

RECORD OF ORAL HEARING
U.S. PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION,
Petitioner,
v.
JOSEPH L. DE BELLIS
Patent Owner.

IPR2024-00221
Patent 6,760,720 B1

Oral Hearing Held: March 19, 2025

Before KRISTEN L. DROESCH, JON M. JURGOVAN, and
AARON W. MOORE, Administrative Patent Judges.

JURGOVAN, *Administrative Patent Judge*

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing
Wednesday, March, 2025, commencing at 10:00 a.m. EDT, via
Video-conference.

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

(10:01 a.m.)

JUDGE JURGOVAN: This is the trial hearing for the following case IPR2024-00221 concerning US Patent Number 6,670,720 B1. The date is March 19th, 2025, at 10:00 a.m. Eastern Time. On the panel today, are Administrative Patent Judges, Kristen Droesch, Aaron Moore, and myself, Jon Jurgovan.

Will the parties please enter their appearances starting with the Petitioner, please.

MR. HERMAN: Good morning, Your Honors. This is Patrick Herman from Orrick, Herrington & Sutcliffe here on behalf of Petitioner, Oracle.

JUDGE JURGOVAN: Thank you.

Patent Owner?

MR. DE BELLIS: Hi, I'm Joseph De Bellis, and I'm here representing myself.

JUDGE JURGOVAN: Thank you.

The hearing order stated that each party will have up to 60 minutes to present their arguments for this case. The Petitioner bears the burden of proving its case by a preponderance of the evidence, and so the Petitioner will start first, followed by the Patent Owner. Each party may reserve time for rebuttal or surrebuttal limited to the opposing party's presentation.

You may share demonstratives so that we can see them on our screens, or you can refer to the record, and we'll follow along.

1 Please, when you refer to papers or exhibits, identify them by number
2 and also the exhibit, paragraph, column and line number and page.
3 Please be as specific as possible so that the hearing record will be
4 clear as to what you're referring to.

5 Now please identify yourselves as you begin speaking so
6 the court reporter will know who you are. And then after the hearing,
7 please remain on the line in case the court reporter has any questions
8 to ask you of any matters that may have been misunderstood.

9 As the hearing is public, third parties may be listening on
10 the line. None of the information in this case has been designated as
11 confidential. But if for some reason you need to discuss confidential
12 information, please let the judges know in advance so that we can
13 address the situation.

14 If at any time you experience technical difficulties that
15 impair your ability to represent your client, please let us know if you
16 can and contact the number given you to resolve the issue. We'll
17 observe a pause until the issue is resolved.

18 Do the parties have any questions before we begin?

19 MR. DE BELLIS: No, sir.

20 JUDGE JURGOVAN: Petitioner, how much time would
21 you like to reserve for rebuttal?

22 MR. HERMAN: 20 minutes, Your Honor.

23 JUDGE JURGOVAN: Please bear with me.

24 Patent Owner, how much time would you like to reserve
25 for surrebuttal?

1 MR. DE BELLIS: I'll take 20 minutes as well, sir.

2 JUDGE JURGOVAN: Okay. Please, as each party is
3 giving their presentation, do not interrupt the party. You'll have your
4 time to respond.

5 Petitioner, you may begin when ready.

6 MR. HERMAN: Thank you, Your Honor. I will be
7 referring to Petitioner's Demonstrative by slide number but will not be
8 sharing my screen. If Your Honors would prefer me to share my
9 screen, please let me know. So --

10 JUDGE JURGOVAN: Up to you.

11 MR. HERMAN: We're here today to address the '720
12 Patent. And as I'll discuss, the patent's claimed method for database
13 searching is plainly taught by numerous prior art references. And
14 while Patent Owner attempts to antedate that prior art, which was filed
15 months before the '720 Patent was itself filed, he has fallen well short
16 of the requirements for doing so.

17 Before doing through this -- before going through this,
18 I'll begin with a brief overview of the patent and the prior art to
19 provide some context. So to do that, I'll direct Your Honors' attention
20 to Petitioner's demonstrative number 2, which is, what is the '720
21 Patent about? It's simply a method and system for searching
22 databases. And as shown in the callouts on slide 2 of Petitioner's
23 demonstratives, and in particular the callout on the top right of the
24 slide, this method purportedly allows a user to access data in the

1 database without having to know anything about the database's
2 structure.

3 And how does the patent accomplish this? Rather than
4 forcing the user to come up with keywords or the like on his or her
5 own, the user is guided through the database. The user is presented
6 with a graphical user interface with pull-down menus. And as shown
7 in the middle callout on slide 2, these menus are populated with just
8 the available search terms in the database.

9 In addition to providing a means for database searching,
10 the patent also discusses how the menu should be displayed, and you
11 see that in the bottom callouts. There, the '720 Patent explains that if
12 a menu has too many entries, it can be truncated to allow for better
13 display. So this is the sum total of the '720 Patent's claims, a database
14 search menu that presents a list of available options instead of forcing
15 the user to guess that is truncated so that it fits on the display.

16 Turning to Petitioner's slide 3, this slide reproduces claim
17 1 of the '720 Patent, and the claim includes the various features that I
18 just discussed directed to a method for searching a database, and this
19 method entails determining the schema of the database, providing a
20 list of available database fields, receiving a search selection of one of
21 those fields, and then displaying database entries in that selected field.

22 The claim then concludes with limitations requiring truncation if the
23 list of entries is too long to display or displaying the whole list if it is
24 not too long.

1 So slide 4 includes figure 10 of the '720 Patents, and this
2 figure provides a graphical example of the patent's data search menus.

3 The search begins by presenting the user with the top-level menu
4 that's shown in blue to the left of the figure. This menu provides the
5 list of database fields, which here includes the fields' name, address,
6 city, state, and phone. If the user selects one of these fields, for
7 instance, city, which is shown by the red annotation, the method then
8 displays the database entries within that field, and you can see that
9 highlighted in green. But because the list of cities in the field is too
10 long to be displayed, it is truncated by just displaying first letters of
11 city names. Then the user can pick a letter like the letter A to display
12 all the cities in the database beginning with A.

13 So slide 5 provides an overview of the Petitioner's
14 grounds. The petition relied on two primary references, a reference to
15 Cochran and another that's referred to as HyperSQL, and that's a
16 published article. A secondary reference to Zellweger is at issue in all
17 the grounds, and a series of other references are cited in connection
18 with certain dependent claims.

19 So slide 6 provides an overview of the Cochran
20 reference. And what does Cochran disclose? Like the '720 Patent, it
21 is directed to an improved system and method for searching databases.
22 And also, like the '720 Patent, rather than forcing users along a static,
23 unchanging search path, Cochran teaches a more efficient, user-
24 friendly, and adaptable method of searching. It presents a user with a
25 graphical user interface, listing selectable database fields and entries,

1 rather than forcing the user to come up with search terms on his or her
2 own.

3 And as shown in the bottom callouts on the right-hand
4 side of the slide, these graphical menus are tailored to, number one,
5 display only search terms that are available in a unique search
6 situation and present in the database; and two, take into account the
7 search decisions and selections the user has already made.

8 So turning to slide 7, slide 7 provides an example in the
9 context of a travel database. Figure 4b on the left shows Cochran's
10 graphical user interface. As shown, the interface graphically displays
11 a number of database fields. Those are highlighted in blue,
12 corresponding to the information that's stored and organized in the
13 database, and these fields include start of travel, number of people,
14 and so on. And the user has already made selections in connection
15 with certain of these fields.

16 And as shown in figure 4e which is on the right of slide
17 7, the user has now selected the lodging name field by clicking on its
18 associated menu, and Cochran's search system responds by displaying
19 a list of database entries that are stored in the database in that selected
20 field, as shown in green.

21 So turning to slide 8, this slide provides an overview of
22 the other primary reference at issue in this proceeding. Again, that's
23 referred to as HyperSQL in the parts of these papers. And what does
24 this reference disclose? It discloses a browser-based database search
25 graphical user interface for searching databases of scientific

1 information. Again, in HyperSQL, a user is not required to come up
2 with search terms on his or her own.

3 Instead, HyperSQL's interface presents users with pull-
4 down menus for each database field. And due to its graphical nature
5 and how it is populated with existing database entries, the user is not
6 required to have any existing knowledge about how the database is
7 organized or what information it contains before searching, and you
8 can see that in the callout that's reproduced on the right of slide 8.

9 So slide 9 reproduces figure 2 from the HyperSQL
10 publication. And it shows an example search interface from a
11 database of bacterium. As shown, a number of database fields are
12 displayed by this interface. That's the blue annotation. And this
13 includes database fields such as bacterium genus, the species, and
14 other categorizing fields. The user has selected, in the figure, the
15 genus field which causes the interface to display a list of database
16 entries in that particular field and that's shown with the green
17 annotation on the slide.

18 So slide 10 provides an overview of the Zellweger
19 reference. Again, Zellweger is a secondary reference in all of the
20 petition's grounds. What does Zellweger add to Cochran and
21 HyperSQL? Recall that in both Cochran and HyperSQL, when a user
22 selects a database field, a long list of database entries in that field is
23 displayed.

24 As shown on this slide. Zellweger explains that rather
25 than displaying one long, continuous list of menu items, searching can

1 be improved by condensing the menu and creating nested submenus.
2 Zellweger discloses two example ways to do that. One is what
3 Zellweger calls an alphabet list. So rather than displaying every
4 single database entry in a particular field when selected, a list of
5 letters corresponding to the entries is displayed first. The user selects
6 a letter to see the entries starting with that letter in the database. The
7 other option is what Zellweger calls a content list. Here, the entries in
8 a particular database field are divided into ranges, and the user selects
9 a range to display the entries within that range.

10 So slide 11 provides an example of these two types of
11 menus. An alphabet list where every entry is represented by a single
12 letter is shown in figure 6b on the left of the slide, and the content list
13 where each entry in a particular database field is represented by an
14 entry range is shown on the right of the slide in figure 7.

15 So turning to slide 12, this slide provides a very brief
16 overview of the other references discussed in the petition. Again,
17 these references are cited in connection with certain dependent claims
18 only. And what do these references add to the grounds? So Microsoft
19 Access teaches well-known database operations like result combining
20 and the use of logical operators like an AND when searching. The
21 Janes reference teaches the use of nodes or graphical elements you
22 can click on in the database interface to see sub-elements that are
23 nested below that particular node. And the Spiegel reference teaches
24 the use of a database search system that's specifically tailored for e-
25 commerce applications.

