

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DROPBOX, INC. and MICROSOFT CORPORATION,
Petitioner,

v.

DATANET, LLC,
Patent Owner.

IPR2024-00080
Patent 10,585,850 B2

Record of Oral Hearing
Held: February 13, 2025

Before JOSIAH C. COCKS, GEORGE R. HOSKINS, and
BACH V. HOANG, *Administrative Patent Judges*.

IPR2024-00080
Patent 10,585,850 B2

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The above-entitled matter came on for hearing on Thursday, February 13, 2025, commencing at 2:00 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 COCKS: All right. Good afternoon. Welcome back.
The format is going to be somewhat similar, but we'll go through the for
posterity, we'll go through the rigmarole.

I'm Judge Cocks. I am joined by my fellow panel members, Judge
Hoang and Judge Hoskins, who is attending remotely.

Let's get introductions of counsel. Oh, I should do the preliminary.

This is an oral argument for proceeding IPR2024-00080, involving
U.S. Patent No. 10,585,850.

Would counsel for Petitioner please state their appearance today?

MR. MASON: Yes, Your Honor. Andy Mason, on behalf of
Petitioners Dropbox and Microsoft, and with me here today is Frank
Morton-Park.

JUDGE COCKS: Thank you, Mr. Mason.

And counsel for Patent Owner, please state your appearance.

MR. JAFFESS: Good afternoon, Your Honors. Ari Jaffess from
Liston Abramson, on behalf of the Patent Owner, Datanet, LLC. And with
me is my partner Mord Michael Lewis.

JUDGE COCKS: Thank you, Mr. Jaffess.

So, similar to before, the Trial Hearing Order set out 60 minutes
per side for argument time. There is no LEAP participant for this
proceeding. Petitioner, bearing the burden of showing unpatentability, will
argue their case first and may reserve rebuttal time. Patent Owner will then
argue their opposition and may reserve sur-rebuttal time. We will then

1 proceed with any rebuttal and sur-rebuttal.

2 So, just to double-check, we have Petitioner's demonstratives, and
3 I'm guessing Patent Owner did not file any demonstratives.

4 MR. JAFFESS: Yes, Your Honor.

5 JUDGE COCKS: Well, you did not file any, and you do not have
6 any to present, so

7 MR. JAFFESS: That's correct, sir.

8 JUDGE COCKS: With that said, Mr. Mason, if you are arguing
9 for Petitioner, you may begin when you are ready.

10 MR. MASON: Thank you, Your Honor. I'd like to reserve 20
11 minutes for rebuttal.

12 JUDGE COCKS: You may begin when you're ready.

13 MR. MASON: May it please the Board, Andy Mason, on behalf
14 of Petitioners Dropbox and Microsoft.

15 Unless the Panel prefers otherwise, today, I will begin with
16 Grounds 1 and 2, which rely on prior art Schneider, Exhibit 1005. And as
17 we'll see, Patent Owner's that the arguments here center around element
18 1.4, but I'd like to start first with Schneider, the Exhibit 1005.

19 Schneider, this is a single reference obviousness ground for
20 Grounds 1 and 2. Ground 2 incorporates the secondary reference, Crawford,
21 for elements that are not disputed. And so, I'm going to focus on Ground 1
22 today.

23 So Schneider teaches current versions of files on a local disk,
24 which Schneider refers to as its C drive, teaches historic data and a history
25 buffer. And then it also teaches that the history buffer is located on a remote
26 external drive, accessible over a network.

1 Schneider teaches presenting a list of prior versions of files to
2 users. And with that list, the user can select a given file and view the
3 contents of that file. Schneider also teaches presenting the list to the users,
4 and from that list, the users can select a certain earlier version of a file to
5 retrieve, for retrieval.

6 And in response to that selection to retrieve, the earlier version of
7 the file is recovered. And Schneider expressly states it replaces the current
8 version locally. So it's the so Schneider, those are Schneider's teachings.

9 Patent Owner does not dispute that Schneider teaches such an
10 implementation. It argued that in its preliminary response, and those
11 arguments were rejected. And since institution, Patent Owner has not raised
12 new arguments against that particular combination.

13 So I will turn next to slide 5 of Petitioner's demonstratives. This is
14 element 1.4. Before diving into element 1.4, I'll just say, Claim 1 here is
15 representative of most of the disputes. I'll also touch briefly on Claim 19
16 and Claim 3, but Claim 1 is largely representative. It recites a method for
17 restoring a file to a previous version. Like Schneider, Claim 1 has a current
18 version in local storage and historic data for a previous version in remote
19 storage.

20 Turning to element 1.4 here, on Slide 5, that's the element in
21 dispute, but before getting to 1.4, I wanted to just touch briefly on element
22 1.2 because that informs the claimed restorable representation that's also
23 recited in element 1.4

24 So what element 1.2 tells us, here, at the bottom of slide 5, is that
25 the restorable representation is not necessarily the whole file, but rather, at
26 least information required for recovering, it says, the earlier version, when

1 you have the current version available. When you have the current version
2 handy, all the restorable restoration is -- is information that allows you to
3 recreate that earlier version of the file, so it could just be a delta from the
4 current version of the file.

5 Patent Owner does not dispute that Schneider satisfies element 1.2,
6 so I'm not going to I won't dwell on that.

7 But only 1.4, at the top of slide 5, has two actions in response to
8 the user's selection to retrieve a file or to restore a file. Excuse me. The
9 first step here is retrieving the restorable representation of the selected
10 previous version from the remote storage location. So this retrieving step is
11 just retrieving the restorable representation.

12 And then, after that, it's storing the selected previous version of the
13 file in the second step, by the computational machine, as the current version
14 on the local storage location. And it doesn't say how that previous file is
15 generated or how the storage occurs. It just says store that previous version.
16 Now, the claim implies, to some degree, that you're using the current
17 version, and you're using this restorable representation to create that past
18 version of the file and replace it as the current version on local storage, but it
19 does not expressly say that.

20 Schneider satisfies disputed claim element 1.4. Schneider teaches
21 a local disk with current versions of a history buffer with historic
22 information, as I discussed.

23 And getting specifically into the evidence, slide 12 of our
24 demonstratives has this excerpt, Exhibit 1005, page 113, lines 9 to 21 of
25 Schneider. And at the top here, it discusses the internal disk of Schneider,
26 and it specifies that on this local internal disk C, it has the current versions

1 of the file, which it refers to here as the OS visible data. And that's what the
2 user is working with currently.

3 And then it specifies that there's a minimum set aside for historic
4 data, but it says that that minimum locally could be zero. So you could have
5 no historic information locally.

6 With respect to the external disk then, right -- so this is the
7 remotely located storage it says that that disk is going to have additional
8 storage allocated to hold historic data. And then it also says your external
9 drive, your remote drive, may have more data than your local disk, and that
10 allows your external drive to reach further back in time. And so, as
11 presented by the petition, Ground 1 is that you've got your historic versions
12 of the file located in the history buffer on the remote storage location. And
13 that's taught by Schneider. That is that does not appear to be in dispute
14 here. That

15 JUDGE HOANG: So, Counsel?

16 MR. MASON: Yes, Your Honor?

17 JUDGE HOANG: Just to baseline, so is your position, as far as
18 meeting the term, a restorable representation, is that the history buffer?

19 MR. MASON: So, yeah. So the restorable representation comes
20 from the history buffer, Your Honor.

21 JUDGE HOANG: It's the historical data inside the history buffer.

22 MR. MASON: Yes, exactly. So, as I said, so Schneider teaches
23 both recovering entire files or portions of files. So, in either instance, it's
24 reaching out, and it's retrieving that past data, that restorable representation
25 from the history buffer.

