

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTOROLA SOLUTIONS, INC.,
Petitioner,

v.

STA GROUP LLC,
Patent Owner.

IPR2023-01294
Patent 8,831,664 B2

Record of Oral Hearing
Held: January 15, 2025

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

APPEARANCES:

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P R O C E E D I N G S

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JUDGE FITZPATRICK: Good afternoon, we'll see if we have everybody on the line. This is for -- this is to hear IPR2023-01294. Petitioner is Motorola Solutions, Patent Owner is STA Group LLC. I'm Judge Fitzpatrick and with me on the line and on the video is Judge McKone and Judge Trock. And could I get an introduction by Petitioner first, including whether there's additional counsel with you, and then followed by Patent Owner.

MR. KNIERIM: Yes, this is Michael Knierim from Baker Botts on behalf of Petitioner, Motorola Solutions. I'll be handling the argument today, but also on the line is lead counsel Eliot Williams, also from Baker Botts.

MR. ENGEL: Thank you, Your Honors. Jason Engel from K&L Gates on behalf of the Patent Owner, STA Group. With me is my colleague Dennis Majewski. I'll be handling the argument today.

JUDGE FITZPATRICK: Thank you both, and thank you for being able to reschedule this so quickly. It's kind of a unique circumstance that we had on the original date. We have a court reporter. A transcript will be entered into the record of this hearing. We have 45 minutes of argument time total per side, and each party can reserve some rebuttal time if they wish.

And we also have your, for both parties, we have your demonstratives. So, we have like the PDF version from the docket, but you're welcome to display them as well. But we have them, as long as you

1 tell us the slide number, we can follow along that way. If there's any
2 questions, let me know. Otherwise, I think we'll start. Okay, we'll start with
3 Mr. -- excuse me, how do you say your name, Mr. Knierim?

4 MR. KNIERIM: It's Knierim, yes.

5 JUDGE FITZPATRICK: Knierim, thank you.

6 MR. KNIERIM: Great, and I'd like to reserve 10 minutes for
7 rebuttal.

8 JUDGE FITZPATRICK: Done.

9 MR. KNIERIM: Let me share my screen. Let me know if you can
10 see it. Okay, I'd like to start briefly with an overview --

11 JUDGE FITZPATRICK: We can see it.

12 MR. KNIERIM: Okay, great, great. So, I'd like to start briefly
13 with an overview of the '664 patent, just to set the context here. And Slide 7
14 has an excerpt from the background section of the specification. And what it
15 describes are these things called management centers. And that's a dispatch
16 console, for example, that a police officer would sit at when handling calls
17 from officers in the field. And what the spec tells us is that conventionally
18 these management centers supported multiple channels. And
19 conventionally, the dispatcher could adjust the volume of each of those
20 channels manually or pipe certain channels to one ear versus the other. And
21 what the '664 patent seeks to solve is a scenario in which important
22 information is lost, for example, because the volume on a given channel is
23 turned down.

24 Now, Slide 4 has the claim language that we're dealing with here.
25 There's not much here. What the claim recites is monitoring media streams

1 associated with channels. It recites receiving an alert in one of those media
2 streams. And then elevating a priority associated with the media stream
3 receiving the alert, such that an adjustment is made to how the media stream
4 is provisioned to an endpoint in the communication environment.

5 So, with that brief background and that context, I'd like to turn
6 right into Ground 1, which is based on a reference called Downs and a
7 secondary reference called EDACS. I'm going to turn to Slide 20 first here
8 that has a very brief overview of the combination. What Downs discloses is
9 a dispatch console, much like the management center disclosed in the spec
10 of the '664 patent. And what Downs discloses is that that dispatch console
11 monitors multiple channels in an RF system. It discloses that the purpose is
12 to ensure that dispatchers are free to concentrate on the substance of calls,
13 which may be an emergency call. Downs discloses that. And what Downs
14 discloses is that those emergency calls are broadcast louder from the
15 dispatcher speakers. And you can see that on Slide 59 if you'd like a cite to
16 the record evidence.

17 What Downs does not disclose, at least explicitly, is how the
18 system determines whether or not a call is an emergency call. That's where
19 EDACS comes in. So, EDACS is a standard for digital and mobile radio. In
20 other words, it sets the protocols for communication between components in
21 the system. And what EDACS discloses, and I can turn to Slide 50 for this,
22 is that -- sorry, Slide 50 is the wrong slide. But what EDACS discloses is
23 that you can initiate an emergency call by pressing a button on the radio.
24 And what happens then, and I'm going to turn to slide -- here it is, Slide 51,
25 my apologies. So, what happens in EDACS is once you press this button on

1 the radio, the emergency call button, the emergency call request is
2 transmitted on an inbound control channel. The system receives that request
3 and assigns the emergency call to a working channel. It also assigns the
4 highest priority to that working channel.

5 And so, what the Ground 1 combination does is it takes EDACS's
6 technique of determining an emergency call and combines that with Downs.
7 And the petition sets forth the motivation to combine these references, which
8 was not challenged.

9 So, what is challenged? Let's get to the disputes. I'm going to
10 reference Slide 42 here briefly, which has an excerpt from the table of
11 contents of the Patent Owner response and the sur-reply. The first argument
12 that Patent Owner raises is that the combination does not receive an alert in
13 one of the media streams. And they attack that in two places, in Section A
14 and Section C as well. But their argument is essentially that the emergency
15 call indication in the combination is sent on a control channel and the audio
16 is sent on the working channel. And so, they're saying, well, if the
17 emergency call notification is the alert, it's not in the media stream because
18 it's on a control channel.

19 The problem with that argument is that it's based on a
20 misinterpretation of the term media stream that is inconsistent with the
21 construction of that term that was adopted by the District Court in a related
22 proceeding. That construction is on Slide 30 for reference. The District
23 Court construed the term media stream as “audio or video or both, which
24 may include associated data.” You can see on the same slide here, this is an
25 excerpt from paragraph 97 of Patent Owner's expert. You can see the

1 construction that they're applying. That is not the construction that was
2 adopted by the District Court because it omits this last clause that says,
3 “which may include associated data.”

4 So, if the Board accepts the proper construction of this term, the
5 emergency call indication in the Ground 1 combination is associated data. It
6 is part of the media stream and therefore received in the media stream. How
7 do we know that interpretation is correct? Well, there are several reasons.
8 The first on Slide 31 is that the claim language, the plain and ordinary claim
9 language supports that interpretation. You can see in limitation [1a], the
10 claim says, monitoring media streams associated with channels, plural.
11 Right? So it does not say that you have to have one media stream on only
12 one channel. And by the way, the inventor of this patent, Dr. Shaffer, who
13 also happens to be STA's expert in this matter, agrees. He was asked during
14 his deposition, can one media stream be associated with multiple channels?
15 His answer, yes. How else do we know this interpretation is correct? Well,
16 because the specification tells us so. There is an embodiment disclosed in
17 the specification, which refers to this concept of out of band signaling. That
18 is a common technique and what it means is that the data is sent on a
19 different channel than the audio. And that is an embodiment described in
20 the '664 patent.

21 Now, Patent Owner here raises an argument that this embodiment
22 does not support our interpretation. But the problem with that is, we asked
23 their expert, who also happens to be the inventor, expressly whether Claim 1
24 of the '664 patent covers this embodiment. It covers embodiment of Claim
25 4, lines 10 through 18 regarding out of band signaling. And his answer was

1 yes, it does. So, we have got the inventor's testimony, STA's own expert,
2 agreeing that Claim 1 covers this embodiment.

3 Another reason we know this interpretation is correct is that
4 Dependent Claim 9 recites receiving the alert in a control packet of the
5 media stream. And we asked, again, the inventor and STA's expert about
6 this, and he confirmed that the alert can be from the control channel as a
7 message. So, that is the testimony of the inventor of the patent and STA's
8 expert.

9 One final point here is that we asked the inventor and STA's expert
10 whether the alert could result from an officer pressing an emergency alert
11 button on his radio. His answer was yes. And by the way, that is exactly
12 what is disclosed in EDACS, which you can see on Slide 51, which has an
13 excerpt from page 17 of EDACS.

14 I also want to mention that when, I'm going to reference Slide 53,
15 when Dr. Shaffer was asked about the meaning of the term media stream, his
16 answer was that it includes at least two things. One is metadata associated
17 with it. And he noted that, and this is on the right-hand side of the screen
18 here, that there is a certain control channel associated with it that may have
19 certain information give you a hint about what's happening. So, all the
20 evidence here supports the notion that a media stream can include both the
21 control channel and the working channel, and that's what we have in Ground
22 1.

