7 does not recite a dispatcher. And Patent Owner hasn=t shown that the operator in Claim 7 should be limited to a dispatcher.

The plain meaning of an operator would include an individual operating a device, and that would include the police officer that=s operating Ohel=s communications unit.

And as you can see here, Mr. Williams= testimony from Exhibit 2005, Page 96, Line 7 through 11, confirms that the operator of Claim 7 is not limited to the dispatcher. It could also be the police officer.

Moving to Slide 59, Patent Owner relies on its argument for Claim 1 for independent claims 11, 13, 14, and 17 through 19. Patent owner presents a separate argument for Claim 11 and, in particular, Limitations 11S and 11H, which it contends also apply to Claims 13 and 14. Those arguments should be rejected.

Turning first to Slide 60 and Limitation 11f, the petition establishes that it would have been obvious to store Ohel=s lower priority message in a queue, as claimed. Limitation 11f recites storing the message having lower priority in a queue on the basis of the determination and the prioritization. Patent Owner doesn=t --

JUDGE MCKONE: On your slide here you say that storing messages in a queue was well-known in the art. Do you have anything more than a queue being well-known in the art as a reason to modify Ohel to reach claim element 11f?

MR. STAVINOHA: So Mr. Williams testified that a queue is particularly well-suited for storing messages in a single memory device such as Ohel=s, the memory device in Ohel=s communications unit.

Additionally, it would have been an obvious implementation to, you know, implement a queue in Ohel=s memory device to store the multiple messages that are recorded. Beyond that --

(Simultaneous speaking.)

JUDGE MCKONE: What do you mean obvious implementation? What does that mean?

MR. STAVINOHA: Well, Ohel discloses storing recorded messages in its single memory device. A queue would have been, you know, an obvious way to implement Ohel=s storage such that it provides a way of organizing these stored messages.

And Mr. Williams= declaration provides a number of examples of the use of queues in prior art to, you know, improve message organization and

playback. And it would have been an obvious implementation to record or to store the messages recorded in Ohel in a queue.

And Patent Owner=s expert, Dr. Akl, doesn=t dispute that a queue was a well-known way to store data.

JUDGE MCKONE: Well, there=s lots of other ways to store data known at the time too though, right?

MR. STAVINOHA: I mean, that=s a fair statement. But, you know --

(Simultaneous speaking.)

MR. STAVINOHA: -- if you, based on both of our, or excuse me, both parties= expert testimony, you know, Mr. Williams explains that it would be particularly suited for Ohel=s single memory device. And, you know, Patent Owner=s expert, Dr. Akl, doesn=t dispute that a queue was, indeed, a well-known way store data.

JUDGE MCKONE: Does your expert explain why it would be particularly well-suited?

MR. STAVINOHA: I believe his testimony is based on Ohel=s disclosure that it can record multiple received messages. And the use of a queue with multiple recorded messages would have been obvious to a person of skill in the art at the time of the 802 Patent.

JUDGE MCKONE: Okay, I won=t belabor the point. It sounds like that=s what you=ve got for us to evaluate.

MR. STAVINOHA: And then jumping ahead now to Slide 65 and Limitation 11h, this is the limitation that recites playing the stored message having the highest priority. Patent Owner disputes whether the petition=s

analysis of Claim 1 establishes that Limitation 11h is rendered obvious by Ohel. It does.

Limitation 11h recites very similar subject matter to Limitation 1g. 11h is playing the stored message having the highest priority while Limitation 1g is playing the stored message subsequent to completing playing of the message having higher priority.

Ohel teaches, for example, in Paragraph 17 here on Slide 65 that recorded messages are played back after the new transmission has ended. The petition maps these higher priority and lower priority messages to Ohel=s higher priority, for example, superior user transmission, and the lower priority to the recorded message.

If we look at Slide 66, in that two-message scenario there=s no difference between Limitations 1g and 11h. Both require playing the stored message. And notably, the claims of the 802 Patent only recite that one message is stored.

So in the claim scenario, when the lower priority message is stored and subsequently played as described, for example, in Ohel, the message that is played is the stored message that has the highest priority.

And that=s similar to a situation expressly contemplated by the 802 patent. For example, at Column 5, Lines 37 through 44 of Exhibit 1001, the 802 Patent describes playing a single stored message. Specifically in this example, Message B has higher priority than Message C, so Message C is stored while Message B is played.

The 802 Patent indicates that Message C is the only radio message in the queue. And as soon as radio Message B is played, or is completed,

radio Message C is played. So in this scenario, when Message C is played, it is the stored message having the highest priority.

And that=s analogous to what we have mapped these claims to in Ohel. So based on that, the Ohel disclosure, playing back a stored lower priority message as described in the petition=s mapping for Limitation 1g, is sufficient to render obvious Limitation 11h as well.

And if there aren=t any questions from the panel, I can turn now to Ground 2 based on Nigawara which is Exhibit 1007.

Moving to Slide 69, Nigawara described a method and system for announcing operating conditions of a plant by voice message. As shown in this excerpt from Column 3, Lines 33 through 41 of Nigawara, the reference describes techniques for addressing simultaneous demands for announcement of voice messages. This is achieved by determining the priority order based on the contents of the messages and then announcing the messages in priority order.

Turning to Slide 71, Patent Owner=s first argument for Claim 1 in Ground 2 relates to Limitations 1a and 1b. Similar to its arguments for Ground 1, Patent Owner contests whether Nigawara=s plant sites disclose the first and second entities recited in Limitations 1a and 1b.

(Simultaneous speaking.)

JUDGE MCKONE: Counsel, just in the interest of time, is this back and forth between you and Patent Owner any different than for the Ohel ground, or is it going to sort out the same way for both references?

MR. STAVINOHA: So, you know, as I=ve mentioned, Patent Owner=s narrow interpretation of entity is not supported by the intrinsic

record. But regardless, Nigawara=s plant sites are entities, even under Patent Owner=s interpretation, that would limit them to groups, localities, or units.

Looking here at Slide 74, Patent Owner admits that Nigawara=s plant sites are sites within the plant which would fall within the scope of a locality under Patent Owner=s interpretation.

Additionally, both Nigawara and Patent Owner=s expert, Dr. Akl, acknowledged that the plant sites are units of the plant, which again falls within the scope of Patent Owner=s interpretation of entity as encompassing units.

So the issues are slightly different, but we think the outcome is the same in that Nigawara=s plant sites are clearly examples of entities within the scope of the 802 Patent.

Moving to Slide 79 now, and disputed Limitation 1d, this claim element involves determining which messages should be stored and subsequently played based on the messages overlapping in time and one or more priorities assigned to the first and second message.

Nigawara=s disclosure of determining to announce lower priority messages with a suitable delay teaches this claim element, including under the order of steps construction.

So as can be seen in the first box on the left of Slide 79, which is an excerpt of Column 7, Lines 20 through 28 of Nigawara, Nigawara discloses that where announced messages overlap with each other, those voice messages having signals having priority lower than the others are announced with a suitable delay.