1 So moving on to slide 13, with that introduction out of
2 the way, I'll discuss the parties' disputes. And there are three primary
3 disputes as shown on slide 13, the first, which consumes the bulk of
4 the parties' briefing, relates to whether Zellweger, the secondary
5 reference in all the petition's grounds actually constitutes prior art.
6 And I'll start by addressing that particular dispute.

7 So turning to slide 14, to begin, there is no dispute that
8 Zellweger was filed before the '720 Patent. Zellweger has a July 1999
9 nonprovisional filing date. The '720 Patent was not filed until
10 February of 2000. So Zellweger was filed first and is presumptively
11 prior art. Because of this, while the ultimate burden of persuasion of
12 un-patentability is of course borne by Petitioner, Patent Owner took
13 on the burden of production. And you see a case cite explaining that
14 on this slide. And what was required for Patent Owner to meet this
15 burden? Well, more than simply throwing evidence at the board
16 without explanation.

17 So the slide 15 lists what was required of Patent Owner
18 to meet its burden of production and show entitlement to an earlier
19 date of conception, predating Zellweger's July 1999 filing. First, it
20 was necessary to show conception of the claimed subject matter prior
21 to July 1999 when Zellweger was filed. Second, it was necessary to
22 corroborate that conception with independent evidence. And third, it
23 was necessary to show diligence from just before Zellweger's July
24 1999 filing until Patent Owner's own reduction to practice.

1 So to meet its burden of production, Patent Owner was
2 required to come forward with evidence showing all of these things,
3 and failure to make any of these required showings means that the
4 '720 Patent is not entitled to an earlier date. As I'll explain, while
5 failing to meet one of these showings would have undermined Patent
6 Owner's attempts to get an earlier date, Patent Owner hasn't shown
7 any of the three.

8 So turning to slide 16. I'll start with Patent Owner's prior
9 conception allegations. So slide 17 summarizes what the law requires
10 for there to have been conception of the claimed subject matter. So
11 what is needed? A definite and permanent idea of the complete
12 invention as it will be reduced to practice, and the invention must be
13 sufficiently definite such that only routine, ordinary skill is needed to
14 reduce that invention to practice.

15 So turning to slide 18, by Patent Owner's own admission,
16 his conception thought process was not complete until after Zellweger
17 was filed. You'll see in Patent Owner's briefing, as reproduced on this
18 slide, that he alleges entitlement to a January 1999 date of conception.

19 But as shown from the excerpts from a declaration Patent Owner
20 submitted - that's Exhibit 2001; so that's what's reproduced on this
21 slide - Patent Owner, continued working on developing his database
22 search system after January of 1999 and through the summer of 1999,
23 and this was not mere routine work. Patent Owner himself
24 characterizes it as slow and frustrating.

1 Turning to slide 19, Patent Owner further emphasized the
2 fact that conception was not complete as of January 1999, in his
3 briefing. So slide 19 includes excerpts from Patent Owner's
4 Response, and what does the Patent Owner say? He says that after
5 January 1999, he found the database system he was working on
6 unsuitable, and he found his efforts frustrating. So this is not a case
7 where Patent Owner had a definite, permanent idea of his invention in
8 January 1999, such that only routine skill was required to reduce it to
9 practice. Instead, whatever existed in January 1999 was, by Patent
10 Owner own admission, unsuitable and ill-defined. Moreover,
11 whatever existed apparently required more than routine skill to carry it
12 forward, as Patent Owner's own repeated admissions in the record
13 show.

14 So turning to slide 20, the law also requires that there be
15 complete -- in addition to there being complete conception, it is the
16 claimed subject matter with all of its limitations that must have been
17 conceived. In other words, inventing something other than what is
18 specifically claimed or something nonspecific and generic does not
19 entitle you to an earlier date of conception for a patent. The patent's
20 claimed invention needs to have been completely conceived,
21 including all of its limitations.

22 So turning to slide 21, Patent Owner has failed to even
23 remotely show that he conceived of the '720 Patent's claimed
24 invention. While he purports to have done something in January of
25 1999, he provides no claim charts. He does not correlate his activities

1 with the claims in any other way, and he also provides no
2 documentation explaining the features or functionalities of the system
3 that he purportedly conceived at the time.

4 In fact, he does not discuss the claims at all. Instead, he
5 just uses a series of buzzwords like rolling and tumbling without
6 explaining what that means with respect to the claims. Petitioner
7 submits that this does not satisfy Patent Owner's burden of production.

8 So slide 22 identifies a few claim limitations where
9 Patent Owner's showing is particularly lacking. For instance, there is
10 nothing in the record that provides any indication whatsoever of how
11 or when Patent Owner purportedly conceived of a system that
12 determined a database schema as claim 1 requires. This deficiency is
13 particularly glaring given that Patent Owner now takes issue with the
14 sufficiency of the prior arts teaching of this very limitation.

15 Next, there is also no explanation of how or when Patent
16 Owner conceived of either providing a list of database fields or
17 determining a quantity of entries, as the claim also requires. These are
18 only meant to be examples of missing explanation. Again, Patent
19 Owner presents no claim charts at all or any other discussion of how
20 the claims are embodied in his alleged prior conception. Indeed,
21 beyond generally alleging that he conceived of some sort of database
22 search system, he does nothing to add any detail to exactly what that
23 system was in January 1999, or at any time prior to Zellweger's filing.

24 So moving on to slide 23, in addition to not showing
25 prior conception, Patent Owner has also failed to offer adequate

1 corroborating evidence. So slide 24 explains the purpose of this
2 corroboration requirement is intended to guard against an interested
3 inventor like Patent Owner here misremembering the past.

4 So turning to slide 25, while a rule of reason is applied
5 when assessing corroborating evidence, meaning that all evidence is
6 to be considered, certain types of evidence is more probative in
7 particular, typically, oral testimony alone is rarely sufficient to
8 corroborate prior conception. Documentary evidence, on the other
9 hand, is most probative and is usually necessary for corroborating
10 purposes.

11 As shown on the next slide - that's slide 26 - Patent
12 Owner presents virtually no corroborating evidence. He has not
13 provided a single document predating Zellweger's July 1999 filing,
14 and the earliest dated documents he did provide, a series of
15 September, October, and November 1999 receipts not only come after
16 Zellweger's filing, but they say nothing at all about the features of his
17 purported inventions. So patent Owner also points to no truly
18 independent corroborating witness testimony.

19 Instead, the only thing he has introduced is his own
20 sister's testimony, and this testimony is even more vague and
21 nonspecific than Patent Owner's. All that Ms. De Bellis says is that in
22 January 1999, Dr. De Bellis purportedly wanted to be able to search
23 and sort data according to any topic or term, rather than being
24 constrained by existing database software. She then moves on to
25 discuss a series of undated discussions that occurred over the course

1 of the next year. So there is nothing here in the record that beyond
2 Patent Owner's own testimony that shows what existed in January
3 1999 and even that --

4 JUDGE MOORE: Counsel, this is Judge Moore. Are
5 you saying that it would be inappropriate for us to rely on his sister's
6 testimony because of the familial relationship?

7 MR. HERMAN: Your Honor, my understanding is that
8 the rule of reasons requires Your Honors to consider of the evidence
9 that is presented in an attempt to corroborate the conception. So I
10 don't believe that you can completely discount Ms. De Bellis's
11 testimony. But at the same time, I believe that the weight and the
12 import of that testimony is minimal for two reasons. Number one, it's
13 not truly independent from that of Dr. De Bellis. And number two, it
14 provides virtually no insight into what actually occurred in January of
15 1999. And it particularly does not lend any credibility as
16 corroborating evidence that is required to do that Dr. De Bellis came
17 up with a method of searching that includes all of the claim limitations
18 at that particular time.

19 JUDGE MOORE: Does it corroborate the truncation
20 aspect of the invention?

21 MR. HERMAN: It -- I do not believe it does because it's
22 unclear from Ms. De Bellis's testimony when that particular concept
23 was discussed between Ms. De Bellis and Dr. De Bellis. All that it
24 corroborates at the very most is that there was some discussion about
25 an improved database search system in January 1999, and at some

1 point between January 1999 and a meeting with Patent Owner's
2 attorneys in December 1999, there was discussion of other features,
3 but it is unclear from Mrs. De Bellis -- or Ms. De Bellis's testimony
4 when those discussions, which would include truncation, occurred.
5 That sometime over the course of 1999, I think, is the only conclusion
6 that the board can draw from Ms. De Bellis's testimony.

7 JUDGE MOORE: Okay. Thank you.

8 MR. HERMAN: Now, turning to slide 27. Next, Patent
9 Owner has also not shown reasonable diligence to reduction to
10 practice. This, like his failure to show conception or corroborate that
11 conception is yet another reason standing by itself why the '720 Patent
12 is not entitled to the benefit of an earlier filing date.

13 So turning to slide 28, to begin, there was no showing of
14 an actual reduction to practice at all here. Patent Owner alleges that
15 he demonstrated his system to his lawyers at some point, but he points
16 to nothing besides a figure from his later filed patent showing what
17 that system was or how it operates. He has not shown that the product
18 he supposedly demonstrated met every claim limitation. So that,
19 however, is what was required for Patent Owner to satisfy his burden
20 of production and to show an actual reduction to practice. So because
21 there was no showing of an actual reduction to practice here, the
22 diligence period extends for Patent Owner's -- extends to Patent
23 Owner's constructive reduction to practice when the '720 Patent was
24 filed in February of 2000.

1 JUDGE MOORE: Counsel, can I ask another question?
2 This is Judge Moore again. Would a person of ordinary skill in the art
3 been able or known how to do the first four steps of this patent in your
4 view of what they need?

5 MR. HERMAN: So --
6 (Simultaneous speaking)

7 JUDGE MOORE: I'm sorry. I'm very --

8 MR. HERMAN: So in view of the -- in view of the
9 teachings in the prior art at the time the '720 Patent was filed, yes, yes,
10 certainly one of ordinary skill in the art would know how to determine
11 the database schema, would know how to provide a list of database
12 fields to a user trying to search that database, and would know how to
13 determine the quantity of entries in a database.

14 But that being said, that is not the only way that one can
15 search a database. And it is not the only way that one of ordinary skill
16 in the art would have known to search a database in the 1999 time
17 period, or when one -- or when the '720 Patent was filed. So what's
18 missing from the conception here is any indication that the specific
19 method of searching a database that the claim requires was conceived
20 of by Dr. De Bellis in January of 1999.

21 So yes, I agree that one of ordinary skill in the art would
22 have considered that obvious and would have known how to do that,
23 but they also would have known of many other ways to search a
24 database that do not require performing the specific steps that the
25 claims here require. And to show prior conception, Patent Owner was

1 required to show that he conceived of a method that actually entails
2 the performance of the steps as claimed, and not just a general generic
3 method, a better method of searching a database.

