

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

INTERDIGITAL PATENT HOLDINGS, INC.,
Patent Owner.

IPR2024-00305 (Patent 8,737,933 B2)
IPR2024-00306 (Patent 9,173,054 B2)

Record of Oral Hearing
Held: April 15, 2025

Before JAMESON LEE, MIRIAM L. QUINN, and LISA A. MURRAY,
Administrative Patent Judges.

IPR2024-00305 (Patent 8,737,933 B2)
IPR2024-00306 (Patent 9,173,054 B2)

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The above-entitled matter came on for hearing on Tuesday, April 15, 2025, commencing at 8:59 a.m., at the USPTO Southwest Regional Outreach Office, 207 South Houston Street, Suite 159, Dallas, Texas.

P R O C E E D I N G S

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8:58 a.m.

JUDGE QUINN: So we are convened today for two separate oral argument sessions. We started this morning with Microsoft Corporation v. InterDigital Patent Holdings. Two IPRs: there will be IPR2024-305 and IPR2024-306. I will be presiding this hearing. My name is Judge Miriam Quinn. With me are Judge Jameson Lee and Judge Lisa Murray, appearing from the courtroom in the Alexandria headquarters.

I'm going to ask you, when you step up to the podium, to identify yourself clearly on the microphone, and if you're going to use any demonstratives, you can tell us which page you're on so we can follow along. We have them electronically on our computers, so we can see that. And we have provided them to the court reporter, so he has the information that you submitted to us.

We have -- I have a question for you. Is there going to be any confidential information disclosed today at the hearing?

MR. MASON: Not from Petitioner.

MR. HEJNY: No, Your Honor, not on behalf of InterDigital.

JUDGE QUINN: Okay, thank you, because there is a public line. So if at any point you're veering into confidential information, I need to know so I can shut down the public line. Okay.

So, as you know, IPRs are contested proceedings. They rely on advocacy, and our role as a judge is to assess your arguments in evidence and to weight them accordingly. We have read through the record for the

1 proceedings that we are discussing today. We're prepared to receive your
2 oral argument.

3 From time to time, I just want to tell you, we're going to be looking
4 down, writing things, looking at our computers. We have lowered them so
5 we can have a more visual experience with you. But please understand that
6 we're not not paying attention; we just are working through with you as you
7 present your arguments. And if we interrupt, I apologize in advance. We
8 tend to do that, but we want to also be able to ask questions and get as much
9 information from you in the short time we have together today.

10 So like I said, we're going to be breaking this into two sessions. The
11 next session will begin 30 minutes after we break this one -- we break out
12 from this one, but no earlier than 11:30. As I understand, there is additional
13 counsel joining us for the afternoon session, so we won't start before 11:30,
14 but we may have a longer break than the 30 minutes that we had identified if
15 we end early. Each side has one hour, though I don't know if you're going
16 to take the whole hour. But you have the opportunity to present your
17 arguments for an hour.

18 Another issue we want to discuss, I want -- I'll do appearances first.
19 Who is here for Petitioner?

20 MR. MASON: On behalf of Petitioner, Andy Mason of Klarquist
21 Sparkman, and with me is Sam Thacker, also of Klarquist Sparkman.

22 JUDGE QUINN: Okay. Now, Mr. Thacker, I think we saw a LEAP
23 request.

24 MR. MASON: Yeah, that's correct. There was a LEAP request for
25 Mr. Thacker.

1 JUDGE QUINN: Okay. Now, we saw it filed in the ones for the
2 afternoon.

3 MR. MASON: That is correct, yeah.

4 JUDGE QUINN: The 536, 537. So for this one, there is no request.

5 MR. MASON: There is no LEAP request, yeah, and we don't plan
6 for Mr. Thacker to argue in this first hearing.

7 JUDGE QUINN: Okay.

8 MR. MASON: Thank you.

9 JUDGE QUINN: That's fine. I just want to make sure we have what
10 we need.

11 And who is appearing for the Patent Owner?

12 MR. HEJNY: Your Honor, Scott Hejny of McKool Smith on behalf
13 of Patent Owner, InterDigital. With me in the room is my colleague Mr.
14 Garrett Griggs. Present on the remote line is Richard Kamprath. And also,
15 there's a corporate representative, Ms. Leslie Lee, from InterDigital also
16 present on the public line.

17 JUDGE QUINN: Thank you. Welcome. One issue we wanted to
18 discuss with you and for you to let us know potentially before the end of the
19 hearing, or if not, if you have it, is that I want to find out if either party has
20 objections to consolidating the proceedings for purposes of issuing a final
21 written decision. We haven't decided how to consolidated, whether all four
22 will be consolidated or a pair of them will be consolidated, but any
23 objections to consolidating the hearing -- the proceedings in one final written
24 decision for the cases. I'd like to know if there's any objections to that.

25 MR. MASON: No objections from Petitioner, and certainly --

26 MR. HEJNY: No objections, Your Honor, from Patent Owner.

1 JUDGE QUINN: Okay, thank you. Hearing no objections to that.

2 Okay. So Petitioner, you will start, and then Patent Owner, you will
3 present your case. Each side gets rebuttal time, and also each side can --
4 Patent Owner can maybe serve surrebuttal time. So I need to know right
5 now what is the rebuttal time for Petitioner and what rebuttal time Patent
6 Owner would like to reserve.

7 MR. MASON: Yeah. Petitioner will reserve 30 minutes, Your
8 Honor.

9 JUDGE QUINN: Okay, thank you.

10 MR. HEJNY: And Your Honor, at the outset, I'll reserve 20 minutes
11 for Patent Owner.

12 JUDGE QUINN: And will you be expecting to also have a surrebuttal
13 today?

14 MR. HEJNY: Yes, Your Honor. So I would suspect that the 20
15 minutes would be the surrebuttal period.

16 JUDGE QUINN: All right.

17 All right, Petitioner. When you are ready, you may proceed.

18 MR. MASON: Thank you, and may it please the Board, Andy Mason
19 on behalf of Petitioner, Microsoft Corporation. Here, the prima facie case of
20 obviousness is undisputed. Patent Owner makes no challenge that any
21 aspect of the Petition is showing that a skilled artisan would've been
22 motivated with a reasonable expectation of success to implement the prior
23 art teachings in a manner that satisfies all challenged claims.

24 The only dispute is whether objective indicia, or alleged objective
25 indicia of non-obviousness overcome that prima facie case of obviousness.

1 And Patent Owner bears the burden on showing not only those objective
2 indicia, but also the nexus to the challenged claims here.

3 For all alleged objective indicia, Patent Owner relies on the Apple
4 AirPods product, and Patent Owner has failed not only to establish a nexus
5 between the challenged claims and any alleged objective indicia, but they
6 have also failed to show -- there's also a lack of evidence on many of the
7 objective indicia themselves. If anything, the objective indicia show that the
8 success or praise of AirPods was due, if not entirely, largely to the Apple
9 ecosystem and other unclaimed features. And therefore, there's a lack of
10 nexus.

11 But even if there were some attenuated link to the claims, there's just
12 a lack of evidence of -- there's no license in record. There's no evidence of
13 any sales at all. And the -- in sum, the strong prima facie case of
14 obviousness here far outweighs the sparse and attenuated objective indicia of
15 obviousness.

16 So if I could invite the panel -- the Board to slide 2, there are several
17 sub-issues in play here. The first is whether, you know, Patent Owner has
18 established the presumption of nexus. Patent Owner has two showings to
19 make there, and they have made neither.

20 Second, even assuming Patent Owner had shown a presumption of
21 nexus, whether that is rebutted by the lack of any nexus between the claims
22 and the alleged objective indicia, as reflected in the exhibits supposedly
23 showing the objective indicia.

24 And then third, whether -- if Patent Owner has not established a
25 presumption where they've established a nexus in fact, that's wrapped up in
26 a lot of the same facts as the rebuttal of the presumption argument. And

1 then fourth, I think perhaps as important as anything, whether the objective
2 indicia here outweigh the strong undisputed prima facie case of obviousness.

3 And given that the presumption is not necessarily dispositive of the
4 issues, I would like to begin by just diving into the objective indicia
5 evidence. So if I could invite --

6 JUDGE QUINN: Let me ask you --

7 MR. MASON: Yes, Your Honor.

8 JUDGE QUINN: So if there's a finding of a nexus, or presumption of
9 nexus, would you contend then there is still no nexus in fact?

10 MR. MASON: Yes. Yeah, there's no nexus in fact. That's correct.

11 JUDGE QUINN: Okay.

12 MR. MASON: And we would contend that if there's -- if a
13 presumption of nexus has kind of been shown in a vacuum, you know, if the
14 Board finds that the AirDrop product embodies and is coextensive with the
15 claims, which we submit is not the case -- even then, looking to the actual
16 evidence, supposed evidence of objective indicia, those show that, really,
17 any praise or success were due to unclaimed features, and therefore the
18 presumption is rebutted, and, at best, the objective indicia are very weakly in
19 favor of non-obviousness.

20 Yeah. So unless there are -- the Board would prefer to start with
21 presumption, I'm going to begin on slide 17 with the alleged objective
22 indicia themselves.

23 So on slide 17, we list the objective indicia that Patent Owner has
24 argued here. I'll just walk through each briefly and then focus on some of
25 those in subsequent slides.

1 JUDGE QUINN: Can we actually go back to the presumption of
2 nexus?

3 MR. MASON: Absolutely, yes. Did you have specific questions,
4 Judge Quinn, or --

5 JUDGE QUINN: Well, I do.

6 MR. MASON: Okay, yeah.

7 JUDGE QUINN: And if you can kind of walk me through it. I'm
8 puzzled by the evidence here that was provided. It tends to be more of a
9 marketing type of document rather than a technical document. Can you
10 explain the statements about the using the Bluetooth low-emission signal to
11 do some things but the Wi-Fi ad hoc network to do other things in the
12 AirDrop device?

13 MR. MASON: Yes, Your Honor, and I think Your Honor may be
14 referring to -- if I could invite the Board to slide 4 here. The -- I think Your
15 Honor raised on interesting point, which is that the evidence relied on here is
16 -- it does appear to be marketing materials, and it's unclear what the
17 providence of many of those materials are. You know, we understand that
18 Patent Owner has submitted a way-back affidavit showing what some of the
19 pages are, but that way-back affidavit does not necessarily line up even with
20 what was supposedly downloaded from the Apple site at that certain dates.
21 So there's that cloud around the exhibits that were submitted, which
22 certainly, I think, would entitle them to less weight in this situation, and we
23 noted that in our reply.

24 But looking at the -- what Patent Owner did cite, right, and it's Patent
25 Owner's burden here to show that the claims -- or the AirDrop technology
26 not only, you know, embodies, but it's also coextensive with the claims.

1 And in purporting to show that AirDrop embodies the claims, the only piece
2 of evidence that Patent Owner relied on is on the right-hand side here of
3 slide 4, and that's -- it's highlighted. The highlighted passage. They relied
4 on something that appears to be from the Apple.com website, some sort of
5 marketing description of AirDrop. There's no real technical documents.
6 There was no discovery, nothing internal from Apple. It was just this
7 marketing document.

8 And what that describes is -- it describes that it's, indeed, peer-to-peer
9 Wi-Fi that is used by the transmitting or the sending device to discover the
10 identity of other local nearby responding devices. And as we see at the left
11 here on slide 4, and what the claims require, is detecting using Bluetooth.
12 And so -- and that's in -- it's detecting using Bluetooth '933 patent and it's
13 detecting over Bluetooth in the '054 patent. And so what -- on their face, the
14 claims require that the sending device receive some type of Bluetooth signal
15 that it uses to detect other nearby devices.

16 JUDGE QUINN: Well, the evidence that Patent Owner submitted,
17 it's a little bit more extensive than that. I mean, that's the summary where
18 you -- what you are showing here on slide 4 is the summary. The Patent
19 Owner provided -- the claim charts that are in the response have some
20 excerpts from Exhibit 2014, and it says that the sending device emits an
21 AirDrop signal over BLE, which is a Bluetooth signal.

22 MR. MASON: Correct.

23 JUDGE QUINN: Do you have an explanation for that, a technical
24 explanation? I mean, I can see there's an emission on Bluetooth, but how
25 does it work?

1 MR. MASON: Yeah. I think this is the passage that Your Honor was
2 just referring to, and this is on slide 30, excuse me, for the remote judges.

3 On slide 30, that's -- this is, I believe, the passage from 2014 that
4 Your Honor relies on. And here, what we have is it does, as you note here,
5 does talk about the sending device emitting an AirDrop signal over BLE,
6 which is Bluetooth low energy. So certainly, you know, we have -- at least
7 according to these documents, we have an outbound signal from the sending
8 device, and that's not used to detect anything. That's just going out into the
9 ether. It's called -- it's often referred to as a solicitation message, and I'll
10 get into our expert's explanation of that. But it's a message soliciting other
11 devices.