Turning to Slide 80, Mr. Williams confirms that a person of skill in the art would have understood that lower priority messages announced with a suitable delay would be stored in memory for the duration of that delay. That=s Exhibit 1002, Paragraph 251. Patent Owner doesn=t dispute that contention.

Turning to Slide 81, when Nigawara=s system determines to announce one of the overlapping messages with a suitable delay, that=s a determination to store and subsequently play the message based on the message=s overlapping in time and priorities assigned to the messages.

And that=s within the scope of Limitation 1d, and it satisfies the order of steps construction, because it occurs after determining the priorities and before playing the message having the higher priority in Limitation le and storing at least one message in Limitation 1f.

Turning now to Slide 94 and Claim 5 --

JUDGE MCKONE: Are the issues pretty much the same for Claims 5 and 7 as they were for Ohel? I just want to make sure you can cover everything you need to.

MR. STAVINOHA: Yes, they=re similar, Your Honor, slightly different. You know, we think Nigawara, just to quickly touch on Claim 5, Nigawara does disclose both voice and video messages.

And additionally, looking at Slide 95, it teaches prioritization based on voice message, as can be seen from this Table 1 here showing the examples of determining priority in Nigawara. And so we think that renders Claim 5 obvious under both interpretations. And with respect to --

JUDGE MCKONE: See, I understood Table 1 to be -- types the message there where, you know, whether it is a serious trouble in main machinery versus whether it=s, you know, just simply guidance, for example, your first and your seventh priority there.

So I=m assuming that if, you know, the first one there was changed to a video message, or a text message, it would still be the highest priority, because it=s serious trouble in main machinery.

MR. STAVINOHA: Well, Nigawara doesn=t tell us how it would address the other types of messages. But based on this example here in Table 1 that it=s using for the prioritization, it does physically reflect that the system is taking into account the fact that it is a voice message.

And given the language of the claim, you know, based on is quite broad. And the 802 Patent doesn=t describe anything more specific than that. And so we think, in light of those disclosures and our expert=s testimony, that this is sufficient to render Claim 5 obvious in view of Nigawara.

JUDGE TROCK: Counsel, this is Judge Trock, but doesn=t Table 1 specifically say according to contents of the message?

MR. STAVINOHA: It does say that, yes, Your Honor.

JUDGE TROCK: All right, thank you.

MR. STAVINOHA: Looking briefly at Claim 7 and Slide 97, the dispute is similar here with respect to Claim 7 and Ground 1. Patent Owner disputes whether Nigawara=s plant operators are operators within the scope of the claim. We submit that they are.

The 802 Patent describes that an operator is someone who relies or acts upon received messages. And we think that that certainly would include someone like Nigawara=s plant operators within the scope of the claim.

I recognize that I=m reaching the end of my initial opening time, and I just want to touch briefly Claim 11.

JUDGE MCKONE: Counsel, you are in your rebuttal time. I would like to hear on Claim 11, sort of the unique argument for Nigawara about whether or not you=re relying on the same message for each of the claimed limitations.

MR. STAVINOHA: Yes, Your Honor. So with respect to that, we are relying on the messages that indicate the operating conditions in Nigawara. That=s always been our mapping, those messages that are passed through the algorithm in Figure 3 of Nigawara as well as what=s depicted in Figure 4. You know --

JUDGE MCKONE: Well, I=m looking at Figure 1. I think for time and limitation, 1a and b, the message you identified was five at the bottom --

(Simultaneous speaking.)

MR. STAVINOHA: Yes, Your Honor.

JUDGE MCKONE: And that=s what you contend is the message, the first and second message?

MR. STAVINOHA: So that=s the signal that is delivering the message. The message is the, you know, is the operating conditions of the plant. And the Information Signal 5 is indicative of those conditions.

That=s received. And then the voice messages that are announced are announcing those operating conditions.

So it=s the operating condition messages that traverse, you know, the communication path through those identification Units 1 and 2 that are associated with each of the plants. And those messages that are passed through, Figures 3 and 4b, are what were -- those operating conditions are what the Petitioner=s relying on for its mapping.

JUDGE MCKONE: You=ll agree that what is in Signal 5 does not always get passed along, it does not always become a message of Number 6 up at the top, in the middle top of Figure 1, correct?

MR. STAVINOHA: Is there a particular portion of the Nigawara reference that you=re referring to, Your Honor?

JUDGE MCKONE: Well, when I=m looking at five, so Box 1, operating condition identification identifies whether there is something to report from some, you know, the plant sites, the Signal 5 coming in. We=ll say that there=s a signal coming in, that five is the temperature.

You wouldn=t announce it if the temperature is fine. You would want to announce if the temperature were too high, for example. And something like that would get interpreted by the operating condition identification, Box 1, and translated into some kind of alert. At least that=s my understanding of how Nigawara works. Is that incorrect?

MR. STAVINOHA: So, you know, the examples in Nigawara clearly describe passing through those messages in response. To the extent there are instances where, you know, one of those would not be passed through, Nigawara is clear that there are circumstances where, you know,

you end up with multiple overlapping messages that are prioritized. And that=s what we mapped to in the Petition.

And unless there are further questions --

(Simultaneous speaking.)

MR. STAVINOHA: Oh, sorry, Your Honor.

JUDGE MCKONE: I understand your position now. I=ll look at the petition again. I don=t know that that is how I interpreted your position when I read the petition. But I will go back and look at it.

MR. STAVINOHA: Okay. Thank you, Your Honor. And I might direct you to, for example, the Petition at 61 where we described Nigawara receiving a second message that is overlapping in time with the first message, just to guide your review.

And with that, I=ll reserve the remaining time that I have left for rebuttal.

JUDGE MCKONE: Okay, you=ve got about 10.5 minutes remaining.

MR. STAVINOHA: Great. Thank you, Your Honor.

JUDGE MCKONE: Thank you.

Patent Owner, let me know when you=re ready to go.

MR. KANTAREK: Yes, Your Honor. I=m just going to share my screen. And I=d like to reserve five minutes for surrebuttal. That=s next.

Sorry, can the Board see the Patent Owner=s slides?

JUDGE MCKONE: Yes.

MR. KANTAREK: Honorable Board, Opposing Counsel, my name is Kyle Kantarek here on behalf of Patent Owner STA Group, LLC. Which

is a player in the mobile and internet technology space. As you can see from the 802 patent the original signee was Cisco. And Patent Owner acquired the 802 and other patents to revise Cisco=s technology, radio emergency communications.

In a time before the 802 patent emergency communication systems involved operators who had to manage incoming messages from various channels. And they had two options to deal with overlapping messages. One was to mute a channel, and the other option was to try to listen to multiple channels at once which resulted in garbled messages. And the operator had to attempt to prioritize and respond to those garbled messages.