4 JUDGE MOORE: Okay. Thank you.

5 MR. HERMAN: So turning to slide 29. Now, when it
6 comes to diligence, Patent Owner was required to show that he
7 proceeded to reduction to practice with reasonably continuous
8 diligence. And slide 29 includes a cite to a case articulating that
9 requirement.

10 So the next slide, slide 30, shows the critical period
11 spanning from Zellweger's July 1999 filing until construction -- until
12 the point of constructive reduction to practice in February 2000. And
13 the Petitioner submits that Patent Owner has fallen well short of
14 showing diligence, reasonably continuous diligence during this
15 period. His declaration mentions some limited activity that occurred
16 in August, September, October, November, and December of 1999,
17 essentially what appeared to be one-off discussions with a computer
18 programmer and lawyers, and then sporadic computer equipment
19 purchases.

20 But this leaves large swaths of the critical period
21 unaccounted for. As you see, there was no shown activity at all for,
22 well, more than half of the time between July 1999 and February
23 2000. So this is not a case where there are single days or only small
24 handfuls of days that are unaccounted for by diligent activity. Instead,

1 almost all of the diligence period is not accounted for. And Patent
2 Owner --

3 JUDGE JURGOVAN: Counsel, I can't hear you.

4 MR. HERMAN: I'm sorry, Your Honor, repeat the
5 question.

6 JUDGE JURGOVAN: There's some delay there.

7 MR. HERMAN: Sorry. I believe, Your Honor, you
8 were cut off in asking your question, and I missed what you were
9 asking.

10 JUDGE JURGOVAN: That -- you froze on the screen
11 for a few seconds there. Resolved. But I do have a question. This is
12 Judge Jurgovan, and that question is it looks like the lawyers were
13 engaged, according to your timetable here, in November '99, and the
14 application was filed in February 2000. So isn't there a case law that
15 says that presumptively that is diligent?

16 MR. HERMAN: I don't believe so, Your Honor. I
17 believe that the length of time that it took from engaging lawyers to
18 producing a filing is not indicative of diligence.

19 JUDGE JURGOVAN: Okay. Well, let's say that it is.
20 So from 11/99 to 02/2000, let's say that that was a period of diligence.
21 Do you have -- can you demonstrate gaps before that in diligence?

22 MR. HERMAN: Yes, Your Honor, and I believe that's
23 shown on this particular slide. But, so preceding December 1999 --
24 but the diligence period begins in July of 1999, so there's
25 approximately a six-month period where diligence was required. And

1 the only evidence that we have on the record that anything at all
2 occurred during this period is one discussion with a computer
3 programmer in August of 1999 and a handful of receipts indicating
4 that materials were purchased in the fall of 1999. What we don't have
5 is any indication that there was continuous work on anything at all
6 during this period.

7 JUDGE JURGOVAN: Okay. And I hate to backtrack.
8 But going back to conception, you continuously refer to January '99.
9 Are you saying there was no activity between January '99 and 7/99?
10 Zellweger's (audio interference), in other words.

11 MR. HERMAN: So Patent Owner contends that he
12 conceived of the invention in January 1999. And then there's a gap
13 between that and the activity that you see in this slide where there
14 does not appear to have been further activity, at least that's supported
15 by the evidence --

16 JUDGE JURGOVAN: So there's no evidence of activity
17 from January through Zellweger's filing day.

18 MR. HERMAN: Yes, that's right, Your Honor.

19 You'll see from the record, Your Honor, that there are a
20 series of receipts that Patent Owner has produced and mentions in his
21 briefing. But those -- the earliest dated are in September, October,
22 and November of 1999, not prior to Zellweger's filing.

23 JUDGE JURGOVAN: Thank you.

24 MR. HERMAN: Okay, so returning to slide 30, so
25 Patent offer -- Patent Owner offers no explanation at all for the lack of

1 activity either before retaining his lawyers in December 1999 or after
2 retaining his lawyers in December 1999. So in sum, what Patent
3 Owner's asking the board to do here is essentially remove almost a
4 year's worth of prior art to the '720 Patent, but Patent Owner has not
5 shown conception, has no documentary evidence of his alleged
6 conception, and did not, in Petitioner's view, proceed diligently to
7 filing. So this is not the type of circumstance where a Patent Owner is
8 entitled to an earlier date. Zellweger plainly remains prior art.

9 So turning to slide 31, the parties also dispute whether
10 the prior art teaches everything the claims require. So on slide 32,
11 what does Patent Owner say is missing? According to Patent Owner,
12 the prior art does not teach determining a database schema or
13 providing a list of database fields as the claims require. Why is this?
14 Patent Owner argues that the claims somehow do not embrace
15 preconfigured menu systems and instead require some sort of dynamic
16 menu system. But the claims here don't say anything at all about
17 preconfiguring or no preconfiguring or the use of dynamic or not-
18 dynamic systems. All that is required is the performance of a method
19 that entails determining a database schema and providing a list of
20 database fields. And this is exactly --

21 JUDGE JURGOVAN: Counsel, sorry to interrupt again.

22 But I have a question here as to what that means, determine a
23 database schema. I think what Patent Owner is saying that means is
24 that you actually search the database and figure out what the fields
25 are, and then you display that. On the other hand, a reference like

1 Zellweger seems to look at it from the perspective of development of
2 the software, where you are determining the database schema prior to
3 implementing it.

4 So my question is: how do you consider -- what do you
5 consider determine a database schema to mean? Does that mean that
6 the schema is determined as the search is being performed, or does
7 that mean that it was preconfigured or developed in advance, in your
8 view?

9 MR. HERMAN: Either, Your Honor.

10 JUDGE JURGOVAN: I see.

11 MR. HERMAN: So either but both of those are
12 embraced by the claims, right? So the claims could embrace a system
13 where some piece of software that is separate from the database
14 searches the database and -- via trial and error process and determines
15 that -- the database schema that way. And there's an embodiment that
16 operates that way in the '720 Patent. But there is also an embodiment
17 in the '720 Patent where the search method is built into the database
18 itself. And in that embodiment, determining the database schema
19 entails nothing more than the database itself accessing its own schema
20 and then relaying that on to an entity that's trying to search the
21 database.

22 And that's what you see in the left-hand side of this slide.
23 The '720 Patent says that the search engine may be incorporated into
24 the structure of one or more of the databases. So the entire search
25 process is performed and managed by the database itself. And of

1 course, the database itself is already aware of its own schema. So all
2 that's occurring in this particular '720 Patent embodiment, which is
3 within the scope of the claims, is the database itself accesses its own
4 schema, that's determining the schema where the database accesses its
5 own schema, and it relays it on to another place to facilitate the
6 search. And that's exactly what the prior art here is doing, right? The
7 prior art here database accesses its own schema and relays it on to
8 another entity for purposes of performing a search.

9 JUDGE JURGOVAN: Thank you.

10 MR. HERMAN: So moving on to slide 33, even if the
11 claims did require some sort of dynamic system - they do not - the art
12 also teaches this. Why is that? There's an example of this from
13 Cochran on this slide. Cochran's database search interface is not static
14 and unchanging. You see that in the top-right passage on the slide.
15 Here, Cochran contrasts itself from static-fixed systems, where the
16 user must perform a database search in exactly the same way every
17 time searching occurs. Instead, as shown in the bottom passages,
18 Cochran's system is adaptable. It takes into account not only what is
19 in the database but the user's prior selections and changes the
20 displayed options accordingly. Put another way, what a user does and
21 the selections the user makes controls what options are then presented
22 to the user as the search continues.

23 So slide 34 provides an example of that. As shown in the
24 passage on the top, the user has already made a number of selections,
25 including selections in the start of travel, number of people, and

1 location fields. This then in turn causes Cochran to dynamically
2 update the rest of its menu. The remaining options will only list
3 database entries that correspond to the choices the user has already
4 made, and the data that's actually present in the database. These
5 choices will continue to change and adapt as the user makes further
6 selections. So far from being preconfigured, Cochran's system is
7 meant to be flexible and provides users with unique searches that
8 match whatever path they elect to take through the database.

9 So turning to slide 35, Patent Owner next appears to
10 argue that the prior art does not teach truncating menu entries if a
11 quantity exceeds a threshold. So Patent Owner's theory here is that
12 Cochran displays a scroll bar, so it never truncates while Zellweger
13 always truncates and thus doesn't make the claimed determination. So
14 this, however, improperly addresses the art in isolation. Here the
15 petition pointed to a combination of teachings as shown on the left.
16 Cochran teaches that there are circumstances where the menu display
17 may need to be adapted when there are too many results, and it does
18 that by displaying a scroll bar.

19 And as shown on the right, Zellweger explains that one
20 way to deal with a large menu is to truncate. It's these teachings
21 together that render the claims obvious. Cochran teaches the claimed
22 quantity determination. Its system is aware of whether or not a menu
23 is too large to display, and it knows this because it's able to determine
24 when a scroll bar is needed, and Zellweger presents an alternative to
25 the use of scroll bars and alphabet lists or a content list.

1 Next, as discussed on slide 36, Patent Owner is also
2 wrong when he argues that the art doesn't teach the type of truncating
3 that the claims here require. This cannot be the case because the art
4 teaches the very same method of truncating as the '720 Patent. As
5 shown on the left, the '720 Patent explains that a menu can truncate
6 entries to an alphabet list, and this is exactly what Zellweger also
7 teaches, as shown on the right of the slide.

8 So turning to slide 37, the parties' final dispute relates to
9 claim construction. So slide 38 lists Patent Owner's constructions,
10 and as can be seen, Patent Owner seeks to graft all sorts of limitations
11 onto the claims and replace the claim language with his own
12 formulations. So what support is provided for this? Petitioner
13 submits virtually none. Patent Owner does not even acknowledge the
14 claim language, let alone point to anything in the intrinsic record that
15 would justify these narrowings.

16 So turning to slide 39, the claim itself shows why Patent
17 Owner's proposals are in error. First, the claim requires only
18 determining a database schema. It does not say that this must be done
19 dynamically, or that the systems that are preconfigured are excluded,
20 or that this can be done only by a trial-and-error process. All that's
21 required is determining a database schema. Any method of schema
22 determination is allowed, including the various types of schema
23 determination that are set forth in the '720 Patent specification. And
24 again, as I noted before, one of the example methods of schema

1 determination in the '720 Patent specification is the database itself
2 accessing its own known schema.

