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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOKIA OF AMERICA CORPORATION, ERICSSON INC., AND T-MOBILE USA, INC.,
Petitioner,

v.

GENERAL ACCESS SOLUTIONS, LTD.,
Patent Owner

IPR2023-01416
Patent 6,947,477 B2

Record of Oral Hearing
Held: January 14, 2025

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

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The above-entitled matter came on for hearing on January 14, 2025, commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE BARRETT: Welcome, everyone. We are on the record in IPR2023-01416, Nokia of America Corporation, Ericsson Inc., and T-Mobile USA, Inc. v. General Access Solutions. This hearing today is being conducted by video conferencing. I am Judge Barrett and with me today are Judges Parvis and McMillin. Let's get the parties appearances. Who do we have for Petitioner today?

MR. HAYNES: For Petitioner, you have John Haynes with Alston & Bird, and in the room with me is Emily Welch.

JUDGE BARRETT: Okay, wonderful. And for Patent Owner?

MS. SPIRES: For Patent Owner is Sarah Spires from Skiermont Derby.

JUDGE BARRETT: Good afternoon, Ms. Spires.

I know this isn't your first rodeo and you're aware of how this works, but just to recap, Petitioner will have 60 minutes total to present its case, and Patent Owner will also have 60 minutes. Petitioner goes first and may reserve rebuttal time. Patent Owner then will have its opportunity to present its response and also may reserve some time for surrebuttal. And then Petitioner will go again and Patent Owner will finish up with the surrebuttal arguments.

We do have your demonstrative exhibits pulled up. You are free to share them, if you want, or you can simply refer us to the page numbers and we'll be able to follow along. Speaking of that, when you do refer to a demonstrative exhibit, please indicate the slide you're on. If you go outside

the demonstratives, give us a good indication -- identification of what you're looking at. An exhibit number, a brief, a page, whatever it takes, so we can easily follow along when we're reviewing the transcripts later.

These hearings are open to the public and there is an open line. I don't think we have any confidential information in this case, but if you foresee something like that coming out, just pause, let me know, and we will deal with it as appropriate. Let me see. One housekeeping issue before we get started. When we (INDISCERNIBLE - TECHNICAL DIFFICULTY) record and we held a pre-hearing conference last week, the panel and counsel, we discussed the court's claim construction order and I thank you for filing that in the record. Does either party see any need to -- for an additional round of briefing to address that? Petitioner?

MR. HAYNES: At this point, the Petitioner does not think there's a need to -- for additional briefing to address that.

JUDGE BARRETT: Okay, thank you. Ms. Spires?

MS. SPIRES: Patent Owner also does not think, at this point, there is a need for additional briefing.

JUDGE BARRETT: Okay, thank you. Let me see. With that, I think we're ready to get started, unless there's any questions or concerns, speak up, but again, you both are quite experienced with this. So, Petitioner, the floor is yours, and if you could tell me how much time you would like to reserve for rebuttal.

MR. HAYNES: I would like to reserve 20 minutes for rebuttal.

JUDGE BARRETT: Okay. Twenty minutes.

MR. HAYNES: And I am going to attempt to share the demonstrative exhibits. Let me see if I can do that.

JUDGE BARRETT: Yes, we can see them.

MR. HAYNES: Okay, great. So I've laid out an overview. As the Board is aware, we have five separate grounds that we believe support invalidity of the challenged claims of '477 patent. I'm going to focus my argument today primarily on Grounds 3 and 4, relating to the Barratt '470 reference, but before I get to that, I think it's useful to discuss what may not really be in dispute at this point.

So first of all, in the challenge claims, we challenged both the apparatus claims, which is independent Claim 1, and the claims that depend from that, as well as the method claim, which is Claim 16 and the claims that depend from that, which are 18 through 20. In the briefing and through the course of deposition of Patent Owner's expert, it appears that there really isn't much dispute about the disclosure of either the Genossar reference or the Barratt reference, with respect to the method claims. At least, with respect to 16 and 17, and 19 and 20.

In particular, in the Patent Owner's response and in their briefing, they reference the method claims only with respects to their arguments on the apparatus claims. Those arguments, however, focus exclusively on structural limitations that are not recited in the method claims. So I don't think we really have a dispute with regard to anticipation of Claims 16, 17 and 19 to 20.

And I think that's an important place to start because the invention that's claimed in the '477 patent is really about what's described in the method claims. The structure is really just -- there's nothing novel about the claim structures. They're basically the way you would do this if you were to implement the process that's described in the method claims. And that

process really boils down to three steps.

You receive a burst, you then determine two different types of parameters from that burst, a signal-related parameter and a channel-related parameter. You then store values representative of those parameters, and then you use those parameters to process a subsequent burst. And that's, at a high level, the different steps that are recited in Claim 16. And as I said, there really isn't any dispute that each of those steps is disclosed by both the Genossar reference and the Barratt '470 reference.

What I have on the screen in Slide 4 is some testimony from Patent Owner's expert, Dr. Madisetti, where we asked him, are you offering an opinion with respect to the method claims, and specifically, 16, 17, 19, and 20. And he confirmed that he had not offered any opinion regarding lack of disclosure of the elements recited in those claims. So I believe the starting point is there really isn't a dispute that the elements of the method claims are fully anticipated by both Genossar and Barratt.

What is disputed are a couple of the elements of the apparatus claims, and it really focuses on the profile parameter storage device that is recited in independent Claim 1, as well as the profile parameter determiner that must be coupled to the profile parameter storage device. And with respect to those limitations, they're challenged in a couple of different ways, both for Genossar and Barratt. And then there are some additional arguments with respect to certainly the dependent claims that I'll touch on briefly.

The primary dispute with respect to those two limitations, I don't think there's really any debate that there is a determination of both signal-related parameters and channel-related parameters in both of the primary

references Genossar and Barratt '470. The real dispute relates to whether or not those parameters are determined by something, you know, by the profile parameter determiner of the claim, and whether values related to both parameters are stored in the profile parameter storage device that is coupled to the determiner.

And that word coupled to, I think, is really where the dispute lies. That's the crux of the dispute, and also what the Board pointed out in their institution decision. And I think the place to start there is what do the parties say is the proper construction of coupled to. And both Patent Owner and the Petitioner have said that that term should be given its plain and ordinary meaning. And I think both parties would even agree that the plain and ordinary meaning of coupled to is joined or connected in any way, and that is what the District Court determined was the proper construction.

And so the meaning of that phrase is not really in dispute. What is in dispute is the application of that meaning to the prior art. And in particular, what it means to be joined or connected in any way, whether or not you can have the profile parameter determiner be joined to a storage device where those two things are part of the same component. And I think when you look at the intrinsic record in this case, you see that even in the preferred embodiment, you have a disclosed controller that contains both the profile parameter determiner, which is, in essence, a functional block inside the controller, and associated memory.

And there's not a lot of disclosure about what that looks like in the patent, and there really wasn't a lot of argument from Patent Owner's expert, Dr. Madisetti, about what the proper construction of coupled to was. And we asked him when we deposed him, as you can see on Slide 7, you know,

what did you apply in forming your opinions with respect to the term coupled to, and he said, you know, he did not apply the plain and ordinary meaning of joined or connected in any way. He just said, I'm not seeing any construction, but my view is that there must be separateness there. You've got to have separate components. And I think that is an incorrect reading of the plain and ordinary meaning of the term coupled to.

JUDGE BARRETT: Mr. Haynes?

MR. HAYNES: Yes.

JUDGE BARRETT: I know last week I said we wouldn't be talking too much about what goes on in the District Court, but then we have the -- Judge Gilstrap's claim construction order in the record now. Didn't Judge Gilstrap take a contrary view of what Petitioner's position is here?

MR. HAYNES: So the Judge's construction is, as I said, joined or connected in any way. There is a statement in the court's claim construction order where he stated specifically that just as an invention cannot be coupled to itself, an invention does not communicate with itself, and that two elements cannot communicate with one another if one of the elements is part of the other. And that dicta, if that is viewed, it really turns on what is itself here, and I think you have to apply that statement in the context of the patent. And, you know, there's two things there.