Neither of these solutions proved workable, especially in the emergency setting. The 802 patent itself discloses and claims novel communication systems and methods for delivering these messages without information loss.

So moving on to Slide 3 of Exhibit 2009. With the use of the 802 patent, and you can see on the left side Figure 1, on the right side Figure 5, an operator can handle communications from different entities and respond timely without worrying about information loss.

And you can see on Slide 4, Claim 1 shows one of these methods. It includes, in relevant part, first entity on a first dedicated channel, second entity on a second dedicated channel. And playing messages having higher priority.

This distinguishes the 802 patent claims from the prior art, especially, and specifically the prior art raised in the petition. Because neither reference, Ohel or Nigawara, include channels dedicated to different entities.

The art, at best, simply provides methods for dealing with overlap of messages within one entity. The police force for Ohel and a power plant for Nigawara. Both references include information on recording messages, but the invention of the 802 patent is not simply referenced.

Ground number 1 is an obviousness ground based on Ohel. Here we have an argument common to all claims, which boils down to whether a dispatcher, whether the dispatcher in Ohel is an entity as claimed in the 802 patent. And there are separate arguments for Claim 11. One argument is that the petition itself failed to address an element of Claim 11, and another is there is no use of a queue and it would not be obvious to do so. We also have arguments based on dependent claims.

Moving on to Slide 6. Ohel itself, as we discussed, deals with overtalk by a police dispatcher using a police officer=s communication unit, which is shown on Figure 2. You can see on the top portion of that it=s a display. This Figure 2 is what is in a police officer=s car in the inventions of Ohel.

So the first argument, as the Board and Petitioner discussed at length, is that Ohel does not disclose multiple entities. And specifically the petitions mapping of Ohel=s dispatcher as an entity is incorrect.

So we have, in the surreply at 1, set forth that an entity is a group of users. And that group of users is not simply just a number of users, it=s an association and a need to hear the same sort of messages.

So the best, if we turn to Slide 8, the best evidence of what entity means is to look at the claims. And so if you look at Claim 1 it separately

claims a first entity and a second entity. And if you move to Claim 6 it separately claims a user. And Claim 7 separately claims an operator.

These are different terms, they should be given different meanings and scope. That=s the *Karlin Tech.* case, 177 F.3d 968, and *Board of Regents*, 533 F.3d 1362. Those are in the Patent Owner response at 15.

JUDGE MCKONE: But that doesn=t mean that we have to read these terms as mutually exclusive though, does it?

MR. KANTAREK: I would agree with you because as I just mentioned, Patent Owner=s construction of entity is a group of users. And so that would, that takes us to --

JUDGE MCKONE: However, if an entity, the first entity was a single user, that wouldn=t, the claims, that wouldn=t implicate Claim 6 at all, would it? Simply because Claim 6 uses the term user why should we conclude that a first entity cannot be a single user?

MR. KANTAREK: So with respect to the user issue, if we turn to Slide 9 --

JUDGE MCKONE: Are you moving off claim differentiation or --

MR. KANTAREK: Oh, I=m sorry, I thought you were asking about, I=m sorry, Judge McKone, I thought you were asking about intrinsic evidence for why an entity needs to include multiple users.

JUDGE MCKONE: No, but I=m, you seem to be -- you=re leading off here with claim differentiation. And it seems to be your argument that because Claim 6 uses the term Aa user,@ a first entity cannot be a user. Is that correct?

MR. KANTAREK: That=s one of the reasons. Yes, Judge, that=s one of the reasons that the first entity cannot be simply one user.

JUDGE MCKONE: See, I don=t understand that argument. Why just because Claim 6 uses a term a user, why can=t the first entity include a user? In other words, be broad enough to include a user but not necessarily be exactly the same scope?

MR. KANTAREK: So, Patent Owner=s position is that it is broad enough to include, it=s a group of users so it=s broad enough to include more than one user with some other caveats. The doctrine of claim differentiation suggests that different terms claims have different meanings in scope not coextensive scope. So if user were to mean entity, then Claim 6 would say based on inputs from an entity.

But more specifically, if you move to Slide 9, if you turn to, excuse me. The top of Slide 9 cites from the 802 patent at 115 through 25, disclosing how each emergency communication system supports a plurality of communication channels wherein each channel may be dedicated to a group, locality or unit. And then dedicated to languages, the same language that appears in Claim 1.

For example, the fire department can allocate one channel to every school, or other public place. Such as shopping malls as to enable effective communication during an emergency. And then the next sentence says, this allocation of dedicated channels to different entities results in the possibility of multiple messages being received.

So this is where we understand that an entity is a group, group locality unit. And specifically with respect to users, if you moved to the second

excerpt which is the 802 patent at Column 7, lines 18 through 20, states the invention can operate between any two processes or entities, including users, devices, functional systems or combinations of hardware and software.

JUDGE MCKONE: Now, usually when we=re construing the claim to have a more narrow meaning based on the specification, we=re looking for something like a definition or lexicography or words of manifest, exclusion or disavowal. Which of the two, which of those two categories would you fit this description in?

MR. KANTAREK: I would fit it in the latter, in disavowal. Because it says entities including users which means it cannot simply be one user.

JUDGE MCKONE: Okay. So we have to read, including users to disavowal or exclude a single user in order to side with you?

MR. KANTAREK: Yes, Your Honor.

JUDGE MCKONE: Okay. I understand that position.

MR. KANTAREK: And I think, I think it=s worth spending a little bit of time on this language because Petitioner suggests that this is a list, right? It says, entities including users, such that a user could be an entity. Devices, such that a device could be an entity. Functional systems or combinations of hardware and software. It simply doesn=t make sense for either of those to be entities.

And Mr. Williams was asked this at his deposition that, that petitioners declarant, he admitted that entities include users. That=s Exhibit 2005 at 21, that when confronted with the other items in this excerpt, he said

he didn=t analyze it. He didn=t analyze whether functional systems would be defined as an entity. And that=s Exhibit 2005 at 64.

He said he didn=t look at these terms because he was focused on users and devices. And that=s Exhibit 2005 at 66. He seems to be cherry picking --

JUDGE FITZGERALD: Mr. Kantarek, if I can jump in. I=m more focused on the intrinsic evidence as opposed to those, the testimony about what it means to other people.

When I see that, the second box that=s on Slide 9 here, entities including users, et cetera, the first alternative interpretation that comes to mind, I think it just comes right out, is that users is plural in that sentence just to stay with the plural of entities. The list is, I don=t find significance to the fact that it says users as opposed to a user there. And the reason is, is because I just think they=re listing everything out in the plural. And what's the response to that?

MR. KANTAREK: Sure, Judge Fitzpatrick. I hear what you=re saying but I think you=re maybe reading the lists in the way it=s not intended, right? It says, the invention can operate between any two processes or entities including users. So it can operate between any two processes, any two entities, any two devices, any two functional systems or any two combinations of hardware and software.