12 But it goes on, and it does mention that other Apple device that are
13 awake in close proximity and have AirDrop turned on detect that Bluetooth
14 signal. So there's detection of a Bluetooth signal here, but it's by the other
15 devices, it's by the receiving devices, not the sending device. And what the
16 claim calls for is that the sending device detect using a Bluetooth signal,
17 using Bluetooth.

18 And so I think what's key here is what's highlighted, is then those
19 other devices in the surrounding area respond using a Wi-Fi signal. And it's
20 that Wi-Fi signal that comes back to the sending device and is used to detect
21 and determine that there are other nearby devices. Without that Wi-Fi
22 signal, there's no detecting that occurs. And you know, with the Bluetooth
23 signal, the Bluetooth signal may not ever even lead to a detection of another
24 device. And so that Bluetooth signal is separate from -- that solicitation
25 that's sent over Bluetooth is separate from and distinct from the ultimate Wi-
26 Fi signal that is used for detection in AirDrop.

1 JUDGE QUINN: Is it your contention that detecting, according to the
2 claims, does not cover also solicitation?

3 MR. MASON: That is correct, Your Honor, yes. And that's reflected
4 in the patent itself, in both patents themselves. And if we could turn to Slide
5 5 of Petitioner's demonstratives. This is Exhibit 1001, Figure 4, and in step
6 401, it talks about, you know, its face, detect information related to at least
7 one candidate WTRU in response to solicitation. So here, it's describing
8 detect and solicit as two separate and distinct acts. That's in the patent itself.

9 And our expert, Mr. Rysavy, discussed this, explained it, that the '933
10 patent -- and this is on the right-hand side of slide 5, Exhibit 1086, paragraph
11 10. The '933 patent consistently describes that environment information on
12 nearby devices is solicited and then subsequently, in a separate act, detected.

13 So the patent is treating solicitation and detection as separate acts. So
14 merely soliciting something over Bluetooth is not detection using Bluetooth.

15 JUDGE QUINN: Well, what if we flip this -- the way we're thinking
16 about it. So there's two devices in proximity with each other. One is the
17 sending device, the other one's the receiving device, and both of them are
18 beaconing each other over Bluetooth. I mean, eventually, all devices are
19 beaconing over Bluetooth, and it's up to the device that wants to send
20 something to figure out which device is proximate to it. But it has received
21 the information from another device already. So it did detect that there is a
22 proximate device beaconing with a Bluetooth signal.

23 MR. MASON: Well, there's nothing in the record that shows the
24 sending device recognizing or knowing the location or presence of other
25 devices based on receiving a Bluetooth signal for AirDrop. The only thing
26 that's of record, right, is, yes, certainly there -- you know, if we take Your

1 Honor's hypothetical, if there's multiple devices beaconing, they don't --
2 there's nothing in the record that shows they know of each other's presence
3 until one of them sends a Wi-Fi signal back to the original device that
4 beacons. And so it's that Wi-Fi signal that's used in that instance.

5 And the only -- you know, based on what Patent Owner cited, the only
6 detection occurs using that Wi-Fi signal. So you know, both devices may
7 be, you know, shooting out these beaconing signals over Bluetooth, but until
8 one of them uses Wi-Fi and sends a Wi-Fi signal back to -- what should be -
9 - what ostensibly is the sending device in the claims, no detection has
10 occurred.

11 JUDGE LEE: Mr. Mason, it's Judge Lee. I have a couple of
12 questions. The first one is that you mentioned that the specification
13 consistently explained that detecting is something that happens after
14 solicitation, but, really, I think there are only these two locations that you've
15 shown us on Slide 5, right. There is no other place, or are there other
16 places? I find only these two portions of the spec, and you don't cite to any
17 other parts; is that correct?

18 MR. MASON: I think that's correct, Judge Lee, yeah. So that was
19 our expert just, you know, reflecting, and I think he's got further discussion
20 on slide 6 of this, but I think Your Honor is correct that there's not -- there's
21 really not much discussion at all of detecting in the specification. It's very
22 sparse. And so, you know, that figure gives some indication that detecting is
23 distinct and separate from soliciting. Our expert read the rest of the
24 specification is consistent with that.

25 JUDGE LEE: Okay, thank you. I only ask because "consistently," at
26 least into my mind, is like, there's repeated and consistent repetition

1 throughout. But, really, I understand it's just these two parts. Whatever
2 they say they say. So thank you.

3 MR. MASON: Yeah, yeah.

4 JUDGE LEE: The other question is compared to these two sparse
5 portions, it seems like -- how do I put it? Let me give you an example.
6 Let's say we have a natural disaster, there's search and rescue, and I'm
7 going to use my voice to detect whether there are any survivors. So it's
8 using voice to detect survivors. So I holler out, is anyone here, and then,
9 you know, some people are able to speak. They holler back, hey, I'm here,
10 I'm here, right here, and some people can't. So they use a rock and they
11 bang on the pipe. So I can hear that. And some people has a cell phone.
12 They can't talk and they actually call 911 after they hear my hollering.

13 In my mind, that's, like, I've used my voice to detect survivors, even -
14 - you know, that's just sending out a message, right. It doesn't matter in
15 what manner the survivor has sent back a response. They could use voice,
16 they could bang on something, and they could call or text, right? So except
17 for these two parts of the spec that you referred to, if we didn't have these
18 two portions of the spec, it would seem like "detect" would certainly cover
19 just the outgoing message being in Bluetooth. It would be covered. What's
20 your response, without looking at these portions of the spec?

21 MR. MASON: Yeah, yeah. You're saying if we just ignore the
22 portions of the specification here. I mean, I still think that when it says
23 detecting using Bluetooth, it's the -- that's requiring that the information that
24 is used to identify other nearby devices is coming in via Bluetooth. Now,
25 perhaps -- you know, in sort of an everyday -- the earthquake scenario, or
26 with the scenario that you posited, perhaps a layman might consider, you

1 know, detecting using voice to be somebody yelling out and then hearing a
2 pipe banging or something along those lines. You know, that hasn't been
3 developed on the record. But I could see that being considered. But I think
4 if we look at the context of this patent, and the context of this technology,
5 right, where there's these distinct solicit and detect steps, and we're focused
6 on, you know, what type of communication protocol is used for each, they're
7 certainly viewed separate and distinct. And merely sending out a signal over
8 Bluetooth to solicit somebody is not detecting using Bluetooth. The
9 detecting here --

10 JUDGE LEE: Okay. A follow up question is the -- is this a situation
11 where we have to look at the law of disclaimers, which is, you have to be
12 really clear in order to override a broader meaning? Is that involved? Do
13 we have to say, do -- these two parts of the spec are so clear that the Patent
14 Owner does not mean a broader thing? Or that's not involved, and this is
15 just, like, a definition of what detecting means? Which is it? Do we have to
16 be concerned about and apply the law of disclaimer, which requires, you
17 know, very clear language or indication in the spec in order to go that route.

18 MR. MASON: Yeah, no.

19 JUDGE LEE: Or is it something less than that?

20 MR. MASON: It is something less than that, Your Honor. I don't --
21 we're not relying on disclaimer law here. We're -- you know, claim
22 construction is how a skilled artisan, right, not a layman, not somebody
23 outside the field, but how a skilled artisan reading the claims in the context
24 of the specification would understand these terms. And on their face -- I
25 mean, if we look at the '933 patent, Claim 1, it's detecting using Bluetooth,

1 right, a plurality of WTRU. So no detecting occurs until the Wi-Fi signal
2 comes in. '054 Claim 1, it's detecting over Bluetooth.

3 And so, you know, one, I think Mr. Rysavy explained how, you know,
4 just in the art, detecting is not the same as soliciting, and detecting would not
5 encompass any kind of preceding separate or distinct steps. That's how a
6 skilled artisan would understand is the detecting is when I've got
7 information coming in and I'm using it to -- I'm deciphering that
8 information to identify surrounding devices. That's how a skilled artisan
9 would understand that.

10 JUDGE QUINN: Let me ask you then, what role do dependent claims
11 -- for example, 8, that give additional detail as to the detecting step, and it
12 says that the Bluetooth discovery is used to detect the plurality of the units.
13 Does that shed light into our conversation here?

14 MR. MASON: I mean, it's -- you know, dependent claims are
15 presumed narrower than the independent -- the claims from which they
16 depend, and here, I mean, I know that this -- yeah, here Bluetooth discovery
17 encompasses both a solicitation signal, as Mr. Rysavy has discussed, and
18 then a responsive sort of signal that's used to detect a device, right. So it
19 involves solicit and then detect.

20 And so what this shows us is that, yes, ultimately, you know, if you
21 have Bluetooth discovery, which it's saying has those two steps, then you
22 are going to detect the plurality of WTRUs. But even in that situation, right,
23 it's -- Bluetooth is used for both the outbound and the incoming signal. And
24 I think what this clarifies is that you also have this outbound signal being
25 sent over Bluetooth.

26 JUDGE QUINN: So these claims support your argument --

1 MR. MASON: Yes, they should -- yeah. Dependent claim --

2 JUDGE QUINN: -- for you to have two-way communication.

3 MR. MASON: -- is consistent with our argument, yeah. And, yeah,
4 that really -- detect is something different from discovery, right? Discovery
5 is solicit and detect, and detect is something different, and Claim A confirms
6 that.

7 Unless there are further questions on the claim construction issue, I
8 can -- I will turn to the --

9 JUDGE LEE: Yeah. It's Judge Lee again. This is important, so I
10 want to ask one more question. I'm looking at the few lines you quoted
11 from the spec, as well as figure 4 in the first box, is that so clear, or is it? --
12 language is not a mathematical formula at all. How can you persuade me
13 that this language actually means solicit cannot be detection? It might just
14 be loose use of language in one case they use "solicit," and in the other case
15 they use "detect," but, really, solicit is also detect. It's just -- it's not a
16 mathematical formula. I can also read this as -- it doesn't exclude meaning
17 solicit is detecting. It's just
18 not-so-precise use of language, you know.

19 So I don't know if I made myself clear. It seems like the real question
20 is -- is this mutually exclusive, or it could actually cover the case where
21 solicit also means detect, and that doesn't run afoul of anything, does it?

22 MR. MASON: That solicit also means detect?

23 JUDGE LEE: Yeah.

24 MR. MASON: Or, rather, I should say that detect is satisfied by a
25 mere solicit?

1 JUDGE LEE: Yeah. Why does this exclude meaning solicit as also
2 meaning detecting?

3 MR. MASON: Well, I think just on its face, the claims don't recite
4 soliciting. The claims recite detecting. So there's that. And skilled artisans
5 would understand those to be separate and distinct acts. I think on slide 6,
6 you know, Mr. Rysavy explained his further -- he was not deposed on this --
7 Patent Owner did not depose him, nor did Patent Owner have any testimony
8 from its own expert, you know, explaining why a Wi-Fi signal coming back
9 to the sending device would be detecting using Bluetooth.

10 And in paragraphs 11 of Exhibit 1086 and paragraph 12, Mr. Rysavy,
11 you know, walked through aspects of the patent and explained why, you
12 know, the claims required detecting using Bluetooth, not performing some
13 other preceding steps, such as solicitation using Bluetooth. He talked about
14 how the WTRU was clearly the sending device and that it must be the
15 sending device that detects using a received Bluetooth signal, and ultimately,
16 why, you know, this confirmed that POSITA reading the claims would
17 understand that the detecting occurs at the sending device using messages
18 received from other nearby devices. And that's distinct from any soliciting
19 or inquiring messages transmitting --transmitted from the sending device to
20 other devices beforehand.

21 JUDGE LEE: So again -- can I frame it this way? In your view, in
22 light of this spec, it's just unreasonable to read solicit as also meaning
23 detect?

24 MR. MASON: Yes, I think that's -- yeah. I think that fairly states our
25 position, and whether the Court -- you know, the Board wants to impose a
26 negative limitation that detect is not solicit, that may be the case, but I think

1 here, just on its face, detecting is not soliciting -- is not the same as soliciting
2 and is not satisfied by soliciting.

3 JUDGE QUINN: Well, it's incomplete. There's an incomplete step
4 of detection.

5 MR. MASON: What's that, Your Honor?

6 JUDGE QUINN: Solicitation by itself is an incomplete step of
7 detection, because --

8 MR. MASON: It's an incomplete step of discovery.

9 JUDGE QUINN: Of discovery.

10 MR. MASON: Yeah. It's an incomplete step of discovery.
11 Discovery involves both soliciting and then detecting, and that's, you know,
12 reflected and understood in the art. And so here, you know, soliciting is an
13 incomplete discovery, but it -- and it certainly is not detecting.

14 JUDGE QUINN: Would you characterize the Bluetooth AirDrop
15 emission as a solicitation?

16 MR. MASON: The Bluetooth -- yes. I don't think we can dispute
17 that the Bluetooth signal that is described in this document that's coming out
18 is a Bluetooth solicitation. But what's unique --

19 JUDGE QUINN: Okay. Is that for the purpose of eliciting a
20 response?

21 MR. MASON: It's to make others aware in the vicinity, right, but
22 only if they are part of the Apple ecosystem. You know, this is an AirDrop.
23 Only if they're part of the Apple ecosystem and also only if they recognize
24 the hash will they then respond using Wi-Fi. And it's that Wi-Fi message
25 that's used for detecting.

