

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WALT DISNEY PARKS AND RESORTS U.S., INC.,
Petitioner,

v.

AGILE JOURNEYS LLC,
Patent Owner.

IPR2024-00029
Patent 7,212,983 B2

Record of Oral Hearing
Held: January 14, 2025

Before MICHAEL L. WOODS, AMEE A. SHAH, and
JASON W. MELVIN, *Administrative Patent Judges*.

APPEARANCES:

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ALSO PRESENT, OBSERVING:

William Redmann

The above-entitled matter came on for hearing on Tuesday, January 14, 2025, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE SHAH: Okay. So, good morning. We are here for IPR2024-00029 regarding Patent Number 7,212,983. This is between *Walt Disney Parks and Resorts, the Petitioner, v. Agile Journeys LLC*. I am Judge Shah again. Also appearing is Judge Melvin and Judge Woods online.

So let's get started with appearances for both parties for those who will be arguing today. If anyone else is attending for you in person or remotely, but will not be speaking, please identify them as well. And following the hearing, normally we'd confer with the court reporter, but we'll just make sure that any spellings are uncertain, we'll do that after.

So can we start with appearances for the Petitioner, please?

MR. HUGHES: Yes. This is Scott Hughes on behalf of Petitioner. I'll be arguing. With me in the courtroom today are my colleagues, Joe Raffetto. And then we have Jacob Felicetty and Nicholas Spagnuolo, too.

JUDGE SHAH: Do you mind spelling some of those names just to be certain?

MR. HUGHES: Go ahead.

MR. FELICETTY: Jacob Felicetty. Felicetty, F-E-L-I-C-E-T-T-Y.

JUDGE SHAH: Thank you.

MR. SPAGNUOLO: Nicholas Spagnuolo. Spagnuolo is S-P-A-G-N-U-O-L-O.

JUDGE SHAH: Thank you.

MR. RAFFETTO: Joseph Raffetto, R-A-F-F-E-T-T-O.

JUDGE SHAH: Thanks. Patent Owner?

1 MR. KESAN: I'm Jay Kesan for the Patent Owner, along with -- I'll
2 be arguing along with Andrew Wright, W-R-I-G-H-T, and Cecil Key, K-E-
3 Y. That's C-E-C-I-L K-E-Y, Cecil Key. And William Redmann, the
4 inventor of the '983 patent, it's William Redmann, R-E-D-M-A-N-N.

5 JUDGE SHAH: Thank you. So, as you know, this hearing provides
6 an opportunity for you to orally advocate for your positions of the patent, of
7 the patentability of the challenge claims as raised. We understand that every
8 case has a lot to -- has a lot at stake, so we just want to confirm. We take
9 our role in this -- deciding this dispute seriously. In the interest of fairness
10 and due process, we must limit our considerations to the arguments and
11 evidence already presented on the record.

12 So, as I said before, we are recording this for transcript purposes
13 since the court reporter is not here. So just to ensure that the transcript is
14 correct, please identify yourself before speaking. Identify specific slide
15 numbers, numbering and figures, and any other pertinent identifying
16 information when referring to demonstratives. I do not believe that this is
17 being streamed online, but it may be, so if you wish to discuss confidential
18 information, please let us know before discussing it.

19 Also, we have familiarized ourselves with the record. We have
20 copies of the demonstratives in front of us. We have familiarized ourselves
21 with the issues. We are streaming, actually, so, again, if you have
22 confidential information, let us know.

23 So, as you also know, our role as judges is to assess your arguments
24 and evidence and weigh those in accordance with the burdens established by
25 our rules of procedure and precedential authority. We remind the parties

1 that Petitioner has the ultimate burden of establishing unpatentability by a
2 preponderance of the evidence.

3 Per the hearing order, which is Paper 16, I believe, in this proceeding,
4 each party has 60 minutes total time to argue their cases. Petitioner will
5 open the argument and may reserve rebuttal time, which may not exceed
6 more than half of Petitioner's total argument time. Patent Owner will then
7 respond to Petitioner's arguments and may reserve surrebuttal time.
8 Surrebuttal time also to not exceed more than half of Patent Owner's total
9 argument time. Please remember again that your arguments should be
10 limited to only those arguments previously presented in your briefs. Please
11 make it clear which challenges and claims you're addressing at all times.
12 And we ask that the parties hold any objections regarding a party's
13 arguments until it is their time to speak.

14 Finally, I will maintain a clock and endeavor to give each party time
15 warnings as you near the end of your allotted or opening argument time and
16 near the end of your reserved rebuttal time. But it would also be helpful for
17 the parties to track their own time.

18 So, Petitioner, do you wish to reserve any rebuttal time?

19 MR. HUGHES: Yes, we're reserving 15 minutes, maybe more. At
20 least 15 minutes, please.

21 JUDGE SHAH: Okay. Well, very good. Then you may begin your
22 arguments when ready.

23 MR. HUGHES: All right. Thank you, Your Honor. Okay. Good
24 morning, Your Honors. I'm Scott Hughes. I'm here on behalf of Petitioner
25 Walt Disney Parks and Resorts, U.S., Inc. And again, we're here for
26 IPR2024-0029 regarding U.S. Patent Number 7,212,983.

1 Here on slide 2, we have an overview of what we'll be going through
2 today. We're going to discuss an overview of the '983 patent and then get
3 into disputes that the parties have regarding the claims, including some
4 limitations such as software that selects, and whether traction data may
5 substantially match information about a party.

6 On slide 3, we have a summary of the invalidity grounds at this
7 proceeding. You can see that we have grounds based on *Sim* in view of *Doi*,
8 grounds based on *Sim*, *Doi* in view of *Waytena*, *Waytena* alone, and then
9 *Waytena* as modified by *Herz*. And we'll be going through these as we
10 address the claims.

11 On slide 5, we have an overview of the '983 patent that's at issue
12 here today. "The '983 patent relates to a system and method for creating
13 itineraries for a party, such as at a theme park." This system collects
14 information about the parties, such as attributes like their age, maybe their --
15 and then their interests, which could be things like types of rides they like or
16 other preferences that they have. "The system further includes data about
17 attractions," and these attractions can range from anything from rides to
18 movies, even just attractions generally within a state. A computer within the
19 system "accesses the party information and that attraction data, and selects
20 attractions with data matching information about the party" in order to create
21 a customized itinerary.

22 Going to slide 6, we can see claim 3 of the '983 patent here. And I
23 will note that there's two independent claims, independent claim 1 and
24 independent claim 3. They share many of the same limitations. The real
25 difference is that claim 1 is a system claim, claim 1 or -- and claim 3 is the
26 method claim. If we look at claim 3, we can see it requires things like

1 “providing data regarding a first set of attractions, gathering information
2 about a party,” and that information is going to distinguish among those
3 attractions. It requires providing a computer, and that computer has software
4 that selects a second set of attractions from that first set of attractions.

5 Now, when it’s doing that selecting of the second set of attractions,
6 the software is going to include at least one attraction for which data
7 substantially matches information about the party. Then this claim requires
8 providing a presentation means and presenting that itinerary to the party.

9 And through this, an itinerary that’s been customized for the party is
10 presented to them.

11 Going on to slide 7 and now 8, we’re going to get into the first
12 dispute here. And this is whether the combination of *Sim* and *Doi* renders
13 the challenge claims obvious, and in particular whether that combination has
14 software that selects that second set of attractions. Now, *Sim* is WO
15 97/18534 and it “discloses a queue management system that can be
16 employed in theme parks” similar to the systems in the ’983 patent. In *Sim*,
17 “groups carry portable modules.” And those modules include information
18 about the group members, including their age, their height, their health
19 status, and also things like their ride and time preferences, the location as
20 they move about the park, and whether that party has any privilege or any
21 priority within the amusement park or within the system. The system further
22 includes data about attractions, again similar to the ’983, things like age,
23 size, health restrictions, the operation status of those attractions, and also the
24 attraction locations.

25 Now, in *Sim* there’s a controlling computer with queue manager
26 software and that uses that guest information that’s been provided and the

1 attraction data to create customized itineraries for the group. And it does
2 this, “including in response to party preferences, on the overall demand in
3 the system, and any priority that’s attached to that particular party.” That’s
4 what the queue manager takes into account when it generates what it calls
5 these sequences of attractions for these users.

6 Going on to slide 9, we can see on the right-hand side we have
7 figures 1 and 3 from *Sim*. In figure 1 we can see the main components. And
8 as *Sim* says, including at page 14 starting at line 31, this system comprises
9 that portable module 1 that the guests are going to carry around. There’s
10 gate units 2, and those are going to be at the attractions and will allow the
11 users onto the attraction or not. And then you have the base station that
12 comprises that controlling computer 3. Now, that controlling computer 3 is
13 going to create these sequences. And once it’s done that, once the sequence
14 of rides has been entered and the prompter removed from a docking station,
15 for example, the controlling computer will transmit messages to the
16 prompters indicating the sequence and times of the rides, their itinerary. We
17 can see that on the right-hand side in figure 3 where we have this display of
18 Space Mountain at 12:15 and Haunted Mansion at 1:45. That’s the itinerary
19 that’s been generated and it’s being presented to those patrons.

20 Going on to slide 10, we can see an overview of *Sim*’s system. Now,
21 just like the ’983 patent and the claims where you have an overall first set of
22 attractions, in *Sim*, we have multiple rides, for example, within a park,
23 including rides 1 to 5. Now, that software is going to select a subset of
24 those. That’s going to be the sequence of attractions that the user gets. It’s
25 the second set of attractions that’s selected from that overall set. And then
26 as a user is going through, you have these gate units that I talked about at the

1 attractions and if they're allowed there, if they show up when they're
2 scheduled, they can have access. If they show up outside of the time or go
3 to the wrong one, they'll be denied access.

4 Going on to slide 11. Here we have the secondary reference from
5 this combination, which is *Doi*. And *Doi* is directed also to a theme park
6 customer navigation system. And it has the same goal as *Sim* and the '983
7 patent of directing parties to attractions in a way that's going to maximize
8 attraction utilization throughout the park. *Doi*, like *Sim*, provides users with
9 a portable unit and obtain similar customer information, including their
10 height, their age, and as they move about the park their positional
11 information. You know, where are they within this park?

12 Now, *Doi*'s system recommends attractions to the users when
13 customer information that's been entered into the system, such as their age,
14 matches data about the attractions, just like we saw in the claims of the '983
15 patent. For example, *Doi* may recommend an attraction or show that is
16 popular with ages of members of the group. And we can see that going on to
17 slide 12. Now we're going to get into how the *Sim-Doi* combination
18 discloses this feature of software that selects attractions.

19 "First, *Sim* discloses software that selects attractions based on party
20 information and attraction data." We saw that earlier what it takes into
21 account. *Sim*'s computer "acquires party information," including
22 preferences, not direct user selections, but preferences for rides, times, and
23 sequences. It "compares party information to attraction data, including
24 locations and current crowding, and generates a recommended sequence of
25 rides and a route." That's an itinerary.

1 So what's this system doing? It's taking the information in and the
2 computer itself is generating the itinerary. We can see that, *Sim*, at the
3 bottom of slide 12 here, including a page 34, indicates that the queue
4 manager includes means of calculating the actual time and sequence of
5 attendance at queue entrances offered to the user. Again, this calculation
6 can be in response to user preferences, on the overall demand in the system,
7 and any priority attached to the particular user, and would result in
8 effectively a recommended route.

9 Now, *Sim*'s queue manager software can also "reallocate sequences"
10 on its own. When there's an unexpected event, like a ride closure or a ride
11 failure. And we can see that including out of pages 23 to 24 of *Sim*, where it
12 talks about this algorithm that the computer can use to do this reallocation.