3 Next, providing a list of database fields and determining
4 a quantity does not require assembling lists and counting for the first
5 time a search is submitted. Nothing about the claims or even the
6 specification here excludes providing an already existing list or just
7 using a database's own existing record of a number of entries it
8 contains. This is what the '720 Patent means when it says that this
9 method can be performed entirely by the database itself.

10 Finally, the claim requires only that a truncated data
11 represents each of the entries. So long as the entries are represented
12 by the truncated data, there are no further form requirements.

13 So with that, Your Honors, I believe I have about 20
14 minutes left. And unless there's further questions, I'd like to reserve
15 the rest of my time for rebuttal.

16 JUDGE JURGOVAN: I would like you to address claim
17 6 on rebuttal. But we don't need to discuss that now.

18 MR. HERMAN: Yes, of course, Your Honor.

19 JUDGE JURGOVAN: Thank you.

20 Patent Owner, when you're ready.

21 MR. DE BELLIS: Yes, thank you, Your Honor.

22 I'm going to take a slightly different approach. I'm going
23 to use references to Mr. Herman's demonstratives, but I'd like to start
24 at page 14. My general contention is that all of this with respect to
25 asserting that I did not perform diligently and consistently, is the sole

1 focus, pretty much, I believe, of this entire speech that Mr. Herman
2 gave and put forth.

3 In reality, I would like to go through the cases and show
4 you that, in fact, it's somewhat deceptive because if you look at Parus
5 v. Google, Mr. Herman is -- the Petitioner is essentially saying that I
6 have the burden of production and that that burden cannot be met by
7 throwing a bunch of evidence at the board. Well, Parus was about a
8 voice interactive systems, and PTAB determined that it was obvious,
9 and in the end, that obviousness was upheld. But the mountain of
10 evidence that they were talking about was disregarded, not because of
11 the volume but because of incorporation of arguments by reference.
12 So my point being that all the details in my response and my surreply
13 were completely explanatory on their face and did not rely on any
14 incorporation by reference.

15 And moving on to -- that's 14. Moving on to 17, which is
16 Mahurkar v. C.R. Bard, Mr. Herman is asserting that I've -- must have
17 conceived of a permanent idea and applied it to practice so that clearly
18 defined in such a way that a person of only ordinary in the skill of the
19 art would be relegated to reduce it to practice. And that is, in fact,
20 exactly what I did. In fact, Mahurkar was a clinically practicing
21 nephrologist, and he developed a catheter that's used for hemodialysis.

22 And he began the work in his kitchen in 1979, and he
23 proceeded to continue through 1980 and 1981. Two and a half years
24 it took him creating various prototypes in his kitchen until he came up
25 with a usable, functional model. The court ultimately found in his

1 favor. And they cited -- the court of appeals cited, and I quote, No
2 reasonable jury could have found clear and convincing evidence that
3 the Cook catalog was prior art. Dr. Mahurkar adequately showed
4 reduction to practice.

5 So the reality is that I hired a coder in August of '99. I
6 didn't just consult with a coder. I didn't ask his advice. I hired a
7 coder, put him on payroll in August of 1999, and by mid-November of
8 1999, three and a half months later, I had a fully functioning,
9 commercially viable product, okay? And so by that date, it was
10 working, and it was sellable. That is the very product that I
11 demonstrated for my attorneys in December, okay? And this case,
12 when viewed in totality, Mahurkar v. Bard supports my particular
13 position.

14 So now moving on to number 18. One second. I just
15 have to change this paper. Excuse me, I'm using a flip chart. Okay.
16 Conception was not complete. This is, I believe, at best disingenuous
17 because I'd like to cite paragraph 49 of my first declaration where I
18 say, and I quote, I continued working on developing a system that
19 embodied my search-on-the-fly concepts throughout the summer of
20 '99, and I found the progress to be slow and frustrating. And if
21 anybody has ever invented anything, the word frustration is intrinsic
22 to the process, which can be iterative as well as painful.

23 But saying when I started -- what I started on was
24 working on a system. And this is mischaracterized because I was
25 working on the invention that I had conceived of. And I stated in

1 1999 because that's the point where, in all fairness, I honestly began
2 diligently and consistently working on these concepts. And if you
3 read my declarations and Patent Owner Response, you'll see that in
4 fact, '97, '98, '99, I was tinkering and toying with these ideas, and it
5 wasn't until actually my sister had arrived from France to actually
6 work in my medical practice that had allowed me to shift my time to
7 work consistently from January, moving forward and, again, fully
8 operational product in three and a half months. That's impossible
9 from a developmental standpoint unless there was something that,
10 number one, was conceived.

11 I have no programming experience. This was born of my
12 own personal frustrations and my own personal, for lack of a better
13 term, disability. And what I ended up doing is conceiving of
14 something and then trying to put it into practice. So the first thing that
15 I did was I tried off-the-shelf software to look for something because
16 quite frankly, it didn't occur to me that it didn't exist. Followed in suit
17 by the idea that I began modifying, and if one recalls back at the time
18 when you bought a copy of Claris FileMaker Pro or Access Database,
19 it came with a big fat book, and in the back there was some operations
20 that would allow you to customize to some degree. So I began doing
21 that, trying to customize.

22 And then what I began to do is actually try to teach
23 myself programming, and with ADHD and with no background, let's
24 just say that I consider myself a good physician, but I was not a very
25 good programmer. That was the frustrating part of it. And it was only

1 until I actually hired a coder who was ordinary and skilled in the art of
2 programming, that I was able to take these very precise and clear
3 concepts, deliver them to the coder, and in a very short order, he was
4 able to deliver me a working product, okay?

5 Moving forward, so when I stated the -- sorry, I lost my
6 track. When I stated that I found the progress to be slow and
7 frustrating, I was referring to the attempt to learn programming. The
8 unhighlighted portion of that very same paragraph relates to my
9 challenge balancing my medical practice with the reduction to
10 practice, which is not unlike in the case we're going to get to in a
11 minute, which is the PST v. Olympus, where Dr. Nezhat, basically,
12 had the same difficulties, and we'll get to that in a moment. But this
13 was all discussed with my -- in my Patent Owner's Response. So
14 when, again, the Petitioner claims that there's no sort of
15 documentation or references, in pages 15 through 18, I talk and
16 comment about my reduction to practice, not conception. Okay.
17 Thank you.

18 And now, hold on, one second. Now I have -- moving on
19 to page 19, where any purported conception was not complete until
20 after Zellweger, right, and he then refers to the filing of, let's see --
21 pardon me, I don't do this for a living. So it's a little bit -- takes me a
22 little bit -- I'm not so smooth. Purported concept was not until after
23 Zellweger's July filing. Okay. Database -- okay.

24 So basically, there are quotes that -- on page 19, that are
25 taken from my Patent Owner's Response. And again this is reduction

1 to practice. This is not conception. And as I said to you before, we
2 picked January of 1999 specifically because my sister arrived from
3 France.

4 And if in fact -- and I just want to make this as an aside, I
5 scheduled -- my sister flew back from France, where she lives, to meet
6 me in Florida. I came from New York to Florida so we could meet for
7 a scheduled Zoom deposition by Mr. Herman. And Patrick seems like
8 a perfectly nice guy, but with zero explanation, less than 24 hours
9 before the deposition, he basically called and canceled. And it isn't
10 until I actually received these demonstratives that I really understand
11 why. Because the idea is that what was imperative is that my sister
12 and myself not be able to give any supportive documentation that
13 would basically fill in any of the blanks, and the idea is my owner's
14 response. The -- sorry, lost my train of thought for a second. The
15 point being is that I have -- that's it. Let's move on.

16 Now we're on to pages 20 and 21, which is REG v.
17 Synthetic Fuels and Nestle Oil. Okay. And the quote is, Conception
18 must include every feature or limitation of the claimed invention.
19 Okay. And the contention is that I have no claim charts. And the
20 contention is that I have no technical documentation. And in reality
21 there is no requirement -- and I'm not an attorney, and I'm not an
22 expert in patents. But as far as I'm -- hold on, this sentence here, put
23 that back up, there's no requirement for me to produce claim charts in
24 my declaration or my Patent Owner's Response. That's not a
25 requirement.

1 As far as with respect to technical documentation,
2 starting at the bottom of column 10, midway through column 12 of the
3 '720 Patent, you'll see that there's an example of actual code execution
4 that qualifies as technical documentation. It correlates exactly with
5 figure b in the '720 application, which is -- and I want to point out is
6 an actual screenshot from an actual working copy of search-on-the-fly
7 that was running on the Barnes & Noble database. So again, I believe
8 that that --

9 JUDGE JURGOVAN: I'm sorry, to clarify the record,
10 you're referring to figure 10 of the '720 Patent, not column 10,
11 correct?

12 MR. DE BELLIS: At the bottom of column 10 through
13 the midportion of column 12 in the '720 Patent, there's actual code that
14 is incorporated into the patent. And then in 15b, okay, in the patent is
15 an actual -- and I believe -- I'm not sure if that's the same one - and
16 we'll get to that, that Mr. Herman includes in his demonstratives. But
17 it might not -- it might be 10 or 11. I'm not positive at this second, but
18 what it shows is the cascade. That's not a rendering or that's not a
19 theoretical. That's an actual embodiment of the software that was
20 created and run in real time against the database. That's a screenshot
21 of the database, which was several million books from the Barnes &
22 Noble database, okay?

23 JUDGE JURGOVAN: Okay. So when are you saying
24 that that was developed, this code, as it's shown here in the patent?
25 When was that developed?

1 MR. DE BELLIS: That was developed when -- shortly
2 after I hired the coder, Mr. Freire to begin. And that would have been
3 in --

4 JUDGE JURGOVAN: Isn't that after?

5 MR. DE BELLIS: I'm sorry?

6 JUDGE JURGOVAN: Isn't that after Zellweger's filing
7 date?

8 MR. DE BELLIS: Well, technically, the code -- yes, sir.
9 The code is after Zellweger's filing date. However, it's, first of all,
10 shortly after. And I believe that my requirement is to simply show a
11 concrete conception and attempt to be in diligent fashion reducing
12 something to practice. So that had been going on up through July up
13 until the time I hired the programmer. Up until that point, I've been
14 working with my own limited ability to code. And then, I simply
15 gave the ideas in a concrete way over to the coder, and in short order,
16 he produced not only that code but the working. So the point is -- is
17 that when the petitioner alleges that there's no documentation or
18 technical specifications, it's not accurate.

19 JUDGE JURGOVAN: Well, I'm -- what I'm interested in
20 is prior to July.

21 MR. DE BELLIS: Yes, sir.

22 JUDGE JURGOVAN: Prior to Zellweger's filing date,
23 this code did not exist in the form that's in the patent here, right?