26 JUDGE QUINN: Okay.

1 MR. MASON: And so I think -- I mean, this is an important issue,
2 but even -- right, even if Patent Owner has shown that AirDrop embodies the
3 claims, I think we've discussed the claim construction issue and the Board
4 understands that dispute.

5 There's also other evidence that we've noted, right, that suggests that
6 this -- the entirety of the AirDrop system operates over Bluetooth, or did at
7 periods of time, and other versions of AirDrop that operate only over Wi-Fi.

8 And so there's other reasons why the claims are not embodied by AirDrop.

9 But I think even if Patent Owner has showed, you know, that they
10 embody it, they also have to show that the claims are coextensive with
11 AirDrop, and so that is -- if I can invite the Board to Slide 8. And here, right
12 -- I mean, coextensiveness is another separate requirement that's imposed
13 upon Patent Owner to show. And this coextensiveness analysis requires
14 considerations of any unclaimed features and how significant they are to the
15 product and their impact on the alleged objective indicia.

16 And so on Slide 9, we have a passage from the Volvo case here. And
17 in the Volvo case, this is actually -- their facts were even better, but the
18 Board still found -- excuse me, the Court affirmed no coextensiveness. In
19 Volvo, they had a single conclusory statement from their expert that the
20 claims were not only embodied, but were also coextensive. So he opined
21 that they were coextensive and referred back to his discussion of how the
22 claims embodies -- or how the product embodies the claims. That was
23 insufficient in the Volvo case.

24 So here, we have even less than Volvo. Here, Dr. Edwards, Patent
25 Owner's declarant, did not even discuss the coextensiveness inquiry. He
26 addressed none of the unclaimed features in AirDrop, much less the ones

1 that the articles suggest were driving, and the alleged objective indicia with
2 respect to AirDrop. And that's reflected on slide 10.

3 His whole section, section eight of his expert report, Exhibit 2001, is
4 titled, The Independent Claims of the '933 Patent Cover AirDrop. So this
5 merely goes to whether AirDrop embodies the claims. And you can see --
6 you see that in paragraph 69. He's talking about whether the AirDrops
7 include the functionality recited in the challenged claims. He does not
8 address the issue at all of coextensiveness, and that alone should be fatal to
9 Patent Owner's arguments.

10 But even if not, looking at the unclaimed features in AirDrop on slide
11 11, we have privacy features relating to device visibility. We have security
12 features relating to encryption. And then we have the device integration and
13 the Apple ecosystem, which was critical to AirDrop's functionality and
14 success. And so I will turn to those and explain why those --

15 JUDGE QUINN: Speaking of ecosystem, just a question about the
16 evolution of AirDrop, I gather from the papers that AirDrop made it into the
17 mobile devices in 2013 with iOS 7.

18 MR. MASON: That is my understanding as well, Your Honor.

19 JUDGE QUINN: But prior to that, AirDrop was a feature of Macs.
20 So how does that feature -- how does that figure into the ecosystem, the
21 Apple ecosystem portion of unclaimed features?

22 MR. MASON: Of the argument, yeah.

23 JUDGE QUINN: Yeah.

24 MR. MASON: Well, I think it ties it in two -- I mean, I think what
25 you just referred to, that sort of evolution of AirDrop, right, is important in
26 two ways. I mean, one, I think if we look at Exhibit 2025, which Patent

1 Owner relies on, that only discusses the Mac version of AirDrop, okay. And
2 so -- and Patent Owner points to that as praising AirDrop. And what's
3 interesting is that's -- you know, there's no evidence that the Mac version
4 used a Bluetooth to Wi-Fi hybrid method that's claimed here, and in fact, the
5 evidence suggested only operated over Wi-Fi.

6 So the praise of that prior Mac-only AirDrop system shows that, you
7 know, the success of AirDrop had nothing to do with the claimed technology
8 here, this hybrid Bluetooth to Wi-Fi switching method that Patent Owners
9 claimed.

10 But also, it -- that evidence also shows that really it's this whole
11 Apple ecosystem which was critical to the success of AirDrop, and that's
12 because people who had -- whether it's a Mac or an iPhone or an iPad, that
13 the evidence shows that, you know, AirDrop came installed on --
14 preinstalled on all these devices, worked the same across all these different
15 devices, and we'll discuss some of the evidence. Indeed, relied on things
16 like the iCloud identity hash and other parts of -- that were integral to the
17 Apple ecosystem in order to even function, right. If you take away the
18 ecosystem, AirDrop does not function, and it certainly is not going to have
19 anywhere near the, you know, adoption that Patent Owner alleges it had,
20 right.

21 So certainly, we have to -- we can't dispute that people were using
22 AirDrop. There's articles mentioning that AirDrop was beneficial, but so
23 many of those articles say it's all about the ecosystem. You know, they say,
24 like, other people are also trying to develop wireless file-sharing technology.
25 There's no evidence that that was the same technology -- or there's scant
26 evidence that that might be the same as AirDrop, but that other technology

1 didn't succeed because it lacked the Apple ecosystem and that shows how
2 important the Apple ecosystem was to any adoption or praise of AirDrop.

3 JUDGE MURRAY: Counsel, this is Judge Murray. Your slide 16,
4 you're discussing the Apple ecosystem. Could you explain the point that
5 you're making on that slide? The slide discusses AirPods rather than
6 AirDrop. What is the relevance there?

7 MR. MASON: Yes, yes, Your Honor. So this was a slide discussed
8 in our reply, and this was a situation where -- this is Bose Corp v. Koss
9 Corp, and the cite that's there on slide 16 so I won't repeat it. And this was
10 related, as you noted, to AirPods. But it was analogous to our present
11 situation because, even there, you know, I think -- even Patent Owner had
12 shown that there were sales of AirPods, and that sales of AirPods were
13 significant, and they -- AirPods were thriving on the market. But the Board
14 found that, well, you know, if you really look at it, the success and the
15 adoption of these AirPods, the purchasing of the AirPods is driven more by
16 the Apple ecosystem and the fact that you can easily use them with all of
17 these different devices.

18 And because -- you know, and it ultimately found that, you know, the
19 Apple -- excuse me. On 16 there, right, with the Apple support system,
20 providing features such as voice assistant, firmware upgrades, and other
21 things like that, drives the AirPods product success.

22 And so analogizing -- you know, that -- it's not directly on point, but,
23 here, we have a similar situation where AirDrop was adopted because -- and
24 the evidence shows this, was adopted because the Apple ecosystem made it
25 so convenient, so predictable, so easy for users to implement the AirDrop
26 technology and to share files using that AirDrop technology.

1 And so for the same reasoning applied in that Bose v. Koss case, here,
2 there should be no -- there can be no presumption of nexus, because it's
3 really the Apple ecosystem that's leading to any adoption or praise of these -
4 - or the AirDrop feature. Did that speak to your question?

5 JUDGE MURRAY: Yes, thank you.

6 JUDGE LEE: This is Judge Lee. I have another question. I am
7 seeing that the Patent Owner only addressed secondary considerations in the
8 Patent Owner response, and in the sur-reply -- is that correct?

9 MR. MASON: That is correct. The Patent Owner only raises
10 secondary considerations. There's no --

11 JUDGE LEE: Well, what is -- well, how does that leave us? What is
12 the effect of the Patent Owner not having said anything about the prima facie
13 case on obviousness? So in light of the fact that the ultimate conclusion of
14 obviousness has to be a balance of the evidence of obviousness on one hand,
15 and the evidence of non-obviousness. So if Patent Owner didn't talk about
16 half of it, how -- where does that leave us, and --

17 MR. MASON: The fact that Patent Owner doesn't dispute the prima
18 facie case of obviousness shows just how strong that prima facie case is.
19 You know, often times, when parties or Patent Owners argue secondary
20 considerations, they first, you know, formulated attacks on the motivation to
21 combine or the presence of a certain element of the ultimate combination or
22 expectation of success, and they say -- you know, the secondary
23 considerations confirm that there really was no expectation of success or
24 motivation.

25 JUDGE QUINN: Well, you can't presume that the lack of a response
26 means that there -- that you've met your burden, because you do have a

1 burden to prove things here at a certain level. I mean, they waived an
2 argument that it doesn't --

3 MR. MASON: Yeah.

4 JUDGE QUINN: -- that it's not obvious, but it's certainly non-
5 conceding that there is a strength -- a certain strength to the arguments that
6 you've made.

7 MR. MASON: I mean, I -- I agree, yeah, the burden is still on us
8 obviously on that prima facie case of obviousness, but it's -- you know, we
9 provided, you know, a well-reasoned explanation of motivation, the
10 expectation of success, showed -- you know, the alleged improved feature
11 was this Bluetooth to Wi-Fi switch, this hybrid method. That was, you
12 know, everywhere in the prior art. And the -- I think even though it's still
13 our burden, the fact that Patent Owner has not disputed it reflects that they
14 could not identify any arguments they considered strong enough to warrant
15 bringing in this IPR.

16 So I think that does show -- does reflect on the strength of the
17 grounds here, and certainly, you know, the Board at institution analyzed --
18 and I know it's a different standard at institution, but they analyzed the
19 grounds and found that the first set of grounds rendered all challenged
20 claims unpatentable, and Patent Owner has done nothing to dispute that.

21 And so I think, you know, here, we submit there's a very strong
22 showing of obviousness. There's been no challenge whatsoever to any
23 aspect of the case for any claim, and you know, the Federal Circuit recently
24 reminded us that, you know, a strong showing of obviousness may stand
25 even in the face of considerable evidence of secondary considerations.
26 That's Purdue Pharma v. Accord Healthcare, case number 2023-1953 issued

1 December 30th, 2024. And we identified that case to Patent Owner last
2 week because it issued after our reply brief had been filed.

3 And that case was cited recently in BioNTech by the Board in
4 BioNTech v. ModernaTX, which is IPR 2023-01359, paper 86, March 5th,
5 2025. There, the Board found that there were significant objective indicia.
6 You know, this related to the Covid vaccine. Commercial success, industry
7 praise, long-felt need but that was -- that did not outweigh the strong
8 showing of obviousness in this case.

9 So I think it's important, you know, as Judge -- I guess maybe was
10 Judge Lee -- to Judge Lee's question, we have to keep in mind the balance
11 here. And here, there's such a strong showing of obviousness, and you
12 counter that with the alleged objective indicia, which are really attenuated
13 from the claims. The exhibits show that it's largely, you know, if not
14 entirely, driven by unclaimed features. And what Patent Owner focused on
15 here, right -- Patent Owner's focus, and this even came out in sur- reply, so
16 if I could invite the Board to slide 27. They focused on this Bluetooth to
17 Wi-Fi switch, and they are saying, this is what's driving all this alleged
18 praise, all this alleged success, all this alleged copying was driven by this
19 hybrid approach. And we can see that -- this is slide 27, sur-reply paper 34
20 at page 20. Patent Owner has provided multiple articles denoting the
21 success of AirDrop due to its ability to quickly locate nearby devices using
22 Bluetooth and subsequently send files over Wi-Fi. So in its own sur-reply,
23 Patent Owner is sort of linking its objective indicia to this Bluetooth to Wi-
24 Fi switch.

25 And again, that same thing, sur-reply at page 24, Patent Owner has
26 been clear the speed and convenience of AirDrop is directly the result of the

1 claimed Bluetooth for proximity detection and Wi-Fi for fast file transfer.
2 They don't point to any other aspects of the claim in discussing this. You
3 know, we don't agree that the exhibits show that any praise was due to this
4 Bluetooth to Wi-Fi switch or that any copying was of this Bluetooth to Wi-
5 Fi switch, but Patent Owner seems to think that was the most important
6 thing and that was what's driving all this alleged objective indicia. But
7 under Ormco and other Federal Circuit precedent, if the feature that creates
8 the commercial success was known in the prior art, the success is not
9 pertinent. So all of this objective indicia is just -- at least, it's not pertinent,
10 at best, it's very weak and certainly does not outweigh the strong showing of
11 prima facie obviousness.

12 And I think if we turn to slide 28, just on this point, right, in the
13 petition, you know, we included a section explaining that Bluetooth for
14 discovery, Wi-Fi for data transfer was well-known in the art, and that was,
15 you know, one element of our obviousness argument. And so this is Petition
16 paper 2, pages 4 to 5. Patent Owner has not disputed that, nor has its expert.

17 So I think -- I see I've used up almost 40 minutes of my time. Is that
18 correct?

19 JUDGE QUINN: Yeah. You have 20 more minutes.

20 MR. MASON: Yeah. But -- yeah, but if there are other -- if there
21 certainly are questions, I would definitely entertain those questions now.

22 JUDGE LEE: One last question from me. It's Judge Lee. Let's
23 hypothetically -- hypothetically, let's say Patent Owner persuades the Board
24 there's substantial secondary considerations of non-obviousness that
25 overcomes the Petitioner's prima facie case of obviousness on grounds one
26 and two. Where are we then? Because the petition has a whole bunch of

1 other grounds, right. One and two are just a small number of the total
2 number of claims. There are at least six, seven, eight other grounds, or at
3 least three to four other big groups of grounds.