23 I'd like to move on unless there are any questions on that to --

24 JUDGE MCKONE: I do have a question just to make sure I
25 understand EDACS properly. So, the way it works is on a control channel,

1 you would get an alert message, a push to talk message. And this happens
2 before there is any data channel that would be allocated for the information
3 you want to send. So, you send the PTT message on the control channel,
4 and then you open up a data channel, and then you transmit the audio data.
5 Is that correct how EDACS works?

6 MR. KNIERIM: That's correct. I think I would call it a working
7 channel, not a data channel. So, but you are correct. How this works in a
8 combination is that officer presses a button on his radio indicating that
9 there's an emergency call about to be transmitted. That gets sent to the
10 system. The system then opens up or assigns a working channel to the group
11 that he's sending it to, and then the audio data is sent. So, that is in Ground
12 1. That is how it works.

13 JUDGE MCKONE: So, how at that point that we send the
14 message on the control channel, how can we say that that is part of a data
15 stream when we have not yet opened up the working channel? And how can
16 we say that that data stream is associated with the channel if we haven't
17 opened up the channel, the working channel yet?

18 MR. KNIERIM: Yeah, sure. Several ways. So, first of all, the
19 alert itself, the message that gets sent on that control channel, is part of the
20 media stream under the District Court's construction. That alert is the
21 associated data. That data is associated with the subsequent audio data that's
22 going to be transmitted. So, if you define media stream correctly, in our
23 opinion, as the District Court did as including that data, the system is
24 monitoring that stream. It does not say you monitor only the working
25 channel. It says you monitor the media stream. You monitor media streams.

1 The second point I want to make here is that you can't focus just on
2 EDACS. You have to focus on the combination that's set forth in the
3 petition. And I'm going to turn to Slide 48 for this. What STA, what Patent
4 Owner does is attacks EDACS individually. But if you look at Slide 45, we
5 have an excerpt from the Petition at page 29 here. The combination that
6 we're relying on is Downs and EDACS, where Downs is a dispatcher
7 console that's monitoring all of this. It is monitoring all these media
8 streams. In fact, that's the whole point of Downs. That's the whole point of
9 the dispatch console is to monitor media streams.

10 JUDGE MCKONE: But Downs doesn't suggest we should have a
11 different timing of the signals from EDACS, does it? We still have the
12 situation where there's a control channel that you broadcast on or transmit on
13 before opening up a working channel. Is that correct?

14 MR. KNIERIM: Downs doesn't necessarily describe it in that
15 level of detail. Downs describes the dispatch console as monitoring trunked
16 as well as conventional systems, which would include a control channel and
17 a working channel. That is correct.

18 JUDGE MCKONE: All right. So, still in your combination, it's
19 still the same timing as in EDACS, correct?

20 MR. KNIERIM: That's correct. The timing of when the channels
21 are established, that is absolutely correct. But our point is, if you look at the
22 claim language, monitoring media streams associated with channels is
23 satisfied at all times by Downs. Downs monitors everything. It monitors
24 the control channel and it monitors the working channel. So, in our view
25 there's nothing in the claim language, the spec or anything else that requires

1 that the associated data piece of that media stream come after the audio. In
2 fact, the purpose of the '664 patent is so that audio streams that are high
3 importance don't get lost. And it makes sense that you send that data, that
4 indication up front and say, this is an emergency call, make sure the volume
5 is turned up. That's exactly what the combination has.

6 I wanted to make another point about this argument that STA
7 raises about monitoring. And that's that this is a new argument that appeared
8 for the first time in the sur-reply. And I won't spend a lot of time on this
9 because I think the Board's quite capable of determining for themselves what
10 is a new argument and what's not. But if you look at the Patent Owner
11 response, there was no dispute that this limitation, limitation [1a] was met.
12 And as I pointed out, they attacked the EDACS reference individually and
13 not the combination. We think it fails for that reason too.

14 And finally, I'll point out that with reference to Slide 50, they
15 concede that EDACS does monitor for emergency call requests. And so if
16 the proper construction of media stream includes those emergency call
17 requests, includes associated data, there's no dispute that limitation [1a], the
18 monitoring step, is satisfied as well.

19 I want to turn briefly now to, unless there are any other questions
20 on monitoring, I want to turn briefly to the elevating limitation. There's also
21 an argument that Patent Owner raises that Ground 1 does not satisfy the
22 elevating a priority limitation. The petition identifies several ways that it
23 does so. The first in which the EDACS says itself that an emergency call is
24 assigned the highest priority. And on Slide 58, the second way that EDACS
25 discloses is that it applies message trunking as opposed to transmission

1 trunking. What message trunking is, is that it ensures that the entirety of the
2 transmission between participants is all on the same working channel.
3 Transmission trunking is where each transmission may be assigned a new
4 message, a new working channel.

5 Importantly though, that's not all. Downs, Downs itself, and again
6 this is part of the combination, discloses that the volume levels for
7 emergency calls are increased. So, that is the example described in the
8 specification, and in fact claimed in Dependent Claim 2. And so Petitioner
9 doesn't really understand how one could argue that elevating the volume is
10 not elevating a priority given that that's actually claimed. And Dependent
11 Claim 2 can be seen on Slide 64 for reference. Any questions on the
12 elevating a priority limitation for Ground 1?

13 Hearing none, I'm going to move briefly to limitation [1c], which
14 recites such that an adjustment is made to how the media stream is
15 provisioned to an endpoint. And I'm going to turn to Slide 60. So, what
16 Patent Owner argues is that limitation [1c] is not met because Downs does
17 not further provision the media stream to another endpoint. I want to make a
18 quick note here that this argument does not apply to Independent Claims 11
19 and 16 because they do not include this limitation.

20 But as to Claim 1, Patent Owner says effectively that Claim 1
21 requires some components transmit or further send the media stream to some
22 other endpoint. And the problem with that is that the claim, first of all, the
23 claim doesn't require that. There's nothing in the claim that says that. But
24 importantly, the specification describes embodiments where the endpoint
25 itself receives and adjusts the media stream when it receives an alert. That

1 can be seen on the slide here. There's an excerpt from Figure 1 that shows
2 management center 38. And there's an excerpt from the specification at
3 column 4, lines 6 through 9, where it explains that management center
4 identifies the event at the alert and coordinates a suitable response
5 autonomously. Also, in the spec from column 2, there's a quote that explains
6 that element 24 is an endpoint. You can see that on Figure 1.

7 I will also note, as can be seen on Slide 61, that the inventor, also
8 STA's expert, agrees. He was asked whether Claim 1 covers the example
9 where volume is increased, for example, for a dispatcher sitting at
10 management center 38. He agreed. He also agreed that dispatch stations,
11 like those disclosed in Downs, are endpoints within the meaning of the
12 claim. And so, we think that this is a clear disclosure. I will note that even
13 if the Board is inclined to adopt STA's narrow interpretation of the claims
14 here, in other words, if the Board believes that the claim -- Claim 1 requires
15 further transmitting the media stream to some other device, some other
16 endpoint, that is also met by Ground 1. You can see this on Slide 62.

17 What Downs discloses is at the dispatch console, when you receive
18 the alert, you will transmit that media stream to monitor and the speakers.
19 And those are endpoints within the meaning of the spec. The spec says that.
20 And by the way, on Slide 63, the inventor and STA's expert agrees with that.
21 He agrees that the monitors or the speaker -- or he agrees that the speaker
22 and the microphone, would be an endpoint. So, even if you accept this
23 narrow view of the claim, it is met by Ground 1 as well.

24 With that, I'd like to turn to Ground 2, which involves Childress,
25 unless there are any questions on Ground 1.

1 JUDGE FITZPATRICK: In terms of the claim construction, I
2 understood your argument how you kind of covered both ways for the “to an
3 endpoint” construction. Would you concede that the '664 patent, the gist of
4 it, is not to elevate a priority to that dispatcher? I mean, that's not the goal.
5 The end goal is the users that are on that network.

6 MR. KNIERIM: I don't think so. I think certainly one
7 embodiment in the '664 patent describes exactly that, it is elevating a priority
8 to the dispatcher. In fact, why don't I turn back to the background. I think it
9 was on Slide 7. The whole point, if you read the patent, is so that the
10 dispatcher can receive high importance calls. So, it's the person sitting at
11 management center 38. Now, is there disclosure in the '664 patent of
12 transmitting that media stream as a higher priority to other endpoints?
13 Certainly, there is. But the '664 patent, I think, is directed to the dispatcher,
14 just like Downs. management center 38, that would be our position.