One, it's not technically part of his construction. It's further explanation and you have to see how that's applied to both the prior art and in the District Court, both to the accused devices. But with respects to what the patent talks about and what we identified in the prior art, if you look at what's in the prior art and what the patent discloses, it's basically the same thing. So however you apply that dicta, I don't think you can apply it to say

that, at least with respect to Barratt '470, the -- there is no profile parameter determiner that is coupled to a memory device, and that those are part of the same thing. They're both part of the controller in the patent.

So if we go to Slide 8, coupled to appears in two different places. The first coupled to is that you have to have the profile parameter determiner coupled to receive an indication of an initial burst. And in discussing that first coupled to limitation, it's very clear that functional coupling is sufficient, and within the plain and ordinary meaning of the term coupled to. And because the profile parameter determiner must be coupled to, in the spec, it explains, it's coupled to the modems 302 and 304, selectively, such that it can receive that first burst.

And then using exactly the same term, coupled to, the profile parameter determiner is then coupled to the profile parameter storage device. And I think it's important to note that --

JUDGE PARVIS: This is Judge Parvis. The modem 302 and modem 304, those are physical modems, correct?

MR. HAYNES: They are. I think it's probably a combination of hardware and software, but they are. They are structural components.

JUDGE PARVIS: And they are physically coupled to IF/RF receive circuitry 306; is that correct?

MR. HAYNES: I believe they are. There is certainly a physical connection through the wires. The passage that we have on this Slide 8 describes that coupling is functionally coupled via lines 310.

JUDGE PARVIS: But those are physical lines; is that correct?

MR. HAYNES: They are. They are physical lines. There has to be some sort of physical connection in order to pass the signal.

JUDGE PARVIS: And is it correct that there's a physical connection that is the implementation of coupled to?

MR. HAYNES: That is correct.

JUDGE PARVIS: Thank you.

MR. HAYNES: And I think that's important when we start looking at the coupling between the profile parameter determiner and the memory that's associated with it. And what the patent describes and what is shown on Slide 9 is from Figure 3. We see that the profile parameter determiner and the profile parameter storage device make up the controller 314. That's one component. And that component is made up of the control CPU 316 and the memory device 318, but those two things alone don't do anything. That CPU without memory can't determine anything. And that memory has to be associated with the CPU in order to do the determination and then store the results of the determination from the first burst, as well as use that stored value for demodulation of a second burst.

So when the patent talks about what is the profile parameter determiner and what is the profile parameter storage device, they are talking about subcomponents of the controller that are -- that work together to both determine what's coming in, because the CPU without memory doesn't do anything, and it can't make determinations for subsequent bursts without having access to an associated memory. And that's what the patent discloses in Figure 3. A determiner in a storage device, but those are functional subcomponents of the controller, which is one thing, one structure. And that's shown in Slide 9 --

JUDGE PARVIS: This --

MR. HAYNES: -- in this passage from Column 10. Sorry.

JUDGE PARVIS: This is Judge Parvis. The 316 -- the CPU 316 and the storage 318 are illustrated as two different physical subcomponents. Is that correct?

MR. HAYNES: They're illustrated as functional blocks here. I don't -- and certainly there's structure associated with each of those, but they're illustrated as subcomponents of the controller component. So while there is a division in a functional box for the RF modem control CPU, that is a component of the controller. So those are both subcomponents of the controller, and they're connected and it shows just, you know, communication. It doesn't show actual physical wire connections because in reality, this is all going to be in a digital signal processor where you have processing components and you have memory components, and they are going to be coupled because they have to be in order to store the values and to retrieve values for processing subsequent bursts.

And so this patent does show separate boxes, but those separate boxes are still subcomponents of the controller. And within the patent, it describes the controller as creating and maintaining the profiles, and that's what's shown in this passage from Column 10. Right? Profile --

JUDGE PARVIS: Isn't there a further description though in the Patent, more specifically, that the control CPU is, which is number 316, is operable to form a profile parameter determiner, and the memory 318 forms a profile storage device. Looking at Column 11, lines 9 through 13, that Patent Owner referred to.

MR. HAYNES: It does include that additional description, but that functional breakdown of those two things, the determiner can't do anything without that memory. And it cannot maintain the -- and determine the

parameter values without accessing that number. So while they are separate subcomponents of the controller, they are interactive, and one without the other really doesn't work for purposes of the invention.

And the functional split between those two things is basically saying I've got some processing elements, and I've got memory, and those are part of my controller, and they are functionally coupled to one another or coupled to one another in any way. And there will be some physical connection here. That blue line that we've illustrated on Slide 9, it's going to have some sort of physical connection. It's probably going to have a number of different circuit level connections on a particular circuit board.

And so if you look at in Slide 10, there's further description from column 6 where it talks about the modems being controlled by this controller, such as base station central processing unit CPU to control demodulation operations thereat. And so the '477 patent mixes in the control CPU with the notion of the controller. Those terms are used somewhat interchangeably, and while it does have separate subcomponents within the controller, the controller itself is the CPU combined with its associated memory.

I'm running a little short on time, so I'm going to skip ahead and talk a little bit about the disclosure in Barratt. So I'm going to jump ahead to Slide 22, specifically focused on the coupled to limitation. And again, if you start with Barratt and what is Barratt disclosing, it is disclosing the same invention of the '477 patent. Figure 6 is talking about the demodulation steps that are being performed by the slot processors in Barratt. And it talks about creating and determining two different types of parameters. It's got the equalization weights, Wr, and -- which are channel-related parameters --

and frequency offset and time alignment parameters, which are signal-related parameters.

And it -- what's shown in Figure 6, which is a functional diagram of the demodulation steps that are performed is that it determines those values, it stores them, and then it uses them in a processing loop, where it takes a -- weights from a prior frame, from a prior burst, and then reuses them to calculate and determine parameters for a subsequent bursts. So --

JUDGE BARRETT: Mr. Haynes?

MR. HAYNES: Yes?

JUDGE BARRETT: This is Judge Barrett. So you said the values -- the parameter values are stored. Do we have evidence of that? Can you point me to evidence where it's disclosed that those are stored between the recursive passes?

MR. HAYNES: So in order to reuse them, there must be some storage. This process cannot work if you're not storing the value, because it says in the description of Figure 6 and in Figure 6 itself, that you are providing as an input into the box labeled 603, in Figure 6 of Barratt, the Wr0, that's the antenna weight, from a SYNCH mode or from a previous frame. And to provide as an input, a parameter indicating a weight from a prior frame, you must have stored that parameter. And I think it's very important that Barratt only discloses one thing that is doing what is shown in Figure 6, and that one thing is the DSP 117.

JUDGE BARRETT: Okay. Before you move on, Mr. Haynes, I'm not sure that you answered my question. You seem to say it's just necessarily so, which is -- it sounds like an inherency argument. Where's the evidence of that, though, that it's necessarily so? And let me tell you what

I'm kind of thinking here and you can point out why I may be wrong. You know, I'm thinking of a feedback loop.

You have an output at one point in the system, you loop that around and it becomes an input in another part of the system, and your theory today seems to be, that loop is diverted at some point, sends everything over to a storage device, and then it comes back and re-enters the loop. And so what -- if we were going to rule in your favor, we need to make fact findings that these values are stored between passes, and so help me out and point to some evidence, if you would.

MR. HAYNES: So in the situation that you described, the feedback loop, you would be operating on the same signal. And I think it's very important here that when you talk about what is being stored, these bursts are separated by timeslot and individual frames. So in Barratt '470, you get timeslot one and it comes into one of the timeslot processors, which is a DSP, and that is then demodulated for that timeslot. And if you were to have a feedback loop, like you described, where you're feeding the values back in, in an iterative nature, you're going to be operating on the same signal, which is the signal received in that one timeslot.

What Barratt discloses is taking the information from a prior frame and using it in a subsequent frame, which is going to be a different signal. And in order to do that, you must have some sort of memory to store that information for it to be acted on. So you need to store -- it is necessary that you store that value. You cannot just pass the value back around because if you did that, you would not be working on a subsequent frame. And Barratt doesn't disclose the feedback loop you describe. What we see here in the figure is that when it says, you know, from previous frame, that is the input.

That's not being provided as part of the feedback loop, and there is a loop that goes here for each timeslot, but that is not -- without some storage, you can't provide from one frame to the next, because there is a time delay between those two things.