4 Hypothetically, if that were to happen to grounds one and two, does
5 that mean the Board's final decision would now, for the first time, tackle all
6 the issues that are involved there, and then issue a final written decision one
7 way or the other? Yeah, that's the question. Or would something be amiss
8 in doing that, because then we don't have briefing in terms of the Patent
9 Owner response and a reply or anything like that. So that's the question.

10 MR. MASON: Yeah. So that is correct, Judge Lee. If, assuming
11 hypothetically, that the Board found the objective indicia outweighed the
12 strong showing of obviousness as to Grounds 1 and 2, which involve
13 McKillop -- Ahya and McKillop, then it would have to also resolve whether
14 those objective indicia outweighed the showing of obviousness in grounds
15 three and four, which were the Hoddie and Hinckley references.

16 And so -- and I think especially for ground three, I mean, I know that
17 the institution decision did not address this, but Hoddie itself arguably may
18 be even a single reference 103. We didn't present it that way, but it's very
19 strong on all of the claim elements. And so that would have to be
20 considered in any final written decision is grounds one and --

21 JUDGE LEE: Am I looking at the wrong case? Because my table of
22 grounds in the DI goes from Ground 1 all the way up to 12.

23 MR. MASON: Yeah. I think -- I was referring to what I believe ends
24 in -00305, and I can confirm that fact.

25 JUDGE LEE: I'm looking at the DI for the 305 case.

26 MR. MASON: Okay. Then I --

1 JUDGE LEE: That has a broad number of grounds.

2 MR. MASON: Then I was referring to 306. I apologize, Judge Lee.

3 Yeah, but in any event, there are two sets of grounds. I think that's the
4 important thing. There are two sets of ground for the '933 patent because of
5 some oddities and claim language. I think we included some grounds just to
6 ensure that certain elements were -- really could not be disputed, because it -
7 - depending -- you know, I think there were a couple instances where a claim
8 construction, we thought, well, Patent Owner could argue this term means
9 either this or this, so we'll add another ground to confirm that it's obvious in
10 either event.

11 So but, yes, to the overall question, the Board would have to address
12 both sets of grounds in your hypothetical to --

13 JUDGE LEE: Yeah, we do have to address it, but what if we have an
14 odd situation where you would have a final decision without any briefing, no
15 Patent Owner response addressing it and no reply, no sur-reply? So
16 basically, we'd be -- and we can't look at it and preliminary reply either. So
17 we'd just be looking at the petition?

18 MR. MASON: Well, yeah, you would look at the petition. And I
19 think, here, in this situation, to my mind, I'd have to -- this is the first time I
20 considered it, but I would think that would be okay because, here, Patent
21 Owner, even as to grounds one and two -- or sorry, the first set of grounds, I
22 will say, did not present any arguments against the prima facie case of
23 obviousness, as previously noted.

24 And so -- you know, and they certainly could've -- you know, they
25 certainly had the opportunity, even though grounds -- the second set of
26 grounds involving Hoddie and Hinckley were not discussed in the institution

1 decision, the Board instituted on all sets of grounds, right. That's what the
2 rules required and precedent requires. And so Patent Owner had the
3 opportunity to address those as well in its Patent Owner response, and then
4 we would've had a chance to reply.

5 Here, because Patent Owner made no -- included no discussion
6 whatsoever of prima facie obviousness as to the first set, we -- I mean, I
7 don't know what we can presume, but they had the opportunity to also
8 present on the second set of grounds. They did not do so. And so we did
9 not include anything in our reply.

10 And so I think it would be, again, appropriate to resolve this just
11 based on what's in the petition, because Patent Owner does not contest the
12 grounds presented in the petition.

13 JUDGE LEE: Okay, thank you.

14 MR. MASON: If there are no further questions, I will reserve the
15 remainder of my time.

16 JUDGE QUINN: Thank you.

17 MR. HEJNY: Your Honors, may it please the Board, Scott Hejny on
18 behalf of Patent Owner InterDigital.

19 If I may address some of the latter comments first. InterDigital has
20 not conceded to the obviousness of this claim. The focus on secondary
21 considerations is due to the fact that secondary considerations has been
22 determined by the Federal Circuit to be one of the best checks against
23 hindsight bias, and that's what we have here. We have a set of inventors,
24 who as early as 2008, came up with an invention directed to, among other
25 things, Bluetooth detection of proximate WTRUs, followed by, eventually,
26 Wi-Fi transfer of media between those WTRUs.

1 The claims were broad, and there is prior art disclosure related to
2 Bluetooth and Wi-Fi. But as the Board is aware, there are only one or two
3 references and one or two combinations in this proceeding. So what
4 Microsoft is relying on is an obviousness combination, and what's the root
5 obviousness. Well, the root of obviousness is hindsight, and secondary
6 considerations provide a guard against that hindsight, and it's recognized by
7 the Federal Circuit and by the PTAB as the most cogent and probative --
8 sorry, the most probative and cogent evidence of record that may often
9 establish an invention appearing to have been obvious in light of the prior art
10 record was not. And that's the Fox Factory case, Your Honors, and it's
11 referenced on page 7 of Patent Owner's response.

12 Now, we've talked about several different issues, and I want to move
13 forward. I want to talk about the first issue that we have. So there's only
14 one issue that Microsoft disputes with respect to the claim limitations for the
15 independent claims of the '933 and '054 patents, and I'll point out for the
16 Board that only grounds one through three challenge the independent claims
17 of the '933 and '054 patents. The one dispute relates to the detecting by the
18 WTRU using Bluetooth for plurality of WTRUs in proximity to that WTRU.

19 And moving forward, it seems to me what I'm hearing from counsel
20 for Microsoft, and what I've seen in the briefing, is that Microsoft is
21 suggesting that only Bluetooth can be used in the detection process. Well,
22 let's talk about how Bluetooth works. As everyone is aware, when you turn
23 on Bluetooth on your phone, the phone is emitting a hash value related to
24 that specific phone, and that's how different Bluetooth devices can detect
25 and recognize proximate devices.

1 So if I turn on my iPhone and Judge Quinn were to turn on her
2 iPhone, each of our iPhones is emitting a different hash value related to that
3 iPhone. You may have seen this when you're trying to pair your iPhone
4 with your car. It will recognize that unique identifier from your phone, and
5 that is how you detect approximate WTRU. There is no transfer of data in
6 that initial detection process, and that is the distinction between detecting
7 and what's shown in figure 4, which happens later after the detection process
8 has already taken place.

9 But I will point out that what Microsoft is doing here is trying to read
10 in a negative limitation. I think we heard counsel mention that in his
11 argument. They were suggesting that detecting by the WTRU can only be
12 done using Bluetooth. I think it's without dispute between the parties that
13 Bluetooth is absolutely used in Apple AirDrop, and it's certainly used in the
14 invention for detecting proximate WTRUs. The disclosure and the
15 specification is clear. That's the first sentence in the abstract, in fact, Your
16 Honors, in Exhibit 1001.

17 So it's black-letter law that limitations should not be read into the
18 claims. Microsoft never contested, either in its petition or its reply, that
19 there was an issue of claim construction to be decided by this board. Only
20 now, in oral argument, and in the essence of the briefing that we saw in the
21 reply, do we see this claim construction issue suddenly arise. I believe that
22 if you look at the reply, there is no mention, there is no claim construction
23 section. The claim construction issue only arises within the body of their
24 briefing as they're trying to argue that Apple AirDrop is not the same as the
25 claim had mentioned.

1 JUDGE QUINN: Well, I mean, counsel was being -- pardon me, but
2 so what? I mean, we have this all the time where Petitioner did not
3 anticipate that you would raise this issue in your response, and it seems like
4 it's an implied construction anyway. It's how you are applying the plain text
5 of the claim onto a device and how it works. So you have different ideas on
6 how this claim language should be read in accordance with how AirDrop
7 works. And it's up to us to decide whether we're going to construe this term
8 or not to bridge the gap between disagreements that we see both of you have.

9 And I want you to address what portion of the claim -- for example, it
10 says using Bluetooth for detecting, and what we're focusing on is whether
11 the solicitation that is described in the claims is part of the detecting or is it -
12 - is, solicitation itself, detecting.

13 MR. HEJNY: Your Honor, InterDigital's position is that the act of
14 solicitation is detecting. The later transfer of information from the detected
15 device back to the sending WTRU is a separate process, and that separate
16 process may be, for example, an AirDrop. It may be conducted using peer-
17 to-peer Wi-Fi. But the actual detection of proximate WTRUs is done
18 without the presence of Wi-Fi. It is strictly a Bluetooth function, and that's
19 clear from the Apple documents.

20 JUDGE QUINN: So what portion is attributable to the Bluetooth if
21 what -- all you have is the beacon with the hash value?

22 MR. HEJNY: It kind of harkens back to Judge Lee's natural disaster
23 example, and the way I thought about it was with Marco Polo. You have
24 one phone saying Marco, you have another phone saying Polo, I'm here, and
25 that is strictly a Bluetooth low energy process, the BLE process, and it's
26 actually described in Exhibit 1053. It's --

1 JUDGE QUINN: I mean, the difference here is that the Polo that
2 comes back is not coming from Bluetooth.

3 MR. HEJNY: Well, what's coming back, Your Honors, is something
4 separate from that initial detection. Now, obviously, once you have
5 connection -- once you have the detected device, then additional
6 information, at some point, has to be shared with the sending device so the
7 sending device can determine what protocol might be best to transmit media
8 from one to the other. So for example, the sending device in the patent may
9 send out a detection or may receive a detecting signal from a proximate
10 WTRU, a hash symbol from an approximate WTRU, and then at some point,
11 a decision has to be made as to what technology is best to then have further
12 transmission of information between those two devices.

13 And that second transmission, where you have environment
14 information that's collected, happens after the initial detection. So there's an
15 initial detection process and the claims clearly say detecting using Bluetooth,
16 and this is -- Your Honor, this is comprising claim. There could be more
17 involved in the detecting process, but you have to have Bluetooth be part of
18 that detecting process, and that's what's critical from these claims and -- that
19 contradicts Microsoft's arguments.

20 JUDGE QUINN: So you're reading the claim to say that it's using
21 Bluetooth at least for a portion of the detecting?

22 MR. HEJNY: Yes, Your Honor, that is allowable as the claim is
23 written.

24 JUDGE QUINN: Are you rewriting the claim to say that?

25 MR. HEJNY: No, Your Honor. It says -- the claim says detecting
26 using Bluetooth, and because of that --

1 JUDGE QUINN: Well, you don't disclose -- where in the
2 specification do you disclose a discovery or detection or solicitation process
3 that uses Bluetooth for part of it but not the whole thing?

4 MR. HEJNY: Well, Your Honor, the specification makes clear that
5 the communication peripherals can include one of four technologies for
6 communication. You either have a 2G or a 3G second-generation modem,
7 Bluetooth or Wi-Fi. And the claim says detecting using Bluetooth, but
8 there's nothing prohibiting any other technology from being used in that
9 detection process.

10 JUDGE QUINN: Yeah. But do you describe another technology
11 being used for the detecting or Bluetooth being only a part of the detecting?

12 MR. HEJNY: Your Honor, I believe the disclosure in the
13 specification -- this kind of goes back to Judge Jameson's comment is that
14 the detection is disclosed using Bluetooth.

15 JUDGE QUINN: Can you point me to --

16 MR. HEJNY: Sure.

17 JUDGE QUINN: -- the part of the claim -- the patent that you're
18 referring to?

19 MR. HEJNY: Sure. So the first sentence in the abstract, detecting
20 with Bluetooth, wireless transmit receive units, WTRU, in proximity to a
21 WTRU as disclosed. And that's on page 1 of Exhibit 1001.

22 JUDGE QUINN: Is that it?

23 MR. HEJNY: Your Honor, there are disclosures in the patent
24 specification that talk about the service discovery protocol in Bluetooth, in
25 Bluetooth Low Energy. There are absolutely service discovery protocols.
26 And so that would be Column 5, lines 57 through in the neighborhood of 60

1 where it states in addition to the SDP information directly discoverable by
2 the WTRU, each candidate, WTRU may exchange additional locally
3 gathered information.

4 So that SDP information that is directly discoverable by the WTRU is
5 related to Bluetooth because Bluetooth is an SDP. And again, that's clearly
6 spelled out in Exhibit 1053 that was submitted as part of Microsoft's
7 briefing.

8 JUDGE QUINN: Do you have evidence of what you described, about
9 Bluetooth, the very specific part of all that you described earlier?

10 MR. HEJNY: About the hash value --

11 JUDGE QUINN: Yes.

12 MR. HEJNY: -- exchange? That is also included in Exhibit 1053,
13 Your Honors, which is a submission that was filed by Microsoft in
14 connection with this petition.