13 Going on to slide 13 here. Even if we assume that because the user
14 may enter a preference for a ride in *Sim*, even though it's not guaranteed that
15 they'll get it, if that means that the computer was not selecting but the user
16 did, it's at least obvious in view of *Doi* to have the software itself make the
17 selections of attractions matching user information that are going to be
18 included in the itinerary. *Doi*'s system collects use data on its attractions
19 and recommends attractions for users based on, for example, user age,
20 matching data indicating the attraction is popular for that age group. We can
21 see that at figure 11 of *Doi*, which is at the bottom left-hand side of slide 13
22 here. We have the very bottom left of that figure. Attraction A is crowded.
23 Attraction D is not crowded. How is it? What's that happening?

24 Well, if we look at *Doi* column 9, lines 63 to 10-11, we see what *Doi*
25 is saying here. What happens is the navigation planner, the computer itself,
26 "makes a plan to recommend other attractions to some of the customers

1 queuing at attraction A” that are selected by that navigation planner in
2 consideration of age. So, for example, selected from the viewpoint of their
3 ages, the navigation information is presented that, “Attraction A is crowded.
4 Attraction D, enjoyable for that aged person, is not crowded. How is it?”

5 We can also see that *Doi* can make recommendations to attend future
6 events starting at a certain time because the information about the party
7 matches data about the attraction. We see that here with the top right-hand
8 side at Delta Delta or “At. . .,” in the bottom of the excerpt from column 10
9 of *Doi*. So at this time “attraction of Pokekun is starting. There are seats
10 yet. Do you want to reserve any?” What’s *Doi*’s system doing? Well, it’s
11 figured out that there’s selected matching ages to the attraction from ages of
12 the customer stored and makes an effort there to go ahead and recommend
13 for those users to do that attraction at that time.

14 So it would have been obvious to a POSITA to apply those teachings
15 from *Doi* of checking the information about the attractions against the
16 information about the parties and making recommendations to them to do
17 certain attractions at certain times. *Sim* and *Doi* are both in the field of
18 theme park navigation. Both use similar components. They both have those
19 customer terminals that the groups carry with them, and they both have a
20 central computer that’s going to keep that information about the attractions
21 and about the parties.

22 In addition, both collect the same type of customer information.
23 Both take in information about the parties, including their age, and also track
24 their location throughout the parks. In addition, both are directed to
25 achieving crowd control and customer satisfaction. They’re both concerned

1 with overutilization and underutilization and making sure all attractions
2 throughout the park are properly utilized.

3 Now, applying *Doi*'s teachings to *Sim* would have enabled *Sim*'s
4 system to take party information, including age, which it's already getting,
5 and provide recommendations of attractions in the itinerary. You should do
6 this attraction at this time because there's a match.

7 Going on to slide 15. We can see that it would have been obvious to
8 a POSITA, and a POSITA would have been motivated to combine these
9 teachings. Petitioner's expert Dr. Houh explained, for example, at paragraph
10 74 of his declaration, Exhibit 1003, that "*Sim* recognizes the importance of
11 greater control and crowd movement, the need to increase customer
12 satisfaction, and contemplates using its system to concentrate the park users
13 in certain areas at certain times." It "also recognizes the need to direct users
14 to secondary attractions" to "maximize park use and customer spending."

15 Now, *Doi* recognizes these same problems and is providing the same
16 solutions or similar solutions to achieve the same results. So a POSITA
17 would have clearly understood to combine the teachings from these two
18 references. And as we see in paragraph 75 of his declaration, a POSITA
19 would have been "motivated to apply *Doi* to *Sim*, such that *Sim*'s system
20 could select attractions and times that match party information, such as rides
21 and shows popular with a party's age, when determining a guest's itinerary."
22 And this would again maximize attraction utilization, control crowding,
23 offer a complete day, and reduce the need to have to maybe reallocate later if
24 there becomes overcrowding or something has to close down.

25 JUDGE SHAH: Counselor?

26 MR. HUGHES: Yes.

1 JUDGE SHAH: I have a question. I just want to make sure I'm
2 understanding your position completely.

3 MR. HUGHES: Yeah.

4 JUDGE SHAH: So are you contending that *Sim* teaches selecting
5 rides based on ride preferences, and that may or may not meet the software
6 that selects? But if it doesn't, then *Doi* teaches further recommendations,
7 and so the further recommendations would be the software that selects?

8 MR. HUGHES: So, Your Honor, there's two things. One is, yes, as
9 we've explained in the papers briefly, we do feel that *Sim* alone teaches the
10 software that selects. It can get user preferences for rides. It checks any
11 priority that they may have, and it gets, you know, maybe ride preference
12 times. It's not guaranteed. The user's not putting in their rides at this time.
13 The software gets that preference information, and it's going to actually use
14 its algorithms and decide what their itinerary is actually going to be.

15 But our other point is, to the extent that because a user entered a
16 preference, you know, that means that maybe there was some user manual
17 selection of what they want that takes it out of the claim, well, it would have
18 at least been obvious in view of *Doi*'s teachings, for the system to go and
19 look at information about the parties and figure out what attractions match
20 that data and present to the user you should do this attraction at this time
21 because of that match. It would have been obvious to bring that into *Sim*
22 when *Sim* creates that sequence of events. So using *Doi*'s teachings, check
23 information about the parties, find out what matches that, and when it
24 generates that sequence, give them the attractions that match with the system
25 still figuring out the best times to do those.

1 JUDGE SHAH: So would the recommendations from *Doi* be after the
2 initial selection by *Sim* or --

3 MR. HUGHES: No, it would be included in that initial selection.

4 JUDGE SHAH: It would be included. Okay.

5 MR. HUGHES: Yes.

6 JUDGE SHAH: All right, thank you.

7 MR. HUGHES: Now, Patent Owner is going to argue that *Sim* and
8 *Doi* do not teach this because they allegedly require user manual selection of
9 attractions. But anything that happens there, and we saw this in *Doi*, that's
10 after the itinerary has already been generated and it's irrelevant to the claim
11 language of whether the software selected the attractions for that itinerary.

12 And the Board was correct in Institution where the Board said, and
13 we see this on slide 16, that "'software that selects' means that the software
14 is selecting a set of attractions from the first set, but does not exclude a
15 contemporaneous or further manual confirmation or selection." Once the
16 software selected the attractions and it's in an itinerary, that's it, it's met the
17 claim.

18 And we can go on to slide 17 here. As I said, Patent Owner argues
19 both *Sim* and *Doi* require this manual selection of attractions, and so it's
20 outside the claims. That's incorrect. First, *Sim*'s queue manager selects
21 those attractions, including for modified sequences when reallocation is
22 necessary. Now, while *Sim* indicates a user may give a preference, that's not
23 a guarantee that they're going to get something. It's *Sim*'s queue manager
24 software that makes that determination.

25 And as we saw, *Doi* is unambiguous that its computer is what is
26 going to select those attractions and recommend them to the user before the

1 user has any input, saying I want that. And it does it, for example, by
2 realizing that this attraction is popular for that age group, you have someone
3 of that age in your party. The software actively recommends that attraction
4 for you to do without the user having to do anything.

5 Now, again, Patent Owner also argues that there should be an
6 exclusion of any contemporaneous or further confirmation, such as a
7 reservation from this software that selects. This is incorrect. Patent Owner
8 is improperly focusing on what happens after the computer has already
9 selected and recommended the attraction. And it also is ignoring the
10 combination of *Sim* and *Doi* where we have *Doi*, for example, clearly having
11 the software pick the attractions before the user has done anything.

12 Now, the '983 patent and its prosecution history contain no clear
13 disavowal of a contemporaneous or further confirmation of recommended
14 attractions, such as a user making a reservation. If we go on to slide 18, in
15 fact, the '983 patent is clear as to what constitutes an itinerary and
16 distinguishes recommended attractions from reservations. If we look at
17 column 7, lines 31 to 34 of the '983 patent, we can see it says, "An itinerary
18 is comprised of events. An event is typically a visit to an attraction at a
19 scheduled time. This is not necessarily a reservation, though it can be. It is
20 a time at which the party is recommended to visit an attraction."

21 So once we have a recommended time to visit an attraction, that's an
22 event, that's an itinerary. If a user further confirms that by officially making
23 a reservation, it doesn't negate the fact that once you have that
24 recommended time to visit an attraction, that's it. That's your itinerary.

25 Now, *Doi*'s computer, on its own provides exactly such a
26 recommendation of a time for a party to visit an attraction. We can see here

1 *Doi* column 10, lines 12 to 33, towards the bottom, this attraction, Pokekun,
2 which it knows is popular for a certain age group, has certain seats available
3 for a show starting “At. . .,” or at a certain time, “attraction of Pokekun is
4 starting. There are seats yet. Do you want to reserve any?” That is, this
5 system has recommended you should do this attraction at this time because it
6 matches you. Applying *Doi* to *Sim* results in *Sim*’s computer selecting
7 attractions and the scheduled times for those attractions, which by definition
8 is an itinerary.

9 Going on to slide 19, we’re now going to turn to the second dispute,
10 which is whether *Sim-Doi* discloses that that attraction data substantially
11 matches party information. Now, Patent Owner argues, as we see on slide
12 20, that “substantially matches” in the context of these claims somehow
13 excludes “exact matches,” and that *Sim* and *Doi* allegedly have these exact
14 matches and can’t meet the claim. But again, the Board was correct in
15 Institution. We see here on slide 20 we have the Institution Decision, page
16 21, where the Board stated, “Claims 1 and 3 do not recite that the data must
17 only ‘substantially’ match such that an exact match is excluded. There is no
18 specific definition of what would be considered ‘substantial’ nor is there an
19 exclusion of an exact match that ‘by its nature’ is also a ‘substantial’ match.”
20 The Board was correct in Institution. There’s no reason it should change its
21 mind now.

22 Now, what does Patent Owner point to for its argument that the ’983
23 patent allegedly excludes these exact matches? Well, they point to sections
24 of the patent where it states that allegedly a low/poor or an unalluring match
25 is not substantial. That has nothing to do with whether an exact match is.

1 And there's no logical way to stretch that to mean that a much better match,
2 like an exact match, would also not be substantial.

3 Now, Patent Owner's expert confirmed this at deposition when he
4 was asked, "Would you consider an exact match to be a poor match?" He
5 indicated, "No." He was asked, "Would you consider an exact match to be
6 unalluring?" The answer was, "No, an exact match would not be an
7 unalluring match." So whether or not poor or unalluring matches are not
8 substantial has nothing to do with whether an exact match is.

9 And, in fact, the Patent Owner's expert confirmed that a match of
10 one factor can be substantial. In his declaration, Exhibit 2009 at paragraph
11 89, he indicated, "Attraction data 'substantially matches' party information
12 when the party profile matches at least one, but potentially more attraction
13 acceptance factors having a positive response." This is exactly what we saw
14 in *Doi*. We have one factor of age. It matches with your party, there's a
15 positive response. Their expert is saying right here, that is enough to make
16 that a substantial match.

17 Now, we're going to go on to dispute 3, which is the next grounds
18 that we talked about. And this is the *Waytena* reference and whether
19 *Waytena* alone renders the challenged claims obvious. Slide 23 has an
20 overview of the *Waytena* reference. And *Waytena*, like the '983 and *Sim*
21 and *Doi*, is also about a "system for providing patrons at a facility such as a
22 theme park with attraction information and reservation schedules."

23 These parties, similar to the patrons in *Sim*, carry PCDs, or personal
24 computer devices, and they enter information including age, sex, height,
25 weight, and then flags, which are things that may describe that party's
26 preferences or characteristics about the party. The PCDs and the system

1 computers also include attraction data, just like we saw in the '983 claims,
2 including things like restrictions for age, height, or weight. There's
3 locations of the attractions and then also flags about the attractions, which,
4 like the flags for the customer information, are characteristics or information
5 about that particular attraction. The PCDs, importantly, can present a list of
6 attractions that match the particular preferences of the patron's group.

7 So *Waytena* expressly notes that with its system having this
8 information about, for example, preferences and characteristics of the group
9 and preferences and characteristics of the attractions, its PCD itself can
10 present a list of attractions that match the preferences of the group. And
11 patrons can make reservations for these attractions, including the ones that
12 were recommended or the ones that are indicated as matching. And they can
13 do that, including by allowing the system itself to pick the scheduled times,
14 by selecting a default "next available time" to schedule that attraction.