26 JUDGE HOANG: Got you.

1 MR. MASON: And as taught by Schneider and explained in the
2 Petition, that history buffer is located remotely.

3 And Patent Owner recognized this. If we turn to slide 13, the
4 Patent Owner, which is quoted from the Petition, a POSITA would have
5 found it obvious to implement a system with the current version of files
6 stored locally on the user's PC and historic versions on an external drive
7 accessible via a network.

8 And it stated that, and then it said, regardless of whether that's the
9 case, this doesn't satisfy the claims. And I'll get into those arguments later,
10 but it does not dispute this combination.

11 And then, if I could invite the Panel to slide 16, this is also from
12 Schneider. Schneider explains that a user may be presented with a list of
13 earlier versions. This is here on line 11. And then, from that list, a selection
14 can be made, and the recovered file replaces the current version. And that's
15 what Schneider expressly states.

16 So, here, we've got Schneider teaching the user selecting a file for
17 retrieval. It's recovered, and then that past version replaces the current
18 version locally. And that satisfies this disputed element 1.4 because it's both
19 going out to the history buffer to recover that past, you know, data
20 associated with the earlier version. And then it expressly states it's once it
21 reconstructs the file, it stores it as the current version locally.

22 Turning back to slide 7, Patent Owner and I'm just going to touch
23 on Patent Owner's arguments with respect to this element. Patent Owner
24 raises three arguments as to this element. The first two fail because they just
25 ignore the ground presented by the Petition. The Petition, as I've explained,
26 has an implementation in which Schneider has the history buffer on the

1 remote drive. The arguments 1 and 2 raised by Patent Owner in the POR,
2 paper 16, at pages 18 to 25, all focus on passages in Schneider that discuss a
3 local history buffer. So they're just they're missing the boat. They're
4 missing the point with these arguments, and for that reason, those arguments
5 fail.

6 As the institution decision recognized, the Petition clearly laid out,
7 and is further explained in the reply, that history buffer is remote. So, when
8 you're going out to get historic data from that history buffer, you're
9 retrieving it from the remote location.

10 JUDGE HOANG: So, Counsel, you know, let's say that the
11 history buffer is stored externally, remotely.

12 From what I'm gathering from Patent Owner's arguments, what
13 they're arguing is that the restoration, by the time you have the restoration
14 stuff that's limitation 1.4 or limitation C you've already retrieved that
15 history buffer. You've retrieved it because in the step B, limitation 1.3,
16 you're retrieving it so that you can present this possible list of files to restore
17 from. So, by the time you get to the restoration step, you've already
18 retrieved the restorable representation from the remote storage location.

19 All right. So I'm not sure if they're disputing whether or not there's
20 an external history buffer, or the history buffer is stored externally. I think
21 they're disputing, you know, where in the process the restorable
22 representation is being downloaded.

23 MR. MASON: Where it's retrieved.

24 (Simultaneous speaking.)

25 MR. MASON: Yeah, and I'm yeah. And I think that that is one
26 interpretation. I don't know if Patent Owner articulated exactly that

1 argument. I mean, it's hard to tell exactly what their argument, whether
2 they're saying that the final copy has to be from the remote location or
3 something else.

4 But in any event, assuming your situation that you just presented,
5 Schneider teaches that when - and if I could invite the Panel because I think
6 you referred to element 1.2. Element 1.2 involves the viewing of the file or
7 the preview of the file, right?

8 JUDGE HOANG: Element 1.3, yes.

9 MR. MASON: Excuse me. Element 1.3, thank you. Involves a
10 previewing of the file. And if we turn to Schneider this is slide 25
11 Schneider explains that previewing, right? And this is, basically, once the
12 user elects to view the file, it automatically launches the appropriate
13 application. And then it references the file on a simulated disk. So this
14 application is referencing the contents of the file on the simulated disk.

15 And so, and then it later explains, down at lines 27 to 28, this is
16 you're not formally retrieving the file here. The application is referencing
17 this simulated disk, and it's not formally retrieving anything from and then
18 the viewed file is automatically discarded. So, once you're done with the
19 viewing, that information is lost from the system.

20 And we presented a hypothetical as to why that makes sense
21 because you can imagine a user looking at several past versions and saying,
22 well, let me look at this one; that's not the one I want. Now I'm going to
23 look at this one; that's not the one I want. You don't want all those clogging
24 up memory, right? So it's discarding these temporary views after the user
25 has looked at them. And then

26 JUDGE HOANG: So, Counsel?

1 MR. MASON: Yes, Your Honor?

2 JUDGE HOANG: It makes sense to me. You know, you're saying
3 you're discarding these unused versions that are temporarily stored to free up
4 memory. That all makes sense.

5 The reason I asked you earlier about what you're mapping the
6 restorable representation to and if that's the history buffer because if
7 because the simulated disk we're pointing to here, that's created from that
8 restorable data that they had already downloaded. So, while you're creating
9 a simulated disk, and you might be removing the files from that creation, the
10 restorable representation in the history buffer, you know, that's still been
11 downloaded before. So, all the files that you're discarding after, that's
12 different than the restorable representation if the files are still from the
13 restorable representation.

14 MR. MASON: Well, I didn't - so I think one minor point or point
15 to note is that the historical the history buffer is not actually copied locally,
16 right? I mean, you're it might be helpful to turn to slide 30, which is it
17 illustrates Schneider and its simulated disk. So, just briefly, and then I'll
18 answer your question.

19 The simulated disk here is on the right-hand side. And what this is
20 -- is just its pointers telling you what information you need to access to see
21 or retrieve a particular earlier version. So some parts of the earlier desired
22 data may be in the current version, so it can point locally. And then,
23 following the laser pointer, others point to the history buffer. And so, the
24 simulated disk, once you create the simulated disk, the simulated disk has
25 these pointers to the remote location because, as presented, our history
26 buffer is located remotely.

1 So, each time you present you create the simulated disk, you're
2 going back out and retrieving whatever information is needed from the
3 history buffer on the remote drive. That information does not stay resident
4 on your local drive indefinitely. As it teaches with respect to viewing, it's
5 deleted after viewing. And also, once you've copied it to the current version
6 as part of the retrieval process, it is also discarded then as well.

7 JUDGE HOANG: Okay. So, just for my confirmation of what
8 you're saying, your argument here is that the history buffer stays on that
9 external drive. Locally, you're creating the simulated disk, and you're
10 always referencing whatever data is on the external drive. You're just
11 leaving it there, but you reference it so that you can create the simulated disk
12 locally.

13 MR. MASON: That's correct, yes.

14 JUDGE HOANG: Okay. Thank you.

15 MR. MASON: The history buffer always stays remote. That's the
16 important thing.

17 JUDGE HOANG: Got you.

18 MR. MASON: And that's also reflected if we turn to slide 26.
19 This is also from Schneider. This is Schneider explaining this process of
20 recovery that we also saw and discussed at slide 16.

21 So, lines 11 and 12 here excuse me 12 and 13 here, it talks
22 about the act of selecting a file to retrieve from a list, right? Well, what does
23 that do? That automatically leads to the steps of creating the appropriate
24 simulated disk. So the simulated disk is not created until the user selects the
25 file to retrieve. That's what Schneider tells us.

26 So, once you make that selection, I want this file. In response to

1 that, the simulated drive is created. That simulated drive references the
2 remotely located history buffer. Data is retrieved from that history buffer as
3 part of the, you know, as part of the simulated disk in creating the local copy
4 of that historic version. And all that occurs after the user selection.

5 And so, as I understand Patent Owner's arguments, Patent Owner
6 is saying, well, even if this data comes, you know, from a remote location, it
7 is first placed you know, it comes through the simulated disk. And the
8 simulated disk is a local entity. And therefore, when you do the last copy
9 from the simulated disk to the current version, it can't be retrieving. But
10 that, that's all really inapposite because the retrieving occurs from the remote
11 location after the selection as part of creating the simulated disk, as it states
12 here.