And there's also subsequent processing of what comes out, right? So you process one burst that goes into the final bitstream for the first burst, and then you receive the next burst. And part of the reason people store these parameters is to speed up the processing of the subsequent burst by storing the relevant parameters. Did I address your question?

JUDGE BARRETT: No, actually you did not. I'm asking for evidence. I hear a lot of attorney argument, and maybe that's correct, but we can't make fact findings based on attorney arguments. That's not evidence.

MR. HAYNES: So the evidence, I think, is two-fold. One, the -- what is described as performing these functions is the DSP, and a person who is skilled in the art would understand that that DSP has memory to perform its functions. And Barratt '470 specifically calls out a particular DSP, and we submitted evidence that shows that that particular DSP has processing circuitry and it has a memory. And that is the only component that is described as performing the functions that are shown in Figure 6 of Barratt, in describing the specification.

And to perform those functions, you need both the processing circuitry and memory to store values from previous frames for reuse and subsequent frames. And in Exhibit 1003, which is Dr. van der Weide's declaration, he describes how this process would necessarily require maintaining the use from prior frames for reuse in subsequent frames.

And here's the portion from Dr. van der Weide -- Slide 26, from

Dr. van der Weide's declaration of paragraph 135, where he describes how DSP 117 maintains values associated with the signals that are received during that timeslot, and it provides a number of different parameters. And I think to your earlier point about the feedback loop, it's also important to recognize that you're storing multiple parameters that characterize each burst.

So when you get a burst, you're storing the initial weight matrix, you're storing frequency offset, you're storing time alignment parameters, and potentially other parameters as well. And so all of those parameters are reflective of the signal that was received in that first burst. Those are then reused and retrieved from storage of that DSP for use in processing the subsequent burst. And again, in Figure 1 of Barratt, there's only one component that is described as doing any of this. All of the demodulation steps in Figure 6 happen in Slot 0 processor, which is specifically identified as DSP -- as an example, as DSP56301.

And I stated earlier, a person who was skilled in the art would know that that DSP contains processing circuitry and memory for storing these parameters to fulfill the described function. We submitted evidence of the data sheet of the exact DSP that the patent calls out as an example. And on Slide 28, that -- the data sheet that we submitted was cited --

JUDGE PARVIS: This is Judge Parvis. I'm sorry. Can we just continue a little bit longer on Slide 26? From making out the prima facie case, is Petitioner -- Petitioner relied on this paragraph 135 in the declaration submitted in the petition; is that correct?

MR. HAYNES: That's correct.

JUDGE PARVIS: And where in this paragraph 135 does it say

that a person of ordinary skill in the art would have understood that a DSP includes memory?

MR. HAYNES: In this passage, it does not state that, but it does state that DSP maintains the values, and I think to maintain the value, you must have memory. It doesn't use those words in this paragraph, but that is necessary. And this paragraph is explaining what was in the petition that the elements of 1.C, which is the storage device, are satisfied by the DSPs, which maintain these values.

JUDGE PARVIS: So it's the highlighted sentence that Petitioner is relying on for its prima facie case? This one sentence that says, "Each DSP 117 maintains values." Is that --

MR. HAYNES: It's primarily -- it's that highlighted sentence, as well as the identification of the DSP 117, and the, you know, there was extensive discussion of how that DSP in Barratt discloses determining the different channel parameters and reusing those parameters for subsequent bursts.

JUDGE PARVIS: Thank you.

MR. HAYNES: Now, with respect to the DSP, when the patent '470 refers to the DSP, it's specifically referencing this particular DSP model, and this is a block level diagram of what that DSP is. So when there's a reference to the DSP, there is a disclosure of what this is. And we see here a number of different functional blocks that are processing circuitry that make up a DSP, as well as the DSP's memory expansion area, which includes RAM. And when you look at the disclosure from Barratt that, to implement the functions of Figure 6, you use a DSP and it gives this specific example that discloses both the processing circuitry and the memory that are

necessary to do the determining.

So the profile parameter determiner, as well as the memory, that must be coupled to the processing elements of this DSP. So the DSP is both -- is the equivalent to the controller of the '477 patent. And it just at -- like the '477 patent, comprises both processing elements and associated memory that are used to implement the demodulation steps, which both determine the values and then store those values and reuse them for processing subsequent bursts.

So that is the primary argument with respect to Barratt '470 and, you know, what's missing, right? And coming back to this coupled to argument that we started with on the claim construction, what Barratt discloses is exactly the same as what the patent discloses. A controller, which is the DSP, that contains within it subcomponents that interact with each other; processing circuits, which are the profile determiner, which access memory and store values in memory; and then the associated memory that's still part of that same DSP, again, same disclosure as in the '477 patent in the controller, that has memory that is coupled to it. And you can see there are various circuit lines that couple with the memory to the various processing components.

And while Barratt '470 didn't reproduce the functional blocks in exactly the same way as the '477 patent, the disclosure of the controller in the '477 patent and the DSP in Barratt, is virtually the same. Both of those things are performing the functions and both of them comprise processing circuitry, which is the determining piece, and associated memory that has to be coupled to that processing circuitry in order for the controller, as a whole, to perform its functions.

JUDGE BARRETT: Mr. Haynes, this is Judge Barrett. It feels as if Petitioner has shifted theories slightly. In the petition, the determiner is mapped to the DSP. And now you seem to be saying, well, look, in the DSP, I have a processor coupled to a memory, so, see, I win. But you didn't identify the processor within the DSP as the determiner in the petition, unless I'm missing it.

MR. HAYNES: What we identified was the DSP, but just like the '477 patent, the controller, which equates to the DSP, contains the determiner. And Barratt did not have, you know, on its face the sub-blocks to draw, you know, better articulated squares around the subcomponents, the determiner subcomponent and the memory subcomponent.

But as I said at the beginning, in the '477 patent, those two things are one of the same. They can't be separate and distinct components within the '477 patent because the determiner doesn't do anything without the memory, and vice versa. And they're disclosed as making up the controller, and that is the same thing that Barratt discloses, and so we identified in Barratt the block that we could identify, which is the DSP, which necessarily contains both the determiner, which we identified as the DSP, and we said that the DSP also maintains the various parameters. And that is the same disclosure that '477 patent has for these elements.

So I've just about used my time, to reserve some for rebuttal. Let me touch very briefly on an argument. I'm not sure this will come up, but there was some argument in the Patent Owner's reply brief that Barratt doesn't disclose channel-related parameters or that the parameters are not stored in the same memory in Barratt. And again, Barratt only discloses one memory, and that's the memory of the DSP, right? That DSP is the only

component that's disclosed as doing all of these functions. And so that is the only thing that you can look to, to see where these parameters are stored. So the parameters are necessarily going to be stored in the only place that is touching them, which is the DSP.

JUDGE BARRETT: Are you saying Barratt -- the overall system that's disclosed, there is no other memory in the entire disclosure -- well, yeah. I'll just stop there. Is that your position?

MR. HAYNES: There are other components, but if -- with respect to the demodulation process, the only memory and the only component that touches that is the slot processor, and that is disclosed as being the DSP. And so with respect to the determining aspects and the storage and use of the different signal and channel-related parameters, the only component that is disclosed as having any interaction with those pieces is the DSP. So that DSP's memory is the only place that is associated with those parameters at all, and necessarily would be where you stored those.

There is no disclosure of other memory where those parameters could be stored. So if you're looking at how to implement Figure 6 in the DSP, the only place to do it is the memory of the DSP.

And with that, unless there are further questions on the coupled to limitation, I'll reserve the remainder of my time for rebuttal.

JUDGE BARRETT: Okay, thank you. I show you have about an extra four minutes, so 24 minutes remaining.

MR. HAYNES: Okay, thank you. I will stop sharing mine.

JUDGE BARRETT: Ms. Spires, whenever you are ready.

MS. SPIRES: I'd like to reserve 20 minutes for rebuttal, please.

JUDGE BARRETT: Okay. Twenty minutes.