15 Going to slide 24, we have here figure 1 from *Waytena* on the left-
16 hand side, which shows the overall layout here. We have a central attraction
17 control interface, which is similar to *Sim*'s central computer 103. We have
18 attraction computers 101 and those would be at each individual attraction
19 within the park. And then we have the PCDs that the patron groups are
20 carrying around with them. And we see here on the right-hand side,
21 *Waytena* from column 5 where it talks about these PCDs and what they're
22 doing and how they have an input and a display and even an audio speaker
23 that they can announce things to the party.

24 Going on to slide 25, that central traction control interface that we
25 talked about, *Waytena* indicates that that can be a conventional centralized
26 computer system, that it allows access to all attraction computers by the park

1 staff. So we have one overall central attraction computer, individual
2 attraction computers at the each attraction, and then the PCDs for the users.

3 And going on to slide 26, we have figure 2 of *Waytena* here. And
4 we can see this is how the PCDs interact with those attraction computers,
5 including to make the reservations. The PCD may send through the
6 communications model module, send a request for a reservation there, the
7 attraction computer is going to check that against its database, and, if there's
8 a match, then you can have a reservation scheduled.

9 Now, when *Waytena* does this, we have here on slide 27 an example
10 of the user interface on that personal device. And this is 5B. We see that
11 there's a list of attractions 541 at the top left-hand side of a figure, there's
12 the current reservations or the party's current itinerary is at the bottom, and
13 there's that option 543 to click Reserve. And the party can click Reserve,
14 for example, if Time Travel is selected, they can click Reserve, which will
15 start that process to schedule it into the itinerary.

16 Now, as we see here at column 14, lines 12 to 35, *Waytena*, in fact,
17 indicates that, "If desired, the patron may be presented with a list of
18 attractions that match the particular preferences of the members of the
19 patron's group," and that is what we have in the claims. The software right
20 here is selecting attractions that match characteristics about the group.

21 And why is that important? As we've stated, these claims are at least
22 obvious over *Waytena*. And here's how that can work. Like we have in the
23 claim, we see in figure 5A, *Waytena* is allowing these parties to put in their
24 party information: age, weight, health conditions, ride preferences. Then in
25 figure 5B they can be presented with that list of attractions. And that list
26 541, like *Waytena* expressly says, can include the ones that the system itself

1 determined match the preferences or the characteristics of the party. Then if
2 the party wants to reserve those recommended attractions, they can do so by
3 clicking button 543.

4 And what happens then? Well, we see in figure 5C here that a time
5 comes up. Either the patron themselves can choose to input a specific time
6 that they would like or, if a user does not want to be bothered with trying to
7 schedule everything themselves, they can select 563 Next Available and let
8 the system itself pick the next time for this attraction for them. So while
9 *Waytena* was considered during prosecution, nothing in the prosecution
10 history suggests that the Examiner considered whether the claims may
11 nonetheless be obvious over these two different teachings that are both
12 within the *Waytena* reference itself.

13 We see this on slide 29. *Waytena*, as we talked about, discloses the
14 ability to select recommended attractions for a user and also performs
15 default selections of reservation times to complete an itinerary. Now, it
16 would have been obvious to modify *Waytena* to present recommended
17 matching attractions with proposed reservation times for each, thus selecting
18 attractions for an itinerary with the PCD. Now, how could this look? We
19 have here figure 5B as modified. So *Waytena* already says the system can
20 determine which attractions match and present them, and the system can also
21 determine the next available time and present that to the user. Putting those
22 two together, it would have been obvious to present the user with that full
23 list of matching attractions and that next available time for the user to only
24 have to hit Reserve once rather than multiple times.

25 If we go on to slide 30 we see some motivations to do this. Now, in
26 the Institution Decision the Board had indicated at trial it would like to

1 discuss some of the motivations that there would be to make these
2 modifications within *Waytena*, and we can see some examples of that here
3 from Petitioner's expert's declaration, Exhibit 1003, including paragraphs
4 146 and 148. Petitioner's expert indicated, "At the very least, it would have
5 been obvious over *Waytena* to simply present this list with proposed
6 reservation times for each recommended, or computer-selected, attraction,
7 without party involvement. This gives the party the option to simply select
8 an entire list of attractions and proposed times," by definition from the '983
9 patent an itinerary, "without having to schedule individually -- or schedule
10 reservations for each individual attraction. That is, the party follows the
11 itinerary that the system is already going to generate based on her
12 information and goes to each attraction on the recommended list at the
13 designated time."

14 Now, a POSITA would have understood that rather than waiting for
15 the party to select Reserve and Next Available Time for each one of those
16 recommended attractions, the PCD could use next available time as a default
17 and make such selections itself. Thus, these existing processes in *Waytena*
18 could be used to present a list of selected matching attractions and proposed
19 times to visit each attraction for the party to confirm all at once, one click
20 instead of multiple clicks, without that party involvement before they get
21 that overall list.

22 If we go on to slide 31, Patent Owner's arguments here are rooted in
23 a notion that users must pick the attractions. They argue, for example, that
24 one of *Waytena*'s goals is "to overcome the inability of patrons to
25 communicate their intention to attend particular attractions and, in effect,
26 request a reservation for attractions." But this is looking at one purpose of

1 *Waytena*, and it really goes to whether it anticipates it, not looking at what
2 we've presented, which is looking at all of the teachings within *Waytena*,
3 would this be obvious?

4 And it also ignores the fact that *Waytena* itself acknowledges that a
5 user may not want to have to pick everything. It specifically says its system
6 can present them with that list of matching attractions that they can choose
7 from. And its system allows them to, instead of having to pick every time
8 they want, they can allow the system to do it by having the system pick the
9 next available itself.

10 Going on to slide 32. Patent Owner also argues that allegedly this
11 modification to *Waytena* maybe couldn't work. They argue that the
12 sequence of attractions presented may not be what a user would prefer.
13 They argue that there could be potential time conflicts between these
14 reservations and concerns about system delays. For example, as it's trying
15 to pick the next available time, could there be conflicts with other users
16 reserving those same attractions? And they argue that users may not commit
17 to reservations they did not themselves manually select. Well, that last one
18 is really irrelevant to the claims. Even in the '983 and any system, if you
19 recommend an itinerary to a user, they're not forced to follow it. Users are
20 going to get their itinerary and they can choose to do what they want on that
21 itinerary or not do things, including as just things change during the day.

22 Now, with respect to their arguments about time conflicts and
23 potential conflicts in competing reservations, *Waytena*'s system itself
24 already takes care of that. It takes into account existing reservations and
25 time to get from one attraction to another. And, in fact, it has the ability,
26 like we see at the bottom here discussed at columns 15 to 17 and 20, it has

1 the ability to hold proposed reservation times in a virtual queue, so that if
2 other patrons request reservations at the same attraction, they will not be
3 given proposed reservation times that conflict with the first patrons. So its
4 system can already take care of that. It can figure out these next available
5 and hold them and present that whole itinerary.

6 Now, I'm going to move on to the last dispute, main dispute between
7 the parties, which is whether a reference to *Herz* is analogous art. And this
8 is the grounds, *Waytena* in view of *Herz*, that we have in the petition.

9 Going on to slide 34, *Herz* is directed to a "system and method for
10 scheduling the receipt of desired movies and other forms of data from a
11 network," and it does this using an agreement matrix that's going to match a
12 party profile or characteristics about a user with characteristics about those
13 movies that they may want to see. Patent Owner's argument here is that
14 *Herz* is not analogous art, and so it should not be considered.

15 Now, as we stated in Petitioner's reply, which we see on slide 35, a
16 prior art reference qualifies as analogous art if it's from the same field of
17 endeavor, regardless of the problems addressed, or if it's reasonably
18 pertinent to the particular problem with which the inventor is involved. And
19 *Herz* qualifies under both prongs.

20 We see on slide 36, Patent Owner argues that *Herz* is not in the same
21 field of endeavor, but it does this by applying an unduly narrow
22 interpretation of what the field of endeavor should be here. Patent Owner
23 argues that the field of endeavor is limited to managing guest experiences at
24 physical venues, and suggests that the attractions being scheduled must
25 have, for example, specific locations, limited capacity, and must require
26 travel time. But as was explained also, going back from the *Netflix* case, the

1 field of endeavor is determined by reference to explanations of the
2 invention's subject matter and application, embodiments, and the structure
3 of the claimed invention.

4 And importantly, "The field of endeavor is not limited to the specific
5 point of novelty, the narrowest possible conception of the field, or the
6 particular focus within a given field." But that's exactly what Patent Owner
7 is trying to do. They're trying to unduly limit what this field of endeavor
8 can be. When we look at the '983 patent itself, we know that the field of
9 endeavor is actually much broader than that.

10 For example, if we look at claim 12, part of the claimed invention, we
11 see that the '983 patent is actually broadly defining what these attractions
12 are that can be selected for an itinerary. They can be things like a show or
13 movie, which are expressly disclosed in *Herz*. They can be a presentation,
14 and they can even be as broad as an attraction within a district, city, region,
15 state, or country.

16 Now, Patent Owner's own expert confirmed that the '983 patent's
17 field is broadly related to scheduling. He talked about his dissertation and
18 indicated that, "The resources for my dissertation were different, but at a
19 high level, they both involved scheduling of resources." And when asked
20 about his work and the relevance of scheduling algorithms for air traffic
21 control and satellites, he indicated, again, it's relevant because both involve
22 scheduling. That's what the field of endeavor here -- is here.

23 And if we look on slide 38, in fact, *Herz* is particularly close to the
24 field of the endeavor of the '983 patent as it's not just directed to scheduling
25 resources in general, but rather to scheduling resources, including shows and
26 movies, as expressly claimed in the '983 patent, in a manner that matches

1 information about a party with that data about the attractions. We can see
2 that on the right-hand side where we have some excerpts from *Herz*,
3 including the abstract at column 4, where *Herz* is going to do this agreement
4 matrix and it's going to compare recipient profiles to profiles of
5 characteristics of available video programs, including movies or other data.
6 And it's going to pick the ones that most closely match.

7 And then what does it do? It put these into a virtual channel, which
8 is, in effect, an itinerary. Here's your itinerary of watch this movie at this
9 time, followed by this movie at this time, followed by this movie at this
10 time. Again, that's what the '983 patent says an itinerary is,
11 recommendation to do this attraction, including this movie at this particular
12 time.

13 Now, even if *Herz* is not in the same field of endeavor, it's at least
14 reasonably pertinent to the particular problem with which the inventor was
15 involved. We can see from some of the case law you have to take things
16 into account, such as whether it would have logically commended itself to an
17 inventor's attention, the extent there's a similar reference of interest, and
18 reality of the circumstances and common sense. So if we look at *Herz* here,
19 we can see that it is definitely at least reasonably pertinent to the particular
20 problem with which the inventor was involved. Again, the '983 patent is
21 seeking to provide users with an appropriate itinerary related to attractions
22 that may include movies and shows just like are discussed in *Herz*.

23 And what is it actually doing here? It's trying to find the ones where
24 the visitor's interest and taste can be understood and an appropriate itinerary
25 generated for them. Common sense dictates that *Herz* logically would have
26 commended itself to a POSITA. Considering these problems, *Herz* is

1 concerned, again, with assisting parties to identify and schedule the most
2 desired attractions, including the movies that best match. Like the '983
3 patent, *Herz* also takes into account things like attraction start times, their
4 duration, and scheduling factors. You can't watch four movies on the same
5 channel at once. It has to pick them, know their start time, know their
6 duration, and give you that full schedule.

7 And Patent Owner is going to argue that, you know, *Herz* cannot be
8 analogous art because it's not about these physical attractions. Well, just
9 like you have to physically be present at a movie theater to see a movie at a
10 scheduled time, using *Herz*, you have to be physically present in your house
11 in front of your TV when that attraction is going to start. If you're not in
12 your house at the scheduled time that *Herz* has for that program, you're
13 going to miss it. Just like if you don't arrive at the movie theater at the time
14 the movie is going to start, you're going to miss that movie as well.