24 MR. DE BELLIS: No. That's true sir. Yes. No.

1 JUDGE JURGOVAN: But you're saying that the
2 concepts that are embodied have -- did exist before --

3 MR. DE BELLIS: Absolutely.

4 JUDGE JURGOVAN: -- July 1999?

5 MR. DE BELLIS: That is correct.

6 JUDGE JURGOVAN: And your evidence of that is your
7 testimony?

8 MR. DE BELLIS: Well, yes, it's my testimony --
9 supporting testimony. And again, not being an attorney, it was
10 disappointing to me because after the fact, what I realize is -- and
11 now, as I described, what I finally have kind of deduced is that the
12 reason that the depositions were canceled at the last minute is that I
13 did have additional supporting information that I would have used to
14 corroborate both my sister's and my testimony that would have been
15 admissible if they were part of the transcript from the deposition. And
16 not having that deposition, I could not introduce that.

17 JUDGE JURGOVAN: But you could have introduced
18 that with your briefing.

19 MR. DE BELLIS: With my -- I'm not sure which brief,
20 sir?

21 JUDGE JURGOVAN: Could have submitted that
22 evidence with your briefing during the trial.

23 MR. DE BELLIS: Here, I --

24 (Simultaneous speaking)

25 MR. DE BELLIS: I -- again, I didn't realize that as well.

1 JUDGE JURGOVAN: Okay. Thank you.

2 MR. DE BELLIS: Okay. So moving on now, we're
3 going to move to -- again, referencing, 21, 22, 23. Okay. So we're
4 back on 22. Bear with me a second, sir. I'm sorry. These are a little
5 out of sequence.

6 So in slide number 22, the Petitioner says that the
7 Plaintiff does not address numerous claim limitations at all. And my
8 contention is that a POSITA would have understood that on page 18
9 of the Patent Owner's Response, I mentioned, I quote, A search-on-
10 the-fly search system that would allow users to search using criteria of
11 their choice as a starting point. And a POSITA also would have
12 understood that a search-on-the-fly search engine is in fact dynamic. I
13 disclosed all this to Mrs. De Bellis in 1999, and had Mr. Herman
14 actually deposed me, he would have known that.

15 The next group of limitations in the claim, claim number
16 1, relates to truncation of the results as it allows the results to be
17 returned and displayed. On page 18 explicitly references in
18 paragraphs 45 through 47 of my first declaration, where the concepts
19 of claim 1 are explained in more detail.

20 Now we're on to -- we're on to slide 24. And that slide
21 24 is where they allege an independent corroboration evidence is
22 required when alleging prior conception. And this -- he refers to
23 Mosaic v. Ridge Wallet. And that's a -- and that the quote is, When a
24 party claims that its own invention predates...the oral testimony of the
25 inventor must be corroborated and that this is to protect against fraud

1 and to provide against additional safeguards against the courts being
2 deceived by inventors who may be tempted to mischaracterize the
3 events of the past. And that's -- that's page 1363 through 1365, okay?

4 And what I would like to do also is quote from that very
5 same opinion that the law does not impose an impossible standard of
6 independence on corroborative evidence by requiring every point of a
7 reduction to practice to be corroborated by evidence having a source
8 totally independent of the inventor, and that's page -- that's page 1363.

9 Additionally, I quote, We apply a rule of reason analysis and consider
10 all pertinent evidence. So as such, the evidence that Mr. Herman has
11 every -- had every opportunity to depose. And I just want to say that -
12 - that I -- I feel that that should be weighed and taken into
13 consideration that he had every opportunity to depose myself and Ms.
14 De Bellis, and he committed himself to do so, and then he did not.
15 And that should be taken into consideration when weighing the lack
16 of corroborative evidence.

17 And last but not least, you know, and it was, you know --
18 oh, that's all. I mean, I -- I hope that, you know, for me looking at
19 some of this information -- and I realize that, you know, we're being
20 professional here, but, you know, I -- I -- I do take my credibility to be
21 somewhat serious.

22 On page 25, we're going to talk about TransWeb vs. 3M
23 Innovative Props. And again, we have a quote, We have generally
24 been most skeptical of oral testimony that is supported only by
25 testimonial evidence of other interested persons, and that's 1295. And

1 then, Contemporaneous documentary evidence provides greater
2 corroborative value. That's 1302. And this is emblematic of the
3 problem with Oracle's entire case. And, you know, importantly, the
4 analysis does not require that every detail of the testimony be
5 independently and conclusively supported by the corroborating
6 evidence. This is the exact same case and the exact same opinion that
7 takes a very different turn. And I believe this supports my case. But
8 there was no hard and fast rule as to what constitutes corroborative,
9 and each case must be decided on its own facts, and in that case,
10 TransWeb prevailed.

11 Okay. Now we're on to 26, and 26 is basically that I
12 have not adequately corroborated and there's -- and he says, of course,
13 that there's no documentation of products predating Zellweger, okay,
14 and there was no product at that time - and I don't pretend that there
15 was - and reducing to practice does not require that the product
16 predates Zellweger - that's absolutely incorrect - and there's no
17 independent witness testimony.

18 Well, Ms. De Bellis technically is my sister, but there's a
19 reason. And I could have chosen other witnesses, including my
20 attorneys. And maybe if I had included them, maybe the depositions
21 wouldn't have been canceled. I don't know. But the reason I chose
22 her most specifically was that what you have to understand is that
23 when I moved my practice out east, the real estate was very
24 expensive. So I bought a small house, and I converted the first floor

1 over into my office, and I lived upstairs. And I had a garage, and I
2 had a small studio apartment out behind the garage.

3 And the point is is that my sister moved back from
4 France after getting a divorce, came back and began to live with me.
5 And the point is, she was with me 24 hours a day. So I saw her in the
6 morning. I saw her at work. I saw her after work. And I saw her on
7 the weekends, and she was there every single day. More importantly,
8 she was able to take over some of the responsibilities in my office that
9 allowed me to shift my focus to actually taking these concepts, which
10 I had firmly defined and begin to create diligently a process. And
11 that's why I felt that she was the best person to actually apply and
12 corroborate my testimony.

13 And again, yes, she is, my -- I'm sorry, I can't read my
14 own handwriting. I'm a doctor, so if you'll excuse me for one second.

15 And basically, this is sufficient under at least my reading of the
16 opinion in TransWeb. And additionally, another point is -- is that, I
17 do believe that that was something that the Petitioner was concerned
18 about was my ability to corroborate because any additional
19 corroboration, for example, my case logs to prove that I was busy and
20 did not have -- that I wasn't spending my free time doing anything
21 else, could have been produced and introduced, okay? So that's 26.

22 Moving on to 27 and then moving on to 28. The Patent
23 Owner has not shown actual reduction to practice. And that's
24 Mycogen v. Monsanto. Okay. So in order to establish -- this is the
25 quote from the Petitioner, In order to establish an actual reduction to

1 practice, the inventor must prove, one, he constructed an embodiment
2 or performed a process that met all the limitations of the interference
3 count, the total claim. Two, he determined that the invention would
4 work for his intended purposes.

5 With reference to the first part, that was met when I
6 proved that a working copy of the software to my attorneys. Perhaps I
7 should have made them witnesses, as I mentioned, okay? And then
8 the -- and then as -- as an example, I believe, of course, and the final
9 embodiment was directly a result of what I had conceived in reality
10 prior to January. And, January was when I -- I, in all honesty, began
11 working consistently on it.

12 And in the '720 Patent, you can refer to figure 11. And
13 again, this is a screenshot of an actual application of a commercial
14 embodiment of the invention of the claim for the Barnes & Noble
15 database. And the screenshot shows that all the limitations -- if you
16 look at that actual single screenshot, it embodies all the limitations of
17 the claims at the -- and the fact that they were actually reduced to
18 practice.

19 Okay. We're on -- we're on 29, which is Perfect Surgical
20 Techniques. That's my favorite case actually. Okay. So basically the
21 Petitioner, Oracle, said that, Reasonable diligence must be shown
22 throughout the entire critical period, which begins just prior to the
23 competing reference's effective date and ends on the date of the
24 invention's reduction to practice. And this is page 1,007. I realized
25 that that's meant to sort of imply that I did not meet those standards.

1 What's interesting is that case, it's about a doctor, actually, a well-
2 known guy by the name of Camran Nezhat. He's a Stanford
3 University ob-gyn, and he's a pioneer in laparoscopic surgery. He
4 invented some forceps, bipolar forceps, that I've used hundreds of
5 times in surgery myself.

6 So that in 2006, he sued Olympus for patent rights and
7 was IPR. And during the proceedings, Dr. Nezhat swore behind a
8 Japanese patent. PTAB determined that JP '551, which is the patent,
9 anticipated and rendered the claims obvious. The PTAB had
10 determined that PST had not proven reasonable diligence on appeal --
11 reasonable diligence. On appeal to the CAFC, and I quote, The
12 standard demanded by the board is too exacting and in conflict with
13 our precedent. The patent owner need not prove the invention
14 continuously -- the inventor that -- I'm sorry. A Patent Owner need
15 not prove that the invention continuously exercised reasonable
16 diligence throughout the critical period. It must show there was
17 reasonably continuous diligence.

18 Next quote, In determining whether an inventor antedates
19 another, the point of diligent analysis is not to scour the patent owner's
20 corroborating evidence in search of intervals of time where the patent
21 owner has failed to substantiate some sort of activity. It is to assume
22 that in light of the evidence as a whole, the invention was not
23 abandoned or unreasonably delayed. And that's -- those both are from
24 page 1,009. The rule of reason analysis in -- under the rule of reason
25 analysis, PST was not required to correlate -- or sorry, corroborate

1 every day or to -- I can't -- I can't read my own writing, to specify
2 precisely what was worked on.

3 Dr. Nezhat testified that he has a medical practice, and it
4 required him to work 80 hours a week and perform four to six
5 surgeries a week. At the time of my invention and its reduction to
6 practice, my practice, I had -- there's only -- there were only two
7 reconstructive surgeons on all of Eastern Long Island with over a half
8 million people during the summer. And during those period of times,
9 I worked more than 80 hours a week, and I did between 15 and 30
10 cases a week, okay, and still we produced a working copy in three and
11 a half -- three and a half months.

12 My caseloads -- and again, had, Mr. Herman deposed me
13 and my sister and brought up this criticism or suspicion or
14 speculation, if you will, I would have happily provided them with my
15 case logs, which would have shown the -- the -- the amount of time
16 that was committed to working during those periods. Okay. And
17 that's 29.