15 JUDGE QUINN: Does your expert describe this operation?

16 MR. HEJNY: Your Honor, that I am not sure about. I'll have to get
17 back to you on that.

18 JUDGE QUINN: Okay.

19 MR. HEJNY: Additional evidence, Your Honor, moving onto the
20 Slide 11, InterDigital's presentation does discuss the short identity hash. So
21 when a user chooses AirDrop as a method for sharing an item, the sending
22 device emits an AirDrop signal over BLE which is Bluetooth Low Energy
23 that included the user's AirDrop short identity hash.

24 The other Apple devices that are late, in close proximity and have
25 AirDrop turned on detect the signal. And then we get into the response.

1 With that signal, when the detecting is done, either via Bluetooth or at least
2 in part via Bluetooth.

3 And that is commensurate with the claims. And then here also, Your
4 Honor, on Slide 14, we have cites to Exhibit 2011. This is, again,
5 documentation from the Apple website discussing the operation of AirDrop
6 and states that AirDrop uses Bluetooth to discover nearby devices and Wi-Fi
7 to transfer data between devices.

8 So even AirDrop here in Apple documentation is drawing a line
9 between using Bluetooth to discover and Wi-Fi to transfer data. And this is
10 why InterDigital contends that AirDrop embodies Claims 1 and 23 of both
11 the 933 and 054 Patents.

12 Now we heard a lot of discussion about nexus and presumption of
13 nexus and we heard a lot of discussion about unclaimed features. The key to
14 remember is that the unclaimed features must be critical and material
15 impact, materially impact the product's functionality.

16 And that's from the Quanergy Systems case and, again, this is
17 InterDigital Slide 19. We heard a discussion about the Bose vs. Koss case
18 and counsel said that Bose vs. Koss is analogous and InterDigital takes issue
19 with that.

20 And invites the Board to actually consider the reasoning in that case
21 because it's important because this is kind of where the idea of an Apple
22 ecosystem was given rise. Essentially what happened in that case was there
23 was a claim limitation related to firmware updates.

24 It was limitation 1K in the claim that was in dispute in the Bose vs.
25 Koss case. And the Patent Owner claimed that the limitation was critically
26 important to the functionality of the system. And when the Board found that

1 the Apple ecosystem was important, it was in relation to that one claim
2 limitation related to network updates.

3 It didn't have anything to do with the fact that the AirPods system
4 operated within the Apple ecosystem in its entirety. And the issue that we
5 have here with respect to this Apple ecosystem argument is that the law says
6 that a product is coextensive with the claimed invention if the product is the
7 invention that is disclosed and claimed.

8 And that's the Demaco case, 851 F.2d 1387, 1392, but the focus here
9 has to be the functionality of the challenged claims. What I see Microsoft
10 doing is trying to introduce something called, I'm going to call it the Apple
11 exception.

12 The line of argument is that if an innovator has an invention like we
13 have here from an individual and it is embodied in an Apple product, then
14 even though that InterDigital system is embodied in the Apple product, the
15 Apple product can't be used for purposes of secondary considerations
16 because the Apple ecosystem is so important.

17 It's an exception that would subsume the rule. It just places an unfair
18 burden, places an unfair burden on InterDigital and any other innovator
19 whose system is embodied in an Apple device and then that Apple device is
20 used to show secondary consideration.

21 JUDGE QUINN: Well does the, does the AirDrop feature on Apple
22 devices work with non-Apple devices?

23 MR. HEJNY: No, Your Honor. And that's just the nature of the
24 Apple system. AirDrop is included in the control system of each and every
25 iPhone. It's been that way since the introduction of iOS 7 back in 2013.
26 And it's made to operate with other iPhones.

1 But what we've seen in the documentation that InterDigital has
2 submitted in connection with its secondary considerations analysis is that
3 other competitors are trying to find a way to copy the AirDrop functionality
4 of Bluetooth detection and Wi-Fi data transmission in order to play catch up.

5 And as recently as January of 2024, even after this Petition was filed,
6 Samsung and Google were still trying to come up with their own system.
7 And that may involve having an application that is installed on each and
8 every Android phone in order to enable this communication between devices
9 using Bluetooth and Wi-Fi.

10 But the fact that this is, this invention is embodied in an Apple device
11 which operates on a proprietary operating system, Microsoft is suggesting in
12 essence, maybe not in words, but in essence that if that's the case, then
13 InterDigital should not be allowed to rely on that Apple device or that Apple
14 functionality like AirDrop in order to show secondary considerations
15 because it's encompassed within only the Apple ecosystem.

16 JUDGE QUINN: Well I don't think that that's what they're saying. I
17 mean, you raised the issue of secondary consideration so it is your burden to
18 show that the commercial success of the product that you are accusing is due
19 to the patented invention.

20 And to the extent you are relying on a feature of a phone, you know,
21 it's Apple's phone so you're relying on Apple's commercial success of
22 selling their iPhones to have this feature and this is just one of the features.

23 So it's just part and parcel of the commercial success that you are
24 attaching to the popularity of the iPhone versus a particular contribution that
25 AirDrop makes to the sales of those iPhones. And I believe that that's where
26 you're going with this, that the evidence that you have is all for commercial

1 success, not necessarily the ecosystem, and be discounted because
2 everybody else also has that feature.

3 MR. HEJNY: Well, Your Honor, unfortunately, Apple doesn't release
4 information related to the commercial success of AirDrop which is why we
5 couldn't present any direct evidence as to the financial ramifications of the
6 inclusion of AirDrop in an iPhone.

7 But the presence of AirDrop within that phone, that was the reason
8 that we submitted the documentation. We were showing, the documentation
9 was submitted to show that there are others in the industry, including
10 Google, Microsoft, Samsung and others that they're trying to play catch up.

11 Because they're trying to catch up with the functionality. Of course
12 they want to catch up with Apple's commercial success.

13 JUDGE QUINN: Do you have evidence of an effort to copy other
14 than what you've shown, that there is some marketing material about them
15 looking for something similar? Is there an effort to actually copy?

16 MR. HEJNY: Well the evidence has been presented in the briefing in
17 the Patent Owner response, Your Honor, and there's no, obviously we don't
18 have any emails from Google or Samsung saying hey, we have to step back
19 and copy what Apple is doing.

20 That information was unfortunately unavailable to us by the nature of
21 these proceedings. But if you look at the documentation from industry
22 analysts from Forbes, from MacWorld, they say that essentially Google
23 and Samsung are trying to mimic the AirDrop functionality because they
24 want to include it in their phones because it has been successful.

25 And the reason it's been successful is because it enables users to
26 connect approximate WTRUs without touching them, using Bump or

1 without touching them to use NFC technology to share files without having
2 to download them to a computer and then email them or send them via, for
3 example, MMS.

4 So the documentation that we've shown hasn't necessarily been
5 directed to show the commercial success of AirDrop although it does show
6 that indirectly, but it does show the efforts by others in the industry to try
7 and mimic this technology and import it into their devices.

8 JUDGE MURRAY: Counsel, this is Judge Murray. Do you have, is
9 any of the evidence you've presented showing that these other players are
10 trying to copy the technology in the patent as opposed to trying to copy
11 AirDrop or the iPhone itself?

12 MR. HEJNY: Your Honor, I don't have any evidence showing that
13 they're trying to copy the patent. And this is kind of a unique instance, Your
14 Honor. I'm glad you brought this up because what we have here is we don't
15 have an InterDigital product that embodies the patent claims.

16 But the Federal Circuit has held that it's appropriate to show that this
17 sort of, it could show that a third-party devices incorporates the technology
18 from the patent and the success of that third-party device could be used to
19 show commercial success.

20 And that case has been cited in the briefing and that is Brown and
21 Williamson Tobacco Corporation vs. Phillip Morris, it is 229 F.3d 1120 and
22 the pincite is at 1130. And in that document that's a Federal Circuit case
23 from 2000 and the Federal Circuit states -- give me just a moment, Your
24 Honor.

25 All right, Your Honor, the case states and this is the Federal Circuit
26 speaking, our case law provides the success of an infringing product that's

1 considered to be evidence of the commercial success of the claimed
2 invention.

3 So here we're having to rely on the embodiment of the elements of the
4 patent claims in AirDrop in order to show commercial success and tie that
5 commercial success and secondary considerations from AirDrop back to the
6 patented technology.

7 But short answer for your question, Your Honor, I don't have any
8 evidence showing that anyone tried to copy the patent claims of the '933 or
9 '054 Patents.

10 JUDGE MURRAY: Counsel, can you explain how we can measure
11 commercial success without having commercial data?

12 MR. HEJNY: Your Honor, I think the best way to do that in light of
13 the evidence that's been presented is to consider the commentary from
14 reputable folks in the industry. And here we have, we submitted a plethora
15 of articles in our briefing in the Patent Owner response.

16 And we refer to some of it in the sur-reply related to AirDrop and how
17 well it's been accepted and how others in the industry are moving in that
18 direction because it has set the standard for wireless transmission of data
19 between two proximate WTRUs.

20 JUDGE MURRAY: All right and I wanted to circle back to your
21 Slide 20 which is entitled, None of AirDrop Unclaimed Features Are Critical
22 Or Material To Its Functionality. Can you explain why privacy and security
23 are not critical to file transfer?

24 MR. HEJNY: Well the claims themselves, Your Honor, address
25 security and to some extent privacy. If you, we've been talking a lot about

1 the detect and transfer limitations, but if you look at the claims and I'm
2 referring to Slide 8, I think let's just go back to Slide 6.

3 So this lays out the independent claims of Claims 1 of the '933 and
4 '054 patents. And in each case, there has to be an acceptance by the device
5 to which the data will be transferred in order for that data transfer to go
6 through.

7 So you have to have a request to transfer and then an acceptance. So
8 there is security already built in because unless the recipient accepts the
9 message, the data can't be transferred to them. And further, Your Honors, if
10 there are dependent claims, for example, the '933 patent and these claims are
11 the same as in the '054 patent related to encryption and other security
12 elements

13 So the patent itself considers the security elements including Claim 1
14 and therefore these unclaimed features are actually claimed features and
15 don't have any impact on the secondary considerations analysis because
16 they're already included in the patents themselves.

17 JUDGE MURRAY: Have you argued in your briefing that security is
18 a claimed feature?

19 MR. HEJNY: Yes, Your Honor. We mentioned that in the sur-reply.

20 JUDGE MURRAY: And would that be true of encryption as well?

21 MR. HEJNY: Yes, Your Honor. I believe we mentioned that in the
22 very same section.

23 JUDGE MURRAY: Thank you.

24 MR. HEJNY: So circling back, we don't believe that the claim should
25 be read to require only Bluetooth for detection. As we discussed, Apple

1 documentation, the patent itself states that Bluetooth can be used for
2 detection.

3 Without a doubt there are going to be further communications. I
4 mean, that's stated later in the claim when media is actually transferred, but
5 before that media transfer takes place, where will be additional
6 communications between the devices.

7 The unclaimed features are not significant. They're not, they don't
8 materially impact the product's functionality. And again, that's the
9 quarantine system. And when it comes to impacting a product's
10 functionality regardless of what system that you're operating on, the analysis
11 has to be on the claims themselves.

12 And what do the claims themselves recite? They recite detection
13 using Bluetooth, they discuss processing a touch-screen input, sending a
14 request to transfer, accepting that request to transfer and then transferring
15 data via Wi-Fi.

16 And it's unclear to me just based upon the plain reading of the case
17 law, how those elements of the claim are materially impacting a product's
18 functionality if that critical factor that Microsoft wants us to consider is the
19 Apple ecosystem.

20 You have to keep your focus on the claim language. And remember,
21 unclaimed features are significant only if they materially impact the
22 product's functionality. And when you're looking at the patent itself, the
23 ability to transfer information via Wi-Fi after Bluetooth detection is that
24 critical functionality.

25 And something else to keep in mind, the patents themselves talk about
26 transmission via Bluetooth and Wi-Fi. Those are both standard

1 communications protocols that are accepted throughout the industry. So
2 there's no doubt that others in the industry could take the claims of the '933
3 patent and include them in their products.

4 Now, would they infringe? Well, yes. But we're not here to discuss
5 infringement. But they're standards-based technologies, they're not confined
6 to a specific issue like we had in Bose v. Koss where the Apple ecosystem
7 was so critical because of the ability to have firmware updates over this
8 Apple ecosystem.

9 And again, that was a limitation that was made critical in the
10 discussion of that case. And again, I would invite the Board to review the
11 Bose vs. Koss case and pay particular attention to Pages 107 through 111.

12 The citation for that case is on Microsoft Slide 16, Bose Corporation
13 vs. Koss Corporation, IPR 2021-00680 paper 37. And again, that's a 2022
14 PTAB decision.

15 JUDGE MURRAY: Counsel, this is Judge Murray again. Just a
16 clerical question.

17 MR. HEJNY: Yes, Your Honor.

18 JUDGE MURRAY: The Petition refers to the challenged claims in
19 these two cases as being entitled to an effective filing date of December
20 23rd, 2008 which is the date of the provisional.