MS. SPIRES: I would like to start off with making one thing clear in the record. Petitioner began by talking about how the apparatus claims are basically the same as the method claims, specifically started talking about the method claims in the '477 patent. And for clarity of the record, I do understand that yesterday, a statutory disclaimer under 37 CFR § 1.321(a), per MPEP 1490, was filed with respect to the '477 patent disclaiming Claims 16, 17, 19, and 20. I have seen that document. It appears in the '477 patent record in the USPTO Patent Center, but I'm happy to file that document as an exhibit, if the Board would like.

JUDGE BARRETT: Yes, if you would, please. Mr. Haynes, do you have any objection to that being filed?

MR. HAYNES: I have no objection.

JUDGE BARRETT: Okay. Yes, Ms. Spires. We could probably chase it down if it's in the record -- if it's in the PTO's records, but it would be much helpful if you could file that.

MS. SPIRES: All right.

JUDGE BARRETT: Thank you.

MS. SPIRES: We'll get that on file today. So then moving on. I know that Counsel did not talk about Genossar grounds, but considering those are a live grounds in the petition, I would like to start with those, if the Board does not mind.

JUDGE BARRETT: That's fine.

MS. SPIRES: I'd like to start by discussing the Genossar grounds and then I'll move on to Barratt grounds. On Slide 10, this is General Access's Slide 10, there is a summary of our primary arguments with respect to the Genossar grounds. And we see that the first argument is that Genossar

does not disclose a profile parameter storage device coupled to a profile parameter determiner. And this argument is going to be similar to what we heard with respect to the Barratt argument, as well.

In turning to the first slide, at Slide 12, General Access's first argument is that the petition did not allege that Genossar discloses a profile parameter storage device coupled to a profile parameter determiner. On the left of the slide, you see the language recited by Claim 1 of the '477 patent, which is a profile parameter storage device coupled to said profile parameter and determiner.

And then looking at the right side of Slide 12, we can compare this language to what Petitioner said about this particular claim element, which they called Claim 1.C in the petition, and that becomes important throughout the argument because there are several things that Petitioner has referred to as supporting Claim 1 element 1.C in their argument just now, that actually were under the analysis of Claim element 1.A. So when we're talking about this, we're talking about Claim element 1.C.

And here, you see the Petitioner's entire analysis of this claim element is seven lines long and alleges only that Genossar teaches that the determined parameter values included the equalizer coefficients that can be stored for each terminal 14 separately and then reused when that terminal station 14 is transmitting, again. And then the petition alleges that Genossar expressly teaches that these determined parameter values can be stored in the stored memory, (i.e. profile parameter storage device) of the base station. That's it.

That's all the petition had to say about Genossar's alleged disclosure of Claim element 1.C. And importantly, while these seven lines

mention the profile parameter storage device, they do not mention the profile parameter determiner at all, much less contain any allegation that the profile parameter determiner is coupled to this profile parameter storage device.

Once more, although the petition says Genossar has some stored memory in the base station, that is the profile parameter storage device. The petition never points to any element within Genossar as being that profile parameter storage device, much the same as what we saw in Barratt '470. So we're left with no idea as to what apparatus within Genossar the petition is alleging is the base station's stored memory that would allegedly store the signal-related parameter and the channel-related parameter as Claim 1 recites. And without knowing what apparatus within Genossar, if any, is this alleged profile parameter storage device, we're left with no way of discerning whether this apparatus is, indeed, coupled to the profile parameter determiner.

If we look at Slide 13, we see that Petitioner argues that the Board should find it's coupled to allegation in the analysis of an element without this claim limitation. And so what we have on the left side of Slide 13 is Petitioner citing to a discussion in, again, Claim element 1.A, that the equalizer controller 56, forming part of the received portion 28, stores the values for the equalizer coefficient and reuses these values. It's much like what we saw with respect to Barratt.

Importantly, this is inconsistent with Petitioner's prior argument with respect to the coupled to limitation. In earlier briefing, in it's reply to the POPR, Petitioner said nowhere did Genossar or the petition state that the channel-related parameters (e.g. equalizer coefficients), must be stored within equalizer controller 56, and similarly, that the signal-related

parameter, (e.g. carrier frequency offset), must be stored within PLL 66. Genossar teaches the general process of determining and storing parameters for use in processing subsequently received signals.

So we have absolutely no analysis within Claim Element 1.A about what this profile parameter storage device is, much less than it's coupled to the profile parameter determiner. And then we've got Petitioner later contradicting its prior argument and saying, it actually did allege that there is this storage happening in equalizer controller 56, and that that is going to be the profile parameter storage device, even though they have never labeled it as such, and that's only the profile parameter to storage device, if you wanted to call it that, with respect to the equalizer coefficient.

We see absolutely nothing here about the other parameters that also have to be stored in the -- here stored within PLL 66, the signal-related parameters (e.g. carrier frequency offset). They have actually said they did not allege that and so they have had no allegations as to where the signal-related parameters are stored, even in other elements, such as Claim Element 1.A.

But what they are saying here is, all right, even if we had alleged this -- they did not -- but if they had alleged, then we look at claim -- Slide 14. We see inside in blue, the alleged profile parameter determiner. There's no dispute. That's what Petitioner has alleged. Now, they're coming back and saying, oh, well, we didn't allege it under Claim 1.C, but we see now that there actually is analysis in Genossar that PLL 66 is used for storage and equalizer, controller 56 is used for storage, those are in pink and yellow. And since those are contained inside the alleged profile parameter determiner, those must be coupled to the profile parameter determiner.

Putting aside the fact that Petitioner literally did not use this phrase, "coupled to", much less any sort of allegation about how there would be this coupling. They're now saying, oh, this is all a misunderstanding, the Board is not construing coupled to correctly. If you're construing coupled to correctly, you're going to see that these have -- the pink and the yellow here have to be coupled through the blue. And the fact is, that is just contrary to the law.

First, again, they never alleged any sort of couplings. There cannot be a misunderstanding as to the claim construction. They didn't allege the claim term at all. But we've got -- this is common sense, and it's what Your Honor talked about that Judge Gilstrap has ruled in Exhibit 2005, as well, that a component cannot be coupled to itself. The Federal Circuit has flat out this, that even without a construction, if you're just looking at or saying plain and ordinary meaning of coupled, something still cannot be coupled to itself.

In the Cutsforth case, the Federal Circuit said, "It goes beyond the plain meaning of coupled to say that a subcomponent (e.g. an engine in a car), is coupled to the component as a whole (e.g. the car)." That is exactly what Petitioner is trying to argue here, after the fact, that the whole, the alleged profile parameter determiner in blue, would be coupled to its subcomponents, the PLL in purple and equalizer controller 56 in yellow. This cannot be the case. These are -- the PLL 66 and equalizer controller 56 are not memory components. They are two totally different components with different non-storage-related primary functions that the Petitioner is trying to repurpose on reply as a claim’s storage device.

But as the Federal Circuit said in a different case, it would be

illogical to regard one unit as being attached to itself, which is basically what Judge Gilstrap said when he said, here, it would be illogical for a component to be coupled to itself. And when we were talking about coupled to earlier, Petitioner's Counsel, when talking about Judge Gilstrap's argument, said, well, it's dicta and it depends on how you interpret coupled to in the context you're applying it. But the fact is, Judge Gilstrap was actually applying coupled to in the context of this IPR. It was not in the context of other prior art or anything else.

If you look at Exhibit 2005, you'll see that what happened was that Defendants actually expressed a concern to Judge Gilstrap that General Access could argue one component inside of another might be considered coupling, and then set forth General Access's argument from this IPR. You can see it even with -- it's set forth in full, even with the figures from this IPR. So we're talking about this exact context, is what he's ruling.

And there, as page 16 shows, Judge Gilstrap agreed with General Access's argument set forth in this IPR. Now, assuming item 56 is the claim profile parameter storage device, because item 56 forms part of the receiver portion 28, which is the alleged profile parameter determiner, you can see he is here talking about Genossar, item 56 cannot be coupled to the alleged determiner.

After setting out this argument, the District Court then held, "This makes sense, as otherwise, the received portion would have been coupled to itself." The District Court went on to explain this on page 17 of Exhibit 2005, stating that, "Two elements cannot communicate with one another if one of the elements is part of the other, just as an invention cannot be coupled to itself and an invention does communicate with itself." Then

having said this, the District Court then construed coupled to as joined or connected in any way.