18 Now, 30, I'm particularly -- and, you know, Patrick, you
19 seem like a nice guy, and you've been very courteous every time
20 we've communicated. But this particular, I find this offensive because
21 while it says that this is a demonstrative exhibit and not evidence, it's -
22 - it's -- it's -- it's deceptive. It's more than disingenuous because at the
23 bottom, You have no activity whatsoever. And that's pure speculation
24 on your part. Okay. Moving on.

1 Finally, I come to 33. Just give me one second. So I just
2 got to change these slides. Just put this in here. Okay, okay.

3 So I believe in summation that I've proven that Zellweger
4 is not prior art. However, it's -- hypothetically, even if it was prior art,
5 all right -- and I'm not saying that it is because I do not believe, and I
6 believe I have adequately demonstrated that from conception to
7 reduction to practice to reduction to construction -- or constructive --
8 I'm blocking on the term, constructive reduction to constructive
9 practice or constructive reduction to practice. I apologize. But I
10 believe is -- is that I've been able to prove that. But even if someone
11 was to argue that Zellweger was prior art, I would tell you that
12 Zellweger in any combination with Cochran or HyperSQL, would not
13 teach or suggest in any way the -- all the limitations that the challenge
14 claims.

15 And now, so, Cochran. Let's talk about Cochran for a
16 second. The deficiency, okay, is that a DB -- and -- and this is true of
17 all of these products. A database administrator must create a menu
18 that is hard coded into the specific database. And the menu does
19 provide optional paths. So I will grant it. It is more dynamic than
20 standard -- than standard queries that were required prior to that when
21 you hard coded with SQL, and we can go into some analogies in the
22 surrebuttal.

23 But the point is that the menus are preconfigured by a
24 database administrator. Put it into really simple terms, it's tiered
25 architecture. It's tiers of which you have the SQL operating -- the

1 SQL system as a layer between the end-user's client and the database.

2 What is revolutionary and profoundly unique about search-on-the-fly
3 is is that the user with the application directly interacts with the
4 database, okay?

5 And that affords a number of different -- when I say that
6 it is unique and also it does not require a programmer, a -- a --
7 Cochran as well as HyperSQL and as well as Zellweger, yeah, there's
8 drop-down menus, but each of those menus is preconfigured, and --
9 and we can go into more detail the fact that even those alphabetized
10 systems is misleading and quite honestly, it -- it may well be that Mr.
11 Herman doesn't understand it and even Dr. Zadok because I have met
12 more than a few Ph.D.s that have been hard to actually convince them
13 of the fact that this is -- it appears.

14 And in fact, an example I would use is if you would
15 permit me a demonstrative -- let me just grab this. This is -- I'm in a
16 conference room in a hotel. This is a cordless phone, and this is a
17 cellular phone. They're both wireless. They both are improvements
18 on the corded phone that's on the wall. But yet, for someone to
19 suggest that this, in any way, makes this obvious is -- is absurd on the
20 face of it. And in reality, when you look through the actual menus -
21 and we'll go through that - there's -- and -- and, Your Honor, you
22 actually pointed to the idea that these are all preconfigured including
23 the truncation. The truncations are preconfigured.

24 The thing that is unique and special about search-on-the-
25 fly is -- is that every time the database is run from the very first time,

1 okay, and -- and with respect -- I'm going to jump around here a little
2 bit because I do have ADHD. But when Mr. Herman says that there's
3 nothing that -- that the -- the claims are brought, I -- I basically define
4 and describe one type of search engine, the search-on-the-fly search
5 engine. There are several embodiments that I describe of potentially
6 creating truncation formulations, and I'm not suggesting that I
7 invented hierarchical structures or taxonomies. I'm not suggesting
8 that I invented truncation. What I am saying is that all of this at
9 runtime is compiled, and that has several very important factors.

10 JUDGE JURGOVAN: Dr. De Bellis?

11 MR. DE BELLIS: Yes.

12 JUDGE JURGOVAN: Can I interrupt for a second?

13 MR. DE BELLIS: Of course.

14 JUDGE JURGOVAN: And that's to say, you know, the
15 claims define what the invention is.

16 MR. DE BELLIS: Yes, sir.

17 JUDGE JURGOVAN: And you're talking about search-
18 on-the-fly and dynamic and so forth. And I'm not seeing how that's
19 reflected in the claims. I do see the word dynamic in claim 6, but I
20 don't see it anywhere else.

21 MR. DE BELLIS: Well, the -- the -- the -- the -- the
22 approach to this claim and -- and the intent in its writing is -- is that
23 this is applied as it's applied to the database. It does not say that
24 there's preconfiguring. It is applied to the data, and at the time of the
25 runtime, at that time, at the moment that it is run, if there are ten

1 records in there and those records only reflect A, B, and C, they only -
2 - the last names. If it's a -- let's just, for argument's sake, say that it's a
3 -- a contact database management system, and you have ten records,
4 and there's A, B, and C, it goes, and every time you click for a run, it
5 goes in assays the schema of the database. It then creates -- provides
6 a list of the database fields of which last name would be one of those
7 fields. And then what you would do is as you selected that database
8 field, which is determining quantity of entries in the selected database,
9 you would see A, B, C, and D. The next time you ran it, if you added
10 a -- a new contact and that contact had began with the letter K, the
11 next time you ran the database, it would now populate with K unlike
12 Zellweger, unlike, Cochran, where you have a preconfigured set list.
13 And, in fact, in -- in many respects -- sorry.

14 JUDGE JURGOVAN: Sorry -- sorry to interrupt again,
15 but I think --

16 MR. DE BELLIS: It's all right.

17 JUDGE JURGOVAN: -- that Petitioner's viewpoint is
18 that Cochran discloses that, that there's a query to the server 710, and
19 the server 710 returns the list of database identifiers. And that's
20 Cochran. That's Exhibit 1004, line 7 -- column 7, lines 9 through 15.

21 MR. DE BELLIS: Could you give me one second, sir?

22 JUDGE JURGOVAN: Certainly.

23 MR. DE BELLIS: As I'm looking for that, the only thing
24 that I will point out, actually, is that in my -- in the specs of the '720
25 Patent, column 2, I describe the state of the prior art, and that is in --

1 in -- in my argument would be that that is in distinction to my claimed
2 invention. And in there, what I describe is I described the SQL
3 queries, queries that are designed to retrieve products and make that
4 distinction, which, in -- and I realize that the claims are interpreted in
5 light of the spec. So I'm sorry, sir, could you please repeat that -- that
6 reference -- or that --

7 JUDGE JURGOVAN: Yeah. So Cochran, which is
8 Exhibit 1004 --

9 MR. DE BELLIS: Yes. I have that.

10 JUDGE JURGOVAN: -- and column 7, lines 8 through
11 15, it -- actually it's Petitioner's demonstrative 32.

12 MR. DE BELLIS: All right, 32. Okay. In 32, In
13 response to a request by a user at a remote computer terminal, the
14 server transmits information at a step ten to the user's computer. The
15 request to start the program is made by dialing the address of the
16 remote server. The information transmitted the server to the user's
17 computer includes a plurality of list identifiers. So yes -- yes, sir. I --
18 I -- I understand that, but also in reference to Cochran, there's a
19 database administrator who has created those identifiers, that has been
20 preconfigured prior. The -- the search itself is dynamic.

21 However, it has to be preconfigured by someone with
22 database experience. The navigation -- and again, as I -- as I had
23 mentioned, it is an incremental improvement. But the -- the
24 navigation, the -- the -- the value of -- of -- of search-on-the-fly in a
25 clinical way is -- or in a practical way, allows because the interface

1 interacts directly with the database, you can actually bring databases
2 of different with -- in different systems and allow the databases to be
3 merged because the data interacts directly with the client. There's no -
4 - there's no preconfiguring by an administrator. There's no
5 architecture that -- that prevents them from interacting. And in -- in
6 Cochran, all of that programming has to be performed by a -- I'm
7 sorry?

8 JUDGE JURGOVAN: Yeah. Let me ask you this: if --
9 how did those database identifiers exist in Cochran if they -- or let me
10 put it this way.

11 How does -- do the identifiers exist in search-on-the-fly if
12 they weren't preconfigured? I mean, they must be configured by
13 somebody.

14 MR. DE BELLIS: No. They're not, sir. That is -- that is
15 the unique aspect of it. The idea is -- is that when you push -- when
16 you select the search, it goes out, and it creates -- I'll give -- I'll give
17 you an example. So the idea would be you had first name, last name,
18 address, zip code, et cetera, comma delimited, however you like.
19 There's your -- your information. And as you select, it goes -- it goes
20 out to the database, and it selects those. It identifies each of those
21 fields, and it returns them in that first menu. If the next time you saw
22 a select for a search, an additional record was either added that had an
23 email address or someone's age, the next time you press that, it would
24 go in, and it would not only give the previous list of identifiers, but it

1 would also give the list of that additional database fields. And that is
2 a major distinction. And that's --

3 JUDGE JURGOVAN: Okay. And why would -- I'm not
4 sure I see that in the claims, but.

5 MR. DE BELLIS: Well, it's -- sir, in the claims --

6 JUDGE JURGOVAN: Hold on one second.

7 MR. DE BELLIS: Sorry. Go ahead.

8 JUDGE JURGOVAN: How is that distinct from
9 Cochran, which seems to be doing the same thing?

10 MR. DE BELLIS: Well, the difference is -- I'll give you
11 -- I'll give you an example. Let's look -- I -- I -- I'm a little out of
12 sequence, so please bear with me. But if you look, for example, at --
13 at, let's say, for example, figure 10. Figure 10, which is page 4 of the
14 -- of Mr. Herman's demonstratives, okay? And in -- on page 4, you
15 see, this is a -- this is a working embodiment, and this is also a -- the -
16 - the -- the -- as far as the claims. The search-on-the-fly search engine
17 accesses the database and gives us a list of the fields. Let me just
18 press the -- the claim. I just want to put that up against it. It gives the
19 -- it gives the list of the fields which includes address, city, state, and
20 phone number. Those fields must be constructed because if you look
21 at Cochran or Zellweger or even HyperSQL, those fields have to be
22 hard coded into the application that you see.

23 This applet is dynamically -- is created on the fly. So --
24 so the idea is what's only in it. Now, an example is that you see that
25 you have A, B, C, D, E, F, and G, and I'll make two distinctions. If

1 you look at Cochran, Zellweger, any of them - and some of them have
2 a parentheses with a numbers count in it - that is a hard coded -- and it
3 actually says it in the spec. Those are hard-coded lists. It calls it an
4 alphabetical list. So if this database, whether it has ten records or ten
5 million records, if there were no -- it was no one whose last name
6 began with the -- the letter D, then D would not appear in the list, and
7 that's what you would call --

8 JUDGE JURGOVAN: I understand what you're saying,
9 but where is it reflected in the claims?

10 MR. DE BELLIS: Because that's on the fly. I'm sorry.
11 I'm sorry, sir?

12 JUDGE JURGOVAN: I understand what you're saying,
13 but I'm wondering where it's reflected in the claims. The claims are
14 what define your property right.