JUDGE FITZPATRICK: Okay. That=s, so there is nothing wrong, I guess, with your interpretation that as a possibility. I think more for us to

rely on it though you have to be able to rule out the other interpretations and make them be unreasonable. And that=s where I think the problem is.

MR. KANTAREK: Judge Fitzpatrick, I would submit it=s unreasonable to suggest that an entity can simply be a functional system or simply be a combination of hardware and software.

And so I think, you were less focused on what Mr. Williams believed so we can skip some of these slides.

So I think part of, part of why an entity can=t include a dispatcher it is based on the specifics of what the 802 patent addresses. Which is, it=s meant to assist dispatchers with confusion that they face when receiving communications from different entities. Ohel, on the other hand, addresses simply overtalk, which is what happens when officers on one channel are overridden by a dispatcher and that dispatcher takes floor control. In this --

JUDGE MCKONE: Now, assuming your phrasing of the purpose of this invention is correct, do we typically limit claims to an invention=s purpose when we don=t have something like words of disavowal or words of definition to do so?

MR. KANTAREK: Your Honor, we don't limit it to a purpose. However, this is an obviousness ground based on Ohel and a POSITA would look at, would look at and understand the specification of the 802 patent and the specification of Ohel. And I think that's important where we have some terms, such as operator, dispatcher, that are similar where it's not simply a word search, a POSITA would understand what the reference is disclosing in its entirety.

JUDGE MCKONE: Now I don't remember seeing in the papers any arguments regarding whether or not Ohel was an analogous art reference. Have you made any arguments in that regard?

MR. KANTAREK: We don't have an argument based on Ohel being nonobvious, Your Honor.

In looking at Slide 14, I think this kind of shows, on the left here, this is our annotated Figure 1, this kind of shows why an entity has to be a group of users. You can see individual users, 106 on the bottom left of Figure 1, which is the left side of Slide 14. But as we've kind of, as we've boxed out and described, there are users associated with the police dispatcher, on the top, which would be users in a police entity, and that's blue box 1. And then in blue box 2 there are users associated with a fire dispatcher, which would be part of a fire entity.

Ohel on the other hand --

JUDGE MCKONE: Why did you carve police dispatcher out of the police, what you say is the police entity, and carved fire dispatcher out of what you consider a fire department entity?

MR. KANTAREK: Because the 802 patent discusses how dispatchers, here, I'm going to take you back to Slide 8, in the bottom right. The 802 patent at 35:9–62 discloses that dispatchers are the operators who handle the communication for the emergency teams and respond to emergency messages received from a plurality of users.

If entities are groups of users they're distinct from dispatchers and operators. They have an associated dispatcher or operator that's not part of the entity.

If there are no more questions on Claim 1 I can move to Claim 5 of Ohel. And that's starting at Slide 18. Sorry, 19.

I think Judge McKone, you touched on this in Petitioner's presentation. You know, Claim 5 doesn't stand alone, right, it depends from Claim 4 which depends from Claim 1. And Claim 1 says that there has to be a priority determination based on at least one predefined parameter. Claim 4 narrows the predefined parameter to a type of the received messages. And then Claim 5 narrows it to the type of received messages being one of a group comprising audio, video, text and image.

But that still means the priority determination is based on that predefined parameter. Now we talked a little bit about Dr. Akl's testimony in the District Court. And Petitioner's slide simply showed Dr. Akl's opinion on Claim 5. And, you know, Claim 5 itself talks about the type being audio, video, text and image, but Claim 4 is the one that does the work where a predefined parameter comprises a type.

So it shows -- so Dr. Akl's analysis of Claim 4 would be where one would look to see whether there was a priority determination based on the type of message. Once Dr. Akl satisfies himself that the priority determination is based on a type of received message, all he has to talk about with respect to Claim 5 is whether the type of received message for that priority determination is based on is audio, video, text or image.

Moving -- now briefly about Claim 5, there is only one priority determination in Ohel. And it's whether there is a superior user or not. On the left here you can see Mr. Williams admitting that the priority disclosed

in Paragraph 70 of Ohel is the priority-based sense of pure user status that Ohel discloses.

Moving to Slide 22. We also talked about this a little bit. I'm sorry, the Board talked about this a little bit with Petitioner. Claim 7 depends from Claim 1 and it further comprises informing an operator of the time of receipt.

So at the bottom of Slide 22 you can see Mr. Williams state that his argument for this claim is an obviousness argument. The problem with this is that Ohel's communication unit 1 is an officer's display not a dispatcher's display. So not only, so Mr. Williams and Petitioners position would, showing the time of receipt on an officer's display simply wouldn't satisfy the claim language which requires informing an operator of the time of receipt, not an officer who would be a user.

And even so, you have on Slide 23 Dr. Akl testifying that there is no disclosure in Ohel. That the dispatcher uses the communication unit 1, that instead he discloses that the users of the communication unit 1 are police officers, and refers to this unit as the officer's unit.

And despite --

JUDGE MCKONE: So in essence you're asking us to construe operator to mean, to be the same as dispatcher?

MR. KANTAREK: Yes.

JUDGE MCKONE: I mean, is that the upshot, in order for you to win we have to determine that operator, as used in Claim 7, equals dispatcher?

MR. KANTAREK: That is one way. The other way is that Ohel's disclosure is that. It's shown to a dispatcher. And the dispatcher they have identified is an entity, according to their reading. So showing it to entity would not be showing it to an operator.

Or I'm sorry, strike that. They don't show it to the dispatcher at all. They show it, Ohel shows it to a user who would be part of an entity. So you don't even need to construe, you don't really, need to construe operator. If you look at Ohel's own disclosure it's not showing a timestamp to an operator or dispatcher, however you look at it.

And if you look at Slide 24 you can see the display, Mr. Williams saying that this is an obviousness ground. He didn't even analyze whether, why an operator or dispatcher of Ohel would need to be told when it interrupted an officer's other transmission. His only answer was it doesn't seem unreasonable. Which is simply not the test for obviousness.

Moving to Slide 26. This is regarding element 11(H). And here in the petition, Petitioner simply did not address element 11(H). You can see on the left of Slide 26 we've shown Claim 11, and then on the right we've shown the petition. And in the petition it says, Claim 11 is nearly identical to Claim 1 with only a few minor differences. And then it goes on to recite these minor differences, but it does not touch on element 11(H).

JUDGE MCKONE: Now would you have 11(H), you can go back to the previous slide before we move on. Is it your reading of Claim 11(H) playing the stored message having the highest priority, that means that more than one message has to be stored?

MR. KANTAREK: Not necessarily, but it is a different --

JUDGE MCKONE: Because isn't it the case that any time, if there is only one message stored than whatever message gets played next from storage is necessarily the highest priority message it stores, correct?

MR. KANTAREK: That would be correct if there are two messages determined here. There is --

JUDGE MCKONE: Okay. It would be the message that's played and the message that's stored, right?

MR. KANTAREK: That's correct. Well, yes. As you --

(Simultaneous speaking.)