13 JUDGE HOANG: Thank you.

14 MR. MASON: I had noted a couple other arguments from Patent
15 Owner on slide 7. Certainly, if the Board has questions I'll just bring up
16 and these are from Patent Owner Response, pages 18 to 25. If the Board has
17 questions as to those arguments, I'm happy to answer them. But as noted
18 earlier, those arguments all rely on this misconception that we rely on a local
19 history buffer. And that's just not the case. That's not the ground presented.
20 Patent Owner is arguing against a petition that wasn't presented. And under
21 the petition that was presented, these arguments fail.

22 So, if there are no further questions with respect to element 1.4, I
23 can turn I will also briefly note that element 19.3, Patent Owner raises
24 similar arguments, and they fail for the same reasons I just discussed.

25 JUDGE COCKS: I guess I just have one question. Do we are
26 we going to need to construe current version as a part of resolving this

1 proceeding?

2 MR. MASON: I don't believe so. That didn't arise here. I mean,
3 Schneider uses this language as the current version. It's replacing the current
4 version locally. But if there is there

5 JUDGE COCKS: Well, I guess, so I will tailor my question.

6 So their construction, Patent Owner's construction, at one point
7 they say, in the context of the claim and underlying disclosure, current
8 version means more than mere overwriting a local version but also means
9 keeping parity between the file and the local storage location and the
10 versioning system of the remote storage location.

11 Do you agree with that statement?

12 MR. MASON: Oh, we don't. No, we don't agree with that
13 construction at all. And that, yeah, Judge Cocks, that involves Grounds 3 to
14 4, which I can certainly turn to now.

15 JUDGE COCKS: Okay.

16 MR. MASON: Yeah, and I understood your first question as
17 relating to Grounds 1 and 2.

18 (Simultaneous speaking.)

19 JUDGE COCKS: Well, actually, I was just looking at 4 as having
20 the term I mean 1.4 as having the term

21 (Simultaneous speaking.)

22 MR. MASON: Yeah, no. It does have yeah.

23 JUDGE COCKS: I probably jumped the gun a little bit, but if you
24 could get to that.

25 MR. MASON: No, no, no. That's I'm sorry I misunderstood
26 your initial question.

1 So, yeah, certainly, and if Judge Hoang or Judge Hoskins don't
2 have any other questions on Grounds 1 and 2, I can turn to that claim
3 construction issue now.

4 So, turning that claim term is in dispute. We don't think it
5 requires construction. Patent Owner advocates for a very narrow
6 construction that grafts a lot of language onto the claim, calling for
7 automatically ensuring parity between the remote location and the local
8 location. So I'll get into why that construction should not be adopted.

9 If we turn to slide 34, the claim and this is Claim 1 in its entirety
10 the claim simply does not require the extra step that Patent Owner attempts
11 to impose. The claim is focused on restoring or recovery. It's not directed to
12 file backup or archive or anything else. That's the subject of other patents
13 that Patent Owner pursued off the same application. But there's nothing here
14 that relates to archiving or backup. This is recovery of the files that have
15 already been backed up.

16 When this claim speaks about a current version, it talks about the
17 local storage location, both in the preamble and in element 1.4. It never
18 talks about a current version on a remote location. It never talks about
19 storing any version to the remote storage location. It never talks about
20 copying or reflecting back the current version to a remote location.

21 When it speaks about the remote storage location, the claim is
22 focused on what is retrieved from that location. And so, the applicants knew
23 here how to use these terms, and they never discussed reflecting back or
24 storing back or ensuring parity of the current version locally with the current
25 version remotely. That's just simply not in the claims. If they had -- every
26 instance of remote storage location involves retrieval and every instance of

1 current version is a file stored on the local storage location.

2 So, here, the Patent Owner, they could've sought to amend these
3 claims to add this extra language. They didn't either during prosecution or
4 here now. And so, they cannot graft this unduly narrow language onto the
5 element at this time.

6 Turning to slide 35, this is the actual disputed claim language there
7 in highlight.

8 Slide 36, this has the disputed term at the top. And at the bottom is
9 my best attempt at capturing our best attempt at capturing Patent Owner's
10 proposed construction. And the language that they're adding is reflected at
11 the end. So they're seeking not only to you know, the language itself
12 recites storing the selected previous version by the computational machine
13 as the current version on the local storage location.

14 And they seek to impose the additional requirement that
15 automatically, you reflect back to the now current local version in the remote
16 storage location so that parity exists. And I won't read the entirety of it, but
17 they add a lot of words and a lot of requirements that just are not there in the
18 claim, and they're not supported by anything else in the file history or the
19 written description.

20 And it's important to remember why they're arguing this, and that's
21 because Sweat, our primary reference for Grounds 3 and 4, satisfies the
22 claims without this unduly narrow construction. Sweat does everything that
23 the claims recite. And it also, actually, does disclose creating parity between
24 the current version locally and the current version remotely. It just doesn't
25 disclose doing so automatically. It requires an extra user step of hitting save
26 in Sweat. And so, they say that's not automatic.

1 Well, if you look at the patent, the '850 patent itself, and the
2 provisional, the only instance of that arguably reflects parity back involves a
3 user action where the user hits save to reflect and save that version back to
4 the I think this is in the provisional what's referred to as the AccuSafe
5 product. So, but in any event, this construction is improper. It's not
6 supported by the claim. It rewrites the claim and should be rejected.

7 But there are not any further questions on claim construction, I'll
8 just turn to the merits of the Grounds 3 and 4 dispute. So the, turning to
9 slide 40 of our demonstratives, the elements in dispute are 1.4 and 19.5.
10 They turn entirely on this claim construction issue. And so, I've already
11 discussed the claim construction issue. I don't think there's any dispute from
12 Patent Owner that without its additional language, the claims are satisfied.

13 And I also think, even if everything but the automatic part of
14 Patent Owner's if this parity requirement that Patent Owner advocates for
15 were adopted, well that's satisfied by Sweat as well for the reasons explained
16 in the reply.

17 JUDGE HOANG: Counsel, but you would say that if we did adopt
18 their claim construction, which would require this automatic backing-up
19 feature that you've been discussing, then Sweat wouldn't meet the claims?

20 MR. MASON: Yeah, yeah. Yes, Your Honor. We submit that
21 that automatic parity is an improper construction. It's not supported by the
22 spec, but yeah, if that were adopted, then Sweat would not satisfy the claims.

23 JUDGE HOANG: Thank you.

24 MR. MASON: And this issue so I will, given that, I will turn to
25 claims 2, 3, the dependent claims here. The dispute here centers all around
26 Claim 2. Claim 2 and 11 have nearly identical language. And then Claim 3

1 depends from Claim 2, and that's why 2, 3, and 11 are also in dispute.

2 So, turning to slide 42, this is Claim 2. It's a very basic proposition
3 of presenting a version of a file using the same application that created the
4 file, right? So I need to show a user a file. What application do I use to do
5 that? Well, I if I have the same application that created the file available,
6 say Microsoft Word, if I've got Microsoft Word and I use that to create the
7 file, well, I'm going to use that to allow the user to view the file. That's what
8 this involves.

9 And if we turn to slide 43, Sweat, as just one example, identifies
10 AutoCAD as a drawing viewing software utilized by the viewer. Sweat also
11 oh, excuse me. I'm sorry. Yes, slide 43, Sweat teaches a viewer to view
12 files. And so, this is Exhibit 1006, column 23, 38 to 41, and it discusses
13 installing the appropriate viewer to open and view drawing files. And it
14 talks about how viewing depends on the viewer that is installed on the
15 computer.

16 And if we turn to slide 44, this is where Sweat, in column 23,
17 discusses using AutoCAD as a drawing or viewing software, right? So it's
18 using this. And then Sweat also elsewhere describes using its own software,
19 its own proprietary software, to create, view, or edit files that are archived
20 and recovered as part of its system.