15 JUDGE TROCK: This is Judge Trock. Oh, sorry. Go ahead,
16 Mike.

17 JUDGE FITZPATRICK: I'm sorry, Judge Trock. I'll just wrap
18 that up. But ultimately, the objective of this technology is to get the
19 important messages to the end users via the dispatcher. I see how this assists
20 the dispatcher choosing what to relay, what to transmit. But there seems to
21 be -- I'm hung up a little bit about saying that the hub of this network will be
22 the endpoint. So, I guess what I'm saying is let's assume that the endpoint is
23 the officers, the first responders holding those devices. How does -- can you
24 go back and tell and revisit how it's your position -- if it's that narrower
25 construction, how you reach that?

1 MR. KNIERIM: Sure. So, let me just make sure I understand
2 your request. So, let me start by saying, you know, if you're assuming that
3 the endpoint has to be an end user radio, not the dispatch center. I mean, our
4 argument first is that it should be the dispatcher, the dispatch center. And if
5 it's not, it could be the microphone or the speakers associated with that
6 dispatch center. And that's where I think we need to narrow our
7 construction. I think what you just proposed is even -- is going even further
8 beyond what Patent Owner has proposed as an interpretation. I don't think,
9 you know, anybody has suggested that Claim 1 be limited to transmitting a
10 media stream to an end user radio. It says to an endpoint. And an endpoint
11 in the spec can include first management center 38. That can be an
12 endpoint. But even if you narrow that a little bit, there's no dispute that an
13 endpoint can be the microphone or the speakers. And, you know, that we
14 have the inventor's testimony confirming that could be an endpoint within
15 the scope of the invention. And that is disclosed by the Downs/EDACS
16 combination as well.

17 JUDGE FITZPATRICK: Thank you.

18 JUDGE TROCK: Counsel, this is Judge Trock. So, following up
19 on Judge Fitzpatrick's questions regarding claim constructions, I want to
20 expand this for a moment to Independent Claims 1, 11, and 16. So, correct
21 me if I'm wrong, but endpoint does not show up in Claims 11 and 16. Is that
22 correct?

23 MR. KNIERIM: I believe that's correct.

24 JUDGE TROCK: All right. Is there anything in either
25 Independent Claim 1 or 11 or 16 -- And for the record, Claim 1 is claiming a

1 method, 11 is claiming media, and 16 is claiming an apparatus. Is that right?

2 MR. KNIERIM: I believe that's correct. Yes.

3 JUDGE TROCK: Is there anything in any of these three claims
4 that indicates what is doing the monitoring, the receiving, the elevating, or
5 the adjusting?

6 MR. KNIERIM: There's not.

7 JUDGE TROCK: So, this could be software, could it not?

8 MR. KNIERIM: Could be, yes.

9 JUDGE TROCK: All right. Thank you, Counsel.

10 MR. KNIERIM: Okay. I'd like to turn briefly to Ground 2, which
11 is Childress. And I want to correct a number of mischaracterizations that the
12 Patent Owner has made about the combination advanced in the petition.
13 And I'll start on Slide 75. Childress discloses including message
14 information, including emergency group call information, on the working
15 channel. You can see that from the excerpt on the screen here at columns
16 28, lines 42 to 58 of Childress. It says, specifically, all mobiles of the called
17 group switch to a side working channel and receive a confirmation message.
18 And that message includes the emergency group call confirmation, as
19 described below as follows. So, all of Patent Owner's arguments that
20 Childress discloses initiating a call on the control channel and transmits
21 information on the control channel simply miss the point. They simply miss
22 the point.

23 The combination here is to say, look, if the Board determines that
24 including the alert on a control channel is not sufficient, as in Ground 1,
25 what Childress tells you is you can actually put that information on the

1 working channel. And there's a reason to do that. And that is on Slide 73,
2 you have the motivation to combine. We have our expert here, David
3 Williams, explaining all the benefits that Childress tells you to including this
4 information on the working channel. That includes enhanced
5 interoperability, improved communication speed and efficiency, enabling
6 more effective and efficient transfer of multimedia data, and generally
7 increased public safety.

8 So, you know, if you look at the Patent Owner Response and the
9 sur-reply, a lot of the arguments are simply irrelevant. The arguments that
10 Patent Owner makes that says that Childress has a control channel and that
11 information is transmitted on the control channel, that's fine, it does. But the
12 point here is that the combination puts the alert on the working channel
13 itself. In other words, it is sent on the same channel as the audio. So, all the
14 arguments we just discussed that Patent Owner raises with respect to Ground
15 1 are remedied by this Ground 2 in Childress. Does the Board have any
16 questions on Ground 2 before I move on?

17 Hearing none, I want to transition to Ground 7, which is based on
18 Kim. And I'm going to start on Slide 87 of Petitioner's Demonstratives.
19 What Kim discloses is a technique for emergency warning broadcast alerts
20 via television sets. So, you may be familiar, if you've ever had a cable TV
21 set in the middle of the night, you hear a loud beep from an emergency
22 warning, that's what this is directed to. And what Kim is directed to solving
23 is, much like the '664 patent, a scenario where an emergency alert comes in
24 on one channel, which Kim calls channel s, while the user is watching
25 another channel, which Kim calls channel r. And what Kim discloses, as

1 can be seen on Slide 87, is that STA -- I'm sorry, Kim will change the
2 channel to the channel having the alert and then increase the volume.

3 You can see also on Slide 88, Kim has a flowchart in Figure 3. It's
4 compared here with Figure 5 of the '664 specification, and it's very, very
5 similar. The spec of the '664 patent describes determining whether an alert
6 indication has been received. If yes, increase the volume of the channel and
7 move the channel to the high-priority spatial position. Kim discloses
8 determining whether an alert has been received, and if so, goes to prescribed
9 channel selection, increase volume, and perform caption process.

10 So, I'd like to briefly address the arguments that STA makes here.
11 A lot of these are very similar to Ground 1. The first argument is that Kim's
12 television set itself is the endpoint, and thus for Claim 1, it doesn't provision
13 or it doesn't retransmit the media stream to a separate endpoint. This is the
14 same argument we just went over. We think it fails for the same reason. We
15 think STA is taking a very narrow view of Claim 1. We do not think it's
16 limited to that. The spec, again, describes management center 38 as an
17 endpoint, and even if not, the speakers to management center 38 are an
18 endpoint. Kim, likewise, transmits the media stream to the speakers of the
19 television set.

20 I want to briefly note here that for the Kim ground, the sur-reply,
21 Patent Owner's sur-reply, raises for the first time this argument about claim
22 differentiation. And again, I won't spend a lot of time on why that's new. I
23 think the Board can make that call for themselves. But I did want to point
24 out that that's something they could have and should have raised in their
25 Patent Owner response if they wanted to pursue that argument.

1 I'll repeat again on Slide 96 we have Dr. Shaffer's testimony
2 confirming that Claim 1, not Claim 11, not Claim 16, but Claim 1 is covered
3 by this embodiment on column 3, lines 56 through 65, regarding the
4 management center 38. And on Slide 101, the inventor confirmed that
5 management center 38 would be an endpoint within the meaning of the
6 claims.

7 The second argument that Patent Owner raises about Kim is that it
8 does not disclose elevating a priority. Again, this is very similar. I'm going
9 to turn to Slide 92. What Kim discloses is exactly what's described in the
10 '664 patent. It describes, for example, elevating the volume. That's actually
11 what's claimed in Dependent Claim 2. But not only that, Kim also discloses
12 changing the channel, which is rendering it to a priority channel. And so we
13 just don't understand how Patent Owner can maintain that Kim doesn't
14 disclose exactly what is disclosed in the spec.

15 Just very briefly, Kim raises this argument about a message-based
16 system, Kim being a message-based system, while the '664 patent describes
17 a dynamic channel-based system, we don't see any requirement in the claims
18 for that at all. I think it's without merit.

19 With that, if there are no other questions from the Board, I'm going
20 to reserve the remainder of my time for rebuttal.