So when Petitioner is saying, oh, joined or connected to in any way, encompasses this whole being coupled to its subcomponent, it absolutely does not. Judge Gilstrap has ordered in a related case that no, those are distinct. He said, you'll either connect it to in any way as the construction of coupled to, while also stating that one component cannot be coupled to itself. This has been consistent with -- it would be hard to argue otherwise, in light of the Federal Circuit's cases that we see on Slide 14.

And then we look to the next argument of Genossar, which we see at Slide 15. If we move on to Slide 16, Genossar does not disclose a profile parameter storage device that stores the signal-related parameter and channel-related parameter. And that is important here, as well, because if we look to the right side of Slide 16, you see what Petitioner alleged, and these are the same seven lines we saw before, and they talk about, Genossar teaches that the determined parameter values, including the equalizer coefficients, can be stored for each terminal station separately.

But here, they only talk about the equalizer coefficients, which Petitioner alleges are the channel-related parameters, and say absolutely nothing about the signal-related parameters. We see on Slide 18, the petition is absolutely silent as to where Genossar stores the carrier-related frequency offset. On the left side of Slide 18, you can see what Genossar actually says, and it says that the carrier frequency offset is stored in PLL 66. But what we don't have is any allegation from Petitioner that there is a storage device in Genossar that includes PLL 66 and equalizer controller 56.

They are absolutely silent as to where PLL 66 is stored, and so

there's literally no allegation whatsoever in the petition, that there is a profile parameter storage device that stores both, a signal-related parameter and a channel-related parameter in Genossar. If Your Honors don't have any questions, I'll move on to Barratt '470.

JUDGE BARRETT: I think we're fine. Thank you.

MS. SPIRES: Okay. So I'd like to address, first, in Barratt '470, a few of the comments that were mentioned earlier. Your Honor discussed where in Barratt there is evidence that storage occurs and talked about maybe a feedback loop. And you're exactly correct about the feedback loop.

The fact that something is determined in burst one and used in burst two does not necessarily mean that the results are stored in the storage device. They could simply be looped back through the determiner processor, even for subsequent bursts. Different bursts can be separated by very small periods of time, so you don't necessarily need to put the parameter into a storage. And of course, for there to be inherency, it does need -- it necessarily matters. It needs to necessarily be the case that this storage occurs in order to inherently have a storage device that is storing these parameters.

But even if we accept that there is a storage device, there -- Your Honor is asking about evidence of this storage device because, like you said, we're factual finding. You need to have evidence, not just attorney argument. And Petitioner's counsel directed you to their Slide 26. And Petitioner's Slide 26 is citing paragraph 135 of their expert declaration, and Petitioner's counsel confirmed that paragraph 135 is what they're relying on here.

But if Your Honors turn to Exhibit 1003, which is their expert

declaration and look at paragraph 135, which is on page 72 of that exhibit -- and particularly, if you look up on page 71 in that heading above paragraph 134, you see the claim that is being utilized. Petitioner specifically said that paragraph 135 is explaining how the petition shows the elements of Claim 1.C. That is what they said in the argument earlier, and that is absolutely not correct.

Look in the heading above paragraph 135 and you see that this is referring to Claim 1.A, which says absolutely nothing about a profile parameter storage device, much less whether that needs to be coupled -- is coupled to a profile parameter determiner. Instead, in paragraph 135, the Petitioner is actually talking about the DSP as the profile parameter determiner, and so that's what this paragraph is about. It's explaining that the DSP is the profile parameter determiner and it is not talking about whether the DSP is also somehow the profile parameter storage device.

So then, Petitioner went on and showed evidence in Slide 29 that importantly, was not included until reply. They're saying, oh, okay, we didn't actually allege where a profile parameter storage device was, and if we go back to our -- to Patent Owner's Slide 22, we can see what the Petitioner alleged here for Barratt, with respect to Claim 1.C.

And on the right side of Slide 22, we see the allegation for Barratt, and it says, Barratt '470 discloses that the base station necessarily includes a 'profile parameter storage device' for storing these parameter values from one frame to next for each signal of interest. That's it. They don't identify what this storage device is, what component within Barratt would be the storage device. They just say, the base station necessarily includes a "profile parameter storage device". There is absolutely nothing here citing to Exhibit

1003, paragraph 135, that they were referencing earlier. Instead, there's paragraph 145, which just repeats what's said in the paragraph.

And so there's absolutely nothing with respect to Claim 1.C saying, oh, we're relying on DSP, much less a breakdown. They say, oh, they weren't able to in Barratt because they were relying on inherency. They couldn't draw the pretty boxes to show what needs to be shown here, to actually do what the statutes require a petition to do, and map the claim elements to the prior art and the disclosures. But they did that later with evidence they included later or attempted to do so, at least.

And in evidence they included at Slide 29, they're showing spec sheets from the DSP processor and saying, oh, look, here, this includes memory. That is information that is the epitome of what is needed to be used to prove a prima facie case that cannot be alleged on reply. Federal Circuit, very clear, more cases than we can count, all cited in the briefing that you know that the evidence is improper on reply if it is necessary to establish a prima facie case.

And so this is the first time we're seeing the art -- the evidence of, oh, look, here's where there's memory in the DSP 117 and this is going to be -- and this is -- and the first time we see an allegation of this memory is coupled to the determinator. Which is, again, a problem, for the reasons we talked about earlier with the coupled to.

So, multiple problems. First, new allegation is required in the petition. Second, no evidence at all that there is actually a storage device here. Third, no evidence that -- or no identification of what the profile parameter storage device is. Fourth, no allegation that this profile parameter storage device, whatever it is, is coupled to the profile parameter determiner.

Fifth, new evidence on reply for the first time, oh, here's what the memory is, here's what it's coupled to. Then we have six, another problem that what they're alleging is that inside the -- at Petitioner's Slide 29, they're saying, the DSP device is the profile parameter determiner, and within the DSP device is this processor 117, and within that, there is memory.

And so this memory, again, has to be coupled to a profile parameter determiner. In fact, what they said is that -- in their reply at page 22. Again, they're talking about this evidence that we see for the first time on reply. They said, the disclosed time slot parameters are channel-related. Okay. So, in this portion of reply where they first mention the Motorola DSP 56301 memory components, they say that the DSP 117, the alleged profile parameter determiner now is going to be coupled to itself.

So they said on page 18 of their reply, "These memory components" -- meaning the ones that they have now boxed in that item on slide 29 -- they said, these memory components would have maintained the at issue values and were coupled to the other components of the DSP 56301 in that they were joined within that device. So we've got the same problem that we saw earlier. In addition to all the other problems of lack of evidence, we have -- they're, again, relying on a definition of coupled to that they did not argue in the petition that's been rejected by the Federal Circuit and by Judge Gilstrap, where they're saying they are coupled to because they are joined within that device. But they -- again, for the reasons we talked about with respect to Genossar, the memory within the DSP cannot be coupled to -- assuming that that is a profile parameter storage device -- cannot be coupled to the DSP, which it is a subcomponent and the DSP is what is alleged to be the profile parameter determiner.

So if we move on to Slide 23, we'll see kind of the mental gymnastics the Petitioner is going through on this profile parameter storage device. So we see the allegation from the petition on the left side of Slide 23, and they are saying that and alleging that, "Barratt '470 discloses that the base station necessarily includes a ‘profile parameter storage device’ for storing these parameter values from one frame to next for each signal of interest", as reported by 1.C. They actually mean that it does this, including all claim elements that are included in Claim 1.C, which is shown on the right and highlighted.

There is absolutely no way that this would meet muster with the Federal Circuit's requirements of particularity, and the inability to prove a case based on conclusionary assertions from (INDISCERNIBLE). So even if somehow the Board wanted to say, oh, yes, I can see how you meant to say that this meant, as all of the elements as required by Claim 1.C, including the coupling allegations and the allegations with respect to how this story has to happen, it has to be both parameters, there is absolutely no evidence as to how this would occur.

If we move to Slide 25, still on that same allegation, we'll see why there is no inherent coupling, which is what they're saying now, that this -- even though they didn't allege it, a POSA would have known there would have been coupling. And they talked a lot earlier about how this coupling is really kind of -- they didn't use the word meaningless, but that's really what they're saying. That coupling, in terms of the patent is meaningless, because one cannot exist without the other. A profile parameter determiner can't exist without the profile parameter storage device. One can't function without the other, and so they're really the same thing. There's no

difference. They're not separate components.