21 And so, as Dr. Maier explained this is slide 45, Exhibit 1024,
22 paragraph 39 -- AutoCAD was well recognized as a program used to create a
23 file. And it could also be used as a viewer. It was well-recognized as a
24 viewer. And so, Sweat discloses using AutoCAD for viewing files. Skilled
25 artisans knew that AutoCAD would be also used to create files. So it's
26 obvious to use the same viewer.

1 JUDGE HOANG: Counsel, is it your contention that it would be
2 obvious; it would've been obvious to use AutoCAD to view? Or is it your
3 contention that Sweat simply described or teaches, discloses that you can use
4 AutoCAD to view files?

5 MR. MASON: It expressly identifies AutoCAD as something that
6 can be used to view the files. And that's here on slide 44, Exhibit 1006,
7 column 23, 29 to 33. In the middle there, line 31, it says, the
8 drawing/viewing software utilized by the viewer.

9 And then it gives examples, including AutoCAD.

10 JUDGE HOANG: What do you make of that section that you
11 cited? It's underneath a section of Sweat, titled Markup (Redline) Files. So
12 it's directed to a marking-up feature of Sweat. Whereas the viewing section
13 of Sweat, right beneath it, doesn't really describe using AutoCAD as a
14 viewer.

15 MR. MASON: Well, I mean, I would respectfully disagree, but I
16 think if we look. I understand it's within that passage of Sweat, but here, it's
17 explaining, right? The ability to markup a drawing and store the markup
18 files are aspects of the drawing/viewing software. So it's speaking to the
19 drawing or the marking up, but it's also saying this same software is also
20 being used for viewing.

21 And so, even though it arises in that context, it's explaining. Like,
22 and this is something that it's - I hate to use this term. It's not rocket
23 science, right? You've got an application that was used to create the file. It's
24 regularly also used to view those files. You're going to use that. It's obvious
25 to use that software to view that application to view the file.

26 JUDGE HOANG: And so, that's, I guess, why I asked you

1 whether it's your contention that Sweat discloses this or if it would be
2 obvious too.

3 MR. MASON: Yeah. I mean, it's an obviousness ground. And I
4 think we explain I mean, Dr. Maier explains it also would've been obvious
5 to do this, right? I mean abundantly obvious. But also, even, you know,
6 setting that aside, Sweat discloses it.

7 JUDGE HOANG: Thank you.

8 MR. MASON: Unless there's further questions from the Panel on
9 Grounds 3 and 4, I'm going to just jump briefly back to Grounds 1 and 2 and
10 Claim 3, which is also disputed there.

11 Hearing no questions, so Claim 3, similarly, this depends from
12 Claim 2. And Claim 2 discusses using an application to view the file. And
13 then Claim 3, it's really another sort of really non-controversial situation
14 where it's just the application is in a read-only mode. So you're viewing the
15 file.

16 And remember, in the Schneider system, Schneider, it's not
17 formally retrieving the file. Schneider is just allowing the user to preview
18 the file, and then its contents are discarded. So we explain why it would've
19 been obvious to just open this application in a read-only mode. We explain
20 why Schneider renders it obvious.

21 But then we - and Patent Owner attacks that aspect of our
22 argument. Well, we also explained this would've been an obvious design
23 choice. When you're viewing a file that you know you don't want the user to
24 edit or use, there's only three options. You can open it in read mode,
25 read/write mode, or read/write/delete mode. Those are the three options.
26 That's undisputed. It would've been an obvious design choice from among

1 those three because the Petition presented this to use the read-only mode.

2 Not only that, we explained and this is supported by our expert
3 it would've been the most obvious choice because you don't want
4 Schneider explains the user is not editing this file. You don't want them
5 using this file or to think that they are editing this file.

6 So that's the only point I wanted to make on Claim 3. Unless there
7 is questions, I will cede the remainder or sorry reserve the remainder of
8 my time.

9 JUDGE COCKS: I don't think we have any further questions.
10 You will have about 30 minutes for rebuttal.

11 Whenever you're ready, Mr. Jaffess.

12 MR. JAFFESS: Thank you, Your Honor. Please the Board, Ari
13 Jaffess, on behalf of Patent Owner, Datanet. Throughout this case

14 JUDGE COCKS: Actually, before, do you wish to reserve any
15 sur-rebuttal time, so I know?

16 MR. JAFFESS: If I could reserve 20 minutes, please, Your Honor.

17 JUDGE COCKS: Please go ahead. Sorry.

18 MR. JAFFESS: Throughout this case, Petitioners have argued the
19 retrieving and the storing features of limitation 1.4 piecemeal, as though
20 they're divorced from the introductory clause that recites that these actions
21 are performed responsive to the selection to restore.

22 It's clear that both the retrieving and the restoring steps are
23 responsive to a selection to restore, and thus, must come chronologically
24 later in time, select and restore action. This was confirmed by Petitioner's
25 expert, Dr. Maier. It's at Exhibit 2007, page 85, lines 12 through 16. I think
26 a POSITA would've understood retrieving as coming after selection because

1 of the word responsive.

2 The other key claim language that the Petitioners have ignored
3 throughout these proceedings is that the retrieving step must be from the
4 remote storage location, not some location local user's PC. As Patent
5 Owner has stressed both in the Patent Owner's Response and in the surreply,
6 nowhere did Petitioner show that a previous version of the file is retrieved
7 from a remote storage location in response to a selection to restore.

8 Every instance in Schneider, the previous version of the file is
9 reconstructed on the local storage location, selected from the local storage
10 location, and stored, copied from this local storage location to its final
11 destination.

12 JUDGE HOANG: Counsel?

13 MR. JAFFESS: Yes?

14 JUDGE HOANG: Isn't the limitation that the restorable
15 representation is what's remotely stored rather than the previous version?
16 The previous version might be created from that restorable representation,
17 but the claim recites the restorable representation is retrievable.

18 MR. JAFFESS: Yes, the restorable representation. Yes, Your
19 Honor. Thank you.

20 But responsive to a selection to restore the selected previous
21 version, retrieving the restorable representation, right? The important point
22 here is that it's responsive to the selection to restore and that it's all
23 reconstructed locally in Schneider. This is how Schneider works. It
24 reconstructs it in a virtual disk which is local to the machine. No one
25 disputes that. It shows you previews, and from that, you can from those,
26 from that data, you can store, use the restorable representation, and restore a

1 file.

2 Stating, as the Patent Owner Response did, the previous version,
3 the restorable representation, is retrieved from the remote storage location.
4 It's not a misreading of the claim. That's actually how the claim reads. The
5 restorable representation of the selected previous version is, in fact, the
6 previous version of a file from that remote storage location. It's data
7 constituting from which you can reconstruct it.

8 Claim language of limitation 1.4 makes it clear that this previous
9 version, restorable representation, was retrieved from the remote storage
10 location, thereafter, becomes the current version on the local storage
11 location.

12 JUDGE HOANG: I guess, Counsel, I'm being a little particular
13 about this language because it's not the previous version being retrieved
14 from the remote storage location. It's the restorable representation of the
15 selected previous version.

16 Because the restorable representation and what we have been
17 chatting about earlier, you know, if that's the data in the history buffer and
18 you are and I think there isn't a dispute that you're recreating a simulated
19 disk locally. But that data that you're pulling to recreate your local
20 simulated disk, and you know, the previous versions, that is local, but you're
21 still retrieving the history buffer data externally. At least, that's what I
22 understand Petitioner has been arguing.

23 MR. JAFFESS: You were retrieving it from external in some
24 disclosures in Schneider, but you are doing that both you are retrieving it
25 to create the list. And then, from that list, you can reconstruct the previous
26 version. We're not reaching back out after that list has been created to

1 redownload data that you're downloading to construct that. This is how
2 Schneider works. It downloads that data and creates the list of prior versions
3 to show, and it's all done locally.