21 JUDGE FITZPATRICK: Okay. You have 12 minutes remaining,
22 and then we'll hear from Mr. Engel.

23 MR. ENGEL: Thank you, Your Honors. I'm going to share my
24 screen if I can here. So, hopefully, you can see that. Thank you. I think one
25 of the things that helped me with this case was working with Dr. Shaffer for

1 his deposition. And one of the things that he explained that I think kind of
2 cemented a lot of this home to me is the invention of this patent. This was
3 originally a Cisco patent. Dr. Shaffer worked at Cisco. It was eventually
4 acquired by the STA group. But the thing that he hammered home to me
5 was that this invention doesn't require new radios, doesn't require new
6 equipment. And that's, I think, something that the Petitioner overlooks,
7 especially with respect to the Kim ground, but I think it kind of permeates all
8 of the grounds. The idea here is that you can make these adjustments at a
9 centralized location instead of distributing all new equipment. And I think
10 that that's something important to keep in mind as we kind of go through all
11 of the grounds, but especially the Kim ground, which is the final ground for
12 the independent claims.

13 So, starting there, I will go to Slide 12 first. And this is the District
14 Court's claim construction --

15 JUDGE FITZPATRICK: Mr. Engel, sorry to interrupt. I just, and
16 to remit, you know, I didn't ask you about rebuttal time. Do you want
17 (CROSSTALK) --

18 MR. ENGEL: Sure. I think five minutes would be fine, five to ten
19 minutes.

20 JUDGE FITZPATRICK: Okay.

21 MR. ENGEL: I don't think I'm going to use up the full 45, but
22 we'll see. So, the District Court's claim construction for media stream is on
23 Slide 12. I don't believe this is contested by the Petitioner, but what I think
24 is contested is the interpretation of the District Court's claim construction.
25 So, our position, Patent Owner's position, and again, this was decided by the

1 court, is that the media stream must include audio or video or both. It can
2 also include optionally associated data. We don't contest that. But I think if
3 you follow the petition all the way through, they're saying associated data on
4 its own can be the media stream.

5 Now, they do have a slight tweak to that, that if there is later audio
6 or video, that satisfies the claim construction. But moving back to Slide 11,
7 I will show you another claim construction by the Court. Again, a contested
8 claim construction that the Court entered, which was that the steps must be
9 performed in order. And this is important because you have to receive an
10 alert in one of the media streams. So, you have to receive an alert with
11 audio or video. And more importantly, you have to be monitoring audio and
12 video in the first place, which I think is problematic, especially for Ground
13 1, as we'll get into later.

14 So, moving to Slide 8, I think this kind of brings forward the entire
15 dispute with respect to EDACS, which goes through Ground 1, as well as the
16 Childress ground itself. EDACS's alert, or the claimed alert that they're
17 pointing to, is a request to talk or a push to talk request. This is the admitted
18 prior art of the patent. Setting up a call is not the same as receiving an alert
19 in a call. And I think that the Petitioner understands that, and I think that
20 they pivoted off of that. But I don't think their combination suggests that
21 you would move the push to talk request into the audio or video. That's just
22 simply not the case.

23 So, the admitted prior art of setting up a call is not receiving an
24 alert in a call. And so, I think in the Patent Owner Response we hammered
25 home that there is no alert received in the audio or video. And Petitioner

1 pivoted to, well, there's an alert received, and later there's audio or video set
2 up. And so, for a number of reasons, that's not the case, because there's no
3 alert received with audio or video. Moreover, if you're setting up the audio
4 or video later, you're not monitoring that audio or video to begin with. So,
5 you can't receive an alert in the audio or video.

6 JUDGE MCKONE: This is Judge McKone. Is it your position
7 that the audio or video and the control information, such as an alert, has to
8 be on the same channel?

9 MR. ENGEL: I don't think it has to be on the same channel in all
10 of the embodiments. It can be on a --

11 JUDGE MCKONE: No, as far as the embodiment I'm talking
12 about, what does the claim require.

13 MR. ENGEL: Yeah. And so, I think that the audio or video could
14 be on a separate channel from the data, but it all has to be monitored and
15 received at the same time. It does not cover the embodiment or the -- it does
16 not cover the example of requesting a call and then later setting up a call.
17 And so, I think --

18 JUDGE MCKONE: To rule in your favor on that point, what do
19 we have to look at? It sounds like there's some kind of claim construction
20 dispute that's not fully captured by what we've seen so far. What else do we
21 need to look at?

22 MR. ENGEL: Sure. So, I think media stream is the claim dispute
23 that was decided by the Court. I don't think it's contested by either party. I
24 think our position, Patent Owner's position, is that a media stream requires
25 audio or video, one or the other or both. So, when you're monitoring media

1 streams, first off, that's plural. So, Patent Owner pointed out that channels
2 were plural. I will point out that media streams are plural. So, you have to
3 be monitoring multiple audio and video conversations in the first element.
4 And in the second element, you have to receive an alert in one of those
5 media streams.

6 So, you have to receive an alert with the audio or video. And so if
7 you look at EDACS, it's receiving a push to talk request, no audio or video.
8 It's not monitoring audio or video. It's not receiving an alert with audio or
9 video. It is receiving a push to talk request, and then it is setting up a call.
10 And then audio and video is transmitted thereafter. And so I think that is the
11 crux of the argument with respect to Ground 1. And honestly, I think it's the
12 crux of the argument with respect to the Childress grounds as well. I don't
13 think there's anything different about Childress at all. It's receiving an alert
14 outside of audio or video being transmitted.

15 JUDGE TROCK: Well, Counsel, are you finding this temporal
16 requirement in the claims, the claim language itself, or in the specification,
17 or both?

18 MR. ENGEL: I think it's apparent from the claims. I think it's also
19 apparent from the specification. There's a flowchart that discusses that, I
20 believe, at Figure 5, for example, showing that an alert has been received,
21 and it talks about how that's in the media stream. But more importantly, I
22 think I hit on the claim construction from the Court, which was the steps
23 must be performed in the recited order. And I don't believe that's contested
24 by the Petitioner. Maybe it is because they're saying you can later listen to
25 audio or video. But this temporal order, you look at it monitoring media

1 streams. So, what does that mean? Judge McKone, that's monitoring audio
2 or video, not monitoring for data that may be associated with later set up
3 video. And then you must receive an alert in one of those audio or video
4 streams. And that's what we're applying. I think it's the plain language of
5 the claim. But more importantly, it was construed by the judge in the
6 Eastern District of Texas. And I don't know that it's been specifically
7 contested by Petitioner.

8 JUDGE MCKONE: I thought that the judge in Texas construed
9 media streams to also include associated data. So, when you're monitoring
10 media streams, you're also monitoring associated data. Isn't that how we are
11 supposed to read the District Court's construction?

12 MR. ENGEL: I don't read it that way, Your Honor. I think I read
13 it as it means audio or video or both. Full stop. It may also include
14 associated data. So, I think there's a requirement that it must include audio
15 or video. And this isn't -- I think the fact that it can include data means that
16 you can't exclude the data. But it doesn't mean that the data can satisfy a
17 media stream. And in fact, I don't think that would make sense that data on
18 its own can be a media stream because media to me implies audio or video.

19 JUDGE TROCK: Counsel, this is Judge Trock. So, how do you
20 respond to Petitioner's argument that you're criticizing EDACS separately
21 and you're not considering the combination where Downs is monitoring the
22 media streams all the time?

23 MR. ENGEL: Frankly, Judge Trock, I don't understand the
24 combination because I don't think that there's any discussion of why you
25 would receive an alert in a media stream in Downs. You know, the entire

1 purpose of EDACS is to set up a call. And so, I don't -- I frankly did not
2 track the combination as saying that the alert would be received in the media
3 stream of Downs. I just, I don't think that there's good testimony on that.
4 And I don't think that there's a good motivation to combine there. I think
5 that EDACS on its own is setting up a call. And in Downs, the calls are
6 already set up. And so, I didn't follow honestly why you would move that
7 alert into a media stream in Downs because it's a request to set up a call. So,
8 to me, I didn't follow the combination, and I don't think that it's well
9 formulated in the Petition. I think they tried to address that a little bit in the
10 reply, but I still don't think it carries the day because you don't have the
11 situation where you're taking the prior art push to talk request and somehow
12 inserting that into Downs, which again, Downs was also prior art, and you're
13 basically arriving at the patented invention without any motivation to
14 actually arrive at the invention in the first place.

15 JUDGE TROCK: So, but you don't dispute that Downs is
16 monitoring media streams? Is that right?

17 MR. ENGEL: I do not dispute that Downs is monitoring media
18 streams.

19 JUDGE TROCK: Thank you.

20 JUDGE MCKONE: I have a question on your argument that
21 Claim 1 has an order to the steps. Are you saying that the -- when you say
22 that the monitoring step has to be performed before the receiving step, does
23 that mean we stop monitoring before we start receiving? Or is monitoring
24 an ongoing where you just have to do some monitoring before the receiving?