15 And now I'd like to get into some arguments on the dependent
16 claims, and we'll go to slide 42. With respect to the dependent claims,
17 Patent Owner has a few main arguments. Most of them are based, again, on
18 that faulty premise that the references, including *Sim*, *Doi*, and *Waytena*,
19 require manual selection of attractions. But we saw that that's not the case.
20 The Patent Owner also argues the references individually rather than looking
21 at the full combination as presented, which is again, improper. And for
22 numerous of the dependent claims, Patent Owner reads limitations into the
23 claims, including by pointing to descriptions in the specification of the
24 patent or talking generally about what their view of the '983 invention is and
25 arguing the references don't have that. But that's not what we're looking at.
26 We're not comparing the references to something specific in the '983

1 specification. When you look at the language of the claims themselves and
2 what they actually require, it's clear that the references have them. And I'd
3 like to go into some examples of that.

4 If we can pull up claim 7, we can see, for example, that claim 7 of
5 the '983 patent states that there's the information about the party comprises
6 a privilege and the data distinguishing a first set of attractions as being more
7 desirable is with respect to that privilege. And so in step D, one of those
8 attractions where you have the privilege is going to be selected.

9 If we can go to Petitioner's reply. Now, Patent Owner acknowledges
10 even that *Sim*'s queue system allows for priority and privileges for guests
11 that may pay additional fees, have a certain class, or guests that arrive at a
12 certain time. But they argue that this does not influence the selection of
13 attractions and that *Sim* selections are not automated by software, but are
14 executed by the users. Again, the executed by the users, that's *Sim*
15 individually. We have *Sim* in view of *Doi*.

16 Now, with respect to these privileges not influencing selections, a
17 POSITA would not see that. If a guest has come in and paid extra for a
18 certain privilege, they're going to expect to get something for that privilege.
19 What are they expecting to get? Access to whatever ride they've paid for --
20 privilege for, priority to the more popular attractions. That's what they're
21 paying for. The system's going to account for that, or *Sim* wouldn't have
22 expressly said it takes those privileges and priorities into account when the
23 queue manager software is making the schedule.

24 And as explained in the petition, it's really the combination of *Sim*
25 and *Doi* that renders this obvious. If we can scroll down. For example, the
26 combination would provide the same itinerary selection of events as we're

1 using in *Doi*. *Doi*'s system is actively selecting the events that match the
2 information about the user. It's going to take into account that privilege
3 information that *Sim* system has when it picks something. If a user's paid
4 extra to have a certain privilege, it's going to make sure that they get that
5 when it picks the attractions.

6 If we can go on to claim 11 now. So claim 11 is a dependent claim
7 and claim 11 requires that there's a third set of attractions previously
8 selected for the party and that has an already visited portion and a remaining
9 portion. And then the party is going to forego that remaining portion due to
10 an interruption eventually. Now, then step D is going to select a second set
11 of attractions as a replacement for that remaining portion. And the claim
12 does state that wherein said second set of attractions substantially excludes
13 the already visited portion. Now, this is again obvious over *Sim* in view of
14 *Doi* and Patent Owner is again arguing them individually.

15 Now, Patent Owner argues that both *Sim* and *Doi* could potentially
16 include already visited portions when adjusting for interruptions. But that's
17 irrelevant to the claim and it ignores the real teachings here. *Sim* teaches
18 you may have a reallocation of events. For example, a ride breaks down,
19 you're not going to give someone everything they've already completed in
20 their schedule. What it's reallocating is that remaining portion. So *Sim* is
21 going to go back, it's not going to give you everything you've already done.
22 We're looking at what's left. This ride closed down. Let's replace it.

23 *Doi* teaches something similar. This attraction is too crowded, an
24 interruption event. Forego that and go do this other attraction that matches
25 you instead. That's the replacement. You combine the two, we have *Sim*,
26 you've done this, it's done. Now we have an interruption event. We need to

1 get something else. Okay. The system's going to recommend a replacement
2 for you. And that's what we have in the combination. And it's clear to a
3 POSITA that they would have taken that into account and excluded what
4 you've already done while giving you something new.

5 JUDGE SHAH: I have a question.

6 MR. HUGHES: Yes

7 JUDGE SHAH: Oh, I'm sorry. Judge Woods, go ahead. You go
8 first.

9 JUDGE WOODS: I'm sorry. Thank you, Judge Shah. So, yeah, Mr.
10 Hughes, if I could ask a question. Is there any teaching in either *Sim* or *Doi*
11 that would -- the itinerary would exclude a ride that was already ridden?

12 MR. HUGHES: So there is some teachings and suggestions in *Doi*.
13 For example, if we go to -- and I'll bring it up now, I'll read it out to you. If
14 we go to page 22 and 23 and 24, what we can see is there's a discussion of
15 what these reallocation events may be. And one of them is that if there's
16 morning attendees and afternoon attendees, they want them to get the same
17 amounts. So morning attendees could then be given a reduced number of
18 rides in the afternoon to allow an increased number of rides to late attendees.
19 If you're giving morning users a reduced number of rides, you by definition
20 cannot give them everything that they've already done in the morning. And
21 what we have here really is talking about reallocating, like I said, what is
22 left? So what we have is we're taking this, we're not going to give them
23 everything they've done, we're going to reallocate, and give them something
24 different, like *Doi* suggests. Take this new attraction.

25 And I'll also state that even if they may get something that they've
26 done, that's not excluded by the claim language. The claim only says that

1 this new set has to substantially exclude an already visited portion. So even
2 if in *Sim* and *Doi*, when it does this reallocation, you may get one or two
3 things you've done before, that's fine. You're still within the scope of the
4 claim. The claim only requires that it substantially excludes, not entirely
5 excludes.

6 JUDGE WOODS: Yeah, I'm sorry. If I could follow-up and I
7 apologize. It's a little early and I'm a little slow. So if you could point to
8 the express teaching or suggestion in either *Sim* or *Doi*, so I could read that
9 for myself, that suggests that you would -- so as to avoid putting a rider on
10 the same ride multiple times, that would be -- that might be excluded from
11 the itinerary. If you could, like, pinpoint, pin-cite exactly where that
12 teaching or suggestion might be.

13 MR. HUGHES: Yes. If you go, for example, *Sim*, the reference
14 starting at page 23 around line 32, this talks about the controlling computer
15 being programmed to reallocate sequences to cope with unexpected events.
16 And it says that when the -- that the explanation of this possibility is going
17 to be presented, and there's examples of it. One is one part of the theme
18 park being lightly loaded and certain rides are to be closed down. Well, if
19 you've already done those rides and that section gets closed down, you're
20 not going to be given what you've done before. Those rides are now closed.
21 Another example that we see going on 24, everybody getting a minimum
22 number of rides. Morning users may have already done a lot. They're going
23 to get less in the afternoon. They cannot get everything they had in the
24 morning.

25 JUDGE WOODS: Okay, thank you.

26 MR. HUGHES: And if we can go on to claim -- yes, Your Honor?

1 JUDGE SHAH: I still have a question. Sorry. So you're using *Doi*'s
2 recommending another item to be combined with *Sim* to teach claim 1?

3 MR. HUGHES: Yes.

4 JUDGE SHAH: But are you also using *Doi*'s recommending another
5 item for this exclusion limitation as well?

6 MR. HUGHES: It's for the exclusion limitation, but it's really for the
7 part of the claim here that is the "replacement for" portion of the itinerary.
8 So you had the itinerary. You had a remaining portion. There was an
9 interruption event. Now you need a replacement.

10 JUDGE SHAH: So you're further recommending?

11 MR. HUGHES: Well, you're recommending a replacement. So the
12 attraction is broken down or, like *Doi* says, it's too crowded. You were
13 supposed to do that. We need to recommend something different. So now
14 I'm going to take that remaining portion, you were supposed to do Attraction
15 A. It's too crowded or broke, like *Doi* says. I've recommended a
16 replacement. I see that attraction D matches you. You should go do that
17 instead.

18 JUDGE SHAH: Okay.

19 MR. HUGHES: Okay. If we can go to claim 21. So claim 21, and
20 claim 18 as well, introduced this concept of a reservation computer. And as
21 was explained in the petition with respect to *Sim* and *Doi*, this would have at
22 least been obvious in further view of *Waytena*. Now --

23 JUDGE SHAH: I'm sorry. Before you continue --

24 MR. HUGHES: Yes.

25 JUDGE SHAH: -- you have about 15 minutes left, so you're starting
26 to go into your rebuttal time.

1 MR. HUGHES: Thank you, Your Honor. I may take two to three
2 minutes of that rebuttal time now, if you don't mind.

3 JUDGE SHAH: Okay. All right.

4 MR. HUGHES: So *Waytena*, like we saw, discloses those attraction
5 computers at each attraction, and those facilitate making reservations. As
6 we explained in the petition, it would have been obvious to include such
7 attraction computers in *Sim*. And when you look at the systems of *Sim* and
8 *Waytena*, they're really very readily capable of being combined together.
9 They both have the overall central contraction computer. They both have
10 something at the attractions. *Sim* has those access gates, which it doesn't
11 give a ton of details on. *Waytena* has these attraction computers. And then
12 they both have the users carrying the personal computing devices that are
13 going to have them with their itineraries.

14 So really what we're talking about is a modification to those existing
15 gate structures in *Sim* to make them like the system in *Waytena* or those gate
16 structures could be the reservation computer. Like *Waytena* says, you get
17 some benefits of that. Instead of having the queue manager do everything,
18 you can have these local reservation computers at the attraction that are
19 checking the current, for example, queue at the attraction, the current
20 capacity of the attraction, its current throughput, and taking that into account
21 when choosing to accept or deny reservations.

22 Now, Patent Owner argues that you wouldn't modify *Sim* to include
23 this because the queue manager allegedly performed some of this
24 functionality. But that's unavailing. As we've explained, these systems are
25 actually very similar. And bringing in these attraction computers where the
26 gate units are in *Sim* gives you that additional capability. What are my

1 current operating conditions? What's local to this attraction? And I can take
2 that into account when making the reservations for that specific attraction
3 with that central computer, just like in *Waytena*, and still *Sim*'s doing the
4 same thing, monitoring all the overall reservations throughout the whole
5 system.

6 And lastly, if we can go to the petition at claim 22, I'd like to briefly
7 discuss this perturbation function that is required in claim 22. And this is
8 that the software can apply a perturbation to a desirability of a first set of
9 attractions that's going to make them more likely to be recommended. And
10 we have this in *Sim* in view of *Doi*. Now, *Sim* uses data on demand of the
11 resources to moderate or adjust that and *Doi* is going to specifically teach
12 how you can do that with perturbation function.

13 If we can -- we can see that *Doi* can mitigate that exact
14 underutilization or overutilization by guiding a non-crowded attraction to the
15 customer. And it can do that by applying what's going to be a perturbation
16 to that desirability. It does this by lowering the price to something that it
17 thinks the users may like, which would cause them to go from one attraction
18 to another. Now, when it does that price lowering, importantly, that's what
19 causes *Doi*'s system to recommend that attraction to the users. The users
20 still have not selected it. But now that *Doi*'s system has reduced the price,
21 thinking that that's going to cause people to go to this new attraction, that
22 causes the system to go ahead and recommend that specific attraction
23 because of the change, because of the price drop. It's that price drop, that
24 perturbation to desirability, that makes the system go and recommend it as
25 an event for the users.

26 And with that, Your Honors, I'll save the rest of my time for rebuttal.

1 JUDGE SHAH: Okay, thank you. You have a little less than 12
2 minutes left for rebuttal.

3 MR. HUGHES: Thank you, Your Honor.

4 JUDGE SHAH: Thank you. Patent Owner, give me one second.
5 You may begin when you're ready. I'm sorry, can you let me know how
6 much rebuttal time you'd like?