JUDGE MCKONE: -- and the last claim element is -- the last claim element is, playing the stored message having the highest priority. So if there is only one stored message, then isn't that message necessarily the message having the highest priority if that's the only thing stored?

MR. KANTAREK: I would say that's correct, Judge McKone, however, they did not, they just simply did not include these arguments in their petition and so that's prejudicial to Patent Owner as we're not sure what to address. They tried to paper over it with this discussion on reply. There was no discussion on it in the petition, which is the main issue we take with this.

And as you can see on Slide 27, Mr. Williams admitted they're not the same element. And he didn't mention the element at all.

Now if you move on to the queue element, which is, this is Slide 29. This is element 11(F) which is storing the message having a lower priority in a queue on the basis of the determination and prioritization.

So as you mentioned the only -- as you mentioned, Judge McKone, the only real support for Petitioner's obviousness argument is that a queue existed before. And of course, Dr. Akl admits that a queue existed. However, storing messages in a queue, the relevant question is whether a POSITA would be motivated to and have a reasonable expectation of success in adding a queue to Ohel's storage. However, Ohel discloses user selectable storage.

You can see on the left here of Slide 30, on Paragraph 48 of Ohel, discusses how the user's communication unit detects a superior user's transmission during the transmission of the user's message, an override process is initiated and begins at step 700. At this point at, in one embodiment of the invention, the user's message begins recording so that the recipient can receive it and process the message at a later point in time.

At the bottom of that excerpt at Paragraph 48 it says, thus at a later point in time another user can review the user's entire transmission or a portion thereof, in particular, beginning of the time of the flag. So this is user selectable storage. There is no motivation for a POSITA to add a queue here. And on the right here you can see Dr. Akl explaining that in a user selectable message playback system using a queue is unnecessary and would likely be computationally less efficient than a typical dynamic memory.

And moving on to Slide 31 --

JUDGE MCKONE: Now before you do that, did Dr. Akl have any basis for his testimony that a queue would be computationally less efficient for that memory?

MR. KANTAREK: Sorry. You're on Slide 30.

JUDGE MCKONE: Yes. Your highlights and testimony here. I'm just wondering what the basis for that testimony was.

MR. KANTAREK: Well the basis would be his background in the relevant art. And also that when such, you can see in the next, the unhighlighted testimony, that when such a queue's order is updated in response to user selection of messages which were ordered differently than the data's order as stored in the queue that would be computationally less efficient.

Because in the user selectable storage, however it does it, they would have to update it into a queue. And, again, there is no indication in Ohel that a queue would be helpful to its storage.

JUDGE MCKONE: All right. It doesn't look like Dr. Akl is listing here, along with his testimony, what he basis that on.

MR. KANTAREK: That's --

(Simultaneous speaking.)

JUDGE MCKONE: -- we often times discount testimony that does not state what the basis for the testimony is.

MR. KANTAREK: I would agree with you, Judge McKone, that Dr. Akl does not cite any other source aside from his understanding of updating a queue in response to user selection of messages ordered differently than the data's order as stored in the queue.

Turning to Slide 31, Dr. Akl has additional testimony on this. He does say that while a queue, sorry. While a queue is indeed, this is on the

right side of Slide 31, while a queue is indeed one well-known way to store data that does not make queue suitable for all applications.

In here he does cite Ohel's disclosure saying that a POSITA understands Ohel's system, provides any user the ability to select playback at any time. Saying at any point in a message -- starting at any point in a message and can be provided immediately after the user stops transmitting or upon the user's manual command. In other words, the user has full control here.

And so that, I think that, those disclosures that he's citing, Ohel at Paragraph 17, 48, 50 and 52, those disclosures of what Ohel does do, and the functionality that Ohel does provide, would become, would tell a POSITA that using a queue would be computationally less efficient.

And that makes sense too. If the only priority determination is, there's a superior user, it's not clear how a queue would even store messages in order based on that determination.

So moving on to Slide 32, you can see the difference here. The 802 patent determines priority between messages to establish the queue, and Ohel's prioritization system is simply, is there a superior user, if so, cut off the communication and record the message.

Dr. Akl also explains on Slide 33 that a POSITA would understand that storing Ohel's messages in a queue would be contrary to the user's selectable playback feature, as we discussed earlier. And as I mentioned, Dr. Akl explains that the petition and Mr. Williams do not explain in what order the messages in Ohel would be stored in the queue. Again, because the priority determination is binary.

Unless there are any other questions on Ohel I move, I'd like to move on to Nigawara.

JUDGE MCKONE: Okay, go ahead.

MR. KANTAREK: Nigawara, it's a similar, this is Ground 2, this is obviousness based on the Nigawara reference. Patent Owner's arguments are similar if not, are very similar to the arguments on Ohel. There is the entity argument based on Claim 1, but there is an additional issue with Nigawara storing all messages received regardless of priority.

And then there is, with respect to Claim 11 Petitioner, again, failed to address the same claim element we discussed before. And also failed to show that Nigawara renders obvious storing messages in a queue for also the similar dependent claims.

So we talked about, Judge McKone, I think, you asked some questions specifically about the messages in Nigawara. And I think it's worth taking a look at Figure 1 on Slide 35 here on the right-hand side and just going through kind of how Nigawara receives and processes messages.

So at the bottom of Figure 1, if you have information Signal 5 from each of the plant sites which goes into operating condition identification unit 1 and a operation condition identification unit 1 spits out voice message announcement instruction signals 8, which go into the voice message signal generation unit 2, then which spits out a voice message output signal 6, which Nigawara tells you are words a human can understand. So these are just, and sorry, and these voice message output 6 then go into message order announcing, message announcing order selection unit 3 above that which then spits out item 9 to all the speakers in the plant.

So we did briefly touch on the fact that, and it was kind of in passing, that there is a discussion or a mention of some sort of video signal in Nigawara, but Nigawara, there was, these video messages are only described once, and that's in Nigawara Column 2, Line 40. These are information signals 5. So ultimately the message, these messages are turned into voice message output signal 6 before they go to order announcing, order announce, announcing order selection unit 3. I apologize, these wordy elements. But so, the message that actually comes out to, the message that is prioritized is all, they're all voice messages, as you discussed with Petitioner.

So specifically if you go on to Slide 36, this shows table 1 of Nigawara, on the right. And on the left it shows figure 2, which has a, which is a more detailed view of message announcing order selection unit 3, which includes a memory and an order determination. Message output memory 10 and a message announcing order determination unit 11.

And then on the right, as I think Judge McKone recognized, this, the priority order, these are all voice messages. And it's based on the contents of the message.

Moving specifically to Slide 38, as we talked about before, the construction of entity as groups of users. The separate plant sites themselves are all part of one plant which Petitioner would submit, or sorry, Patent Owner would submit is one entity.