25 MR. ENGEL: Well, I think in practicality, there would always be

1 monitoring because there's multiple media streams. So, you could have
2 multiple alerts come in and the system could decide which one is more
3 important. So, I don't think you stop monitoring per se. But I think if you're
4 following through one example, you would monitor a media stream, receive
5 the alert, elevate, and then in Claim 1, you would provision that differently
6 to the endpoint.

7 JUDGE MCKONE: Right. So, I'm trying to figure out how to
8 distinguish EDACS from that when if we're not requiring that a media
9 stream be limited to one channel and the media stream can include
10 associated data, why isn't it the fact that when EDACS is monitoring the
11 control channel that that satisfies the monitoring step, which happens before
12 you receive an alert and you monitor the control channel. I'm sure you're
13 doing that on an ongoing basis. You will see the PTT message that's
14 receiving an alert. So, you've satisfied the temporal aspect of Claim 1, and
15 then you start receiving the associated audio on whatever channel you set up,
16 working channel.

17 MR. ENGEL: Yeah, I think, Judge McKone, I think that's a good
18 example to illustrate why I think that you must have a temporal limitation to
19 satisfy the claims. And so, this would be the same for infringement as it
20 would be for validity, is you're monitoring multiple media streams, but you
21 must receive an alert in one of those media streams. And so, you can
22 continue to monitor the other media streams, but you can't receive an alert
23 on its own and then set up a separate call without monitoring something to
24 begin with. And I think a good example is to kind of think about the
25 practical application of how these claims work and some of the good

1 examples. One of them in the specification is talking about an officer down
2 can be an alert. And I think one of the ways that would happen is you're
3 monitoring audio, for example, of officers out in the field, and someone
4 says, man down, man down, and the system recognizes that alert. It receives
5 it in the audio stream and then it elevates that for consideration.

6 Another example, which you may be familiar with --

7 JUDGE FITZPATRICK: Mr. Engel, I'm sorry, is that first
8 example, is your claim limited to stuff like that?

9 MR. ENGEL: I'm not sure I follow, Your Honor.

10 JUDGE FITZPATRICK: Well, you just talked about where the
11 alert itself is like embedded in the audio, which the words, the magic words,
12 man down, or I'm sorry, officer down. That's very easy to understand in
13 terms of seeing an alert in a media stream. It gets awkward when we start
14 talking about the associated data, and we've been talking about it for a while
15 now with both sides.

16 MR. ENGEL: So, I think there are two embodiments in the patent.
17 I think we probably hammered this home a little bit in our sur-reply. And I'll
18 give you a different example. The man down, obviously, is an easy one to
19 understand. I think actual shots fired. You may be familiar with
20 commercial software that can monitor audio or video for actual gunshots,
21 and then it can show you where those gunshots are. I think the gunshot
22 example is a good example of what I think the '664 patent captures because
23 it's not always enough to just say there's an alert in the audio or video. So, I
24 think that if there is an alert, shots fired, or man down, the system of Claim 1
25 can capture that alert, and it can elevate it, and it can also, in Claim 1,

1 provision it to the endpoint differently, you know, change the spatial
2 direction, for example.

3 But I think what the out-of-band signaling, which the Petitioner
4 kind of hammers home, I think I'll use that as a good example to show why
5 my shots fired example, I think, is a very good example, because you're
6 receiving an alert in a media stream, and you have two servers, for example.
7 And that embodiment I think you have to have two servers. You have a first
8 server that is monitoring media, and it is listening for shots fired, for
9 example. It will then put like a green box maybe around where it thinks the
10 shots come from, and it will embed that alert message into the audio or video
11 and transmit it downstream to another server.

12 So, in that embodiment, again, the alert may be received on an out
13 of band channel, for example, a control channel as a control packet or a
14 header packet, but it's still transmitted with the audio or video. It's not the
15 situation where you have an alert that just exists on its own in an
16 environment and says, set up a call. So, I think in both of those
17 embodiments that you still have to have the audio and video be transmitted
18 with the alert. It can't be a situation where you separately set up a call later
19 on down the road.

20 I think one of the things that I'll hammer home a little bit here, you
21 know, in Dr. Shaffer's deposition, he was, you know, asked a number of
22 different questions, and we heard a number of different supposed admissions
23 from him. But one of the things he said during his deposition, there's a big
24 difference between alerts sent before media is there and after media is there.
25 And I think that's the point at the end of the day. You know, there's alerts in

1 media, and then there's alerts separate from media. We're not trying to cover
2 a situation where you have, you know, a request to set up a call, and there's
3 later on a call. We're talking about you're sending the alert with the media,
4 whether it's embedded in it, or it's been analyzed and it's transmitted with the
5 audio and video in a separate out of band channel, for example.

6 Give me one second, Your Honor, to go to the Childress example.
7 And I don't think Childress moves the needle at all. In Childress, I think it's
8 the same request to talk that's transmitted outside of the audio or video.
9 There's no -- there's nothing that says transmit this alert with the audio or
10 video in the first instance. And so you're not monitoring audio or video.
11 And so I don't think you get over the grounds, and I don't think it changes
12 the combination of EDACS with Downs at all.

13 So, unless there are any questions, I'll move on to the last example,
14 which is Kim. That starts at our Slide 64. And so, I think Kim circles back
15 to the point I made at the outset, which is specialized equipment. And Kim
16 is a specialized television. It is a television that listens for an alert, and it is
17 capable of displaying that alert and displaying at a certain volume level.
18 Kim is not the embodiment of the '664 at all. The '664 is designed so that
19 you can implement this at a centralized location and not have to have all
20 those fire departments buy all new radios. That's exactly what the
21 embodiment of the '664 is. Do this at a centralized location or multiple
22 centralized locations, but don't force those police departments to go out and
23 buy all new radios for all of their officers. So, Kim is the example where
24 you'd have to buy all new radios. And I think the other important point
25 about Kim is, Kim is the endpoint. It's one endpoint that receives these

1 audio or video determinations, and then it turns on or changes the volume,
2 but it doesn't actually change anything about the media stream.

3 And I think this is something that I'll give an example that
4 hopefully resonates. And it did for me, because I had some audio or video
5 problems with setting up the call today, and Mr. Slay (PHONETIC) was
6 very helpful. And one of the things he was saying is, can you adjust your
7 audio or video settings, like adjust the internal audio or video settings? Not
8 my speakers, but the internal audio or video settings, which would be
9 adjusting the media stream. And in Kim, you're not adjusting the media
10 stream, you're changing the volume of the actual endpoint itself, which is not
11 what the '664 is designed to encompass. Because if you did that, you'd have
12 to have all new radios, because you have to be able to control the radio.

13 And so, the '664 is designed about adjusting the actual media
14 stream itself. So, increasing the volume, changing the spatial direction of
15 how that is rendered at the endpoint. And so, I think that's really important
16 to kind of emphasize in Kim. Kim is changing the hardware settings at an
17 endpoint television. And so, that would be similar to me on this Webex
18 turning up my speakers, but not similar to me changing the internal audio of
19 my mic or my speaker, which goes back, I assume, to the Webex server and
20 changes how that audio or video is rendered. That's a different setup, and
21 that's more akin to the '664. I think in the '664, that adjustment takes place
22 at a centralized location, but I think it's a good illustrative example of what I
23 think the '664 is designed to cover versus what Kim covers.

24 And I'm sorry, I think somebody may have had a question and I --

25 JUDGE FITZPATRICK: Yeah, I did. I did. I understand what

1 you're getting at. Those are kind of like big picture, step back from the
2 claim, arguments. I'd like to talk about the claims. First, Claims 11 and 16
3 don't talk about the endpoint. So, why don't we stick with those first, and
4 what's your best argument on Claims 11 and 16, please?

5 MR. ENGEL: Yes, I think I will admit that Claims 1, 11, and 16
6 are different. And so, in Claim 1, the provisioning is definitely captured
7 there. I think in Claims 11 and 16, it's not explicitly there. I would argue,
8 you know, the idea is that it happens at a centralized location, but there's not
9 something that I can necessarily point to it being at a centralized location in
10 those claims, Your Honor.

11 JUDGE FITZPATRICK: I appreciate that. I don't mean, you
12 know, just to be candid with you, I asked for your best argument on Claims
13 11 and 16. I didn't hear anything valuable.