7 MR. KESAN: Fifteen minutes.

8 JUDGE SHAH: Fifteen minutes?

9 MR. KESAN: For my surrebuttal.

10 JUDGE SHAH: Thank you.

11 MR. KESAN: Good morning, Your Honors. I'm Jay Kesan for the
12 Patent Owner, and I'd like to reserve 15 minutes for the surrebuttal time.

13 Here's a brief outline of my presentation. I'll begin by looking at the
14 key problems that is addressed by the '983 patent, which then very nicely
15 ties into the notion of software that selects. That being the key limitation
16 that is the dispute here, meaning that the software selects and creates an
17 itinerary without manual selection of the rides and the times, and we'll talk
18 through that. And that, I believe, is present in *Sim*, *Doi*, and *Waytena*, where
19 the system simply will not work without user input.

20 The '983 patent addresses something that users felt when going to
21 theme parks where they would experience decision fatigue. They would
22 experience anxiety and frustration from having to pick rides and attractions
23 that they did not know much about. On the other hand, they would face an
24 information overload about these attractions that once again caused decision
25 critique and anxiety. The '983 patent tries to address exactly that by
26 eliminating that user dependence through an automated process of

1 generating the complete itinerary, software that selects excludes manual user
2 selection.

3 The second limitation substantially matches -- actually relaxes the
4 matching criteria between the data for the attraction, the information for the
5 party, and so sweeps in more attractions and creates more flexibility in
6 creating the itinerary. We believe that the '983 patent, when properly
7 interpreted, is valid and nonobvious over the prior art. The traditional
8 systems like *Sim* and *Doi*, which are really queue management systems,
9 they're registration systems, they're customer navigation systems, they're
10 not itinerary creators. They have the same problems that the '983 patent was
11 trying to address. They have the same frustrations and inefficiencies.

12 What we have here is an automated process of creating the complete
13 itinerary, specifying events and times very akin to figures 4 and 5 in the '983
14 patent. And Your Honors referred to figure 4 in the Institution Decision.
15 And you can see that there is a complete itinerary of dates and times.
16 There's even messages within the itinerary in angled brackets telling you it's
17 time for lunch, it's time to go meet the tour bus, it's time to go shopping, so
18 on and so forth in figures 4 and 5. It's a fully automated process. It
19 excludes manual intervention, and it's designed to make it a nice, seamless
20 user experience. You walk in there, an itinerary is presented to you, you go
21 ahead.

22 JUDGE WOODS: Hey, Mr. Kasen, if I could ask a favor of you.
23 Would you please reference your slide number as you go through them? I
24 do have the -- I have your demonstratives in front of me.

1 MR. KESAN: Okay. I'm sorry, Your Honors? I should have done
2 that. Yeah. I'll do my best to try to make sure. I'm at slide 5 and this is the
3 first slide where I'm addressing the actual claims. So claim --

4 JUDGE SHAH: I'm sorry, Counselor, I don't see any page numbers
5 on the slides themselves, so perhaps --

6 MR. KESAN: It's at the bottom right. Slide 5 in the bottom right.

7 JUDGE SHAH: Oh, some of them are covered by the exhibit number.
8 Okay, sorry about that. Thank you.

9 MR. KESAN: Oh, sorry about that. Okay. So I'm at slide 5 and slide
10 5 shows that claim 1 and 3, which are the two key independent claims at
11 issue, one is a system claim and the other is a method claim. And both of
12 them are directed to providing an itinerary. This is not trying to manage
13 queues, not trying to navigate customers. It's designed to provide an
14 itinerary. And the claim tells us that the itinerary is the second set of
15 attractions selected from the first set of attractions. Claim 1 says that. And
16 it's the software that selects that second set of attractions from the universe
17 of the first set of attractions. And it incorporates data about these attractions
18 and tries to match them with the information about the party and the visitor.
19 And in that automated process, it generates an itinerary.

20 Now, an itinerary has very specific meaning in the '983 patent. It is
21 composed of events. That's what column 7, lines 31 to 36, in the patent tells
22 us, that an itinerary is composed of events, and an event is a visit to an
23 attraction at a scheduled time. And an itinerary subsequently, the next line
24 that follows the patent, says it's a sequence of events, and those events are,
25 of course, an attraction. Now, the attraction might be a ride, but it could also

1 be a restaurant. It could also be a shop, it could also be a picnic site, so on
2 and so forth.

3 As I just mentioned, figures 4 and 5 are excellent examples of
4 scheduled itineraries. It's critical to understand before we get to *Sim* and
5 *Doi* and so on that figures 4 and 5, that itinerary was generated by the
6 software. The user was not asked to pick a single event in that itinerary.
7 The user was not asked to pick a single time. This was generated by the
8 software.

9 I would also like to go briefly to slide 6 of the Petitioner. It's
10 important to highlight that Petitioner wants to ignore important aspects of
11 the claim directed to providing the itinerary. The claim says you have to
12 provide an itinerary. The itinerary comprises the second set of attractions
13 selected from the first set. The software selects that second set of
14 attractions, meaning the itinerary. And this itinerary is customized for that
15 party. In this process, there is no manual involvement. And as we shall see
16 later, the prosecution history makes that very clear.

17 I'm now at claim 6 of my presentation. I want to spend a little bit of
18 time talking about these four dependent claims. And if I have some time,
19 I'll talk about a few others.

20 Claim 7 prioritizes picking the attraction and itinerary based on some
21 admission privileges that the user already has. So the user tells the system,
22 hey, I have certain admission privileges. Then the system, once again, the
23 software prioritizes those attractions based on those admission privileges
24 that they have and picks that and builds it into the itinerary creation. Claim
25 11 talks about how when there is an interruption, and that interruption might
26 be, hey, okay, I've gone over for lunch, I already have an itinerary, but I've

1 spent too much time for lunch. And claim 11 addresses that situation where
2 the interruption is overcome.

3 And that is what claim 11 tells us. These are words from the claim.
4 The interruption is overcome by now creating a new itinerary for the
5 remaining time. So the remaining portion of the time that the user has in the
6 park, the software once again creates a new itinerary to replace the previous
7 one that they've kind of now missed the schedule for. And so it creates a
8 new itinerary, but then it makes sure to exclude already visited sites that
9 wasn't a previous itinerary. So what we have here is a software is simply
10 saying, okay, I gave you itinerary one and you kind of somehow fell behind,
11 et cetera, whatever, got distracted, whatever. And here's a new itinerary at
12 this point for the remaining portion of your ride. And of course, we won't
13 repeat it.

14 Claim 22 talks about a perturbation function. And this is a very
15 important part of the whole concept of directed demand in this patent. And
16 their number of claims that say, claims, for example, 19 to 22, that deal with
17 this concept of where you direct demand. And the software directs demand
18 to control sending people to various attractions to address both
19 overcrowding, underutilization, and so on. And the perturbation function,
20 when a certain ride or attraction starts becoming too crowded, it reduces the
21 attractiveness of that. And that is actually shown in great detail in figure 13
22 in the patent, so that the second choice might be picked to avoid the
23 overcrowding and directing demand to other places. And this perturbation
24 function allows you to direct demand and actually anticipates, and it's that
25 dynamic aspect that is very significant, that it anticipates the kind of
26 overcrowding. And the software allows you to do that. And so you can see

1 the unperturbed versus perturbed situation in figure 13, and you can see how
2 the perturbed situation ends up sending as much as 25 percent of the visitors
3 to second choices, for example.

4 Claim 23 is also a very critical claim that talks about how messages
5 can be presented in conjunction with events and in conjunction with the
6 itinerary. And figure 4 and figure 5 are excellent examples. As I mentioned
7 before, you have these messages in angled brackets, lunch, go meet the tour
8 bus, go shopping. And that is actually presented on the same screen at the
9 same time as the itinerary with the events and the attractions.

10 And now on slide 7, figure 7 lays out how this '983 system operates.
11 It collects input party information. Parties talk about their attributes, their
12 age, heights, et cetera. Their preferences, you know, we have an aversion to
13 violence, we don't want to get wet, we have a small child, we don't want to
14 go roller coasters, we have grandparents, we have physical handicaps, so on
15 and so forth, certain constraints. And then you have certain data about the
16 ride itself, features of the ride, any kind of qualifying heights and weights, et
17 cetera, but also, more importantly, the current level of demand in that ride at
18 that moment, real-time data, how full is it, so on and so forth.

19 And then we have an automated software selection process that tries
20 to substantially match the two and it then generates the itinerary. And this
21 itinerary that's generated at this point has no involvement in terms of the
22 user picking certain rides, user saying I want certain rides or the user saying
23 I want certain times. That is all done by the software.

24 So what we have here is a couple of distinguishing features here,
25 which I'll get to -- we'll get to in more detail when I get to software that

1 selects, is that we have an automated software based process, unlike the
2 prior art where it's a user-driven process.

3 JUDGE SHAH: I'm sorry, just because we're having some issues
4 sharing the slides, we're currently on slide 8.

5 MR. KESAN: Yeah, it's -- we're on slide 8. Oh, yeah. Thank you.
6 Thank you, Your Honor, I appreciate that. I'm sorry I didn't do my best to
7 mention that I was actually on slide 8 now.

8 And slide 8, it emphasizes that the prior art is user-driven. It's
9 manual. In *Sim*, as we shall see, the system doesn't even start until the user
10 picks a ride and a time. Figure 6 of *Sim* makes it clear you have to press the
11 ride and the time. Only then does the routing begin. Same thing in *Doi*.
12 Until the customer picks something that is offered to him, he has to pick it, if
13 he doesn't pick it, there is no navigation of the customer that takes place.
14 This is completely different from the '983 patent where there's a complete
15 itinerary that is spelled out by the software.

16 The dynamic adaptive nature of the '983 patent, where you're aware
17 of demand, you're aware of preferences, you're aware of what is actually
18 happening at that moment in the theme park and you're directing visitors
19 accordingly, that dynamic aspect is not found anywhere in the prior art. In
20 fact, in *Doi*, it's just simply giving you a real-time recommendation and you
21 take it or leave it. That's the end of it. So the user involvement in the prior
22 art is significant.

23 We, on the other hand, have a completely different objective. We
24 want to try to take the user involvement out of the process. So the two
25 limitations and the claim that I want to focus on that's highlighted here in
26 slide 9 is software that selects, which is the fully autonomous selection,

1 excluding manual user intervention. And I -- once again, we'll get to the
2 discussion of this in the prosecution history, which I believe is very
3 significant. And there's a very unambiguous disavowal of manual selection
4 of events. And then I'll also discuss substantial matches.

5 Now, in slide 10, "software that selects" means that the software
6 autonomously generates an itinerary, which is the second set of attractions.
7 In the course of prosecution, the same language, "software that selects,"
8 previously recited software operable to select. The patentee had argued that
9 manual intervention and manual selection had no correspondence in this
10 invention. That's what he had argued. He had argued that manual selection
11 was, in fact, antithetical to the purpose of the invention. That is what he said
12 in the prosecution. And what the Examiner did was, if that's really the case,
13 and the Examiner was looking at *Waytena*, where the user was selecting the
14 reservations and selecting the times, and he said, no, software operable to
15 select suggests that the software might be operated by somebody to select.
16 And he wanted to exclude that possibility. And so he changed that language
17 to say software selects, this is the software that selects.

18 JUDGE SHAH: So, Counselor, I'm going to interrupt for a second
19 because I have a few questions about that. So some of the issues that I have,
20 one of them is that there's no interview summary that -- or anything in the
21 record that indicates that this "operable to select" changed to "that selects" is
22 in any way attributed to there being an exclusion of manual selection.

23 There's also nothing -- you know, you're essentially talking about a
24 negative limitation. And I don't see anything in the patent itself that also
25 contains such a negative limitation. If there is, please point that out. But
26 those are some of my concerns with simply saying, well, Applicant argued

1 that this is what it means, but without anything on the record that the
2 Examiner agreed to that, there's really no evidence that there's an actual
3 disavowal or that the Examiner considered this change to mean an exclusion.