15 MR. DE BELLIS: I understand that, sir. What -- if you
16 were to take the -- the claims and actually create it word for word, the
17 assumption that is made is -- is that I meant, it's inferring that I meant
18 something else. But if you actually, at the time of the search,
19 computer searching a database comprising determine the database
20 schema. So at the time of the search, it goes out, and it looks for all
21 those database fields.

22 And -- and -- and unlike Cochran where those fields are
23 preconfigured and then populated, this applet is populated by the
24 contents of the database. And that is expressed by virtue of the fact
25 that it simply says determining a database schema for a database. So

1 that's what happens. You -- at the search, at the time of the search, not
2 at the time of the search after a database administrator has
3 manipulated the system, at the time of the search, it determines that
4 schema. Then it provides a list of the database fields which it does,
5 and then determining a quantity of entries in the selected database.
6 That's the dark bar that shows the A and then if the quantity exceeds
7 an amount.

8 Now, the truncation to distinguish from the other forms
9 of truncation, this truncation is dynamically created at the time of the
10 registration. The ranges and the truncation that is afforded in the prior
11 art that -- or the combining art that Mr. Herman alleges are
12 preconfigured. If you look -- if you -- if we look carefully - let's --
13 let's take a moment and look at those actual examples - you can see
14 that -- so just to give you an example of my version of truncation.
15 The idea is that -- and this comes from the cognitive ability to see the
16 periphery of a database. And I realize it's not in the claims of giving a
17 justification for why this was so important.

18 The idea is that the edges of a set, of a data set, are very
19 important. If you had a data set, for example, and you decided to
20 view it by state, and you had New York, New Jersey, and
21 Connecticut, it would cognitively tell you something different than if
22 it showed 49 states. If it showed Chicago and Indiana, it would give
23 you some cognitive feedback. That's sort of deductive search vs.
24 inductive. And that's not obviously in the claims or the spec, but it's a
25 historical reason for why this was created.

1 So the whole point of it is that you only see what is in the
2 database at the time of the search. And if in fact, for example, there
3 was a blank at the top above the A, that would tell you because this
4 information was compiled at the time of the search -- and again, the
5 whole purpose of defining it generally is that determining a database
6 schema for a database. At the time of the search, if it was an area that
7 was blank, what it would show you is that at least one entry had not --
8 did not have a last name in it because as that field is dynamically
9 populated, it would show a blank where there was no -- no field
10 generated. And that's dynamic. And -- and --

11 JUDGE JURGOVAN: Now -- you're now into your
12 rebuttal time --

13 MR. DE BELLIS: Yes, sir.

14 JUDGE JURGOVAN: -- by about two minutes plus.

15 MR. DE BELLIS: Okay.

16 JUDGE JURGOVAN: And you can continue if you
17 want, but you're eating into your rebuttal time.

18 MR. DE BELLIS: Thank you for reminding me, sir.

19 JUDGE JURGOVAN: And I'll say, I'd like you to
20 address claim 6 on your surrebuttal.

21 MR. DE BELLIS: Yes, sir.

22 JUDGE JURGOVAN: Do you continue to -- I'm sorry?

23 MR. DE BELLIS: I was going to say, I yield back to Mr.
24 Herman, and I'll address claim 6 in the surreply, sir.

25 JUDGE JURGOVAN: Okay. Thank you.

1 Let's go back to Petitioner's rebuttal.

2 MR. HERMAN: Thank you, Your Honors.

3 I'll begin by discussing claim 6, as Your Honors
4 requested during my opening presentation. So claim 6 is one of the
5 dependent claims in the '720 Patents that are at issue here. And claim
6 6 depends on claim 3. So claim 3 requires comparing a quantity of
7 database entries with a specified limit and truncating the displayed
8 entries if that specified limit is exceeded. So claim 6 then provides
9 that that specified limit is to be determined dynamically based on
10 characteristics of the terminal. So Your Honors are correct that claim
11 6 does use the word dynamically, but the reference to dynamic here is
12 referring to whether the number of entries that need to be displayed by
13 the menu can, in fact, be displayed on the user's display.

14 So moving on, what does the prior art teach? So Cochran
15 teaches a system that is able to determine if the number of entries in
16 one of its field menus is able to be displayed. That's how it
17 determines if a scroll bar is needed. If there are too many entries to fit
18 on the menu that needs to be displayed, Cochran will employ a scroll
19 bar so that all those menus can be displayed to the user. And as a
20 further reminder, Cochran's system is adaptable. Its menus, the pop-
21 up menus, that appear in connection with each database field are not
22 populated in advance. Instead, the user's prior selections will drive
23 what and how many entries will be displayed when a particular field is
24 selected. So because of this, the number of entries and the need of a

1 scroll bar in Cochran will be determined at the time a particular field
2 menu is actually selected, and that menu is generated for display.

3 So Cochran adapts its menus to the circumstances.
4 Sometimes it's pop-up menus will include a lot of items, a lot of
5 database entries in them if the user has not yet made choices in other
6 fields. At other times, the menus that are displayed will include fewer
7 items in them if the user has made selections in other fields, right? So
8 the content of the menu in Cochran is determined essentially on the
9 fly and in the circumstances to take account -- into account the
10 selections that the user has already made. So then --

11 JUDGE JURGOVAN: So let me ask this, Counsel, and
12 that is, it says that the specified limit is determined dynamically based
13 on a characteristic of the terminal. And I think what you pointed to in
14 the petition is a field, not a characteristic, not, for example, the screen
15 size of the terminal or something that's connected to the physical
16 terminal. You pointed to basically the field of a window, I think --

17 MR. HERMAN: So --

18 JUDGE JURGOVAN: -- as the characteristic of the
19 terminal. I'm not sure I see that.

20 MR. HERMAN: So, Your Honor, that -- what Petitioner
21 was pointing to in the petition was a collection of teachings in the
22 prior art. So one of the things that Petitioner pointed to was Cochran's
23 determination of whether or not a scroll bar is needed. So that's one
24 of the reasons that the petition explains why the prior art here, and the
25 prior art at issue here is the combination of Cochran and Zellweger, is

1 able to determine a quantity of entries, is whether or not a scroll bar is
2 needed, right, and whether or not a scroll bar is needed, as explained
3 by Petitioner's expert, will depend not only on the number of entries
4 that are in a menu, but also on the characteristics of the display that is
5 displaying that menu. We --

6 JUDGE JURGOVAN: The claim language is terminal,
7 not display.

8 MR. HERMAN: So --

9 JUDGE JURGOVAN: That's a characteristic of the
10 terminal, and you're referring back to the display.

11 MR. HERMAN: So, Your Honor, I believe the size of
12 the display is a characteristic of the terminal. The terminal that the
13 claim is referring to here is the terminal that's performing the search,
14 which would be the user's terminal, which includes the display along
15 with other components. So the characteristic of the display that's
16 being -- that is being compared to the quantity of menu items is the
17 size of the display. And I don't believe that there is any dispute from
18 Patent Owner that that size of display qualifies as a characteristic of
19 the terminal.

20 JUDGE JURGOVAN: But -- so -- but you're saying
21 Cochran discloses that --

22 MR. HERMAN: Yeah.

23 JUDGE JURGOVAN: -- the list is truncated according
24 to the size of the display screen?

1 MR. HERMAN: So Cochran discloses a piece of that,
2 Your Honor. But so what Cochran does is it makes a determination of
3 whether or not the number of menu entries that's generated by a search
4 requires a scroll bar or not. And a necessary part of making that
5 determination is whether the display is so small or so large that it is
6 unable to display the number of entries. But there is a correlation
7 between the need of -- for a scroll bar and the size of the user's
8 display. So by Cochran making that determination, that determination
9 that a scroll bar is necessary, it has compared the number of entries
10 that are to be displayed in a menu with a characteristic of the display.

11 Then the secondary reference, Zellweger is providing an
12 alternative, right, to using a scroll bar so that the alternative that
13 Zellweger is providing says, instead of using a scroll bar and
14 providing a really long list, you can truncate. So what the petition
15 was trying to express is that the same determination that Cochran is
16 already making would continue to be made, right?

17 So Cochran's system would continue to assess whether
18 the total number of entries that is returned in connection with a
19 particular menu selection is so large that you need a scroll bar. But
20 just instead of using a scroll bar, you use Zellweger's alternative
21 approach and truncate, right? So same determination that's already in
22 Cochran would be made, except the response to that determination
23 would be different.

24 Instead of a scroll bar, now, one of ordinary skill in the
25 art would follow the teachings of Zellweger and the improvements it

1 provides and truncate instead of providing a scroll bar. But the
2 underlying determination that triggers the use of truncation would be
3 the same, but too many entries to fit the display, thus, necessitating
4 manipulation of the graphical user interface so that all the results that
5 need to appear in the menu appear in the menu.

6 And again, that's something that Cochran is doing on the
7 fly, it's doing at the time a menu is selected. And -- and why is it
8 doing that at the time a menu is selected? Because that's how Cochran
9 works. But every time a user makes a choice, right, that then has a
10 cascade effect on every further menu that Cochran displays, right? So
11 if a user has selected four things in connection with the date of travel,
12 the location the user wants to travel, that then controls the universe of
13 entries that will be displayed when the user selects the next menu,
14 right?

15 So Cochran is making a determination at the time the
16 user is opening a particular menu, how many entries are going to be
17 displayed, and whether a scroll bar is necessary. And -- and what the
18 Petition was trying to express is that instead of using a scroll bar, it
19 would just use a different approach of display following Zellweger's
20 teachings.

21 JUDGE JURGOVAN: Thank you. I understand your
22 position.

23 MR. HERMAN: So also briefly respond to Patent
24 Owner's discussion of conception and reduction to practice. So the
25 issue with most of this discussion is that it is not supported with any

1 corroborating evidence that accompanied Patent Owner's Response.
2 Instead, it relies almost exclusively on Patent Owner's own testimony
3 and representations of what was done at particular times.

4 So Patent Owner's discussion today of his work with the
5 computer programmer is representative of this. So he explained, for
6 instance, that he hired a coder in August of 1999, and that work was
7 performed by this coder over the course of a number of months and
8 that code was generated that supposedly practiced his database
9 system. But the only support for any of this in the record is Patent
10 Owner's own testimony. Nothing at all corroborates anything that
11 Patent Owner says about his work with the programmer or the
12 generation of code in his response or in any other portion of the
13 record.