14 MR. ENGEL: Yeah, I think the best argument would be to look
15 back at the specification and look at where these steps take place. And I
16 think that, for the most part, that they are taking place at the two servers they
17 talk about. I think it's the UPS and the RPS. I'm forgetting the analogies for
18 those and the description of how that takes place. But I think, you know, I'll
19 admit in the claims themselves, there isn't the same endpoint language we
20 can point to, Your Honor.

21 JUDGE FITZPATRICK: Okay. So, I'm going to focus on Claim
22 1 on that language that's unique to it. What about the -- why can't Claim 1
23 be mapped, for example, such that the tuner that's receiving two different TV
24 channels is the way I understand it. It's got the channel that the consumer is
25 watching. Well, there are different embodiments in Kim. There's one

1 description of someone who's actively watching TV when one of these
2 broadcast alerts comes in. And the way I understand it, the tuner is
3 observing two different channels, one so that it can reproduce and show to
4 the consumer what he or she wants to watch, and the other one that's always
5 monitoring the emergency channel. Why can't that tuner be doing that
6 receiving and then something in the system is provisioning the emergency
7 alert to the screen and the speakers of the TV? Why can't the screen and the
8 speakers be the endpoints?

9 MR. ENGEL: And in your embodiment, there would be a
10 computer that is performing the method?

11 JUDGE FITZPATRICK: It doesn't matter. Well, no, don't limit it
12 to that. Clearly, Kim has a TV screen and a speaker, and things change
13 based on whether an emergency alert comes in. Emergency alert comes in,
14 and the TV gets turned on, for example, if it's off, and then it displays that
15 channel. And also, if they're watching something quiet, it will turn to the
16 broadcast channel, and it will actually increase the volume as well. So, why
17 can't those two things be the endpoints?

18 MR. ENGEL: Yeah, I think the difference that I would point to in
19 Kim is that the endpoint in Kim is the television, and the thing doing all of
20 the alleged steps in Kim would be the television. So, it's not provisioning it
21 to an endpoint. It's receiving something and displaying it differently. And
22 so, I think Claim 1 is the example where I don't think this can cover a
23 dispatcher, for example, because this talks about provisioning to an
24 endpoint. And so, like I don't think it covers the situation where you're
25 receiving things and provisioning it to yourself.

1 I think the idea is that you're receiving alerts, you're monitoring
2 multiple media streams, and you're provisioning it to an endpoint differently.
3 And so, you have an officer out in the field who, you know, there's shots
4 fired. Let's show the officers where those shots are. Or there's a man down.
5 Let's show the officer where that officer is. So, I do think that language, the
6 provisioning to an endpoint language, is very important in Claim 1 because
7 it differentiates it from Claims 11 and 16. And I don't think the Petitioners
8 did a good job of differentiating those examples because a lot of what they're
9 pointing to is the endpoint. And I think circling back to your example, Your
10 Honor, the thing changing the TV settings is the hardware in the TV, you
11 know? So, it's the TV telling itself to change its own hardware. And again,
12 that's not changing the media stream. You're not elevating a priority
13 associated with the media stream and you're not provisioning how that
14 media stream is sent to the endpoint.

15 So, if you look at the language of Claim 1, it's an adjustment is
16 made to how the media stream is provisioned to an endpoint in the
17 communications environment. That is, for example, changing the spatial
18 direction of how that media stream is received at the endpoint. And that's
19 not something you do at the TV. That would have to be done to the media
20 stream itself. And I don't think there's any disclosure in Kim that you would
21 change the volume of the media stream. In fact, the disclosure in Kim is to
22 change the volume of the television, not the media stream.

23 JUDGE MCKONE: Now, why do we have to read provisioning as
24 done somewhere else and then sent to an endpoint? When I look at the
25 challenged patent in column 2, around lines 15 to 20, and it looks like we're

1 distinguishing between something that's conveyed to the endpoint and
2 something that's provisioning. Why does -- you seem to be reading
3 provisioning as something that's sent to the endpoint. Why do we have to
4 read it that way?

5 MR. ENGEL: I'm sorry, Your Honor, what was the cite in the
6 specification?

7 JUDGE MCKONE: It's in the top of column 2 of the spec. So,
8 that first paragraph under overview.

9 MR. ENGEL: Yeah, I think the example would be kind of in the
10 next language that follows that, in other embodiments, the adjustment
11 provisions, the alert message from a left ear to a right ear. And so, that's an
12 example of provisioning where you're not -- you can't change anything at the
13 endpoint to have left ear or right ear. It has to be a change to how the media
14 stream is received. Like you've turned off the right channel or left channel.
15 The same holds true for spatial direction. And I also think the same holds
16 true for increasing the volume. So, I think when the spec uses the language
17 provision, it's talking about modifying the media stream itself. And I think
18 that's what's required by Claim 1.

19 JUDGE MCKONE: Okay.

20 MR. ENGEL: I don't think I have anything further, Your Honor,
21 unless, Your Honors, unless there are any questions.

22 JUDGE FITZPATRICK: None for me at this time. So, you got
23 plenty of rebuttal time. Let's shift gears and have Mr. Knierim.

24 JUDGE TROCK: I have one last question.

25 JUDGE FITZPATRICK: Oh, I'm sorry. Sorry, Judge.

1 JUDGE TROCK: That's okay. Counsel, how do you respond to
2 the Petitioner's evidence where Dr. Schaffer admitted that an endpoint can
3 be a speaker or a microphone?

4 MR. ENGEL: I think there are a couple of things there. I think
5 Dr. Schaffer was asked a lot of questions outside of the context of what the
6 claims mean. And I think if you read through his deposition, that you'll see
7 he was badgered quite extensively and was quite confused about what they
8 were asking about at the deposition. I think that there hasn't been a claim
9 construction offered up for endpoint. And so, I think an endpoint is an
10 endpoint. Like, I don't think you can separate out the speaker from the other
11 parts of the hardware. I think his point was that, you know, I'll get back to
12 what he was asked at his deposition, which is how can you monitor an alert
13 in a media stream if there is no media stream to begin with. And I think
14 that's the argument that I think carries the most weight. But as far as
15 separating out the endpoint to just be a speaker separated from the hardware
16 associated with it, I don't think there's any support for that in the record.

17 JUDGE TROCK: Well, let's go back to my question about the
18 speaker being at the endpoint. Did you take the opportunity to follow up
19 with Dr. Schaffer at his deposition to clarify this point? Or did you just let it
20 go?

21 MR. ENGEL: I think he was asked follow-up questions at his
22 deposition about this point. I will see if that is something that -- I don't have
23 it right in front of me Judge Trock, but I can see it if he was asked that and
24 perhaps address that in rebuttal.

25 JUDGE TROCK: Yes, if you could provide that, that would be

1 good.

2 JUDGE MCKONE: Now, if your expert did testify that a speaker
3 can be at an endpoint, why isn't that part of the ordinary meaning of
4 endpoint? Or why wouldn't endpoint be broad enough to encompass that
5 since no party here has offered a narrower construction?

6 MR. ENGEL: Well, I think first and foremost, no party has
7 offered any construction for endpoint, I don't think, explicitly. And so I
8 think, you know, had there been a claim construction offered, we would
9 have addressed it. More importantly, it's not in the petition. I do think --

10 JUDGE MCKONE: My question, and I'll clarify my question,
11 since it might not have been clear. Why shouldn't we understand your
12 expert's testimony that a speaker can be an endpoint as illustrating what the
13 ordinary meaning of endpoint is? Or how broad it can be under its ordinary
14 meaning?

15 MR. ENGEL: Sure. I think if you look back at the questioning, he
16 wasn't asked if a speaker on a radio itself could be the endpoint. And so, I
17 think the answer is unclear. And I'll also check to see if there were
18 objections lodged to that. But more importantly, if you go back to Figure 1,
19 for example, and box 24, which Petitioner pointed to, examples of endpoints
20 are, for example, telephones. And there's no example that says the endpoint
21 is just the speaker of the telephone and not the hardware itself. And so,
22 that's the point I think we get to with Kim, is Kim's endpoint is a television.
23 It's not a speaker and then there's a separate box for the other equipment
24 itself. So, I think, you know, the expert's testimony is what it is. It's not the
25 spec. And so, we'll go back to the specification and the examples of things

1 that are endpoints are the phone clients, for example, or the CB radios, for
2 example. But there's nothing in the specification that would say that speaker
3 by itself, just the speaker removed from the rest of the hardware and the
4 radio isn't it.