So that is literally reading the coupled to language out of the claim. This is what the claim means when it says that the two are coupled to. Yes, they absolutely do work together, and that's why they are coupled to each other, but it cannot be the case that you can simply read that out and say, oh, okay, well any component that works with another one -- they're all coupled to each other, because they're working with another. They don't need to be distinct components. They are sitting there reading, looking at a controller in general and saying, oh, well these other two things aren't distinct because they're a subcomponent of the controller.

Well, I mean, in a device, most things are a subcomponent of something else. I've got my phone and there are thousands upon thousands of things that are subcomponents of the phone. That does not mean that they are not still the same components within the phone, obviously.

And so -- but as you see on Claim -- Slide 25, there is no inherent coupling within the claim apparatus. There's been no allegation. The profile parameter storage device, what that would be to even figure out whether it's coupled, the storage device, even if there is one, could be external to the alleged profile creating apparatus. So we're about an apparatus here that includes a storage device. Well, what if the storage device is in the cloud? It's -- there's a possibility that the storage device is not on the device, or we can have the storage device exactly as is being alleged here as a subcomponent of a profile parameter determiner, which we already know cannot be the case. Judge Gilstrap has ruled that, the Federal Circuit has ruled that. I expect that that will be a consistent ruling here.

If we look then to Slide 27, this is a bit of what we talked about

earlier, that Barratt '470's Figure 6 does not indicate where, or as Your Honor mentioned, if at all, parameters from the SYNCH mode or previous frame are stored. It just simply doesn't say it. It's silent on that respect.

And then on Slide 29, you're seeing -- this is where Petitioner first mentions the Motorola DSP memory components. This is on reply and they say here that the Motorola Inc. DSP56301 has memory components capable of maintaining the at-issue values. Even if all of this is true, even if they had alleged this in the petition, capable of does not meet the requirements for inherency. And here, Petitioner has said that they are relying on inherency for the storage. And the fact that these memory components might be capable of the at-issue values is simply not sufficient to meet the necessarily in all cases store the at-issue values, as required for inherency. And look at -- if Your Honors don't have any questions on Barratts '470?

JUDGE BARRETT: I think we're comfortable.

MS. SPIRES: All right. I'd like to turn to the Barratt '470 in view of PHS. And so if we look at Slide 38, we see that the argument here is the Petitioner maps different parameters for Claims 16 and 18. And I will mention that in the disclaimer of the claims, while Petitioner -- excuse me -- General Access has disclaimed method Claims 16, 17, 19, and 20, General Access has not disclaimed method Claim 18. And so this claim is still live. And so we see at Slide 38, the Petitioner maps different parameters for Claims 16 and 18.

And so looking at Slide 39, we see on the right side, Petitioner is relying on Claim 2 for its Claim 18 analysis. But importantly, Claim 18 depends from Claim 16, though not Claim 1. Although, Petitioner's analysis of Claim 1 and Claim 16, in this respect, is similar. But it is important to see

here for Claim 18 that what's required is that -- it says wherein the initial burst of the first burst data signal responsive to which, the at least one signal-related parameter and the at least one channel-related parameter are determined is transmitted to the receiving station during the contingent period. That is important because when Petitioner relies on Claim 2 for its Claim 18 analysis, Claim 2 does not have the same requirements.

And so if we look at -- this may be worth looking, at this point, at the actual claim language. Slide 7 shows what Claim 16 recites, which -- upon which Claim 18 depends. And in the third portion of this, it says, storing values representative of the at least one signal-related parameter and the at least one channel-related parameter determined during said operation of determining.

And so then if we look at Slide 8, we see Claim 18. And so what it's reciting, the at least one signal-related parameter and the at least one channel-related parameter, the antecedent basis for those is in Claim 16. But if we look on claim -- still on Slide 8 at Claim 2 -- what we see if that it talks about -- just like Claim 18, wherein the initial burst of the first burst data signal responsive to which" -- and this is where it changes -- said profile parameter determiner determines the at least one parameter, is communicated during the contention period.

So for Claim 2, we've only got the at least one parameter, which would be either a signal-related parameter or a channel-related parameter, whereas Claim 18 requires both. The first burst data signal, responsive to which the at least one signal-related parameter and the at least one channel-related parameter are determined is transmitted to the receiving station during the contention period.

So then if we look back at Slide 40 what we see, on the left side of Slide 40, we see what petitioner alleged for claim -- it's Claim 2 analysis, which, again, is what they were relying on for Claim 18. And this says, where the initial burst is used by the base station to determine the at least one parameter for the first burst data signal, including the frequency and timeslot of the SCH channel and other parameters described in the PHS standard. The problem here is that frequency and timeslot do not map to their antecedent basis of the channel-related parameter and signal-related parameter in the Claim 16 analysis.

And so Petitioners have explained and tried to kind of parse what they said here and say that the frequency and timeslot of the SCH are the channel-related parameter and signal-related parameter, and this was on reply that they first argued this. This is the Reply 22, so again, something that was -- the mapping for the prima facie case would've been required in the petition. They're saying that the timeslot parameters are channel-related and that the frequency parameter here is signal-related. Okay. That should've been in the petition and wasn't. So for that reason, this claim analysis has to fail.

But we've also got the problem that, all right, even if we're going to take them at their word for that, we've got Claims 1 and 16 -- and Claim 16 is an antecedent basis for these parameters -- is talking about the signal-related parameter being frequency offset and time alignment. And then -- but they're calling the timeslot here a channel-related parameter and then the frequency, they're saying that the signal-related parameter in the PCH is the frequency parameter, as opposed to in Claim 1 and 16 where they have said that the signal-related parameter is frequency offset and time alignment.

And they do not allege anywhere in the petition or even on reply that frequency and frequency offset are the same thing. Same as there is no analysis that the timeslot is the same as the channel-related parameters alleged for Claim 16.

And so for those reasons, Petitioner's allegations with respect to Barratt '470 and PCH have to fail. And if Your Honors don't have any further questions, I will move onto the final item, which is WiMAX.

JUDGE BARRETT: That's fine.

MS. SPIRES: So for the WiMAX arguments, I think those are set out pretty well in the briefing, but what we have, you'll see at Slide 31 two issues. One is that the petition did not establish that WiMAX qualifies as prior art, and then the petition also cannot now establish that WiMAX is prior art, at least using the evidence that they're using here.

We see at Slide 33, the petition did not establish that WiMAX qualifies as prior art because WiMAX is really a potential DRAFT standard. And there is absolutely no analysis in the petition as to the public accessibility of potential DRAFT standards, as opposed to DRAFT standards. WiMAX is "an unapproved Task Group document being circulated for comment" and that may not be reproduced without permission. So quite a few indications, all set forth in the briefing, that WiMAX was not publicly accessible.

Then on Slide 34, we see, also, that WiMAX has indicia of non-reliability, such as the fact that it contains two different dates on its cover and also does not contain any of the indicia of non-reliability that the Federal Circuit has relied on previously, such as an ISBN numbers. Here, it just has placeholder ISBN numbers.

And so in the institution decision, the Board obviously held that Petitioner did not meet the threshold requirement of establishing that WiMAX is prior art. So then absent from Petitioner's briefing on reply, the Petitioner submitted a motion to submit supplemental evidence to the Board. The Board denied that motion and then despite that, and then we see in Slide 36, the Board's holding and then the Board's denial of Petitioner's request to submit supplemental information to establish that WiMAX is prior art.

And then despite that, on reply, Petitioner then argued that WiMAX is prior art, submitting the exact evidence that the Board told Petitioner it could not submit. And so as you would expect, General Access finds that this is contrary to the Board's procedure and has asked in this briefing that these exhibits be stricken from the record and this argument, because there's seems to be no purpose in requesting to submit supplemental information if the Board is going to deny that request and then the information can just be submitted anyway without a request.

So for the reasons that the Board submitted in its denial of Petitioner's request to submit supplemental information, General Access believes that, for those same reasons, the Board should not consider the evidence here. If Your Honors do not have any additional questions, I will save the rest of my time for rebuttal.

JUDGE BARRETT: I think we're fine. You still have your full 20 minutes for rebuttal.