4 Bear with me. I'm going to get my bearings to get there, here.
5 (Pause.)

6 MR. JAFFESS: Bear with me a moment.

7 JUDGE HOANG: Of course.

8 MR. JAFFESS: So, page 59 of Schneider helps make this clear.
9 The entire retrieval operation may hide the process of establishing a
10 simulated disk. The act of selecting a file to retrieve from the list, wherein
11 it's constructed from information in the general log -- which is local -- can
12 automatically lead to steps of creating the appropriate simulated disk,
13 copying the file, and closing (de-activating) the simulated disk.

14 Right. The entire retrieval operation may hide this process, and it
15 copies the file and closes it. It's all done locally.

16 JUDGE HOANG: Doesn't that kind of support Petitioner's
17 position? If this section here, looking at the past in terms of files, in here, all
18 you're doing is perusing what past files you have. And then you close the
19 simulated disk, right? You shut it down. And then, to restore it, wouldn't
20 you have to reopen it or redownload that?

21 MR. JAFFESS: This is not how I'm reading Schneider. Once it's
22 already restored, you can close it. It's not actually it has to process all of
23 this information to show the prior versions, and that's all done locally. It
24 does not then go back out to get the data when you select it to restore. This
25 is all done in one step. Not one step, sorry, but it's all it is one retrieval of
26 the data that's reconstructed locally on a simulated disk to show the prior

1 versions to allow you to view and then allow you to restore. There's not a
2 separate retrieval from the remote storage location.

3 JUDGE HOANG: Thank you.

4 MR. JAFFESS: Yeah. It's unrebutted that viewing is performed
5 using the locally present version of the file, and restoration is performed by
6 fetching from this local version.

7 Schneider does not teach or suggest that responsive to the selection
8 to restore the selected previous version retrieving the restorable
9 representation from remote storage. Or it's not responsive to that. It has
10 already downloaded this information, has it locally, and from there, you can
11 restore the file. It requires file reconstruction to be performed locally as it is
12 tightly linked to the OS and a file-level implementation of present invention.

13 This is page 24 of Schneider, Exhibit 1005. File-level
14 implementation of the present invention, with tight integration into the
15 operating system, the method of understanding by the user of retrieving
16 information may significantly differ, although is still based on the principle
17 of saving original states of recent changes.

18 JUDGE HOANG: What do you make of Petitioner's argument that
19 after -- during the viewing of the file, limitation 1.3, after that file is viewed,
20 it's discarded from the temporary directory, or wherever it is, so that when
21 you have to actually restore it, then you have to go back into the remote
22 storage to get the data to actually restore it? And they pointed to something
23 in Schneider discussing discarding files during the viewing process.

24 MR. JAFFESS: My read of Schneider is not that it discards it after
25 viewing and before restoring. It can discard it once it's done with the full
26 process, whether that involves restoring or not. It does not discard work and

1 discard data that's been downloaded and ignore it and then go back out to the
2 remote location to get further data to reconstruct. It does it all in one
3 download of data, reconstructing the prior versions, allowing you to view
4 them, allowing you to restore them.

5 I'll proceed to the claim construction disputes. To avoid reading as
6 the current version as mere surplusage, the phrase must be interpreted to
7 mean, consistent with POSITA's understanding, keeping parity between the
8 file on the local storage location and on the version system.

9 Petitioners argued that this, the mention has something to do with
10 archiving, but restoring is part and parcel of an archiving system. But you
11 restore from the archive. That's the point. So this needs to be done so that
12 the version of a file now present on user PC has a corresponding version on
13 the remote storage location, each of them corresponding to each other.

14 Similarly, limitation 19.5's recitation of restoring the selected
15 another revision of said file following said previewing step set forth from the
16 claim context of a method for restoring a file to a previous version must be
17 understood to mean the selected another revision of said file becomes the
18 most recent version time on both the local machine and the internet storage
19 area network, Claim 19.

20 Petitioner's evidence makes clear that to restore a file means to
21 overwrite it since they are copied to their, quote, normal storage location.
22 This is Exhibit 1028. I believe this is Petitioner Microsoft's dictionary at
23 452. To copy files from a backup storage device to their normal location,
24 that's the definition of restore.

25 Patent Owner also pointed out that the local computer, at any given
26 time, it's unrebutted, the version of a file, then resident, is inherently the

1 current version.

2 JUDGE HOANG: Counsel?

3 MR. JAFFESS: Yes.

4 JUDGE HOANG: Sorry. Can I get just a baseline of your claim
5 construction? So on your original Reply, you described that a POSITA
6 would understand storing the selected previous version as the current version
7 on the local storage and that that means the version of the file present is on
8 the PC, has a corresponding version on the remote storage location. That's
9 at page 13.

10 And then, a little bit on the next page, on page 14 of your Reply,
11 you describe that a POSITA would understand current version means more
12 than overwriting a local version but also keeping parity between the local
13 file and the storage location.

14 So I'm wondering, are you trying to -- are you offering a claim
15 construction for just the term current version, or are you offering a claim
16 construction for the limitation, starting, you know, with the word, storing the
17 selected previous version, ending at current version? And what is that
18 construction specifically?

19 MR. JAFFESS: Yes. It's as the current version is the term that we
20 are construing. And we're specifically construing it, as I just said, to keep
21 parity between a local version and a version on the remote storage.

22 JUDGE COCKS: So when you say "parity," and I think you said
23 "corresponding," does that mean that the two versions are identical in real-
24 time?

25 MR. JAFFESS: When you restore it, they are identical in real-
26 time.

1 JUDGE COCKS: Okay.

2 MR. JAFFESS: And this was discussed by our expert in
3 deposition, Mr. Jawadi. This is pages 99 to 100 of his deposition transcript,
4 Exhibit 1027. This was a hypothetical of versions numbered 1, 2, and 3.
5 You're working on version 3, and you restore version 2 to your local
6 machine, and then it crashes. And if there's no parity kept, then when you
7 start this machine back up, that restore is completely lost in the system.
8 That's the way that this system operates, as shown through the specification
9 and the provisional patent application as well. That's how it operates.
10 Otherwise, it would not work.

11 JUDGE HOANG: Okay. Counsel, you said to keep parity when
12 you do the restore operation.

13 MR. JAFFESS: Yes.

14 JUDGE HOANG: If you're downloading, if the local machine is
15 retrieving or, you know, whatever, getting a backup copy, how is that, at that
16 point in time, that you copied over that file, how is that not parity in that
17 case? How is there no parity if the local machine literally just downloaded
18 or retrieved --

19 MR. JAFFESS: Meaning?

20 JUDGE HOANG: -- the backup file.

21 MR. JAFFESS: The remote storage has versions 1, 2, and 3.

22 JUDGE HOANG: Right.

23 MR. JAFFESS: The remote storage thinks version 3 is the current
24 version. You download version 2. That's what you have on the computer.
25 Remotely, it's version 3. You've restored version 2 on the local machine.
26 Version 3 is sitting as the current version remotely. They're out of sync.

1 Again, the computer, if your local computer crashes, that's all lost. The
2 restore didn't happen essentially. Meaning the remote storage believes that
3 version 3 is current, but it's because parity was not maintained. JUDGE
4 HOANG: So you're suggesting that, in this hypothetical, then the remotely
5 stored version 3 is just removed, and it doesn't exist so that now you only
6 have version 2?

7 MR. JAFFESS: No. It's a stack. It gets pushed --Version 2 gets
8 pushed to the highest, the top of the stack. That's the current version.
9 Version 3 is maintained because they maintain all the versions, the system
10 does.