5 JUDGE TROCK: Counsel, this is Judge Trock again. Just to
6 follow up on what you're saying now, who says that in Kim the television is
7 the endpoint? Who testifies to that effect? Where's the evidence of that? Or
8 is this just your attorney argument?

9 MR. ENGEL: That Kim's television is the endpoint?

10 JUDGE TROCK: Yes. Because you've said this several times
11 today.

12 MR. ENGEL: Yeah. I mean, I think that we look at Claim 1, for
13 example, and it's a communications environment. And so, there are multiple
14 parts of the communications environment. There's a transmitting part and a
15 receiving part, for example. And in Kim, the receiving part is television. It's
16 not --

17 JUDGE TROCK: Isn't the receiver in the television the receiving
18 end? I'm just bringing these questions up because I'm looking for evidence
19 in the record that in Kim, the television is the endpoint. Who has testified to
20 that effect, other than the attorneys making arguments.

21 MR. ENGEL: I think Dr. Shaffer has testified to that. I don't have
22 the exact paragraph offhand. I can see if I can find that. But I'm almost
23 positive Dr. Shaffer has testified that in Kim, the endpoint is the television.
24 And I think looking back to the specification, you'll see the same
25 embodiments. There are no televisions in the figures of the patent, but there

1 are radios, for example, that have displays. And so, that would be the
2 endpoint of the receiving equipment. And I would argue that Kim is the
3 television. It's definitely not the transmitter. At best, it's the receiving unit.
4 I'll see what Dr. Shaffer had to say about that as far as evidence outside of
5 the patent.

6 JUDGE TROCK: Yes. As this is what I'm trying to reconcile
7 because it's your same Dr. Shaffer who's testifying that a speaker can be an
8 endpoint.

9 MR. ENGEL: Yeah. I understand that, Your Honor. I do think
10 that the patent, you know, I think if there's evidence of what an endpoint is, I
11 think the Petitioner should be held to the same standard that, you know,
12 proving that Kim is not an endpoint. They haven't proved how there's any
13 provisioning in Kim that's done to the end point. I would argue what is the
14 endpoint in Kim in the petition. It's definitely not the speaker. That's not
15 there.

16 JUDGE TROCK: I have a question for you just in general about
17 Dr. Shaffer. Because Dr. Shaffer is a named inventor and he's also your
18 expert, how are we to assess his testimony? Any differently than any other
19 expert? Is there bias at play here?

20 MR. ENGEL: I think there could be bias. And I think if that was
21 in play, then the Petitioner certainly could move to exclude, which they did
22 not do. I think they could certainly point out his bias, which I don't believe
23 they did. He doesn't have any stake in the patents anymore. They were
24 from his previous employer at Cisco. And when we were looking for, you
25 know, experts that understood this technology, Dr. Shaffer was, you know,

1 perhaps one of the most qualified because he understood the backstory as
2 well. So, I don't think that his testimony should be viewed any differently
3 than any other expert. Again, he doesn't have any skin in the game for this
4 particular proceeding. And if the Petitioner wanted to exclude him or point
5 out that he was biased, they had every opportunity to do so.

6 JUDGE TROCK: Would you say that Dr. Shaffer is a person of
7 ordinary skill in the art?

8 MR. ENGEL: I would say like almost every expert, he's probably,
9 you know, beyond the ordinary skill. But I think what he did for his opinion
10 is he looked at how one of ordinary skill in the art would view it at the time.

11 JUDGE TROCK: Okay. If you could follow up with us with
12 respect to these citations to his testimony, I would appreciate it.

13 MR. ENGEL: Yeah. Will do, Judge Trock.

14 JUDGE TROCK: Thank you.

15 JUDGE FITZPATRICK: Mr. Knierim, please proceed whenever.

16 MR. KNIERIM: Sure. Thank you, Your Honor. So, we want to
17 start briefly with the concept of endpoint that was just being discussed. First
18 of all, there is a construction for endpoint, and counsel said he wasn't sure if
19 that was ever construed. It's an agreed upon construction. It's in our reply,
20 page 4. The construction was end-user device. The construction of endpoint
21 is end-user device. And our position is that in Ground 1, the dispatch
22 console itself is an end-user device. The dispatcher is an end-user. In Kim,
23 the television itself is an end-user device. The user watches the TV. The
24 user is the end-user. But even if not, I think the question you asked about
25 the speakers certainly holds true and is consistent with that. I mean, we've

1 got the inventor saying unequivocally, those are examples of end-user
2 devices. And that applies to all the grounds.

3 Counsel started his argument by talking about the background, his
4 discussions with Dr. Shaffer, and about how the patent avoids the need for
5 specialized equipment. First of all, that's not in his declaration. It's not in
6 the record. And also, the claims do not require that the invention be
7 implemented either with or without specialized equipment. So, any
8 distinction based on Kim as being a specialized chip is simply irrelevant.

9 Counsel also said that the claims require monitoring audio or video
10 data. I think that's simply not the case, and it's certainly not under the
11 District Court's construction. The term media stream includes -- to be clear,
12 our position is not that a media stream can only be data. That's not our
13 position. Our position is that the data, though, is part of that media stream.
14 And by monitoring that data, such as an emergency call alert, you are
15 effectively monitoring a media stream. Even if this claim is construed to
16 require monitoring audio or video data, Ground 1 meets that. As I've said
17 before, Downs discloses monitoring all of the channels, all of the audio.
18 You can look at Slide 44. Petitioner's Slide 44 has a few excerpts from
19 Downs. These are cited in the petition, I believe, at pages 29 to 30. And the
20 combination -- Patent Owner's problem here is they focus just on EDACS
21 for this monitoring limitation. But the combination is Downs and EDACS.
22 And what Downs discloses is a dispatch console that is informed of all of the
23 transmitters and channels that are being used and the status of other
24 transmitters and receivers in the system. That's from column 2 of Downs.

25 JUDGE FITZPATRICK: Mr. Knierim, can I draw your attention

1 to Slide 4. It's about this issue. And I think it's perhaps your least strong or
2 weakest position here is I understand that Downs discloses monitoring
3 audio. You were just trying to show us evidence of that in the record. But
4 Claim 1, that's on Slide 4. Claim 1, first step, monitoring media streams
5 associated with channels in a communications environment. And then step
6 B, there's antecedent basis in step B, referring back to 1A. It says, receiving
7 an alert in one of the media streams. So, monitoring of general media
8 streams is not enough. Ultimately, you need to show that there's an alert --
9 that you receive an alert in one of those media streams.

10 So, it gets awkward. And this whole thing, we've been dancing
11 around the claim construction. The media stream has been defined and
12 agreed to by the parties to mean something which doesn't really resolve the
13 ultimate issue here. And that is, it means, and I might butcher it, I think it's
14 audio or video or both and any associated data, or -- and associated data if
15 present, something like that.

16 So, if we're only looking at, in step 1A in Downs, we're looking in
17 channels for an alert, which you would say is associated data. And when it's
18 received, then you're going to open a working channel, you're elevating a
19 priority associated with that media stream, with that alert. And then that
20 other part of the media stream is going to be transmitted. And so, ultimately,
21 you do have the components of a media stream. But Patent Owner is saying,
22 well, it's not. At the time that step A is being performed, and maybe he's
23 saying also at the time step B is being performed, there is no media stream.
24 Can you answer me on that?

25 MR. KNIERIM: Sure, sure. So, let me start with the second thing

1 you just said, is that at the time the working channel is being formed, step B
2 has already occurred. That's not the case. Let me take a step back. If media
3 stream includes the data and the audio, it exists as soon as that data starts
4 being transmitted. That's part of the stream. Now, yes, it happens before the
5 audio, but that stream exists, that media stream exists when the data is sent.
6 The stream continues.

7 JUDGE FITZPATRICK: Can I interrupt you there? What if
8 someone hits push to talk? Okay. It was an accident. And then that officer
9 doesn't communicate anything. So, how could that alert have been part of a
10 media stream when that condition subsequently never occurred?

11 MR. KNIERIM: Yeah. So, well, let me just make one comment
12 first. This is not just a push to talk. This is an emergency button. So, it is a
13 separate button on the radio that initiates this. And I think the way the
14 system works is when you press that button, you establish the media stream.
15 The audio signal is not transmitted until after that's established, but you do
16 set up a media stream. And a media stream can't mean continuous audio.
17 What if you're talking and you stop talking, you pause talking for a little bit,
18 there's some silence, there's no signal, and then you start again. That's not
19 two media streams. That's still the same media stream.