MR. HAYNES: May I proceed?

JUDGE BARRETT: You may. And again, I have you down for 24 minutes remaining.

MR. HAYNES: Okay. I want to start just by touching on the

prima facie case arguments with respect to the profile determiner and profile parameter storage device. Particularly, with respect to Barratt '470. We saw a lot of focus on what was stated with respect to Element 1.C. In particular, one sentence from that element, but the very first sentence under Element 1.C specifically references the discussion above. In particular, Element 1.B, which specifically references the DSP and the fact that it is the DSP that both determines and maintains those values. And the Element 1.B discussion earlier discusses -- refers to the discussion up above of Element 1.A.

And the petition makes clear that the DSP, as disclosed, is determining two different types of parameters, and it is maintaining the values that it was determined. And then in Element 1.B, it discusses how it -- and uses those maintained values for processing subsequent bursts. So the disclosure of a DSP as being the determiner and the -- and also the memory within that maintaining values was set forth in the petition, and we provided additional detail of that in the reply with specific details of what the DSP, and specifically, the identified DSP, contains. But the disclosure of the DSP itself in Barratt is a disclosure of those elements. And we've pointed to that DSP as satisfying both, Element 1.C and Element 1.A, as specifically explained how it did that.

Coming back to the coupled to itself argument, the DSP is a component, just as the controller is a component in the '477 patent. That DSP component contains processing elements and associated memory, just as the controller contains processing elements and associated memory in the '477 patent. So Barratt discloses, in the same level of detail, the same controller with associated memory, that does the determining and the storage

as the '477 patent.

So with respects to the coupled to limitation and specifically, with respect to the Court's statement that you can't be coupled to yourself, the processing components within DSP are coupled to the memory components in the DSP. And together, those comprise the DSP, just as the memory portion and the CPU portion of the '477 patent comprise the controller. So they are all part of one component, but within that component, they're -- the memory is coupled to the processing elements, and they have to be.

And that is necessarily the case and fully disclosed by the disclosure of not only generic DSP, which might be enough in and of itself, but by specifically identifying a DSP by model number that discloses what that DSP looks like. And we've shown that that DSP has both, memory and processing circuitries coupled to it.

With respect to the argument relating to the Personal Handy Phone System, PHS, the combination there as disclosed was looking at PHS for the disclosure of the specific contention period, and that is set forth in our petition. We then referenced frequency and time, and the Board pointed out that we did not map those to the same specific channel and specific parameters that were relied on in the independent claims, from which those claims depend. But the combination that was made was the contention period that was disclosed in Personal Handy Phone System, and we did point to those specific parameters, but we also said in other parameters from PHS. And it's an obviousness argument.

So the obvious in our argument is in Personal Handy Phone System, there was a contention period and it would be obvious to determine the parameters during that contention period, using frequency and time

offset as the examples, but not limited to those examples. So that would include additional examples or the additional parameters that were specified in Barratt. And really, the combination is using the contention period, the specifically of the contention period disclosure, in the Personal Handy Phone System document, with the specific parameter disclosure up there.

JUDGE BARRETT: Mr. Haynes, you don't need to display this on the screen, but I'm looking at Petitioner's Demonstrative Slide 42, which I think is a pretty handy table. So for independent Claim 16, for example, the Petitioner identified the parameters as frequency offset, time alignment, and antenna weights. And then when we get to the dependent claim, it's frequency and timeslot. Do you agree that the frequency and timeslot are not the same parameters as listed for independent Claim 16?

MR. HAYNES: I would agree with that.

JUDGE BARRETT: Okay. Thank you.

MR. HAYNES: And -- yeah. And just to be clear, we relied on Claim 2, which pointed to Claim 1, which had all three parameters. And -- but in that discussion of the combination, it wasn't limited to just frequency and timeslot. It was, and the other parameters of the PHS System, which would include the three that are -- were identified in Claim 1 and Claim 16, but I do agree that those are not the same parameters.

JUDGE BARRETT: Okay. Thank you.

MR. HAYNES: And I'll just briefly touch on the WiMAX public disclosure issue, and we are seeing what the Board said in its denial of our supplementation motion. In the slides -- and I won't read the case quotes to you -- but in Slide 45 and Slide 46, we identified the authority that we believe allowed us to supplement the public availability of the WiMAX

standard, and we believe that it is appropriate to submit that, both, in reply and to seek to supplement, as we did. But we believe that it's properly considered when the Patent Owner challenges the public availability of a reference. And here, with respect to the prima facie case, there's been a lot said about how this is a DRAFT standard, but that DRAFT standard and specifically, the number associated with that DRAFT standard, is cited in other patents, and we provided that evidence on Slide 47.

JUDGE BARRETT: Mr. Haynes, let me interrupt you, please. You mentioned DRAFT standards and that's something that's bothering me and Ms. Spires made this argument (INDISCERNIBLE - TECHNICAL DIFFICULTY) DRAFT standard. So let me tell you what I'm thinking. In my mind, there may be three different documents. There's, of course, an issued standard that was finalized and issued. There would be a DRAFT standard (INDISCERNIBLE - TECHNICAL DIFFICULTY) comment. And then we have this thing called a potential DRAFT standard, which is the label on the exhibit that Petitioner is using.

So correct me if I'm wrong, but I saw nothing, even in the supplemental information, using the word potential. Not even -- not telling us how that came about, how it's used, the dissemination of something that's a potential DRAFT standard. So I'll let you react to that, but am I missing some evidence?

MR. HAYNES: Well, I think -- the description of what the document is not the key factor here. The key factor is the number that's on that document is specific to what it is, right? And that is the one --

JUDGE BARRETT: You're talking about the IEEE number, the standard number?

MR. HAYNES: Well --

JUDGE BARRETT: 802.16.1?

MR. HAYNES: Well, no, but specifically, the release information that's associated with that. So if you look, for example -- trying to find the IEEE number. So the number 802.16.1-00/01R4, right? So 802.16, that's just the DRAFT's standard section and that may become a published standard in IEEE. A lot of times, they call the published standard a recommendation, rather than calling it, you know, a specification, which some other standards groups do. But the -- what follows that, right, the /01R4 is referring to a specific version of the document, which is what we rely on. And that version on the document we showed was referenced in other prior patents and that is the document. So whether it's potential DRAFT standard or something else, whatever description of it there is, at least information that's attached to it identifies what the document is.

JUDGE BARRETT: And it's 01R4, calling that release information -- forgive me if I missed it, but I don't remember seeing anything in the evidence on that. Did an expert make the explanation that you just gave us?

MR. HAYNES: So I believe in the Eklund declaration that we submitted, which is Exhibit 1034 and it's referenced on page 48, you know, he references to the annotated excerpt from the session that labels the hyperlinks to other exhibits that are discussed, and in particular, the hyperlink to that particular 01R4 link, and that links it to the specific document that we're talking about. And as you can see, he also references there different versions of that same document. For example, 05R1, which leads to a different exhibit, which is Exhibit 1031. And those citations are

on Slide 48.

JUDGE BARRETT: Yeah. Speaking of Slide 48, now that we're on this topic, it raised another question I wanted to ask you about. In the middle block on that page, there's a quotation from paragraph 29 of -- is it Mr. Eklund, his declaration. It uses the past tense -- let me find it here. The excerpt at the bottom of that from Exhibit 1031 shows that the WiMAX Exhibit 1006 was accessible on September 29. The excerpt itself at the top says, this list was updated 27 September. So how could a document that was updated on the 27th show in the past tense that Exhibit 1006 was accessible two days later?

MR. HAYNES: I'm sorry. You broke up a little bit in your last sentence there. Would you mind repeating it?

JUDGE BARRETT: Yeah. So again, I'm looking at your Slide 48, I believe it is. That middle block, Eklund declaration exhibit, page 8, paragraph 29. The witness says that the thing shown at the bottom indicates that Exhibit 1006 was accessible on September 29. That excerpt -- the pasting in from that session 9 document list, it began saying this list was updated on 27 September. So I'm a little confused on how something that was updated on the 27th would indicate that something was accessible two days later.