11 JUDGE COCKS: So in your scenario, which version is the
12 previous version?

13 MR. JAFFESS: Version 3 is the previous version at that point.
14 Sorry, the previous version that you restored is version 2. It becomes the
15 current version when you restore it.

16 JUDGE COCKS: So it's both? So version 2 is both the current
17 version and the previous version in this?

18 MR. JAFFESS: It becomes the current version through the restore.

19 JUDGE COCKS: Okay.

20 MR. JAFFESS: And then at that point, all of them are previous
21 versions for other operations.

22 JUDGE HOANG: So this is a lot of discussion and a lot of
23 hypothetical situations that just I don't see in the claims at all. And all I see
24 in the claims is storing this as the current version on the local storage
25 location. I understand that Accuvview [sic] has other features, the backup
26 features that we've talked about at length previously. Why do you need to

1 read in these backup features into this limitation, just on the face of this
2 limitation?

3 MR. JAFFESS: AccuSafe.

4 JUDGE HOANG: Oh, sorry. AccuSafe.

5 MR. JAFFESS: No, not a problem. AccuSafe does have many
6 features, but this has to do with the previewing, archiving prior versions,
7 previewing, and restoring them, and as part of the disclosure of the
8 provisional patent application that we're relying on that shows this. I can
9 show that in Exhibit 1003, on page 147.

10 Right. It talks about if the version of the file on the user's PC on
11 the top level the -- it puts it on the top level of the AccuSafe revision stack.
12 If such is not the case, AccuSafe must first backup the user's file to the
13 AccuSafe Media Device and then perform the restoration function. This will
14 assure that no version of a file is lost as a result of the restoration process.
15 This must be understood in the broader context of the disclosure, which
16 makes clear that all changes to files are tracked.

17 On page 139 of Exhibit 1003, AccuSafe tracks file operations at
18 the interrupt level, within the Windows OS, creates a database log of
19 relevant file saves, and then saves versioned copies of such files on a
20 separate AccuSafe folder on the defined AccuSafe drive.

21 Further down on this page, page 139 of Exhibit 1003, file change
22 monitoring and copying, AccuSafe constantly monitors Windows OS for file
23 activity. File information is available and responded to in AccuSafe when a
24 file is opened, copied, deleted, renamed, moved, or created. The backup
25 operation ensures the file version that is being overwritten is not lost; while
26 tracking and monitoring operation ensures the current version of the file on

1 the local drive is also reflected in the remote storage.

2 And they'd argue that some of this is optional in the disclosure, but
3 none of this. It's all required.

4 JUDGE HOANG: It's required to -- it seems like backing up files
5 would be required to restore the files, but why to perform the restoration
6 functions, right, do you then need to also implement -- for the restoration
7 function, for the restoration feature, this backing up this additional, you
8 know, current parity limitation you're suggesting?

9 The portion of AccuSafe that you pointed to describing this backup
10 feature, which does occur in the restoration discussion, it talks about keeping
11 a backup file of the file that the user wants to replace so that you have all
12 versions. So even if that errant version is there, right, and it's newer than
13 whatever is being backed up, it's just keeping a version of the file -- for the
14 user. But that's not in relation to the file being restored by the user. It's just
15 keeping a backup of whatever errant copy, right?

16 The way I read this it's -- this passage here you pointed to on 147,
17 that seems like it's getting to keeping a backup file of that file that the user
18 wanted to overwrite so that there's a backup of that, different, distinct from
19 keeping parity between the remote version and whatever version that the
20 user just downloaded.

21 MR. JAFFESS: Yes, Your Honor. It's talking about the full stack.
22 It does not throw out whatever errant version or whatever version it's
23 overwriting. But it also requires keeping parity with the remote storage, the
24 database log, and saving the version copies on the separate AccuSafe folder,
25 the defined AccuSafe drive. That's how it functions. It saves all the files. It
26 saves them remotely as well. And to give any meaning to the word, as the

1 current version, this is required in claims 1 and 19 because, otherwise, it's
2 just mere surplusage. And we've cited multiple cases just as to --

3 JUDGE HOANG: Well, I don't know if it's mere surplusage
4 because when I read limitation 1.4, we have, responsive to a selection to
5 restore the selected previous version. Then two things are performed: the
6 retrieval of the restorable representation and then the storing of the selected
7 previous version as the current version.

8 So, responsive to a selection to restore the previous version, that is
9 what you want to do, right? You want to restore the selected previous
10 version. The next two limitations, the retrieving and the storing limitations,
11 those are describing how you restore the selected previous version. So it's
12 not that it's reading out restore. It's saying that you restore by retrieving and
13 storing.

14 MR. JAFFESS: It's not reading out restore, but it would read out
15 as the current version, right? As we had argued, every file sitting on a
16 computer is inherently the current version of that file. To give any meaning
17 to this in an archive system, there has to be this track parity. As the current
18 version means that it's being tracked.

19 JUDGE HOANG: But it's for the current version of the local
20 storage location, right? The claim is discussing current versions at a local
21 storage location. So, whatever happens on the remote storage system is
22 what happens, but here, you're just relabeling whatever version of the file as
23 the current version.

24 MR. JAFFESS: It would just be an overwrite then. It would not
25 be a restore, and it would not be restoring as the current version.

26 JUDGE HOANG: Thank you.

1 MR. JAFFESS: Again, we had cited various cases, including
2 Ethicon Endo-Surgery, to the effect that it's improper to construe terms to be
3 mere surplusage as the current version should be understood to mean
4 keeping parity between versioning locally and on the remote storage
5 location.

6 Bear with me one moment. I'll try not to be redundant in the
7 argument.

8 Going back to Schneider and the virtual drive locally, let's go to
9 Exhibit 2004, paragraph 91. This is Mr. Jawadi discussing the virtual drive
10 and how it is local.

11 Going on to paragraph 92 as well, it allows the user to select a file
12 that can be retrieved from the past and automatically launch the operation --
13 application rather.

14 And as shown by Mr. Jawadi here, this provides further
15 confirmation that Schneider's file restoration functionality is provided by the
16 software running locally on the user's computer.

17 Now, moving on briefly to Claim 19, the context of Ground 1, as
18 discussed, all prior history versions of the files in Schneider are generated
19 locally unless Schneider does not teach, quote, previewing selected revision
20 of said file, wherein said selected revision of said file is received from an
21 internet storage area network, as recited in limitation 19.3. This is discussed
22 by Mr. Jawadi in Exhibit 2004, paragraph 100.

23 They cited in their slide 12, that portion of Schneider on page 113
24 that's showing internal disk and external disk. This portion of Schneider
25 suggests that file restoration takes place on the PC itself, right? Provisions
26 in the PC's software would divert to and take advantage of an external disk

1 that had more historic information than available, and whose access is
2 desired. In other words, this confirms that file restoration is running locally,
3 confirming that it works by creating historical versions locally, restored from
4 the locally created historical versions.

5 The viewing is performed using a locally present version of the
6 file. The restoration is performed by fetching from this local version. So
7 Schneider does not teach or suggest responsive to the selection to restore,
8 retrieving restorable representation from the remote storage location.

9 If you go to Exhibit 1005 and Schneider page 60, it's lines 21
10 onward. Schneider states, it is useful to allow the user to select a file that
11 can be retrieved from the past, automatically launch the appropriate
12 application, copying the file from a simulated disk to a temporary directory.
13 This allows the user to not only know of the existence of an old version of a
14 file but to view its contents without actually formally retrieving as the
15 viewed file is automatically discarded. Therefore the viewed file's existence
16 in terms of being retrieved is hidden.

17 This is, again, as we discussed that and how it's one action:
18 downloading for previewing and then using that to reconstruct when you
19 restore. They're arguing that you go back out somehow to the remote
20 storage in order to restore, which we do not see in Schneider. There's a
21 single retrieval that locally reconstructs the historical version of a file which
22 may be optionally provided -- previewed and discarded, but if selected, is
23 then copied from the local simulated disk or temporary directory to replace
24 the local version of the file.