4 So can you direct some -- can you just kind of give your thoughts on
5 that?

6 MR. KESAN: Yes. Your Honor is exactly correct. There is no
7 summary of the exact discussion that took place. But the interview
8 happened after a lot of remarks were already on the record, where the --

9 JUDGE SHAH: Do any of those remarks discuss that "software that
10 selects" means an actual exclusion?

11 MR. KESAN: They do. So, for example, patentee argued that --

12 JUDGE SHAH: Outside of Patentee's arguments, is there anything
13 that the Examiner agreed that this is what software that selects -- is there
14 anything that specifically points to a claim construction of software that
15 selects to exclude a manual selection? I think that's -- again, we're talking
16 about a negative limitation, so there really needs to be something explicit in
17 the record.

18 MR. KESAN: Your Honor, the key thing here is that the Examiner
19 was aware that the patentee was trying to emphasize that the fact that the
20 software was selecting the attractions, not the user, because in *Waytena* it
21 showed that, and the examiner had *Waytena* in front of him. So it's
22 reasonable to say that this change was made to overcome *Waytena*, because
23 *Waytena* was right, was the key reference that was there in front of the
24 Examiner at that time. And so --

25 JUDGE SHAH: But it could also mean that instead of the user
26 creating the agenda, the software creates the agenda. That doesn't mean that

1 the user can't make -- you know, how does that not mean that the user -- let
2 me rephrase that. Petitioner argued that simply because the user selects
3 preferences of rides, they're not selecting the rides in the agenda. Can you
4 address that argument? Because what you're saying is that this "software
5 selects" somehow means that there's absolutely no selection of preferences
6 or anything about rides. And I'm not sure where I see that.

7 MR. KESAN: So what the prior art shows is that you have
8 recommendations that are made to the visitors and the visitors -- and that's --
9 in *Sim*, there is no such filtering. But at least in *Doi*, maybe to the extent
10 that there is any filtering, that recommendation is made to the customer, the
11 customer has to pick that, and the customer, if he doesn't pick it, then there
12 is no itinerary. There's nothing to do. So filtering followed by selection by
13 the user is completely different from what this patent is teaching.

14 If you look at, for example, figures such as 14, which lays out the
15 actual algorithm, you can see that the entire itinerary is simply generated
16 based on substantially matching until an entire itinerary is filled out. There
17 is no user involvement, and there's no teachings in the patent that require
18 that the user selects something.

19 JUDGE SHAH: But can you show me where that is in the claims? I
20 think I'm just having a little bit of trouble. The claims are fairly broad.
21 Claim 1 is fairly broad. It has "comprising." It doesn't have an exclusion
22 for manual selection. And so there's -- outside of it saying that its "software
23 that selects," I'm not sure how that exclusively includes any manual
24 preference or any confirmation of the itinerary.

25 MR. KESAN: Your Honor, I think there is a key distinction here.
26 One is, yes, the patent uses the word "comprising," so there could be

1 additional involvement from the user. But the user says, oh, I've changed
2 my mind. Oh, give me a new itinerary, so on and so forth. The claim only
3 focuses on generating the itinerary. When you're generating the itinerary,
4 you're selecting the second set of attractions. The software has to do that.
5 There is no manual involvement in the claim. The claim doesn't say
6 anything about any kind of manual involvement.

7 Now, subsequently, after you present the itinerary, the itinerary is
8 created, it may be that the user says, oh, I've changed my mind, or I want to,
9 as claim 9 says, I want to regroup with other people in my party. Or claim
10 11 says, oh, I've fallen behind, there's an interruption. But the main claim
11 itself simply says the itinerary comprises the second set of attractions and
12 it's the software that selects that second set of attractions. It's unambiguous.
13 The software has to select it. There is nothing about the user saying, yes,
14 these are the attractions I want to go to.

15 JUDGE SHAH: But wouldn't preferences be included in the
16 information about the party? If the user is saying, hey, I prefer these rides,
17 wouldn't that be part of the information about the party? Or why wouldn't it
18 be part of the information about the party?

19 MR. KESAN: So the preferences are simply general information
20 about, hey, I -- by the way, the claim doesn't have anything to do in terms of
21 preferences.

22 JUDGE SHAH: Well, it simply says information. So information is
23 very broad.

24 MR. KESAN: And so the information could be demographic
25 information about attributes, so on and so forth. But it could also include
26 preferences like I don't want roller coasters or I don't want -- but it doesn't

1 talk about manually saying I want to attend these attractions. If the user says
2 that, the software will take it into account. But if the user doesn't say that, it
3 doesn't matter. If the user doesn't pick any preference at all, it doesn't
4 matter. The software will pick the itinerary.

5 JUDGE WOODS: I have a question.

6 MR. KESAN: That's not true in *Sim* and *Doi*. Sorry, Your Honor.

7 JUDGE WOODS: You said that if the user provides such
8 information, the system will take that into account. Well, why isn't exactly
9 that happening in the prior art here? The user's providing information about
10 particular rides and the system's taking that into account. Just because the
11 claim may include other situations doesn't prevent this prior art from falling
12 within the claim scope.

13 MR. KESAN: So, Your Honor, it's a question of whether the user
14 shares some information or not. The system operates to generate the
15 itinerary. Not true in the prior art. In *Sim*, the reservations and the time
16 have to be picked by the user and only then does the routing of *Sim* begin. If
17 the user does not pick the attractions in time, there's nothing for *Sim* to do.
18 *Sim* is inoperable. Same thing with *Doi*. In *Doi*, the customer is navigated
19 based on giving the user certain choices.

20 Here what we have is a system where the software will generate the
21 itinerary and take into account whatever the user gives. The user may have
22 no preferences. User may not know anything. The user might simply say I
23 have no idea and here is my age and height and tell me where I should go.
24 This system will do it. This system will give you an itinerary because in the
25 process of creating the itinerary we don't have any user choices about events
26 and reservations.

1 Again, this -- I'm in slide 12. And this goes to exactly what we're
2 discussing, which is that filtering of events, like perhaps something like what
3 *Doi* does, and offering it to the user and then the user decides what to do is
4 not the same as autonomous selection of the second set of attractions to
5 create the itinerary. *Doi* requires that user confirmation. If the user decides
6 not to leave the particular queue that they're in, they say, hey, I don't want
7 that Pokekun ride, you know, I don't want that 10 percent reduction in price.
8 I don't want that Attraction DD (phonetic) with a 50 percent reduction. I
9 don't want to go. That's it. There's nothing for *Doi* to do. That is not what
10 is going on here in the '983 patent.

11 Same thing with *Sim*. It's the users that actually decide which queue
12 to become a part of or which plurality of queues to become a part of. They
13 have to join that. Same thing with *Waytena*. Users have to manually select
14 the attractions. And even if there is some filtering, it's simply suggestions.
15 Ultimately, the user has to do things and that is exactly what the '983 patent
16 is trying to avoid.

17 Now, Your Honor had mentioned that "comprising" is an open-
18 ended term and that is exactly correct. And the Institution Decision Your
19 Honor cite to, *Solvay v. Honeywell*, and we don't dispute that. However, it's
20 important to note that just because you have used the word "comprising"
21 doesn't mean that you have an additional step. You cannot override a core
22 limitation that is already in the claim. And that is what *Spectrum v. Sterilite*
23 tells us.

24 And so we can't have additional steps that override the key
25 limitation. It's the software that selects the itinerary. Simply saying that
26 selection is the same as filtering, it's not. All that you're doing is you're

1 narrowing things down and you're giving it to the user. That's all you're
2 doing. The '983 patent is different. It's about autonomous selection.

3 A few more points that I want to -- addressing some of the points
4 that Petitioner argued.

5 JUDGE SHAH: For the record, we're on slide 13.

6 MR. KESAN: Yeah. In slide 13, as I was just discussing, filtering
7 assists the users, but it does not automatically generate the itinerary.
8 Software that selects does not limit user actions is simply incorrect. The
9 users cannot intervene in the selection of that. There's no place in the
10 system for the user to intervene. The user can only provide their input.
11 That's where it ends. And then the software generates the itinerary. And
12 actually it's required that the software do it because it can take things into
13 account that the user is unaware of.

14 And so, of course, the user, subsequently, might interact with the
15 system and say, hey, I want to change this. Hey, I want to do something
16 else. And that's certainly possible. But then what happens is that then,
17 again, generates a new itinerary. So you say, hey, I've fallen behind.
18 Software says, no problem, here's your new itinerary. So again, it's the
19 software that is simply creating that schedule of events.

20 We discussed that when we take the total totality of the arguments
21 that were there in the prosecution history into account, when you take that
22 totality into account, you can see that when the Examiner was at the end in
23 the interview, when he required that change, he was really trying to narrow
24 the scope of the claim to situations where the software selects the itinerary.

25 Slide 14. I want to address the "substantially matches" element. The
26 '983 patent emphasizes that the matching here is flexible. And by the way,

1 it's a misrepresentation of our arguments to say that we said exact matches
2 are excluded. What we're saying is it's much more. What we are saying is
3 that there is flexibility in matching data with information. And so we have a
4 utility function described in the pattern which may be a sliding scale
5 between 1 to 10. And so if we sweep in more attractions, so we have more
6 flexibility in creating the itinerary, so we can actually take and send users to
7 second choices, a second option, so on and so forth. That actually is an
8 improvement over the prior art. We don't need exact matches because if we
9 had exact matches, then we would have a limited number of matches to play
10 with. We wouldn't be able to do the adaptive, dynamic, directing demand
11 and so on, which is a significant part of this system.

12 So what it really emphasizes is that we try to satisfy the party
13 preferences by matching it and we don't have to be exact. Even in the
14 example of where the patent says there's a 10 match. Even in that situation,
15 it may be a situation where the user may actually be a few steps away from a
16 particular attraction. He may not be right there, but it's -- but the idea here
17 is that we're trying to broaden out the criteria so we have more attractions to
18 play with.

19 JUDGE SHAH: But, Counselor, on that note, I understand that the
20 claim wants to broaden the criteria. That being said, wouldn't exact matches
21 meet that broadened criteria?

22 MR. KESAN: We don't dispute that an exact match would be picked
23 by the system. The idea here is that we're saying it's an improvement over
24 that because we actually don't require that. So we are relaxing that
25 requirement, that's what we're doing.

1 JUDGE SHAH: But wouldn't -- but again, if we're looking at
2 whether the prior art teaches a claim, wouldn't a substantial match include
3 an exact match? I understand the intent of it. I understand that it doesn't
4 have to be an exact match. But I think the argument that was made in the
5 record is that an exact match doesn't meet the claim because it's more than a
6 substantial match.

7 MR. KESAN: My only point here is that, yes, an exact match is a
8 substantial match. I agree with you, Your Honor, and *Doi* focuses on exact
9 matches. But what the '983 patent requires is only a substantial match. It
10 doesn't have to be an exact match. And that then allows you to meet the
11 goals of this invention. But I'm not disputing the fact that an exact match
12 would also be a substantial match.

13 JUDGE WOODS: But the claim language doesn't require selecting
14 all attractions that substantially match, does it?

15 MR. KESAN: No.

16 JUDGE WOODS: Okay.

17 MR. KESAN: That's in claim 3. And slightly different language in
18 claim 1 about "consisting of." But you're right that claim 3 it's
19 "comprising." The important thing here is that substantially matches
20 excludes poor matches, low matches. But there's a lot of flexible
21 implementations that's described in the patent. The patent teaches us how
22 you can use empirical correlations, fuzzy logic, weighted metrics, and
23 regression analysis to try to build in that flexibility, extensive options to
24 tailor those -- the matching criteria in different context.

1 JUDGE SHAH: Is that claimed somewhere, like those types of
2 algorithms or anything? Do the claims discuss that or are those just
3 examples of types of analyses that the system would use?

4 MR. KESAN: Yeah. Yeah, yeah. We're just simply highlighting the
5 fact substantial matches is meant to be a flexible proposition. And again,
6 highlighting how substantially matches should be interpreted, that's what we
7 meant.