21 MR. HEJNY: Yes, Your Honor.

22 JUDGE MURRAY: I understand that you're asserting the priority
23 date of December 22nd, 2009, the date of the first non-provisional. Is that
24 correct?

1 MR. HEJNY: So, Your Honor, these are different cases. The issue
2 regarding priority date is related to IRP 2024-537 and 538. In this case,
3 there was no challenge to the priority date made by Microsoft.

4 And therefore, the presumptive priority date is the 2008 filing date.
5 But regardless, whether the filing date is 2008 or 2009, there is adequate
6 written description support in the specifications to support the claims as
7 issued.

8 JUDGE MURRAY: Yes, I understand your position. That's why I
9 characterized it as a clerical question because if we do refer to it or if we do
10 have a consolidated final written decision, I would like to correctly state
11 your position with regard to these cases.

12 MR. HEJNY: Yes, Your Honor. And because Microsoft has made no
13 challenge to the priority date in the 305 and 306 cases, we would argue that
14 therefore the patent claims are entitled to their earliest priority date which is
15 in 2008. But --

16 JUDGE MURRAY: Thank you.

17 MR. HEJNY: -- but to be honest with you, Your Honor, it's a
18 distinction without a difference because the 2009 date is fine to preserve the
19 priority of these patent claims.

20 JUDGE MURRAY: Understood.

21 MR. HEJNY: Another important point to make regarding the Apple
22 ecosystem is this idea that, again, the success of the AirDrop system is
23 closely tethered to the Apple ecosystem. Well if that's the case, then it
24 would seem that every new service offered by Microsoft, sorry I said that,
25 every new service offered by Apple would also be successful because of that
26 close tie to the Apple ecosystem.

1 Well that's not the case. And we've included three exhibits showing
2 criticism of, for example, Apple apps, how terrible Apple apps are, why
3 Apple music missed a beat, denigrating Apple music and then talking about
4 how Apple Vision Pro when introduced by Apple was determined to be in an
5 unfriendly package.

6 So if the Apple ecosystem is so important to the success of a product
7 like Apple AirDrop, how is it also not important to these applications and
8 why have these applications not received the same sort of universal acclaim
9 that Apple AirDrop is seeing?

10 And the truth is, Your Honors, is because Apple AirDrop embodies
11 the novel elements of the claims that were filed by InterDigital when two
12 InterDigital inventors were sitting in their room and trying to find out how
13 can we send communications from my device to your device without having
14 to go to computer and email you this file?

15 They came up with this idea of using Bluetooth detection of that
16 nearby device and then Wi-Fi transfer of data after send a request and accept
17 step in that process as embodied in the claims of the '933 and '054 patents
18 and that invention has since taken off.

19 And it's been extremely successful and it has been used by Apple
20 AirDrop. And then I want to make one other point.

21 JUDGE QUINN: Well Counsel, there's a difference here between
22 industry praise and commercial success. So I'm thinking you're kind of
23 mingling the two.

24 MR. HEJNY: Yes, Your Honor. I had moved on to industry praise,
25 but Microsoft relies on these extraneous factors for both nexus and
26 secondary considerations. And when it comes to secondary considerations,

1 that was the point I was making just now is that if an unclaimed feature or
2 extraneous factor like the Apple ecosystem was so important, well then why
3 did these other Apple technologies that were launched I mean the Apple
4 ecosystem not also receive a claim because they were part of the overall
5 system?

6 And then when it comes to the nexus arguments, that is where I was
7 drawing the line with the Bose vs. Koss case and drawing the distinction that
8 essentially Microsoft is arguing that you can't have commercial, an
9 innovator can't have commercial success if their invention is taken and put
10 into an Apple product because somehow this Apple ecosystem governs all
11 and it is only the Apple ecosystem that is responsible for the nexus to the
12 invention.

13 The Apple ecosystem doesn't play that part. The invention was used
14 in the Apple system. We've mapped it out in the claim charts that are
15 included in the Patent Owner response and this is a different circumstance
16 than what you see in the Bose vs. Koss case.

17 That's the point I was making there. The second point, Your Honor,
18 was with respect to the Apple ecosystem and industry praise. And weren't
19 these, why weren't these other technologies like Apple Music, Apple Maps,
20 why weren't they praised if the Apple ecosystem is so important and it is
21 such an important factor to be considered in the secondary considerations
22 analysis?

23 JUDGE QUINN: But you, okay so I'm confused. You have the
24 burden to show secondary indicia.

25 MR. HEJNY: Yes, Your Honor.

1 JUDGE QUINN: Okay so I want to hear your best argument for the
2 industry praise for the patented features that are allegedly in AirDrop.

3 MR. HEJNY: Yes, Your Honor. And that's spelled out in the briefing
4 in the Patent Owner response, but some of the exhibits are shown on
5 InterDigital Slide 32. How iOS 7's AirDrop to transform the way we share.
6 It's a better way to share text or email.

7 AirDrop review, it's a fantastic innovation and what you have here,
8 Your Honor, is a series of articles made by industry commentators which is
9 distinct from the reviews that are cited in Microsoft Nested Bean case, but
10 you have reputable publishers discussing the success of AirDrop and how it
11 has turned the industry on its ear.

12 JUDGE QUINN: I wanted to ask you about that. Who are these
13 reputable publishers so that we can give the appropriate weight to the
14 commentary?

15 MR. HEJNY: Sure, Your Honor. Two are Forbes and MacWorld.
16 And those are the two most, two of the most reputable commentators in the
17 industry when it comes to Apple devices. And I can give you a full list,
18 Your Honor, and they are, I can give you the page range and the Patent
19 Owner response if that would be helpful.

20 So the industry praise, Your Honor, is discussed in the secondary
21 consideration sections which is in the Patent Owner's response beginning on
22 Page 37 and continuing to the end of the brief which is Page 51. And these
23 articles are cited and the citations are identified in the list of exhibits.

24 And they identify the industry commentators, Your Honor, on whom
25 we relied to provide information, for example, such as CNET, Forbes,
26 MacWorld, Digital Trends, The Verge, there's a large number, Your Honor,

1 of commentators that have weighed in on this experience that the industry
2 has seen with AirDrop and has praised it consistently for its success.

3 JUDGE QUINN: I have a question for you about your, the brief part
4 of your response that talks about your relationship and the license
5 agreement.

6 MR. HEJNY: Yes, Your Honor.

7 JUDGE QUINN: And what weight do we give to them without
8 actually seeing the license agreement?

9 MR. HEJNY: Unfortunately, Your Honor, I'm afraid you can't give it
10 much weight. We attempted to negotiate with Apple a protective order in
11 this case. So a license could be submitted to the Board. We were
12 unsuccessful in those negotiations.

13 Counsel for Microsoft insisted on a provision whereby in-house
14 counsel for Microsoft could have access to that license agreement upon a
15 reasonable request and we didn't want to agree to that, Your Honor, and then
16 come back and tell them no if we decided that we didn't want to.

17 I felt that would have been using it, the protective order as a sword
18 and a shield. Therefore, agreement couldn't be reached with counsel for
19 Apple for the release of the license in question.

20 JUDGE QUINN: Yes, thank you for that clarification.

21 JUDGE LEE: Mr. Hejny, it's Judge Lee. I have a question. What
22 exactly is the feature in AirDrop that, in Patent Owner's view, made
23 AirDrop so commercially successful and worthy of industry praise?

24 MR. HEJNY: Your Honor, thank you, Judge Lee. To me that is the
25 Bluetooth detection and Wi-Fi transfer of data. That is the crux of the
26 invention that is disclosed in Claim 1 of both the '933 and '054 patents.

1 I know we've heard argument from Microsoft that well look Bluetooth
2 detection and Wi-Fi data transfer were both known in the industry and you
3 can't rely on elements known in the prior art to support secondary
4 considerations and not obviousness.

5 But that's not true because there is no 102 reference out there or
6 Microsoft would have submitted it in this proceeding that disclosed both
7 Bluetooth detection and Wi-Fi transfer of data. So I disagree with
8 Microsoft's argument on that point. And those elements of the claims, Your
9 Honor, are the most important aspect of the '933 and '054 patents.

10 JUDGE LEE: Thank you. I understand that, but just reading over
11 your Patent Owner response and it doesn't mesh with what you just told me.
12 I can't find anything in here either, you know, saying that commercial
13 success is due to the Bluetooth detection and Wi-Fi transfer. Can you point
14 me to where in the Patent Owner response points that out?

15 MR. HEJNY: Yes, Your Honor. Give me just a moment.

16 JUDGE LEE: I've seen all this write up about other people have to
17 contact their phones together whereas in AirDrop you don't. It's all wireless.
18 That seems to be the feature that everyone wants. That if you don't want to
19 have to put your phones together, you can do it wirelessly.

20 MR. HEJNY: Yes, Your Honor. Can I take that question under
21 advisement and have a look at it as I sit down and come back to it --

22 JUDGE LEE: Sure.

23 MR. HEJNY: -- in my surrebuttal?

24 JUDGE LEE: Sure.

25 MR. HEJNY: Does the Board have any other questions for me before
26 I reserve the rest of my time for surrebuttal? Otherwise, I will cede the floor

1 to Microsoft. Keeping in mind that I have a pending question from Judge
2 Lee. Thank you, Your Honors.

3 JUDGE QUINN: Let me know when you're ready.

4 MR. MASON: Okay. I'm ready. May it please the Board, I'd like to
5 begin with what Patent Owner I think has admitted. We don't see, in line
6 with Judge Lee's questions, we don't agree that the evidence shows this, but
7 Patent Owner has admitted that the alleged crux of the invention here is this
8 Bluetooth for detection Wi-Fi for transfer.

9 It's admitted that's the critical functionality driving any praise of
10 AirDrop. And so that alone is dispositive on secondary considerations here
11 under Ormco and cited on Slides 27 and 28 of our demonstratives and other
12 cases cited in our reply.

13 In short, they're pointing to something that is undisputedly known in
14 the prior art as the crux of the invention here, as the crux of what's driving
15 secondary considerations. So legally, those secondary considerations are
16 alleged objective indicia to be given no weight at all.

17 Second, turning to the issue of unclaimed features and if I could invite
18 the Panel to Slide 12, oh, yes, there we go. Privacy, the claims do not
19 address privacy. I didn't see anything in their briefing showing that the
20 claims address privacy.

21 Maybe I overlooked it and they can point to it, but I didn't see
22 anything in the sur-reply addressing that privacy is an unclaimed feature.
23 And if we see here on Slide 12. Right? This is one of Patent Owner's own
24 articles, Exhibit 2027, explaining that the privacy feature ensures you won't
25 just appear in other people's AirDrop panels as you walk around. Right?

1 So is that if I'm walking around the airport, if I don't have this privacy
2 feature, anybody can see my presence. Anybody can attempt to send me
3 something and if I inadvertently tap my phone while I'm distracted or do
4 something else, I could get malware or some sort of phishing spamware
5 which I clearly don't want.

6 Hopefully my contacts don't send that to me. But at least it's limited
7 to my contacts with this privacy feature. Slide 13 --

8 JUDGE QUINN: When you say privacy, are you referring to the
9 ability of a user to do, to turn off the discoverability of their device to
10 others?

11 MR. MASON: Yes. My understanding is that the default setting is
12 that only your contacts will see you visible in their AirDrop panels. Right?
13 So if you and I were in each other's contacts, I would say, okay, Judge Quinn
14 is in the room or is nearby, I can try and AirDrop something.

15 But if we weren't, you would not appear in my contacts at all. That's
16 what I'm referring to by privacy. And on Slide 13, in his Declaration, Patent
17 Owner's own expert explained the importance of this device visibility so
18 another term for that privacy is device visibility, who you are visible to.

19 In paragraph 137 of Exhibit 2001, he stated device visibility was also
20 important to give users the sense that they could still control their privacy.
21 So he's noting the importance of this feature himself in his declaration. This
22 is not even under cross-examination. Slide 14, our expert also opined on this
23 explaining how this visibility material or feature is material to the
24 functioning of AirDrop because it gives users the peace of mind as they're
25 walking around that they're not going to be subject to spam or malware or
26 anything like that.

1 He also explained how it leverages and this comes from the
2 documentation itself. This visibility feature leverages and relies on iCloud
3 information. Right? So this is, you know, an important aspect, a material
4 aspect of AirDrop and it relies on the Apple ecosystem in order to work.

5 So in two ways this shows that there's, you know, that these are
6 unclaimed features that are material to AirDrop.

7 JUDGE QUINN: But in order to use it, AirDrop functionality, you
8 don't necessarily need to have iCloud information. It could just be device to
9 device without the need for --

10 MR. MASON: Yes.

11 JUDGE QUINN: -- internet or anything like that.

12 MR. MASON: Yes, you could turn off that disability or privacy
13 controls, but what the article show, you know, for example Exhibit 2027,
14 Patent Owner's own exhibits show that this was an important feature that
15 was touted and lauded by people and --

16 JUDGE QUINN: So --

17 MR. MASON: -- which suggests that it was what was driving
18 adoption or it increased adoption in AirDrop.

19 JUDGE QUINN: So help me here by defining an ecosystem, when
20 we use this word in this case. What are we circumscribing that with? How
21 do we define that?