MR. HAYNES: Okay. I see what you're pointing to. So you're looking at the first sentence of the document list that says the list itself was updated on the 27th of September. Yeah, I acknowledge that there's a discrepancy in that date, but we did submit additional evidence to further support that it was available, you know, in September of 2000, including other patents that were published prior to this, that reflect that this document

was publicly available and cited in other patents by the Patent Office prior to that date. And we acknowledge the dates. There are some inconsistencies in the dates in the documents, but all of those documents -- all of those dates show that it predates the priority date here, and we provided additional evidence of -- to show that the document was publicly available prior to that.

JUDGE BARRETT: Well, I think Ms. Spires argument would be the inconsistencies show that we can't trust any of those dates. Not that we should assume that any one of those might be correct, which I think --

MR. HAYNES: Well --

JUDGE BARRETT: -- you can't say.

MR. HAYNES: With respect to the publication, there's clearly some sloppiness in the way it was uploaded and in this description of the document list that's maintained. However, the fact it was cited in other patents prior to the priority date indicates that that document was available as of that date, that it was cited in the patent. So that, I think, eliminates any ambiguity that might be indicated by the fact that some of the dates aren't completely consistent in the document itself.

JUDGE BARRETT: Okay. And so the basis of that argument is that that 01R4, that is unique to your Exhibit 1006?

MR. HAYNES: Yes.

JUDGE BARRETT: Okay. I understand your position.

MR. HAYNES: And later versions of the document, right -- 05R1, right? That's a different exhibit that came later. When they revised it, they noted that in the revision of context and gave it a different number. Unless the Board have other questions, I have nothing further.

JUDGE BARRETT: I think we're fine, so thank you for that. Ms.

Spires, as I said, I believe you have 20 minutes left, if you choose to use all of that.

MS. SPIRES: Thank you, Your Honor. I'd like to start back with the Barratt '470 arguments. Counsel said, again, that they're relying on the disclosure of the DSP is satisfying Element 1.C, and I encourage Your Honor to just look at the arguments with respect to Element 1.C in the petition and see if you find DSP cited there anywhere, because I assure you, you will not.

Petitioner says they rely on 1.B and 1.A. Well, yes, because for 1.C, there's an antecedent basis in 1.B and 1.A. So yes, they absolutely -- 1.C has to rely up for the antecedent basis, but there is no antecedent basis in Claim 1.A or 1.B for the profile parameter storage device, because that comes into the patent for the first time in Claim 1.C. And that is why, if you look through the -- the discussion in Elements 1.A and 1.B, even when they're talking about the DSP, you see zero discussion of linking that to a profile parameter storage device. It's just never said.

And so there's a reason for that, because those claim elements are not at issue in Claim Elements 1.A and Claim Elements 1.B. So there is nothing in the analysis of 1.A, 1.B, or 1.C saying there actually is a profile parameter storage device in Barratt and it is the DSP. That is what the law requires to be alleged, and that was never alleged. Never until reply.

This is, again, the Netflix case from the Federal Circuit, where the Federal Circuit said the Board should not have to decode a petition to locate additional arguments beyond the ones clearly made. A Petitioner may not rely on a vague generic and/or meandering petition and later calls the Board for failing to understand what the Petitioner meant. Not citing the Microsoft

case, also from the Federal Circuit that says, "It is not the Board's job to cobble together assertions from different sections of the petition or citations in various exhibits in order to infer every possible permutation of a particular argument. Arguments in a petition must be made with particularity, not opacity, as the Federal Circuit interpreting the statutes here and opacity, not particularities. This is exactly what we have here.

In addition, even if the allegation had been made, again, it is insufficient. Petitioner tries to get around the problem with the fact that coupled to -- a component cannot be coupled to itself by trying to liken DSP 117 to the patent's controller. It is not the same. The patent says there's a controller. The patent, meaning the '477, says there is the controller 314 and this controller has two components that are coupled together. The profile parameter determiner that is 316, and the profile parameter storage device that is 318. Those two are coupled together. They are not coupled to a subcomponent of themselves.

The contrary here, Petitioner specifically says, and what they have told you several times they're relying on, Exhibit 1003, paragraph 135. The very first sentence of that -- and again, this is the Claim 1.A analysis. It says, Barratt '470 discloses a DSP device (i.e. profile parameter determiner). And now they're saying, oh, there's a processor here that's the determiner, and we've got memory components and these are coupled, despite the fact that, again, none of this was alleged previously. But that is not what they said.

They did not say there's a DSP and not contained. A profile parameter determiner that is coupled to a profile parameter storage device. They didn't mention a profile parameter storage device or coupling, but even

if they had, they said that Barratt '470 discloses a DSP device (i.e. profile parameter determiner). So they're saying that they have a profile parameter determiner, and within that -- as a subcomponent -- exactly what the Board said can't be coupled to the whole, there is this memory. And these two are going to be coupled together.

So, we've got the fact that this allegation never happened to begin with, but also, that these cannot be coupled together, because you've got a sub-component being coupled to the whole. And they're trying to get around this now, but what they said in their reply that talked about already is that these are -- at page 18 in the reply it said, the memory components would be coupled to the other components of the DSP in that they were joined within that device. But what it needs to be coupled to is not another component of the DSP.

According to the petition, the memory components are being coupled to the DSP itself, which is what the petition in paragraph 135 alleges is the profile parameter determiner. So the DSP does not necessarily have memory, as we talked about, and processing coupled to it. It absolutely does not.

Looking at the Barratt '470 in PHS, I think we heard all that we need to hear, which is that Petitioner agreed that frequency and timeslot are not the same parameter -- relied on for Claim 18 are the not the same parameters relied on in Claim 16. I think that's the end of the story because these -- they do not rely on the same parameter to their antecedent basis in Claim 16. And so this challenge fails.

But in case the Board wants to entertain that, what Petitioner said is that, oh, there's a little wiggle room there because it's an obviousness

argument, and they also said that the evidence includes additional parameters disclosed in Barratt, because it said, and other parameters from PHS. There is absolutely no argument in the petition, in the reply, or now, as to what these other parameters are from PHS that they're relying on. No evidence whatsoever. Certainly, nothing that the Federal Circuit would say qualifies as evidence with particularity, as the statute requires. And so that's not going to save the argument here.

For WiMAX, you are absolutely right. All of the sloppiness, as Petitioner's counsel called it, absolutely shows that we cannot rely on anything with respect to these documents. There are nothing but discrepancies. Petitioner's counsel said there's clearly sloppiness in the way it was uploaded. There is sloppiness all across the board in the weight of this happening and all of the evidence. And that is exactly why the Federal Circuit has said it's important to find indicia of reliability. There is the opposite of that here.

As Your Honor pointed out, there's nothing in the evidence with respect to an explanation of this R4. We had no way of knowing if another document citing as R4 that is the same document we're seeing here. As Your Honor pointed out, it says -- the document -- WiMAX says that it is being submitted for comment, likely for potential revisions. And so how many revisions or comments occur into these documents before there is a change in name? We have no idea. There's absolutely no evidence in the record of that.

And all of the evidence that is in the record that the Petitioner has been pointing to today, again, is evidence that the Board specifically denied Petitioner permission to submit and rely upon. So you would think that the

Board would not want to allow Petitioner to rely on evidence that it was told it could not submit and rely upon. But even if the Board does want to rely on that, there still is insufficient evidence here to show what needs to be shown.

For instance, Petitioner has not gotten around the fact that it is a black letter law that our work is not publicly accessible. The only people who know how to find it are the ones that created it. They've got the -- we were talking about the declaration from their expert, who says he was a member of this task group. Great. That's the same evidence that was out there in the Samsung case that's cited in the briefing, where a member of the task group said, oh, we knew about it and this is how we knew about it. And the Board said, I don't care, we need to have evidence that people outside of the task group that was actually creating this document knew about it.

There is no evidence of that in this case, and so for that reason, and all of the reasons that the Board cited in its denial of Petitioner's request to submit supplemental information, WiMAX can still not link it to be prior art, which again, is the Petitioner's burden to establish at the petition phase. If Your Honors have no further questions, I will turn it over to you all.

JUDGE BARRETT: I'm seeing no questions from my colleagues, so I think we're good. Thank you both for your presentations. This case is now submitted. Let's go off the record.

(Whereupon, the above-entitled matter went off the record at 2:49 p.m.)

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