8 I'm now at slide 16. Slide 16 is a very critical piece of admission by
9 the Petitioner in District Court. About a year and a half ago, we had a
10 technology tutorial in front of Judge Carlos Mendoza in the Middle District
11 of Florida. These are statements made by the Petitioner to the District Court
12 about the '983 patent. And I was presenting what the '983 patent was about.
13 And these statements here are not my statements. These are Petitioner
14 statements. They're in Exhibit 2010 in the record.

15 Petitioner told the Court, "guests are unfamiliar with this facility,
16 they need the system, here the software, to select the attractions."

17 Petitioner told the Court, "the '983 patent does all this without the
18 party selecting" the attraction.

19 The Petitioner told the Court, "it does this matching," and, "it does it
20 all with the software. The party doesn't select any attractions itself."

21 Petitioner told the Court, in the '983 patent, it is "the software that
22 does the selection without the party visiting the facility, selecting any of the
23 attractions themselves, and this is a very important part of the technology
24 because visitors are unfamiliar with the facility, they do not know what
25 attractions to select; and so the '983 patent, it's the software that does the
26 selection."

1 Petitioner quoted from the prosecution history that I had mentioned
2 earlier. Petitioner quoted saying, “Manual selection,” and this is in quotes
3 from the prosecution, “has no correspondence in the invention.” This is
4 what we said, and Petitioner agreed with this. Petitioner said, “It defeats the
5 purpose of a customized itinerary, and manual selection was described by
6 the applicants as ‘antithetical’ to the purpose of the alleged invention.”

7 We’re in complete agreement with the Petitioner that that is what the
8 ’983 patent is. And this is what they told the District Court. Now, with a
9 desire to invalidate these claims, they are seeking an expansive view of these
10 claims which simply belies the prosecution history, belies their own
11 statements, clearly showing that we’re actually in agreement about what the
12 ’983 patent is about.

13 I Want to talk a little bit specifically about *Sim* and *Doi* in slide 17.
14 There is no autonomous selection in either *Sim* or in *Doi*. In both systems,
15 the way this works is in the queue management system of *Sim*, the user --
16 figure 6 makes this absolutely clear. You take your portable module, you
17 put it in the docking station, and you have to pick the reservation, you have
18 to pick the time, and you have to press Go. Only then does the routing of
19 *Sim* begin. There is no teaching in *Sim* where the computer can pick an
20 attraction on its own without the user picking it first. There is no teaching in
21 *Sim*. *Sim* was actually inoperable until the user picks a particular attraction.

22 *Doi* also suggests certain options for the customer to perform a
23 navigation. But again, the customer has to pick that. Without customer
24 input, *Doi* cannot navigate. Both *Sim* and *Doi* require this previous selection
25 by the users. In *Doi*, these are only simply suggestions and

1 recommendations that are filtered out. But it's the user that's actually
2 creating the itinerary. It's the user who's picking these things.

3 JUDGE WOODS: Mr. Kasen?

4 MR. KESAN: Yes.

5 JUDGE WOODS: So Petitioner pointed out, I'd like to refer you to
6 column 9 of *Doi*. In particular, from column 9, line 63, to, I believe, column
7 10, line 11. And in particular, *Doi* discloses that the navigation planner 42
8 makes a plan to recommend other attractions to some of customer queuing at
9 the Attraction A that are selected in consideration of the age. So to me, that
10 appears to teach a computer providing a selection. Could you address that,
11 please?

12 MR. KESAN: Your Honor, you're reading from column 9, which
13 lines?

14 JUDGE WOODS: It begins with the paragraph, "For example, as an
15 Attraction A is crowded." It's the language that spans paragraph -- or
16 column 9 to column 10, I believe.

17 MR. KESAN: Okay. Yeah, I see it now. I see it now. So if
18 Attraction A is crowded, then that is correct. Figure 11, says if you look at
19 the bottom left, Attraction A is crowded. And now why don't you consider
20 going to Attraction D? That is correct. And that is a suggestion. That's it.
21 But the user has to take it. But the user, he simply can stay right where he is.
22 It's the user who -- and in figure 15, there's actually a 50 percent reduction
23 in price in order to entice him to go there.

24 But the point here, though, is that the itinerary involving Attraction
25 D is only created if the customer chooses to take it. Does that answer your
26 question?

1 JUDGE WOODS: I think I understand the distinction you're trying to
2 draw, but I think it's important to note that *Doi* actually uses the term
3 "selected." So could you reconcile that with your argument?

4 MR. KESAN: I think the selection is done by the user. And the --
5 what we have here is, if you look at this, he makes a plan, the navigation
6 planner. Again, I'm reading from that column line, column 9, line 62. The
7 navigation planner makes a plan to recommend other attractions. And the
8 customer is queuing at Attraction A. And obviously, the Attraction A has
9 been selected by the user. That is correct. He is in Attraction A. But then
10 he's being offered Attraction D and he's being told, hey, Attraction D is not
11 crowded. Please -- how is it?

12 So, in other words, what we have here is a situation where the
13 customer wants to be in A, but they're instead directing him to D by saying
14 Attraction A, if you look at the same column 9 reading on to 10, it says
15 Attraction A is crowded. Consider Attraction D, which is enjoyable or aged
16 persons because it's not (inaudible). So it's simply a suggestion and the
17 customer may choose to take it or may not choose to take it. And that's
18 really the point that entire discussion column 9 and 10 and figure 11 makes.

19 And figure 15 then in *Doi* actually puts another overlay, which is
20 that price incentive. Notice it doesn't create the itinerary. It simply makes it
21 attractive for you to do that by giving you some price breaks. That's what
22 it's doing.

23 On the other hand, in slide 20, it's important to emphasize figure 14
24 of the '983 patent, where this entire loop of picking attractions and seeing if
25 they qualify for it to become an event based on matching, this entire loop is

1 accomplished by the software picking one attraction after another to form an
2 event until the itinerary is filled out. And that is what figure 14 shows.

3 JUDGE SHAH: Is that entire loop claimed somewhere in the patent,
4 the way that the selection is done in this manner?

5 MR. KESAN: We believe that this is what claim 1 and claim 3 try to
6 do, is that you go and you substantially match the data and information and
7 that's the way the itinerary gets created. That's what we believe what is
8 being claimed.

9 JUDGE SHAH: And where would those details be in claim 1 and
10 claim 3, the details of initializing an event, finding an attraction not in an
11 event?

12 MR. KESAN: So, what we have here simply is the -- each -- the
13 itinerary is composed of events. And so that's where, when claim 1 talks
14 about an itinerary, he's talking about a sequence of events.

15 JUDGE SHAH: I understand that. I think -- that's fine. I think
16 you're reading a lot more into the claims than what's there. None of what's
17 in figure 14 is claimed. I understand that's an example of how some
18 analysis can be done. But I don't see how software that selects encompasses
19 all of this detail.

20 MR. KESAN: I think --

21 JUDGE SHAH: Or it's only this detail, it's not -- you know, it has to
22 be this detail.

23 MR. KESAN: I think claim 1 captures the critical notion that there is
24 no involvement of the user in selecting an attraction or selecting a time.
25 That is all done by the software. The itinerary itself is made of events,
26 sequence of events, as the patent tells us. And an event is a visit to an

1 attraction at a scheduled time. And so what we have here is the software
2 filling the itinerary out without the user doing so, without the user picking
3 specific times and specific events that they want to attend. The user may
4 offer suggestions and so on, as we had discussed, but he's not picking the
5 itinerary.

6 JUDGE SHAH: Counsel, just to remind you, we have 14 minutes
7 left, so you're into your rebuttal time.

8 MR. KESAN: I want to very briefly, very briefly, touch upon
9 *Waytena* and *Herz*. *Waytena* simply to say that I believe that the Board was
10 exactly correct in reading *Waytena*. It's simply a complete speculative
11 redesign of *Waytena* that the patent -- or the Petitioner engages in. This is
12 found nowhere in the past. They made this up. How did they make it up?
13 They grabbed these two attractions from here, which actually is different
14 parties, by the way. It's not even -- it's Tom with Patty and then in another
15 case it's Tom with Anthony.

16 They grab this, they put it up here, they take the times, the user has
17 actually skipped over Water Flume and Rat and he's trying to reserve Time
18 Travel, but they just simply create this of their own. They randomly put in
19 times here, which is nowhere to be found in *Waytena*. And they make up
20 this simply to make it look like figure 4. Well, figure 4 is entirely created by
21 software and it includes messages, like I noticed that I mentioned before in
22 these angled brackets, like lunch, pick a wonderful meal. So it has events
23 and it has messages and it's all created by the software.

24 They would like to create something like this. But what they failed
25 to highlight is that these attractions were picked by the user. In fact, notice
26 here it says waiting for a response. It says "wasting," that's obviously a

1 typo, but it says you're waiting for a response. It asks, are you going to
2 reserve a time? And it says, hey, this time is available. Do you want to
3 confirm this reservation? So this is simply a queue management system
4 asking for questions all through, prompting the patron, tell me, do you want
5 this? What time? Do you want this? So on and so forth. That is not what
6 the '983 patent is about.

7 In fact, I want to highlight, I'm in slide 20 of my presentation, I want
8 to highlight the point that figure 3 of *Waytena*, it's the patron who is being
9 asked all these questions. It's the patron who is being asked, hey, do you
10 want to go -- do you want to take this time, do you want to accept it? Only
11 then, after the input, does it actually become part of the itinerary.

12 I want to briefly mention a few things about a few dependent claims,
13 merely to highlight that there are a number of dependent claims that are in
14 sync with the whole goal of the system. For example, the attributes in claim
15 5 are designed to match itinerary creation. They're not about access
16 permissions to the rights. They're really about trying to fill out the itinerary.

17 In slide 24, I mentioned admission privileges before with respect to
18 claim 7. Skip over a few of these dependent claims, which I believe are,
19 once again, once they're understood through the lens of creating an itinerary,
20 words like "travel times," "schedule times," have a very different meaning
21 because they are being picked by the software, they're not being picked by
22 the user. They discussed claim 11 and the exclusion of already visited sites
23 when there's an interruption.

24 Claim 17 deals with an audible presentation of the presentation
25 means. This is critical because the presentation means can include not just a
26 screen or a computer or a printer. It can actually be an audible presentation

1 of the itinerary. Claim 17 talks about that. It's not just about beeps and
2 tones like *Sim*. It's actually audibly telling you the next event in the
3 itinerary, even in the party's preferred language.

4 The reservation computer in claim 18, in slide 30, excludes
5 unavailable attractions. Unavailable here refers to the queue being full. It's
6 not about the attraction being down, it's really about the queue being full,
7 which is not shown in the prior art.

8 Claim 19 in slide 31 talks about how you deprioritize the selection of
9 certain attractions to deal with excessive demand. And in slide 32 in claim
10 20, all claims 19 to 22 deal with this demand situation. They track the
11 demand and provide feedback to manage the itinerary so that you avoid the
12 overcrowding. You stop sending people there, you start dispersing them
13 elsewhere.

14 Claim 22 talks about that perturbation that I had mentioned earlier.
15 In slide 35 you can see how after perturbation, the second option AA and
16 BB, can get picked over the unperturbed state, directing some of the traffic
17 over from the first choice that everybody has. Everybody has the first
18 choice, CC, but you're now directing traffic over to AA and BB, which
19 might be a second choice for people with some profiles. And so that's the
20 way the perturbation system works.

21 Claim 23 is a very critical claim that talks about how you have
22 messages along with the itinerary. This is very different from *Sim*. In *Sim*
23 you have messages, but in this message mode -- sorry, this is the itinerary
24 mode. When you are in the pager mode in the message mode, it displays the
25 message but not the itinerary. When you are in the normal mode, where you
26 have the itinerary here, then you have no message. The claim requires that

1 the messages be provided in conjunction with the itinerary. And in
2 conjunction, of course, means synchronized in time or space. And that's
3 exactly what figure 4 and figure 5 show. And that's what our expert, Dr.
4 Gonzales (phonetic), explains here in paragraph 169 of his declaration.