JUDGE MCKONE: Well then that, because it seemed a little bit different than what you wanted for Ohel rather than simply a different set of users now you want entity to be a separate corporate entity. Is that how I'm reading your instruction?

MR. KANTAREK: No. No, Judge McKone. So our construction, as we noted in the sur reply, was groups of users which itself excludes operators and dispatchers. And here we would submit that all the plant sites are one, is one entity because it's one group of users. These, all these entities, as we looked at in Figure 1, if you go back to --

JUDGE MCKONE: Why can't we view a separate plant site? Why can't we say that plant site A has a different group of users than plant site B?

I'm assuming there is different locations in the plant and they're performing different functions, why aren't they different groups of people and therefore different entities?

MR. KANTAREK: I think that's why I was trying, taking you to Figure 1. If you look at Slide 35, there may be different operators that work at each plant site, but ultimately these group, this group of users is all part of the same entity.

As you can see, all of the messages that are being prioritized, stored and then prioritized, they're all spread out, you can see Item 9 comes out of announcing order selection unit 3, the speakers 4. So all of these users are hearing these messages on the same channel, if you will.

So it is one entity that includes, it is a large group of users. And Nigawara discloses that it's attempting to, and this is at Slide 40, Nigawara discloses on the right here that it's for announcing, by voice messages, the operating conditions of a plant, such as a thermal power plant, or announcing a change or changes in those conditions. And more particularly, to announce, and announcing method and system suitable for

application to a plant where a plurality of voice message announcing devices are provider. So --

JUDGE MCKONE: So it's your view that they're all the same entity because they're all hearing the same message broadcast over a system of loudspeakers? Is that the distinction you're drawing here?

MR. KANTAREK: So that is part of the work that, so the construction is a group of users, and group is not simply just multiple users they are grouped together. And in Nigawara it's clear that they're grouped together because they're all hearing the same messages. And indeed Nigawara's invention is so that everyone at the plant doesn't hear a different message from plant site 1 and a different message from plant site 2 at the same time and not understand that message.

JUDGE MCKONE: No, I understand that one way you can view this, and the way that you want us to view this is all the people in the plant are the same group. Why is it incorrect to also view this as, okay, plant site A has three people, that's a group. Plant site B has four people, that's a group. They're both separate groups and therefore separate entities. Why is that wrong?

MR. KANTAREK: I would say that because of what we just discussed, that they're all at the same power plant, they're all hearing these messages together. And it's, they're all working together as one entity to deal with and announce and react to operating conditions of a single plant.

And if you move on to Slide 41, this kind of shows the difference between the entities disclosed, the groups of users disclosed in the 802 patent and the announcing system of Nigawara on the right, which solves an

issue effecting users within one entity because Dr. Williams, as Dr. Williams admits, when voice message announcing systems operate independently, voice messages are announced simultaneously due to the absence of operational harmony among the devices. So this, Nigawara is about harmonizing these different speakers, different announcing systems within the power plant entity itself.

One thing bears mentioning here is that simply because Nigawara uses the term operator a POSITA would understand that those operators are actually the users and the workers of a plant. On the left here you can see Dr. Akl explaining as much. And so the key here is to look at the disclosure and not simply find the word operators.

And in Nigawara's closed system the common operational control, prerecorded voice messages, using a predetermined set of rules can be set by the signal entity, the power plant, so that only users in the entity operate under common operational control.

Moving on to limitation 1(D). This is Slide 45. Limitation 1(D) is a, of the 802 patent states, determining which message out of the first message and the second message can be stored and subsequently played based on the second message overlapping with the first message in time and one or more priorities assigned to the first and the second message.

So in the 802 patent you have storage, or I'm sorry. You have a determination of what to store based on priorities assigned. But at the bottom of Slide 45 you can see that Nigawara stores all messages when received without a priority assignment at all.

On the left you have disclosure from Nigawara. On the bottom left is this Column 4, Line 39 through column, through 44. It says, voice messages are classified in those having -- or I'm sorry, strike that.

It says, the rule, this talks about the rule for determination of the priority order by the message announcing order determination unit 11. Which, as we talked about before, the order, the message order announcing determination unit 11, from Figure 2 of Nigawara, says the messages go to, message 6 goes to the order, announcing order determination unit after it's stored in message output memory 10. Within message announcing order selection unit 3.

And on the bottom right here you have Mr. Williams admitted as much. In Nigawara all messages incoming before they are prioritized are essentially buffered or stored. And then they go to a priority determination.

So on Slide 46 you can see that Nigawara discloses the opposite of what's claimed in Claim 1 of the 802 patent. So on the left you have disclosure from Nigawara, Column 3, Line 66 through Column 4, Line 5 and states, voice message output signal 6 and the voice message signal generating units 2 of the individual plants are stored in a voice message signal memory 10.

Then if you look at the bottom, on the right here you can see that memory 10 that we discussed from figure 2 --

JUDGE FITZPATRICK: I think, do we have the wrong slide up?

MR. KANTAREK: Oh, I'm sorry about that.

JUDGE FITZPATRICK: Oh, thank you.

MR. KANTAREK: Apologize. So -- thank you, Judge. So on the right here you have Figure 2. So I'll start over.

On the left you have Nigawara's disclosure at Column 3, Line 66 through Column 4, Line 5 and it states, it's talking about Figure 2 that states that voice message output signal 6 from the voice message signal generating units 2 of the individual plants are stored in a voice message signal memory 10.

Then the bottom left here, this is Column 4, Line 24 through Line 30, it says, the message signal selection unit 101 selects from the voice message signal memory, the voice message signal 6a having the highest priority among those stored in the memory 10 and applies the signal to the message output unit. So the output signal 6 coming from unit 2 are stored and then there is a priority determination date.

Limitation 1d requires the opposite. You have to determine which message should be stored based on the priority assigned to the message. So necessarily the priority determination happens before. But on the right here you can see Dr. Akl explaining it.

So moving on to Slide 48, you can see in 802, in the 802 patent, this is Figure 3 on the left, this shows the order of the priority calculation and the storage. If there is an overlapping message there is an immediate priority determination.

This is, if you go to 306 in Figure 6 it says, is the second radio data overlapping with the first radio message, if yes, 310 is calculated their priorities. And then down at, not until 316 does it store the radio message that is not being played in the queue according to the priority. And on the

right here you can see the explanations from the 802 patent of what Figure 3 is showing.

In Step 310 a priority is calculated for each of the incoming radio messages. And then at the bottom the radio message with the highest priority is played at Step 314 while the remaining radio messages are stored in a queue at Step 316. The storage is based on the priority calculated at Step 310. Which is directly from the claim language of Claim 1.

And here on Slide 49 you can see that B and C overlap. And there is an immediate priority comparison, and they store C.

Moving on to Slide 54, this is just another depiction of how there are many different messages in Nigawara. And we talked about it a little bit earlier and I explained what those different messages were, but to the extent the Board wants to see them all distinguished, Slide 54 can be helpful.