22 MR. MASON: How is that the ecosystem --

23 JUDGE QUINN: Yes.

24 MR. MASON: -- defined? It's the ability to communicate seamlessly
25 with many different devices of different users using the same platform. And

1 I think I can, if I turn to, I can turn to the slides then actually get into some
2 of the details on the ecosystem and what that refers to. So if I could invite --

3 JUDGE QUINN: But the key feature here, I'm sorry, while you're
4 looking for that, is the fact that these multiple users are in the same
5 platform?

6 MR. MASON: Yes, the multiple users are, they're on the same
7 platform. They're using the same application. That application is pre-
8 installed on all of the devices so there's no separate user installation as to
9 required and we discussed in our briefing how other devices or other
10 technologies failed because they required users to download a separate app,
11 maybe even pull up a separate app when they wanted to share

12 AirDrop makes it seamless from whatever application I'm in they've
13 described, you can, you know, choose to send to somebody via AirDrop.
14 And so it's that and then it's also the updating of the software curves using
15 the Apple ecosystem. Right?

16 So I don't have to worry that we've got some kind of versioning
17 mismatch that that's a security issue or some type of issue. There's all these
18 benefits to the ecosystem. So that's what I'm really referring to is the sort of
19 knowing that all these other Apple devices like in a function in a predictable
20 way.

21 And if there's a lot of people, you know, my own devices I can send
22 things to my own devices with, you know, at the click of a button and to my
23 friends or contacts with the click of a button. And I'll discuss that --

24 JUDGE LEE: This is Judge Lee. I understand what you're saying.
25 That makes sense, but what comes to mind is because we were talking about
26 the main feature of the invention being Bluetooth detection and Wi-Fi

1 transfer of data so I'm just thinking in what way does the advantage of doing
2 that manifest itself in the mind of the consumer? You know?

3 Am I going to go use it and go oh, that's wonderful. I just got, I
4 detected my friend by Bluetooth and I got this music via Wi-Fi. I just can't
5 see that. How does it, how does that improvement manifest itself in the
6 hands of a user?

7 MR. MASON: Well we submit that it doesn't. Right? It's Patent
8 Owner's burden to show that the alleged, you know, Bluetooth to Wi-Fi
9 switch is what the consumer sees and what's driving the consumer.

10 I mean, what the exhibit shows or suggests is that the consumer is not
11 even aware of what protocols are being used to transmit or detect other
12 devices in AirDrop. There's really a --

13 JUDGE LEE: Does it make the transfer faster or something like that?
14 More tangible to the user? Or, how do we know the user really doesn't
15 know? If you're passing by Wi-Fi, it doesn't make it any faster? Say, you
16 know, 100 pictures?

17 MR. MASON: I mean, I've heard attorney argument to the fact from
18 the other side, but to my knowledge there's not evidence showing a
19 noticeable and certainly they could have submitted evidence showing okay,
20 consumers noticed that when we use Wi-Fi for transfers, it's much quicker
21 and that makes them much more likely to adopt AirDrop.

22 That makes them much more likely to buy an Apple product. They
23 could have shown that. There is none of that in the record here. So there's, I
24 mean, certainly there would have been means for them to show what you're
25 positing, perhaps.

1 I don't know that most users would even notice this and I think that's
2 reflective in the fact we discussed in our briefing how other file sharing
3 technologies that Patent Owner contends copied or tried to copy actually use
4 only Bluetooth.

5 Or I think Google's Nearby Share the evidence shows that it used
6 either Bluetooth or Wi-Fi or NFC, depending on what might be most
7 appropriate at the time. And so, what the evidence suggests is that the
8 transfer protocol just really didn't matter. Right?

9 You know, to the users, and I think that's best captured, you know, if
10 we turn to Slide 19, for example, this is Patent Owner's Exhibit 2023 and I,
11 again, before I dive into the exhibits, I do, you know, we did note in our
12 reply that Pages 15 to 16 there's no evidence that any of these, even you
13 know, I've heard of Forbes, I've heard of MacWorld, but there's no evidence
14 in the record that these are reputable sources on how Apple devices function
15 or how Microsoft or Google devices function.

16 There's, you know, what we would expect if you're showing copying
17 or something like that or showing any of this really. This technical
18 documentation confirming how a product actually works.

19 JUDGE QUINN: So what would be the credentials of a proper
20 industry praise article?

21 MR. MASON: So I mean, well it might be, it could have been as
22 simple as their expert saying, you know, hey, I've worked in this industry for
23 years, I regularly consulted and others regularly consulted Forbes to
24 determine how this technology would work.

25 Or we regularly consulted MacWorld to get a beat on, you know, how
26 consumers actually felt. If they had some testimony to that effect, well then

1 we could have cross-examined Dr. Edwards on that, but they have nothing in
2 the record. So that's just one example how they might find that --

3 JUDGE QUINN: Do you feel like the quality of the witness basically
4 someone who can interrogate as opposed to a journalist somewhere that you
5 do not know their credentials?

6 MR. MASON: Well I think it's, so the exhibits are not being relied on
7 as testimonial. Right? They're journalists and they're publishers and so
8 we're not saying that should be excluded. We're just saying they, here you
9 know, there are questionable weight because there's nothing of record
10 showing, hey, this is on these issues and this technology these are reputable
11 sources.

12 JUDGE QUINN: Did you have any objections to any of them as
13 hearsay or any other evidentiary --

14 MR. MASON: We did not move to strike and we filed objections, but
15 we decided ultimately that this really went to the weight of the evidence.
16 And more importantly, I think if we turn to the evidence itself, for example,
17 on Slide 19, it shows that the alleged objection indica are not tied to the
18 claims. Right?

19 They're, you know, for the most part just general praise. And it
20 indeed shows that the alleged praise flows from other unclaimed features.
21 So Slide 19 at the top here, we see, this is one of Patent Owner's articles. It
22 says, AirDrop is not particularly revolutionary.

23 Right? It's suggesting this is no whiz bang technology that everyone's
24 been waiting for. It's just, they say it's not revolutionary. Rather, it
25 leverages the core strengths of Apple's unified ecosystem. Right? So what
26 is it doing? Well it's leveraging the Apple ecosystem.

1 What does it saying? It's like the technology is not that revolutionary.
2 There's a whole section in this article in the middle here labeled Ecosystem
3 Benefits. Within that, it's talking about the benefits of the ecosystem and it
4 also notes, you know, hey, AirDrop may ultimately deliver to you limited
5 user value.

6 And so it's, you know, this is not like overwhelming praise for
7 AirDrop per se. And at the bottom we see here too like iCloud allows
8 AirDrop to know other user's locations and theoretically makes file sharing
9 easy. Right? So theoretically this makes things easier, but it also shows,
10 right, this is leveraging the Apple ecosystem.

11 It's using the iCloud to function. That's Slide 19. We turn to Slide 20.
12 Again, this is the same article. It says the Apple ecosystem control delivers
13 enhanced benefits to users. Same app at the same time with the same results
14 and that's Exhibit 2023 at 4 cited by our reply at 16 to 17.

15 That speaks I think to Judge Quinn's earlier question. It also notes
16 that and iOS 6, right, this is before iOS 7 was released before AirDrop was
17 released for iPhones. There were 550 million devices now running iOS 6.

18 That's a massive potential user base that AirDrop might be able to,
19 you know, thrive on. So this suggests that AirDrop is just riding Apple's
20 coat tails. It's riding the pre-existing sales, the pre-existing ecosystem, and
21 so any praise or any adoption is really due to this Apple ecosystem and pre-
22 existing Apple products.

23 If we turn to Slide 21. Right? This is one of Patent Owner's exhibits,
24 Exhibit 2034. It's another article which they cite is allegedly showing
25 copying by Nearby Share. Well first of all, this does not rise to the level of

1 copying, or this does not come close to showing copying because it says,
2 Nearby Share is a little different from AirDrop.

3 It uses Bluetooth, Wi-Fi or NFC to transfer files between devices.
4 Right? So it's just saying you could use one or the other or the other to
5 transfer the files. It's not saying like oh, Bluetooth or Wi-Fi is the end all, be
6 all. It's just and it's not saying that a practice is the claimed invention
7 certainly.

8 And it's not even saying, it's saying that it's not the same as AirDrop.
9 So that this proves that this is a copy of AirDrop and even with respect to
10 this other wireless filesharing technology, it focuses on the ecosystem.
11 Right?

12 And then we see here in the middle of Slide 21 it's the ecosystem man,
13 you know, one way in which AirDrop is better and it makes it much better
14 and this is italics in the original. That's the ecosystem. Right? So again, it's
15 sort of like the distinguishing feature here is the ecosystem. We turn to Slide
16 22.

17 They say, this is a much wider issue than just file transfer tech and
18 again, that's another article effectively saying like the file transfer tech here
19 is not really that much of a factor. What's a factor is that Apple is really the
20 only company that offers a complete device ecosystem. Right?

21 They say, in the middle here, Exhibit 2034, Page 2, Google, they say,
22 you know, they've said, this is not the same, this Google product is not the
23 same as there about, but they're saying they made a great experience.

24 They could, it's hard to imagine how they could make a better
25 experience with Android and Nearby Share. But without the full weight of
26 the full ecosystem behind it, it just can't compete. So I think all of this

1 evidence is overwhelming that it's really other factors that are driving any
2 success or adoption of AirDrop.

3 One other, so I will, let me see here. I, just swinging back to the other
4 unclaimed features aside from the ecosystem, I think on privacy, that's not
5 mentioned in any of Patent Owner's briefings. Encryption, I don't see that
6 mentioned anywhere in any of Patent Owner's briefings.

7 That's a new argument that they've raised today as to encryption being
8 in the claims. I did a quick search. I tried to do a quick search of the claims.
9 I didn't see it in the claims, but so I would say maybe in there, but my
10 understanding is they've never mentioned encryption in their briefing.

11 That's encryption is not in the claims so that's an unclaimed feature.
12 And then they say that the claims address security because of sort of a
13 request of acknowledgement signal, but there's nothing in the claims that
14 suggests that that's being made by a user.

15 And I think there's evidence of record discussed in the petition that
16 this like call and response between devices before sending information was
17 just the devices themselves. There was no user interaction and so that user
18 interaction is an additional unclaimed feature.

19 Let me just make sure, oh, yes, and I just think well the big point,
20 we're not arguing for some Apple exception here. What we're arguing is that
21 Patent Owner, there's just a lack of evidence. There's insufficient evidence.
22 Patent Owner could have put in evidence.

23 They did not. If we turn to Slide 18, this is the Apple case that they
24 rely on. In that situation that involved Apple "Slide to Unlock" feature and
25 so this is, you know, clearly something that was just, you know, part of the

1 Apple ecosystem and the Federal Circuit affirmed the finding of objective
2 indicia outweighing obviousness, but there they had industry praise.

3 They had Samsung internal documents evidencing an intent to copy,
4 actual copy and praising the device. They had Steve Jobs unveiling the
5 Slide to Unlock and showing an audience eruption at seeing the Slide to
6 Unlock. There were Apple marketing materials showing that this Slide to
7 Unlock feature was critical and it was the first thing that users were going to
8 interact with.

9 So there was a number of pieces of evidence in that case that led to
10 the finding of an objective indicia. Here there is none of that evidence.
11 There's no survey evidence showing an increase in sales of AirDrop due to
12 this feature. I'm sorry, increase in Apple products due to this AirDrop
13 feature.

14 There's no indication that anybody sought to license AirDrop or the
15 claimed technology. There's no indication that there actually was a license.
16 So based on that lack of evidence, the objective indicia here, the secondary
17 considerations are at best weak and certainly do not outweigh the strong
18 showing of obviousness.

19 JUDGE QUINN: Thank you, counsel.

20 MR. MASON: If there are no further questions, I will, I've gone over
21 my time. I thank you for --

22 JUDGE QUINN: Thank you.

23 MR. MASON: -- allowing me that time.

24 MR. HEJNY: Thank you, Your Honors. Again, Scott Hejny on
25 behalf of InterDigital. When it comes to the security issue, just to answer a

1 question, the alleged unclaimed security features issue was addressed in the
2 sur-reply on Page 19.

3 I believe that is paper 34. So a couple of comments. First I want to
4 answer a couple of questions. First of all, to Judge Lee, you had questions
5 for me about whether or not we ever mentioned the importance of Bluetooth
6 detection and Wi-Fi data transfer in the briefing.

7 And that is in the sur-reply which is on paper 34 at Pages 20 and 24. I
8 just wanted to get that into the record for you.

9 JUDGE LEE: Yes, I was looking for it in the Patent Owner response.
10 Shouldn't it be in the Patent Owner response, the whatever feature you think
11 is the reason for your nexus? It shouldn't come in for the first time in the
12 sur-reply.

13 As I read your Patent Owner response it seems like the reason people
14 like AirDrop is because people didn't have to click their phones together to
15 make a connection.