25 Briefly, on Claim 3, they argued against obvious to try. The
26 number of possible rewrite modes associated with accessing the file has

1 nothing to do with the internal operations of the application. They're
2 discussing the file per missioning, and the claim actually recites the
3 application is in a read-only mode. It's not a protection of the file. It's the
4 mode of the application itself. And not all applications support the read-only
5 mode. So it would make more sense to lock the file. Sorry. Strike that.

6 Moving on to Sweat, this is Grounds 3 and 4. We note that restore
7 and download mean two different things. Sweat only discloses
8 downloading. It does not render the challenged claims obvious in addition
9 to failing to meet Patent Owner's definition of as the current version.

10 They had argued that Sweat and -- other than the argument about
11 Sweat with manual steps being possible to create parity, there is no argument
12 that Sweat creates parity with a remote storage location. Manual steps are
13 not claimed. It's done automatically, so the manual steps would not save
14 them here, as far as Sweat is concerned.

15 Claim 2, very briefly, the application that created the file. Sweat
16 discloses a different workflow for viewing and editing. The client computer
17 on viewing, Sweat discloses, at column 23 of Sweat, lines 41 to 43,
18 computer 104 may use the same plug-ins and ActiveX controls that a
19 browser uses to display files.

20 This is different than editing. This is viewing in a browser with
21 ActiveX controls. And editing is in column 5, lines 46 to 48. The
22 application registered to the file type on your computer is what's used for
23 editing.

24 Sweat clearly contemplates two different programs: one for
25 viewing and one for editing. The list that we were looking at before of the
26 viewers, which has the AutoCAD, it's a list of viewers: Volo View Express,

1 Volo View, and AutoCAD. I believe that it should be AutoCAD viewer, but
2 regardless, the AutoCAD there, if it's an ActiveX control, it's different than
3 the program that is used to edit the file, right? It's a viewer. It's a viewer
4 version of AutoCAD somehow.

5 JUDGE HOANG: Counsel, what do you make of Petitioner's
6 argument that it would've been obvious to use AutoCAD as a viewer?

7 MR. JAFFESS: The viewer in Sweat is discussed as being in a
8 browser, an ActiveX control. I mean, you're going completely outside of
9 that construct. I don't think it would be obvious to do that in light of the
10 disclosure in Sweat about viewing.

11 JUDGE HOANG: Even though Sweat also describes downloading
12 applications for viewing?

13 MR. JAFFESS: Bear with me on that. I hate to ask, Your Honor.
14 Is there --

15 JUDGE HOANG: Sure. Sure. Let's see. The user must install the
16 appropriate viewer to open -- this is column 23, about line 40 -- to view
17 program files, the user must install the appropriate viewer to open and view
18 drawing files.

19 And then they list some, what I assume are applications, like
20 Autodesk WHIP! and Volo View Express.

21 MR. JAFFESS: Again, this is in discussion in terms of viewers
22 and not editing applications.

23 JUDGE HOANG: I understand, but that's why I'm asking about
24 the obviousness case. It seems like Petitioner is also asserting that it
25 would've been obvious to use AutoCAD as an application. And I'm saying
26 that there's some other applications also being described as used to view

1 and -- used to view files.

2 MR. JAFFESS: In the context of the following sentence, I take
3 that to mean that it's not an actual -- it's installing a viewer that can function
4 as an ActiveX control in a browser. And the following sentence, lines 43
5 onward, if a user can't see the drawing files when loaded into a browser, the
6 user may not be able to view them.

7 So that distinguishes -- it's saying you view them through an
8 ActiveX control in a browser, and if you can't, you may not be able to view
9 them at all. It's not saying that you can download a separate application. I
10 think it changes the workflow of Sweat and reworks it to say that it's obvious
11 to go outside of this construct and use a downloaded application for that.

12 JUDGE HOANG: Thank you.

13 MR. JAFFESS: One second, Your Honor. Unless there are any
14 further questions, I'll reserve the rest of my time.

15 JUDGE COCKS: I don't think we do. Thank you. You'll have 27
16 minutes if you need that time.

17 Whenever you're ready, Mr. Mason, you've got --
18 (Simultaneous speaking.)

19 JUDGE COCKS: You've got 30 minutes.

20 MR. MASON: Oh, go ahead. Sorry.

21 JUDGE COCKS: I believe I said you have 30 minutes.

22 MR. MASON: Thirty minutes, okay. Thank you, Judge Cocks.

23 Yeah, I will just jump in right on the subject that we were just
24 discussing. And this is slide 43 of our demonstratives. And I think Judge
25 Hoang has expressed our obviousness theory correctly. And if we look at
26 this passage here, on the upper left-hand side of slide 43, this is discussing,

1 you know, installing the appropriate viewer. So, right, you're installing an
2 application to view the file.

3 It's the very next sentence which Patent Owner wants to focus on,
4 says, the client computer may use the same plug-ins and ActiveX controls
5 that a browser uses to display files.

6 So it's saying, you know, one option is to use these ActiveX
7 controls and plug-ins, but there's other applications that you can use to view
8 these files. And that's our whole obviousness theory is you've got these
9 applications that you've downloaded. They can edit the files, and they're
10 also useable to view the files. So it would've been obvious to make the file
11 viewable to present the view of the file using that same application.

12 Unless there's any further questions on that, we'll turn -- staying
13 with Grounds 3 and 4 and the claim construction dispute. I think Patent
14 Owner has repeatedly said that the current -- as the current version has no
15 meaning unless there is some kind of parity.

16 And again, I think Judge Hoang, you walked through what the
17 claim actually requires, right?

18 It says responsive -- it's the top of slide 5 here, right -- it says,
19 responsive to a selection to restore the selected previous version.

20 And then there's two steps that occur, right? And so, this is not
21 saying -- these two steps are essentially telling you what happens as part of
22 the expected restore process, right? Retrieve the restorable representation of
23 the selected previous version.

24 So you go out and you retrieve that from the remote storage
25 location. And then you store the selected previous version by the
26 computational machine as the current version on the local storage location.

1 Well, if you take that language out -- and I've just blacked it out
2 here on the screen with a bubble -- if you remove that as the current version
3 language -- and I think Mr. Jaffess agreed with this -- then what you've got
4 and what the claim would recite then is, well, you just stored a version of the
5 file locally, but the user doesn't understand it to be the current version. So
6 this language absolutely has meaning on its own without adding all the
7 surplusage that Patent Owner would like to add into the claim.

8 And unless there's further questions on Grounds 3 and 4, I will turn
9 back to Grounds 1 and 2 briefly. And I think that this might be what Judge
10 Cocks was asking earlier in the proceeding, but the claim construction
11 dispute does not implicate Grounds 1 and 2. So I want to make sure I clearly
12 answer that question.

13 And I think, with respect to Schneider in element 1.4, there's no
14 dispute that this restoration software is running locally in Schneider. It's
15 running locally in the claim itself. It's the computational machine with a
16 current version being accessible. So this is the user's PC that's performing
17 these operations to restore. So that's of no moment that Schneider has its
18 software running locally.

19 Two, there's no dispute that Schneider uses a simulated disk and
20 that that simulated disk is local, right? But there's also no dispute that that
21 simulated disk is created in response to the user's action, selection to retrieve
22 a file. And that's slide 20.

23 Again, I mean, I'll come back to slide 26 of Schneider -- or slide
24 26, which is Schneider, Exhibit 1005, page 59, lines 12 to 17. He says, at
25 lines 13, right here, the act of selecting a file to retrieve from a list.