Unless there are other questions on Claim 1 I'll move on to Claim 5. So Claim 5, if you look at Slide PO 56. This is, again, what Judge McKone was talking with Petitioner's Counsel about. Nigawara prioritizes its messages that are already stored based on message content without considering the type of message. So if you look at the claim language, we talked about this a couple of times, I won't belabor the point, but it has to be based on whether it's an audio, video, text or image message, it doesn't just have to be one of those.

On Slide 57 you can see that this is explicitly based on content. At the top left here, from Nigawara Column 1, Lines 49 through 55 --

JUDGE MCKONE: Now are you applying the claim language here the same as you're applying it in District Court?

There is some insinuation by Petitioner that you're not doing that. What's your view?

MR. KANTAREK: So our understanding is that, my -- it is consistent. And my point was that, again, I might mention this with respect to Ohel, that simply showing Dr. Akl's report based on Claim 5 doesn't get to the argument here. Because Claim 1 talks about determining priorities based on a predefined parameter, Claim 4, narrows that predefined parameter to a type of perceived message.

So once Dr. Akl is satisfied that the infringing, the infringing device -- or the infringing product, determines priorities based on the type of message. So all he has to show is that, oh, I'm sorry. All he has to show is that the type of message that determines the, the type of message can be one of these different types.

So I think the argument can be one of audio, video, text and image. And so I think the issue with type is that the, Dr. Akl's determination of whether there is a priority determination, with respect to type of message, would be contained in his analysis of Claim 4 and Claim 1. Simply Claim 5. Once he's already done that analysis, his analysis of Claim 5, it's just that, hey, it does it based on type, here are the different types that it doesn't base it on.

JUDGE MCKONE: So if I were to dig into, a little bit deeper into Dr. Akl's previous testimony in District Court I wouldn't find him and Patent Owner reading the claims 1, 4 and 5 together much more broadly?

MR. KANTAREK: I don't believe you would.

JUDGE MCKONE: Okay.

MR. KANTAREK: So, if you move on to Slide 58. Oh, sorry, we were talking about Slide 57. On the bottom left here. So on the top left, sorry.

Nigawara, Column 1, Line 49 to 55 says, according to the present invention priority order of announcement of voice message signals generated from a plurality of independent voice message announcing devices is determined according to their importance.

And then at the bottom here, in Column 3, Lines 33 through 39, this explains that, when a plurality of demands for announcement of voice messages exists simultaneously, the message announcing order selection unit 3 determines the priority order of announcement of the voice messages according to the contents of the messages and the relative importance of various pieces of information below.

And then the next page, the next Slide 58, if you read in table 1 it says, example of determination of priority order according to contents of voice messages. It does say type of message output signals, but as you can see, everything here has a voice message. And as we discussed earlier the voice, the message output signal 6 are all voice messages and they're all converted, whatever the information signal is at the beginning it's converted into a voice message output signal 6. So these are all voice messages.

Unless there are other questions on Claim 5 I can move to Claim 7.

JUDGE MCKONE: And you have about four minutes before you're getting into your rebuttal time.

MR. KANTAREK: Brief, okay, thank you. Thank you, Judge. Slide 60 briefly. You can see the claim language of Claim 7 which we

talked about. And we talked about previously that Nigawara's operators were the users of the 802 patent. And there is no operator, no operator as explained by the 802 patent in Nigawara at all.

So Slide 61, Mr. Williams admits that Nigawara does not disclose a dispatcher. And if you go back to Slide 10, Mr. Williams admits, was it asked in your opinion are dispatchers operators and he explained that in this particular context, which is discussing emergency communication systems and the context of the patent, which is the 802 patent, it's saying straight out dispatchers are the operators who handle the communication of the emergency team.

So despite Mr. Williams agreeing with that, and also agreeing that Nigawara doesn't disclose a dispatcher still maintains that Nigawara renders this claim obvious.

Moving on to Claim 11, moving to Slide 64, this is the same issue as before, right, that the petition fails to address element 11(H). So I'll skip most of that.

Moving to Slide 65, this is element 11(F). This is storing messages in a queue on the basis of the determination and the prioritization. Again, Nigawara stores everything before any priority is determined at all. So on the left here you have Nigawara, Column 3, Line 66 through Column 4, Line 5 saying that voice message output signals from the voice message signal generating units to the individual plants are stored in a voice message signal memory 10. And that's, on the right here you can see that's before the message announcing order determination determines priority.

On Slide 66 you can see Dr. Akl explaining that a POSITA would understand that these prerecorded message transfer to voice message signal for Figure 1 of Nigawara, which is on Slide 54, means that there is no need for a queue. On the left here you can see Dr. Akl saying, a POSITA understands that a message is received could be stored in any order in the memory 10 and still played back in the order of priority without being stored in a queue.

And on the righthand side you can see the, Dr. Akl explaining that the petition and Mr. Williams do not explain why Nigawara would take the extra computational steps reordering any messages stored in memory 10 when the system, as described, already selects the highest priority message for announcement and for each played message does not explain what would be beneficial about this change.

And moving on to Slide 69, simply discuss, shows Exhibit 2006 where Mr. Williams was previously chastised by the Board for improperly picking and choosing teachings from a reference and failing to represent accurately what it suggests to a skilled artisan. And Patent Owner would submit he's done the same thing here.

He never, and Slide 70 shows he never investigated whether these methodologies were appropriate at all.

If there are no other questions I can reserve the remaining time for surrebuttal.

JUDGE MCKONE: Nothing further from me. Thank you.

MR. KANTAREK: Thank you.

JUDGE MCKONE: And you have about five minutes and ten seconds left.

Petitioner, you have about ten and a half minutes left for your rebuttal. You can begin whenever you're ready.

MR. STAVINOHA: Great, thank you, Your Honor. I'll just share my screen real quick. Are you able to see my slides?

JUDGE MCKONE: Yes.

MR. STAVINOHA: Great. Okay. So I'll go ahead and get started. You know, as just an initial matter, regarding the emphasis on the alleged problems of the 802 patent described in the specification that Patent Owner focuses on, you know, those aren't commensurate with the scope of the claims.

I just want to point out that looking at Slide 4 here the Applicant specifically removed any limitation that would limit the communications to, the communication system to an emergency communication system. So the claims are certainly broader than the disclosure in the specification that Patent Owner glides upon.

Moving next to Claim 5 and Patent Owner conflicting interpretations here, and in the District Court, Patent Owner attempts to shift the attention to Claim 4. I just want to point out however that for Claim 4 in the District Court Dr. Akl's only theory of infringement was based on the accused products allegedly determining priority of messages based on identification of the source not the types of messages identified in Claim 5.

Regarding Claim 11, it's important to know --

JUDGE MCKONE: Now how much of the District Court record do we even have here to evaluate whether there is really a difference in application? I know there is --

MR. STAVINOHA: Yes, Your Honor.

JUDGE MCKONE: -- Dr. Akl's testimony.