5 In fact, *Sim* is the exact opposite of "in conjunction." It is mutually
6 exclusive. You can't have both modes at the same time. You have the
7 normal mode with the itinerary or you have the pager mode. They simply
8 can't exist together in the screen. And if you switch to pager mode, it takes
9 three minutes to boot back. So there is -- there's nothing in *Sim* that is in
10 conjunction whatsoever.

11 A few words about *Herz*. *Herz* is a digital system. Your scheduling
12 digital content. The Board is exactly correct that this is not analogous. In
13 fact, the quotes that they showed you from Dr. Gonzales, he was talking
14 about how scheduling resources in the context of integrated circuits, in the
15 context of traffic control, in a satellite. That is relevant to my qualifications
16 for understanding scheduling of resources. However, *Herz* is entirely
17 digital. It has nothing to do with physical attractions, physical itinerary
18 creation, user movement, et cetera. In fact, *Herz* actually tells us that the
19 best situation for him, and Dr. Gonzales points this out in his declaration, the
20 best situation in, according to *Herz* is I would have the same program be sent
21 to every person so I satisfy all customer profiles. That is what *Herz* would
22 like. You would like to beam the same program to everybody? That would
23 be the exact opposite. It's be a disaster if everybody in a theme park all
24 went to the same attraction. That's exactly what we're trying to avoid. *Herz*
25 doesn't have any of the physical constraints that you have in the real world.
26 This is simply about sending digital content.

1 And so Your Honors are absolutely correct. This is not in the same
2 field. It's not so broad that it's about scheduling. It's really scheduling
3 about physical resources. And it's certainly, as I just pointed out my
4 example, it's not even reasonably pertinent to the kind of problems that the
5 '983 patent deals with, with physical constraints.

6 JUDGE SHAH: Counselor, you have five minutes left.

7 MR. KESAN: So, briefly, what we have here is a situation where we
8 are trying to exclude manual user intervention and we're trying to create
9 itineraries through the software. And that's what -- you get a consistent
10 picture from the teachings of the patent, from the prosecution history, and in
11 fact, as I mentioned, even Disney admitted that in this report. The Board is
12 correct to say that *Waytena* does not invalidate the claims, *Waytena* also
13 taken, the combination with *Herz*, which is not analogous. But, in fact, if
14 you look more carefully, the same logic applies to *Sim* and *Doi* as well,
15 where users have to be involved in creating the itinerary, which is exactly
16 what we're trying to avoid. And I'll stop here.

17 JUDGE SHAH: Thank you, Patent Owner. Petitioner, you have a
18 little less than 12 minutes left.

19 MR. HUGHES: Thank you, Your Honors. I'd just like to address a
20 couple points here on rebuttal.

21 First, as I've stated in my opening here, and as we saw there, Patent
22 Owner is not arguing the limitations in the claims. They're arguing the
23 specification. They're arguing generally what they think this invention may
24 be or what its advantages may be, but they're not arguing that the prior art
25 does not have what the claims say. If you look at the language in the claims,
26 all that the claims require, it's clear the prior art has it.

1 For example, you heard Patent Owner talk a lot about the prior art
2 only making recommendations to the users and the users could choose to
3 either follow those recommendations or not follow them. But that's exactly
4 how the '983 patent defines what an itinerary is. If we look at the patent at
5 column 7, lines 31 to 34, it says an itinerary is comprised of events, not
6 necessarily a reservation. What is it? It is a time at which the party is
7 recommended to visit an attraction. So all of their arguments that in *Doi*
8 what it's doing is recommending for patrons to go to this attraction at this
9 time, that's by definition the exact itinerary that's in the claims. They can't
10 get around that.

11 Now, if a user further confirms that, yes, I would like to do it and
12 make a reservation, that's fine. The itinerary has already been generated.
13 It's already been presented to the user so that they can see those
14 recommendations of attractions and times. Itinerary is complete. If they
15 further confirm and make a reservation, that's not negating the fact that the
16 system and the computer has already presented them with that itinerary.

17 In addition, you'll see that they made lots of arguments, like I said,
18 about things that are not in the claims. Pointing to figure 14, talking about a
19 utility function, fuzzy logic, talking about, you know, things like an audible
20 preferable language for claim 17. Again, none of that's in the claims. For
21 example, if we look at claim 17, just a portion of the itinerary has to be
22 announced audibly. Our references have that. They're doing something
23 audible in relation to the itinerary to make an announcement to the users.

24 In addition, I want to mention claim 23, which they said a key part of
25 this is their messages and that allegedly these messages have to be shown at
26 the exact same time as the itinerary. Again, that's not what the claim says.

1 The claim may say that these messages are provided in conjunction, but then
2 it indicates what's that -- what's meant by that, whereby each of said second
3 set of messages is available at an appropriate time. That's what we have, for
4 example, in *Sim*. As the user's following their itinerary, they're looking at
5 their itinerary on their screen and they get to the location of the next event,
6 the message that corresponds, we're now an appropriate time, the message
7 corresponding to that location comes up. It's being provided in conjunction
8 with the user following their itinerary. As they follow that displayed
9 itinerary, get to this location, for example, the appropriate message is going
10 to come up at the appropriate time.

11 And I'd also like to just briefly address their arguments on the
12 *Waytena* modification here. Now, what we're saying in *Waytena* is not that
13 the user has to go through and make all of those picks like they're showing.
14 In *Waytena* we saw this. The system itself can present the list of matching
15 attractions to the user. The system itself can pick the next available times.
16 What we're saying, and as was explained by our expert and in our petition,
17 the motivation to combine those two features in *Waytena* is that a user then
18 does not have to individually click five times, yes, I want the recommended
19 attraction, Reserve, Next Available, Confirm. Yes, I want the next
20 attraction. Reserve it. What time do I want? Next available. You gave it to
21 me. Confirm.

22 What -- it's really obvious and as we explained the motivations,
23 instead of making those 8 to 10 to 12 clicks to get a reservation at 4
24 attractions, the system itself can generate that list of the 4 recommended,
25 determine the next available for each of them, present that and you now have
26 the one-button click. Click that Reserve. Your itinerary is right there in

1 front of you. Here's your recommendations. Do these attractions at these
2 times and you can choose to accept it all at once. We have -- the motivation
3 came from our expert, Dr. Houh, explaining how this is going to simplify the
4 process, avoid users making multiple selections when they don't have to,
5 and really give them that one option. Take it all at once.

6 JUDGE SHAH: I have a question.

7 MR. HUGHES: Yes.

8 JUDGE SHAH: So, again, keeping to the record, Patent Owner
9 argued that in *Sim* and *Doi* there is some user input required in terms of the
10 fact that the patent would continue to generate an itinerary. If I understand
11 Patent Owner's position, the patent would still generate an itinerary if no
12 attraction preferences are made. Can you address what would happen in
13 your proposed combination of *Sim* and *Doi* if there were no attraction
14 preferences information? If let's say that the only information that the
15 system received from the user was age.

16 MR. HUGHES: Okay. Yes, Your Honor. So we do know in *Sim*
17 there is an indication that the user can present attraction preferences.
18 There's no teaching like that. We have nothing from that in *Doi*, and they
19 didn't indicate that. We have exactly the situation you just described in *Doi*.
20 The user is going around the theme park. They've said nothing to the
21 system about wanting Attraction D or about wanting to go to Pokekun. But
22 that system in *Doi* on its own, looking at age and realizing based on its use
23 data that Attraction D is popular with that age or an attraction Pokekun is
24 popular with that age, user may not know anything about them. What *Doi*
25 says is based on my information, user is this age, these attractions are

1 popular for that age, here's your recommendation. At this time, Pokekun is
2 going to start. You should go and do that.

3 So there's nothing in *Doi* that suggests that the user would, in fact,
4 have to tell the system first, for example, I want to do Attraction D today or I
5 want to do Pokekun. It's very clear when you read the reference, it is the
6 computer and the software within *Doi*'s system that is the first thing to
7 present those attractions as an option to the user.

8 JUDGE SHAH: Okay, thank you.

9 MR. HUGHES: Any other questions? Your Honors? All right.
10 Thank you.

11 JUDGE SHAH: I'm sorry. Did anyone have any other questions?
12 Okay. No questions. Thank you. Are you ceding the rest of your time?

13 MR. HUGHES: Yes, I cede the time.

14

15 JUDGE SHAH: What's that, are you ceding the rest of your time?

16 MR. HUGHES: Yes.

17 JUDGE SHAH: Okay. Thank you.

18 Okay. Patent Owner, you have four minutes remaining.

19 MR. KESAN: Yes. Just want to -- I just want to emphasize a few
20 points, Your Honor.

21 When we talk about information about a party, it's important to
22 understand that in the '983 patent that is not about the selection of specific
23 attractions. The information about the party could involve preferences that a
24 party has, but the user does not need to select anything. The user simply
25 needs to talk about their attributes, such as age, size, and so on. They don't
26 have to pick any attraction at all for the system to go and create an itinerary.

1 When we're talking about *Sim*'s preferences, they're actually user
2 selections of specific attractions. *Sim*'s process cannot start without the user
3 picking reservations and times 2:00:38, and that's very clear. It begins with
4 the user deciding which queue to join and which plurality of queues to join.
5 Here, on the other hand, it's the software that creates the entire itinerary.

6 JUDGE SHAH: Can I interrupt for a second? So it seems to be
7 Petitioner referred to a specific definition of "itinerary" as being a
8 recommended time, citing to the patent. Are you saying that providing a --
9 like are you giving -- or do you have anything that you can point to for what
10 you consider to be a definition for "itinerary?"

11 MR. KESAN: Yes, Your Honor, column 7, lines 31 to 36 in the
12 patent are extremely clear about what is an itinerary. And yes, of course,
13 when the itinerary is created by the software, it is, of course, only a
14 recommendation in the sense that you can't force a user to do anything. You
15 can't force the user to say go here, go there. The point here is, though, that
16 an itinerary is made of events, and events is a visit to an attraction at a
17 scheduled time. That itinerary with events and times are created and given
18 to the user so he can simply follow along, doesn't need to do anything, and
19 he'll be able -- he'll be given admission, so on and so forth.

20 In *Doi*, for example, only when the customer picks Attraction D
21 when they are at Attraction A only, as shown in figure 11. Figure 12
22 navigates you to Attraction D only after the customer picks it. If the
23 customer doesn't pick it, there's nothing to navigate.

24 With respect to claim 23, Petitioner obfuscates the distinction that
25 claim 23 tries to make. It's in conjunction with, meaning the message is in
26 conjunction with the itinerary, meaning it is shown there together. That's

1 what “in conjunction” means, that it’s concurrence in space or in time. That
2 is simply not what is going on in *Sim*. There are two separate modes.
3 There’s a normal mode and a pager mode. The pager mode shows the
4 message, doesn’t show the itinerary. The normal mode shows the itinerary,
5 doesn’t show the message. One cannot imagine a situation of it not being --
6 more clearly not being in conjunction. It’s mutually exclusive. It’s one or
7 the other. So by definition that’s not in conjunction.

8 What we really have with *Waytena* is a lot of hindsight
9 reconstruction going on where you’re trying to just tack on a lot of features
10 into *Waytena* that are simply not there. Figure 3 of *Waytena* right here in
11 slide 20, it’s clear the patron requests the reservations. The patron is being
12 given the time and then the patron has to confirm it. It says, look, proposed
13 time accepted. It’s a (inaudible). Hey, do you want to take it or not? So it’s
14 simply a situation of where the user is creating the itinerary.

15 JUDGE SHAH: Thank you. Your time is up.

16 MR. KESAN: Thank you, Your Honors.

17 JUDGE SHAH: We appreciate the parties’ positions. We will take
18 everything under advisement. Thank you all for showing up and doing this.
19 Have a good evening -- afternoon -- morning. Sorry. I think that’s it.

20 MR. HUGHES: Thank you, Your Honors.

21 (Whereupon, the proceedings were concluded.)

IPR2024-00029
Patent 7,212,983 B2

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