26 So what happens once a user selects a file to retrieve? It leads to

1 the creation of the appropriate simulated disk. And what does that creation
2 of a simulated disk involve? That involves going out to your remote history
3 buffer. So that is all responsive to user location. So it's, I think, oddly, we
4 seem to be in agreement in terms of how Schneider functions.

5 I've heard counsel say a few times that Schneider does an all-in-
6 one download of data, and it just has all the data, there, available. And then,
7 when you retrieve the file, you're just going to have to go locally. But
8 Schneider nowhere describes that. And to the contrary, again, here on slide
9 26, it describes after the selection to retrieve, you create the simulated disk.
10 And so, I don't -- Patent Owner hasn't pointed to anything suggesting that
11 Schneider maintains all this data that's been retrieved at any point in time for
12 any purpose such that it can be used.

13 And we identified and articulated a scenario that explains why that
14 doesn't make sense to keep all that data. This is RAM, and if the user is
15 viewing multiple files, you can't keep all those versions of the file locally to
16 the extent it's even been retrieved and stored in some kind of local storage.
17 So, for that reason, Patent Owner's arguments as to element 1.4 fail on
18 Grounds 1 and 2.

19 Yeah. And I already explained that after the viewing, that the file
20 is discarded. So there's no evidence that any local copy is maintained in
21 Schneider. And most importantly that when the user selects to retrieve and
22 that that's when the simulated disk is created.

23 JUDGE HOANG: Counsel?

24 MR. MASON: Yes, Your Honor.

25 JUDGE HOANG: What's the best passage in, that you can point
26 to, in Schneider that shows, during this retrieval step, in building the

1 simulated disk that it has to go to external or it does go to external storage or
2 remote storage -- excuse me -- as opposed to using a version that it
3 previously downloaded, like for example, when you're looking at files?

4 MR. MASON: Well, again, I think, first, there's a supposition that
5 it has, you know, somehow previously downloaded it.

6 I think if we look at slide 30, this is the virtual disk or virtual drive
7 in Schneider. And again, it's a virtual drive, and it just has these pointers to
8 where it's pulling the file information from. So it's these pointers, going
9 down into the history buffer, are going remotely.

10 And so, when Schneider describes its viewing, it says that, you
11 know, the application accesses the contents of the file through the virtual
12 drive. And so, the viewer, we submit, is just following these pointers to the
13 history buffer, pulling it into RAM so the application can display it, but it's
14 not actually creating any kind of local copy on the local drive.

15 JUDGE HOANG: Does Figure 2 describe the use of the local
16 history buffer as opposed to the remote history buffer? So, if I recall in
17 Figure 47I, you had a history buffer locally and a history buffer remotely.
18 So, as Figure 2, are you saying Figure 2 is generally applicable to
19 everything, or is Figure 2 specific to one of those embodiments, or --

20 MR. MASON: Well, Figure 2 is just one example of how the --
21 we use that as an example to show how the simulated disk or drive works. I
22 mean, in the implementation presented by the Petition, the history buffer
23 here would -- as shown here in Figure 2 -- would actually be located
24 remotely. I understand that it's described, right? In Figure 2, it's describing
25 it as local. But in the obvious implementation that we describe in the
26 Petition, that history buffer is local. So these pointers are going out to the

1 remote drive.

2 JUDGE HOANG: Okay. So Figure 2 does not show a remote
3 implementation. It's a local implementation of a history buffer. You're just
4 saying in your theory that we -- that this history buffer just would just be the
5 external history buffer.

6 MR. MASON: Yes, yeah, yeah. In the implementation presented
7 by the Petition, this history buffer that the simulated disk or drive is pointing
8 to is remote, right? And so, it's -- yeah, it is remote. And so, when you're
9 creating that simulated disk, any time you create the simulated disk, it goes
10 out to that remote history buffer.

11 And I, you know, I've discussed slide 26 before, but that's, I think,
12 perhaps the best instance, which Schneider -- what Schneider tells us is you
13 create the appropriate simulated -- it doesn't say reference in a simulated
14 disk that's already been created and has the file stored locally. It says create
15 the simulated disk in response to the user's selection to retrieve. And there's
16 nothing that controverts that. That's what Schneider expressly states.

17 And so, I think this is Schneider 130, lines 10 to 17, also discusses
18 this. I think this doesn't get into as many details as Schneider page 59, but it
19 again discusses that, you know, once you've selected from a list of earlier
20 files, the recovered files. So, again, in our implementation, right, the
21 recovered file, you're going out. This does not speak to the simulated disk,
22 so it's not as helpful.

23 But in discussing this, I think Petition, at 21 to 22 and 27 and 29 to
24 30, in discussing these other elements with respect to the restorable
25 representation and where it's stored, they explain why that's located on the
26 remote history buffer and why retrieving that involves -- yeah, anytime a

1 user selects to retrieve it, you're going out to retrieve it. And that, those
2 passages in Schneider are Exhibit 1005, page 31, lines 12 to 24; page 108,
3 line 15; and then page 112, line 26.

4 I think if we also look to slide 29, you know, which is up there.
5 This also describes the use of the simulated disk. And what this -- this
6 explains how the simulated disk is created, right? The simulated disk is
7 created by combining information on the original drive C and the history
8 buffer. And it is describing this as -- it's not a real disk. It's a virtual disk,
9 right? So, but, from the system's perspective, it's accessing it as if it was
10 another physical disk drive. It's just these pointers to the remote locations
11 for the historic data or as pertinent local locations for current data.

12 So, unless there are further questions --

13 JUDGE COCKS: I do not believe we have any further. Thank
14 you.

15 MR. MASON: I cede my time. Thank you so much.

16 MR. JAFFESS: Your Honor, just may I take a few minutes? It's
17 fine if you dock me for my time.

18 JUDGE COCKS: Go ahead.

19 MR. JAFFESS: Thank you, Your Honor. So Counsel for
20 Petitioners argued that without the quote, current version, the user doesn't
21 understand the downloaded file as the current version. But our point is,
22 when you overwrite a file, the resulting file is always a current version. Any
23 file sitting there is the current version of that file on the local machine. So it
24 has no meaning unless it has this parity. That's the point.

25 Now, to the functionality of Schneider. Counsel discussed
26 multiple files and keeping all of the data. The way that Schneider works is

1 an action to go back to a date and time, view historical files, preview, and
2 then you can restore from those. It's not storing all of the historical data
3 locally for a ton of files. It's this scenario in Schneider that we're discussing.

4 The local operation of Schneider, we think, is best shown on page
5 24, lines 7 to 12 of Schneider. This talks about the file-level implementation
6 of Schneider. With tight integration into the operating system, the method
7 understanding by the user of retrieving information may significantly differ,
8 although is still based on the principle of saving original states of recent
9 changes. An operating system may simply present the user with a list of
10 prior states for a given file and allow it to be copied forward.

11 This is the tight integration to the operating system as it shows the
12 local reconstruction. And it's the file implementation in Schneider.

13 We also point to page 130 of Schneider, lines 10 to 13. Hooking
14 into or supplementing the directory and file presentation means of an OS,
15 allowing the user to view a list of earlier versions of a file. A selection can
16 be made from the list and the recovered file either replaces the current
17 version or is copied to a new file.

18 This helps show the local nature of the data for Schneider that is
19 showing versions and allowing restoration thereof. And the request to
20 restore is after the retrieval. The retrieval is used to preview and is also used
21 to restore.

22 I believe, unless there are questions from the Panel, I'd be happy to
23 answer.

24 JUDGE COCKS: I don't think we have any further questions.
25 Thank you, Counsel.

26 MR. JAFFESS: Thank you, Your Honor.

1 JUDGE COCKS: Well, once again, we thank both sides for their
2 presentations today. I know it's been a long day for everybody involved, so
3 thank you for your time.

4 The case is submitted, and we are adjourned. Thank you.

5 (Whereupon, the above-entitled matter went off the record at 3:25
6 p.m.)

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