MR. STAVINOHA: We submitted Dr. Akl's analysis for Claim 5 as it's plainly contradictory to the theory that's put forth in the petition. We did not include, in our excerpts from his infringement report, the portions for Claim 4. But I will represent to you that it did not include a theory based on the types of messages received in Claim 5. And perhaps if the Board would like it, we can supplement the record if that would be desirable.

JUDGE MCKONE: It seems --

MR. STAVINOHA: But --

JUDGE MCKONE: -- a bit late for that. My concern is, I think Petitioner was well-aware that Claims 4 and Claim 1 were all part of Claim 5. So if you had wanted us to see the whole picture as far as the full analysis of Claim 5 you would have already given that to us. And that's what concerns me a little bit here. You've made an accusation of being inconsistent and haven't given us nearly enough to sort that out which makes the argument not as strong as it could be I'll say.

So with that, I'm not going to take up any more of your time now. I'll allow you to proceed to your next argument.

MR. STAVINOHA: Okay. I take your point, Your Honor. I just want to note that Dr. Akl's analysis for Claim 5 is essentially identical to

what we have provided. And so with that I'll move on to Claim 11 in Ground 1 for Ohel.

I just wanted to note that the petition argued the features of Claim 11, including the queue, were disclosed in Ohel. That's at the Petition 41. We also argued that a queue was a well-known practical way to store the messages described in Ohel for later playback which confirms that a person of skill in the art reading Ohel would have found it obvious that Ohel was describing a queue, although Ohel doesn't necessarily use the word queue.

Also regarding that limitation of Claim 11, I just want to point out that the claims don't limit the order of storage in the queue. And also regarding Dr. Akl's testimony, with respect to --

JUDGE MCKONE: Regarding whether the claims limit the order of storage that's sort of beside the point. The issue is whether, what Ohel describes and what a skilled artisan would have, you know, how they would have modified Ohel. So if your theory is that Ohel stores data in a certain way and that's why you would use a queue, then it's important that you establish that Ohel stores data in that way. And I think that was Patent Owner's point.

MR. STAVINOHA: Well, I think that we have established, both through Mr. Williams' testimony and the corroborating testimony of Dr. Akl, that a queue would have been a well-known way to store data in Ohel's system.

Moving on to Dr. Akl's testimony regarding user selection that Patent Owner emphasized, I'd like to point out that nothing in the claim language itself precludes the use of user selection. Additionally, if we look at Slide

62, just allow me a moment to get there. You know, Dr. Akl's opinion in the litigation relies on functionality that permits user selection.

So his position is that that somehow distinguishes Ohel from the claims of the 802 patent lacks credibility. And additionally, looking at step 60, or excuse me, Slide 63, the prior art cited in Mr. Williams background of the technology section establishes that the use of user selection with a queue was known in the background art and there is nothing inherently incompatible about user selection with a queue.

Moving to Slide 65, regarding limitation 11(H) in Ohel Patent Owner suggested that we didn't provide analysis in our petition. There is no question that the petition says that Claim 11 is nearly identical to Claim 1 and that we were relying on the analysis for Claim 1 for Claim 11, so I think there is no question that the petition addressed those features in its analysis of Claim 1.

Turning to Ground 2 in Nigawara. Regarding Nigawara's entities, I'll just point out that nothing in the claim language would preclude one entity from also being part of a larger entity. And then furthermore, regarding Patent Owner's comments regarding the operator, Patent Owner encouraged you to look at the disclosure.

And I'll take us to Slide 28 now. Looking at this excerpt from Column 1, Line 13 through 27 of the 802 patent, the 802 patent describes an operator being someone who needs to reply or act on radio messages. You know, I think Nigawara's plant operators certainly fall within the scope of a person that needs to act on or rely on those messages that are announcing

operating conditions in the plant, which further supports their status as an operator.

Next, regarding Limitation 1(D) and the Petition, or excuse me, the Patent Owner's arguments for Nigawara, I just want to point out that their, this idea of temporarily storing messages before they are announced if we look at Slide 83, it is not outside the scope of the claims and doesn't distinguish Nigawara from the claims of the 802 patent.

The 802 patent, looking here at Figure 3, describes a scenario where the claim steps are performed on messages that have been stored. So for example, in Figure 3 here on Slide 83, it describes a scenario in which two overlapping messages are received. Step 314, the highest priority message is played. And at Step 316 the lower priority message is stored.

If you look at the excerpt from Column 5, Lines 10 through 13, it describes how if a new message is received while the highest priority message is played then these steps are performed again. Including on messages that have been stored. So I think that's support for the idea that temporarily storing messages before assigning priority is not outside the scope of the claims.

Looking now at Slide 95, just to return to Judge Trock's question regarding Nigawara in Claim 5, I just want to point out that Nigawara considers content in doing its prioritization. And in doing so it explicitly includes the format of the content. For example, voice.

And then finally, regarding Patent Owner's arguments concerning Mr. Williams' credibility, there is no merit to their positions. You know, just because the Board may have had comments on Mr. Williams' testimony in a

different proceeding that has nothing to do with the outcome here. You know, if it were relevant the Board has repeatedly rejected Dr. Akl's testimony.

But I think the important thing is here, with respect to the 802 patent and the prior art that we rely upon, Mr. Williams testimony provides a detailed analysis that compares the claims to the prior art while Dr. Akl's testimony is divorced from the actual requirements of the claims. It mischaracterizes the prior art and it's inconsistent with his own prior testimony regarding what is or is not within the scope of the claims. And with that, I don't have anything else. Unless you have further questions I'll leave it here.

JUDGE MCKONE: I have nothing further. Colleagues?

JUDGE FITZPATRICK: Nothing for me. Thanks.

JUDGE MCKONE: All right. Well, thank you very much.

MR. STAVINOHA: Thank you very very much, Your Honors.

JUDGE MCKONE: So about five minutes and ten seconds for Patent Owner. You can begin whenever you're ready.

MR. KANTAREK: Yes, I'm ready to share my screen. So I wanted to briefly talk about, or to start where Petitioner ended. And I think the fact that, the fact that mister, this is Slide 70. The fact that Mr. Williams had testimony excluded is one thing, but I think the fact that's relevant here is that he didn't know it was excluded and he didn't know why it was excluded. So if he has been excluded before for improperly picking and choosing teachings, defining opinions failed to represent what a reference says, he

doesn't learn, and doesn't inform himself of that then he is bound to do it again.

And I don't have anything specific. Anything else specific to respond to. If the Board has any questions I'm happy to answer those.

JUDGE MCKONE: Okay, nothing further from me.

MR. KANTAREK: Okay. I'll give everyone back their time. And thank you for the extra time.

(Simultaneous speaking.)

JUDGE MCKONE: Well thank you very much to both sides. You both put on an excellent presentation and it's been very helpful. With that, we are adjourned.

(Whereupon, the above-entitled matter went off the record at 2:47 p.m.)

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