14 There is no documentation of interactions with the
15 programmer. No declaration was submitted by the programmer. No
16 copies of the code were -- was filed along with Patent Owner's
17 Response. So beyond Patent Owner's testimony, there's nothing in the
18 records that confirms or corroborates any of what Patent Owner is
19 saying here today.

20 And Petitioner submits, not only does conception need to
21 be corroborated but so does reduction to practice, and that has not
22 happened here. And the discussion of Patent Owner's code is no
23 different. So Patent Owner said today that code existed at some point
24 in 1999 but has not presented that code, nor has he offered anything

1 corroborating his contention that he had conceived of the functionality
2 present in that code prior to Zellweger's filing in July of 1999.

3 So a Patent Owner cannot remove a prior art reference
4 predating Patent Owner's filings simply by alleging conception and
5 reduction to practice dates. Evidence of that is required, and that
6 evidence must be corroborated. And that is the key issue here. The
7 record is completely devoid of corroborating evidence showing that
8 Patent Owner conceived of the claimed invention prior to Zellweger's
9 July 1999 filing. There was not a single document of record that
10 predates Zellweger.

11 So Patent Owner mentioned several times today that
12 Petitioner canceled his deposition. So reviewing Patent Owner's
13 Response, a Petitioner was of the view that his positions and his
14 testimony was clear. So this is not a case where there's some sort of
15 technical dispute that required cross-examination or explanation. And
16 it was also clear that Patent Owner had not met his burden of
17 production. So it is not Petitioner's obligation to make Patent Owner's
18 prior conception showing for him. That was Patent Owner's burden.

19 So given this, it was Petitioner's view that a deposition
20 was not required. It would not have been a productive use of either of
21 the parties' time. But moreover, as Your Honors correctly noted,
22 during Dr. De Bellis' presentation, any evidence or information Dr. De
23 Bellis thought was relevant could, and in fact, was required to be
24 included in his Patent Owner Response. And in connection with this,
25 Petitioner stipulated to extend the due date for that particular response

1 two times in an effort to allow him adequate time to make whatever
2 arguments he thought necessary and to introduce whatever evidence
3 he believed he had, and he declined to do so.

4 So moving on to the prior art. So Patent Owner also
5 spent time discussing the supposed deficiencies of the prior art. As
6 Your Honors noted, there is a disconnect between Patent Owner's
7 arguments and the claims. In particular, there is no requirement in the
8 claims that the claimed method be practiced by a search engine, that
9 the information be generated for the very first time at runtime, or that
10 there be absolutely no preexisting programming at the database. The
11 limitations like that are simply not part of the claims.

12 So claim 1 does not even reference a search engine. It is
13 directed only to a method implemented on a computer for searching
14 databases. Independent claim 3 also does not reference a search
15 engine. All that these claims require is performance of a series of
16 search steps, including determining a database schema, providing a
17 list of database fields, and so on. It does not matter for purposes of
18 the claims whether something you could call a search engine does this
19 or the database itself does.

20 There is also no requirement that any of this occurred
21 dynamically, and there is nothing that precludes the database from
22 being preconfigured or preprogrammed in some form or another in a
23 way that allows it to facilitate searching.

24 Indeed, the '720 Patent itself explains that a database can
25 be already programmed to facilitate searching. And you see that, for

1 example, in the '720 Patent in column 4 at lines 19 through 21. So
2 there, the '720 Patent itself explains that its search-on-the-fly system
3 may be incorporated into the structure of one or more databases 12,
4 13, and 50 -- 15 that are to be searched.

5 So the '720 Patent here allows for a database schema
6 determination and menu generation in a way that occurs exactly the
7 same way as in the prior art. In the '720 Patent's example, the
8 database is itself programmed to do the searching, and as part of doing
9 this, it accesses its own schema and then relays a list of database fields
10 onto the searching user.

11 So Cochran, as Your Honors noted, does exactly the
12 same thing. Its database accesses its own schema. That's Cochran's
13 list. And then it relays its lists onto a searching user to display a menu
14 interface. There is no difference between the '720 Patent and
15 Cochran. Both employ a database that itself generates a search
16 interface. Both access their own schema as part of this, and both relay
17 a list of database fields to a searching user for display, and both also
18 teach a database search method that is able -- that adapts the menu to
19 take into account, number one, what's present in the database and the
20 choices that a user has already made.

21 And with that, Your Honor, I know I have about three
22 minutes of time left, but I'd be happy to answer any questions that
23 Your Honors have.

24 JUDGE JURGOVAN: It does not appear we have any
25 further questions.

1 So we'll go to Patent Owner now for surrebuttal.

2 MR. DE BELLIS: Thank you, Your Honor.

3 I -- I'm going to have to just -- I'm not as eloquent,
4 perhaps, as Mr. Herman. But I'm going to stick to my guns, and I'm
5 going to say that I met the burden of showing reduction to practice.
6 And if you look at the case law, if you read those references, they
7 reference and in -- in particularly PST, it -- it -- it absolutely states
8 that corroboration -- and ultimately, if -- if Mr. Herman is -- is
9 implying that my credibility is not true, then, you know -- and
10 obviously that's what he's doing with -- with some of these
11 documents. The fact of the matter is, I did diligently conceive of this.
12 It's in my Patent Owner's Response. It's in my declarations, and I
13 proceeded.

14 Now, that's a choice for you to discern whether or not I'm
15 credible, and there's nothing I can do about that. What I will tell you
16 is is that should you find me credible, then my swearing behind
17 Zellweger makes all of this moot. That's a fact.

18 Now, moving on to should you find me less than
19 credible, then we have to look at some questions and looking, for
20 example, my -- again, I'm just -- I'm going to stick to what I know,
21 and that is that my claims must be interpreted according to the specs.
22 And if you look at the specifications in column 4 -- I'm sorry. I bet
23 this is the wrong one. In column 2, I actually -- in column 2, line 10, I
24 begin -- I go into detail describing and criticizing the current state of
25 search, which involves SQL queries, involves preconfigured menus.

1 And the point is is that in light of the spec, a POSITA would look at
2 the claims and would interpret them exactly as I had -- as I have
3 because that -- there's -- there's already a description about SQL
4 queries designed to retrieve products.

5 Now, with respect to Cochran, we can look at page 7 of -
6 - of the demonstratives. And just -- just -- just at a cursory glance,
7 this [unintelligible] -- and perhaps it's because I spent my life and
8 career creating, marketing, and selling software that's searched on the
9 fly, I look at this, and it's impossible. It's impossible because look at,
10 for example, number 111, the start of travel. It starts with March --
11 January to March, and that is fixed, which is to say that if you
12 suddenly decided if there was no February, it would still come out as
13 being a fixed criteria because that was preprogrammed. And there's
14 nowhere in my specs and nowhere in the claim -- the claim doesn't say
15 either way, but in the specs, I clearly say that it's done in -- in
16 contradistinction to the way in which this has been created.

17 When you look at the states, he lumps together into
18 regions, Delaware, DC, Maryland, Pennsylvania. That's
19 preconfigured. A database administrator had to -- and with respect,
20 I'm sorry, to what he mentioned in column 4 where he talks about -- I
21 can't remember what line it was. He mentioned yet another
22 embodiment where he discusses the idea that I bring in a number of
23 different databases.

24 The point is that you couldn't merge this data because
25 these preconfigured constructs by the database administrator.

1 However, if at the time you were able to access everything for the first
2 time at runtime with no bias, no preconfiguring, that data would then
3 appear and then could be linked seamlessly, and that's the distinction.
4 When you interpret and read the specs, it becomes clear that the only
5 way to interpret claim 1 is in light of the fact that it's done at runtime
6 with no preconceived interference by a database administrator.

7 And then with respect to claim 6, what I would say is that
8 again, the way in which this is dynamically based -- you can look at
9 the -- actually, the initial picture, you'll see that I anticipated and
10 describe a number of different products with varying size screens in
11 figure 2, interactive devices, GPS devices, cell phones.

12 And the -- the point being is -- is that because the idea is
13 to create universal flexibility, it is -- it is -- it is at the time that the
14 data is presented that there is an iterative function. Everything about
15 search-on-the-fly is iterative. And the idea is that this data is sent to
16 the screen. If it can fit, then it goes back and gets recompiled, and
17 then it checks to see if it can be fit, and then goes back and gets
18 recompiled until it fits. These ranges that are created have been hard
19 coded, and I -- I -- I am going to stick to my guns and with all due
20 respect to Mr. Herman, tell you that he's not being sincere or truthful
21 with respect to that. This is very different.

22 And I got 12 minutes. But honestly, as I said to you
23 before, I worked very hard from January of 1999. Like the doctor --
24 like the -- like -- I'm sorry, like the ob-gyn, I put a lot of hours in.

1 There were a lot of work, and yes, I did not necessarily provide
2 perhaps additional materials yet as, again, I am pro se.

3 And -- and in that context, I look at it, and I say, if Mr.
4 Herman - and I would ask you to ask the question yourself - if he was
5 so sure that he could basically take me out with -- with interrogating
6 myself and my sister under -- in sworn testimony, it's just interesting
7 that he -- you know, with such a weak case as he's implying that I
8 have, it just seems odd to me that he would pass on that opportunity.
9 It's just -- I believe -- I believe it's -- it's -- it's -- it's a specious
10 argument. And with that, I'll just concede because pretty much --
11 unless you have some other questions, of course. If I didn't answer
12 you adequately about claim 6 or anything else, I -- I welcome some
13 questions.

14 JUDGE JURGOVAN: Well, on claim 6, limiting by the
15 terminal, I think it's determining the specified list --

16 MR. DE BELLIS: Yes.

17 JUDGE JURGOVAN: -- dynamically according to the
18 terminal size.

19 MR. DE BELLIS: Yes.

20 JUDGE JURGOVAN: This is a window size. There, it's
21 the terminal.

22 MR. DE BELLIS: Yes.

23 JUDGE JURGOVAN: That's what you're saying. That's
24 the display screen?

25 MR. DE BELLIS: That's the terminal. Yes.

1 JUDGE JURGOVAN: I see. That's the only question I
2 had for you.

3 And I believe we are concluded. So I want to thank both
4 parties for their presentations. Would you please stay on the line?
5 The judges are going to leave the hearing now, but please stay on the
6 line in case the court reporter has any questions for you. And again,
7 we appreciate your presentations.

8 (Whereupon the above-entitled matter went off the record at
9 11:52 a.m.)
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