20 So, you know, our view is that when that data is sent, when that
21 data is sent onto the control channel, you've established a media stream.
22 You're monitoring it. You have to monitor it to determine that it's an
23 emergency. And that's all part of the same communication. That's all part of
24 the same process flow.

25 With respect to Downs, though, I think the first part of your

1 question is, well, how can you be monitoring media streams if the working
2 channel hasn't been set up yet. Well, there's two responses to that. First, if
3 you're monitoring for data, that's part of the media stream, so you're
4 monitoring it. But even if you take an narrower view of that, Downs
5 discloses monitoring the audio signal for everything. Downs monitors
6 everything. There is an order of steps construction here where step A has to
7 come before step B, but that does not mean that you have to finish
8 monitoring or that you have to monitor a particular piece of the media
9 stream before you receive an alert. Monitoring is a continuous thing that I
10 don't think counsel disputes. They said, well, look, there's multiple media
11 streams. You're always monitoring, and that's what we have with Downs,
12 and that's what we have with EDACS. EDACS is specifically monitoring
13 that control channel for an emergency call situation. Downs is monitoring
14 everything. It's monitoring the audio, and it's playing emergency calls
15 louder so the dispatcher hears them. The only thing that's missing from
16 Downs is how does the system determine that it is, in fact, an emergency
17 call. That detail is just not there. That is in EDACS. Hopefully, that
18 responded to your question.

19 JUDGE FITZPATRICK: Counsel, that's helpful. Thank you.
20 And you have about three minutes left.

21 MR. KNIERIM: Okay, great. I wanted to talk very briefly about
22 the concept of an alert, and I think, you know, counsel gave several
23 examples in the specification of where the alert is audio itself. Like if an
24 officer says, officer down, that would be an alert that's in the audio. But
25 that's just one example, and the spec actually describes alert. Just give me

1 one moment to find it. It says that the term alert message is used herein in
2 this specification is meant to connote any type of message or signal that was
3 intended for one or more end users. The message may inform the end users
4 or apprise them of some situation or alternatively simply convey some
5 information from a sender.

6 So, alert is incredibly broad, and if that's not enough for you, you
7 can look to the testimony again at the inventor on Slide 35 of Petitioner's
8 demonstratives where he says one example, and there's a small snippet from
9 his transcript here. The full section is quoted in our papers, in our reply. He
10 was asked about alerts. There's three things that it could be, and one of
11 them, he admits, is an officer pressing an emergency alert button indicating
12 that there's an emergency situation. So, that's the inventor. Again, this is --
13 he's an expert, but he is the inventor of this patent. He is saying that can be
14 an alert, and that's exactly what we have in EDACS. It's sent on a control
15 channel. We have this testimony that says that's fine too, and so we think
16 that that is abundantly clear that that's covered by Claim 1, and therefore
17 rendered obvious by Ground 1.

18 Let me just check my notes here. I believe that is all I have unless
19 there are further questions from the Board.

20 JUDGE FITZPATRICK: Looks like not. So, thank you. We'll
21 turn to Mr. Engel again.

22 MR. ENGEL: Sure. So, I'll hit that last point first, I guess, and
23 that's -- there was redirect on that point about the alert, and I'll point the
24 Board as soon as I find it. So, it's our Slide 14 where there was redirect
25 asked of whether the man down alert could satisfy, and Dr. Shaffer's

1 testimony was that there's a big difference between an alert sent before
2 media is there and after media is there, and that's our position that man down
3 can be an alert, but it's not an alert sent with any media. It's a request. It is
4 an emergency request, but at the end of the day, it's a request to talk or a
5 push to talk request, which is in the prior art.

6 Judge Trock, I will do my best to (CROSSTALK) --

7 JUDGE FITZPATRICK: Mr. Engel, can I interrupt because it
8 relates to this, how close in time are these things? We just heard Mr.
9 Knierim describe the prior art as, even though you just referred to it as a
10 request to talk, I think you said, you know, button. He says you just press it
11 and it's automatic that when you start talking is going to be an elevated
12 message.

13 MR. ENGEL: I'm not sure that there's any evidence of that in the
14 record, but I think your example, Your Honor, was a good example where if
15 somebody pushes a button and it doesn't say anything. So, you know, let's
16 use EDACS. What if somebody hits the man down button and there's no
17 audio or video transmitted with it at all?

18 JUDGE FITZPATRICK: So, what if they hit that button and he
19 doesn't talk, but a channel gets open? Because Mr. Knierim just stated it,
20 and we'll have to look at the record to see where the evidence is on this, but
21 you just said in the prior art, you push the button and that working channel
22 opens, the emergency working channel just opens. And at that point, I don't
23 really, personally, I don't really care whether the audio stream is silence or
24 not. It's an audio stream.

25 MR. ENGEL: That I would argue there was no audio or video

1 being monitored to begin with. It's, at best, it's associated data, and I think
2 the construction doesn't say that data on its own can satisfy it. Because if
3 you go back and read over the District Court's analysis regarding the
4 construction, I believe that they hammer home the audio, video, or both, but
5 then as a concession say, it can also include the data associated therewith.
6 And I think when you summarized it earlier, you said, and may include is
7 probably the way that I would interpret it. \

8 JUDGE FITZPATRICK: Is it your understanding the Downs, or
9 Downs with EDACS, that when that push -- the request to talk button is
10 pushed for an emergency by, you know, let's say an officer on a radio
11 device, does he get to communicate right away, or does he have to wait for
12 the system to respond and grant him permission?

13 MR. ENGEL: I think he would have to wait until the channel is
14 open, and I don't think there's any testimony in the record that I'm aware of
15 at least.

16 JUDGE FITZPATRICK: It doesn't really answer. Obviously, you
17 have to wait for the channel to be open in order to use the channel. I'm
18 wondering how that channel opens. Does it open because he pushes the
19 button, or does it open because he pushes the button and then somewhere the
20 dispatcher sees that he pushed the button and said, oh, okay, I'm going to
21 approve this and open the channel?

22 MR. ENGEL: I think that's in EDACS that it would open the
23 channel. Downs, I don't think, discusses that, and that kind of gets to the
24 point of the combination, which we talked about a little bit earlier. There's
25 monitoring and Downs. There's request to talk in EDACS, but I haven't seen

1 anything that says it would be really great to have that request to talk be in
2 an existing stream of Downs. I mean, that's the '664 patent, and we haven't
3 seen any testimony that I'm aware of that says, you know, that would be
4 great to, you know, do exactly what the '664 says, at least not a rational
5 motivation to combine in that way.

6 But and I will say in that example, I don't think there's any
7 monitoring to begin with, because you have to be monitoring audio or video,
8 and if you're not monitoring audio or video, you can't monitor audio or video
9 if you're just receiving the data or talking.

10 Judge Trock, I think the question you had about the speaker
11 device, I think I have a couple of responses on that. I think if you look at the
12 full citation of that question and answer, it's at I believe page 75, lines 7 to 9
13 of Dr. Shaffer's deposition transcript. He was being asked about a little bit
14 of a different environment because he clarifies that it would not include the
15 server. So, I think he was being asked about a server environment and not
16 necessarily, you know, the endpoint itself. But I think counsel, you know,
17 and my apologies, counsel helpfully pointed out that an agreed construction
18 of endpoint was end-user device, not a portion of the end-user device. So, I
19 think I would argue that in Kim, the end-user device is the television, and
20 you can't, you know, apportion any of that. So, I think the agreed
21 construction would trump any testimony. But I think the agreed
22 construction is consistent with the specification.

23 And then, as far as Kim's television being the endpoint, I believe
24 the best place to look for that is going to be the Patent Owner response at
25 pages 49 to 51, which should be supported by Dr. Shaffer's declaration at

1 paragraphs 140 to 145.

2 And that is all I have, Your Honors. Hopefully, I answered all the
3 questions you have. If you have any else, please let me know.

4 JUDGE FITZPATRICK: Thank you. I think both of you have, we
5 really appreciate you answering the questions as we interrupt you from time
6 to time. This was very helpful. We will issue a decision prior to the
7 deadline for doing so. And you'll see a transcript first. So, if I could adjourn
8 the hearing, but ask you to remain on the line, ask counsel for both sides to
9 remain on the line in case we have any questions from the paralegal who
10 may feel free to speak up now.

11 MR. ENGEL: Thank you, Your Honors.

12 MR. KNIERIM: Thank you, Your Honors.

13 (Whereupon the above-entitled matter went off the record at 1:31
14 p.m.)

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