16 MR. HEJNY: Well, Your Honor, one of the reasons people like
17 AirDrop was because of the battery conservation and the speed of transfer.
18 That is actually the --

19 JUDGE LEE: Yes, but I'm just looking for it in your Patent Owner
20 response.

21 MR. HEJNY: Sure, Your Honor. We cited to that. It's included in
22 the Edwards declaration which is Exhibit 2001, the paragraphs 140 through
23 143. Our experts walks through the data transfer rates, the comparable rates
24 between Bluetooth and Wi-Fi.

25 And, honestly, Your Honor, I believe that the entirety of the brief
26 focuses on the importance of Bluetooth transfer, sorry Bluetooth detection

1 and Wi-Fi data transfer because that was the essence of the invention. And I
2 apologize that I can't give you a citation right now.

3 But this is absolutely mentioned in the sur-reply, but it is indeed the
4 subject of this entire dispute, is the importance of Bluetooth detection and
5 Wi-Fi data transfer. If I find another citation, I'll provide that to you as soon
6 as possible.

7 JUDGE LEE: Are you able to rely on things articulated for the first
8 time in your sur-reply for something as critical as establishing nexus?

9 MR. HEJNY: I think we can, Your Honor, because we were rebutting
10 an argument so it's our burden to show secondary considerations and then
11 Microsoft to rebut and then us to comment on the rebuttal arguments.

12 And to be honest, the evident importance of Bluetooth detection and
13 Wi-Fi data transfer is evident throughout the Patent Owner's response and
14 the patent itself. And the fact that we raised it or mentioned it for the first
15 time in the sur-reply is fair game if we are responding to one of Microsoft's
16 arguments rebutting any evidence or argument that we submitted to the
17 Patent Owner response.

18 Is it just me, or Judge Murray, you had a question to me as to whether
19 it was proper to rely on, for example, industry commentary to show
20 commercial success. And I would direct the Board's attention to the Apple
21 v. Samsung Electronics case, 839 F.3d 1034 at 1054 through 56. It's the
22 Federal Circuit in 2016. In that case, the Federal Circuit upheld the jury
23 finding of non-obviousness where commercial success was shown in ways
24 other than sales or market share. That case related to the Swipe to Open
25 functionality on the iPhone.

1 And kind of similar to AirDrop, there wasn't a lot of commercial
2 information related to a monetary value for the Swipe to Open function. But
3 in that case, Samsung, I'm sorry, Apple -- strike that, Your Honors. In that
4 case, Apple relied on evidence other than financial information such as
5 industry commentary to show commercial success for the "Swipe to Open"
6 feature.

7 JUDGE QUINN: So I have a question for you. Your opposing
8 counsel here has stated that if it is true what you stated that the crux of the
9 invention hinges on the switching between a Bluetooth discovery and a Wi-
10 Fi transmission, that under the current precedent or Ormco Corporation case,
11 Federal Circuit case, that basically those are features that are in the prior art
12 and therefore they cannot be considered commercial success.

13 MR. HEJNY: We are, those are features that were never combined in
14 the prior art. And they were first combined in the filing of the energies --

15 (Simultaneous speaking.)

16 JUDGE QUINN: Well, that's not true. That's not accurate. We do
17 have in the record, Hoddie and Hinckley, and at least Hoddie has, I'm not
18 sure if I'm saying it correctly, but it's H-O-D-D-I-E, that reference does have
19 a disclosure of doing discovery of Bluetooth and then using Wi-Fi to
20 establish a transfer.

21 MR. HEJNY: Well, Your Honor, the patentability of Claims 1 and 23
22 are both at '933 and '054 patents turn on all of the elements. All of the
23 functionality has to be considered and that's why it was so crucial for
24 InterDigital to map those claims to the AirDrop functionality.

1 Now Bluetooth transfer and Wi-Fi, sorry Bluetooth detection and Wi-
2 Fi transfer are important. And, in fact, I do believe that they're critical. But
3 there are other limitations and other claim elements that are also important.

4 JUDGE QUINN: So are you saying so what all is there?

5 MR. HEJNY: The ability to --

6 JUDGE QUINN: My colleague asked you specifically, what were the
7 features that you claimed are the driver for commercial success.

8 MR. HEJNY: Well the ability to either accept or reject a message.
9 That's critical both from a proxy standpoint and security standpoint.
10 Because if you, if anyone can just send you a message without you accepting
11 it, well then you're going to have the problem that counsel for Microsoft
12 suggested, you're going to end up with potential malware or spam or
13 whatever on your phone.

14 You have to be able to either accept or reject a message. And it's
15 another critical limitation. But Bluetooth detection and Wi-Fi transfer are
16 two critical points for the patents themselves. But you have to look at the
17 patent as a whole, you have to look at the claim as a whole.

18 You can't look at individual elements in isolation when determining
19 whether or not the claims are not obvious under secondary considerations.
20 Yes, Bluetooth and Wi-Fi may be very important to the claims, but when
21 you're considering the secondary considerations analysis, you have to look at
22 the claims as a whole instead of just isolating two limitations as part of that
23 analysis.

24 JUDGE QUINN: So did you provide any industry praise or both a
25 need for the accept or reject features as well because I have to tell you that
26 Hoddie also discloses the accept or deny feature that you're referring to.

1 So I'm confused as to where you're going with this because that's why
2 we asked you a specific question like which are the features that are driving
3 the success so that we can focus on that?

4 MR. HEJNY: Sure, the indicia praise for AirDrop focused on the
5 AirDrop product as a whole and the fact that, the fact is that AirDrop does
6 embody the challenged claims and that is spelled out in the claim charts that
7 we put in the Patent Owner response.

8 AirDrop includes each and every claim limitation. Microsoft didn't
9 assert Hoddie as a 102 reference and I don't believe it discloses each and
10 every claim limitation or else Microsoft would have asserted that as an 102
11 reference.

12 And therefore the patent claims can certainly be non-obvious and be
13 of Hoddie because you have to consider all the claim limitations as a whole
14 instead of just focusing on specific elements in isolation.

15 JUDGE QUINN: Are you saying that unless the record has a 102
16 reference or a single 103, that the features that are claimed cannot be; but
17 there is some success just because there is no 102 or single reference on it?

18 MR. HEJNY: I'm sorry, Your Honor, I don't think I understood you.

19 JUDGE QUINN: I don't understand why you keep saying that
20 because there is no single reference ground that somehow that makes a
21 commercial success more prevalent to this case.

22 MR. HEJNY: Because nobody in the industry had done before what
23 InterDigital did when it filed its patent claims. Those claims were novel.
24 They were allowed by the patent office and there was no prior art that read
25 on those claims to preclude them from being issued by the patent office.

1 And only, you only really only saw it entering the commercial market
2 when Apple released iOS 7 five years later and iOS 7 in 2013. So yes,
3 Bluetooth detection may have existed before the priority day. Wi-Fi transfer
4 may have existed before the priority day, but the combination of elements
5 that represent the patentable subject matter of Claims 1 and 23 in the '933
6 and '054 patents, those combinations were not present in the prior art.

7 JUDGE QUINN: Are you saying that's long felt, but unresolved need.
8 I mean, it has to fit within the framework of secondary considerations.

9 MR. HEJNY: Of course, Your Honor. And the long-failed and
10 unresolved need is spelled out in the background of the invention which is in
11 Column 1 of Exhibit 1001. And it discusses the prior art and despite these
12 advances, I'm reading from line 35, despite these advances, however, file
13 transfers may still be a cumbersome, multi-step task requiring adaptation
14 between multiple implementations.

15 For example, many technologies involve fragmented approach to
16 access and manipulation of files such as attachments. These hurdles inhibit
17 the more regular use of file transfer schemes in spontaneous situations.

18 And that was the long-felt need and the problem that individual solved
19 when they filed their patent application. The fact that it didn't make it into a
20 commercially successful product like AirDrop is beside the point.

21 There was absolutely a long-felt need at the time that the patent
22 application was filed and the industry recognized this merits in 2013 when
23 Apple release iOS 7.

24 JUDGE LEE: How about your dependent claims? Do they have any
25 features that are significant insofar as being responsible for the industry

1 praise and the alleged commercial success in the light of the satisfaction of a
2 long-felt need?

3 MR. HEJNY: Your Honor, we haven't addressed any of the
4 dependent claims specifically. I think that Claim 8 was touched on earlier
5 today. The method of Claim 1 wherein Bluetooth discovery is used to detect
6 the plurality of WTRUs in proximity to the WTRU.

7 Obviously that claim limitation, that claim relates to the detect process
8 in Claim 1 and I would submit that because Claim 8 must be narrower,
9 because the doctrine of claim differentiation, that means that the detect
10 process in Claim 1 is broader.

11 And is not limited to detecting using only Bluetooth. So I think Claim
12 8 absolutely has merit as well as its corollary. Claim 31 --

13 JUDGE LEE: I don't mean for you to come up with something on the
14 spot. I just like -- I just wanted to know if part of your briefing urges
15 additional features that are significant which are further recited in the
16 dependent claims.

17 MR. HEJNY: No, Your Honor. We didn't address any other features
18 from the dependent claims in the briefing.

19 JUDGE LEE: All right. Yes, there's no need for you to come up with
20 it now.

21 MR. HEJNY: Sure, sure, no, I just wanted to raise that because it
22 came up earlier this morning, Your Honor. Okay. And so we talked a little
23 bit about well I will say that counsel for Microsoft talked about this concept
24 of new versioning of software.

25 And how that was important when it comes to the Apple ecosystem.
26 Well new versioning of software is never mentioned in the briefing and the

1 only new versioning of software will be discussed today is the Bose vs. Koss
2 case.

3 So that is a new argument that I'm hearing for the first time. In an
4 effort to tie a trail rail between this case and Bose vs. Koss. When it comes
5 to the benefits of Bluetooth detection and Wi-Fi transfer, Bluetooth detection
6 uses less energy to save battery capacity.

7 That's why they call it BLE is Bluetooth Low Energy. Wi-Fi transfer
8 is much quicker. And I would submit that users would absolutely recognize
9 the difference between Bluetooth transfer as compared to Wi-Fi transfer
10 when transferring photographs like we take every day on our iPhones that
11 are several megabytes in size.

12 And our expert, Dr. Edwards discusses that in Exhibit 2001 in
13 paragraphs 140 through 143. And we've heard, we heard two other
14 comments I want to address. Counsel for Microsoft said that in response to,
15 you know, what is the benefit of AirDrop?

16 And he said it was the seamless, the ability to seamlessly
17 communicate with many devices using the same platform. Well the using
18 the same platform is drawing us back into this Apple ecosystem argument
19 and this Apple exception that I discussed earlier.

20 And he also said that the invention was not revolutionary because it
21 was Bluetooth, Wi-Fi and some other extraneous limitations, but it was
22 revolutionary because this combination was first submitted in a U.S. patent
23 by InterDigital.

24 And that in and of itself, those claims were allowed by the Patent
25 Office over the prior art showed that these patent claims are patentable and I
26 respectfully urge the Court to take a look at that Bose vs. Koss case and this

1 ecosystem argument because I really do think that the ecosystem argument
2 being advanced by Microsoft is going to create an exception that swallows
3 the rule when it comes to showing the commercial success or the acceptance
4 or the nexus of an invention created by an innovator like InterDigital when
5 that invention is embodied in an Apple device.

6 If the Board has no more questions, I'll cede the time, but I'll be happy
7 to answer any additional questions.

8 JUDGE MURRAY: Counsel, this is Judge Murray.

9 MR. HEJNY: Yes, Your Honor.

10 JUDGE MURRAY: I understood you to argue that the process of
11 using Bluetooth could also use other technologies in addition to Bluetooth.
12 Do I have that correct?

13 MR. HEJNY: Yes, Your Honor. The claim as it is written, let me
14 refer to the proper claim language, I'm looking at Column 10 of Exhibit
15 1001, detecting by the WTRUs in Bluetooth, a plurality of WTRUs in
16 proximity to the WTRU, that claim, this is a method claim.

17 It's a comprising claim and InterDigital's position is that the detecting
18 process can evolve using Bluetooth as well as some other technology or
19 solely using Bluetooth. That is supported by Claim 8 which recites that
20 wherein Bluetooth discovery is used to detect the plurality of WTRUs so by
21 the doctrine of claim differentiation, Claim 1, we still have detecting using
22 Bluetooth must be different from Claim 8.

23 And therefore Claim 1, I would submit, contemplates using detecting
24 using Bluetooth or Bluetooth in combination with something else.

25 JUDGE MURRAY: Okay, so if we were to disagree with that point
26 and about Petitioner's understanding, would you still have an argument that

1 AirDrop or let me ask it this way, would or would not AirDrop copy the
2 claims under the petitioner's understanding?

3 MR. HEJNY: So you're saying if you disagree with me and hold the
4 detecting has to be based solely on Bluetooth?

5 JUDGE MURRAY: Yes.

6 MR. HEJNY: I still think that the claims cover AirDrop because
7 Bluetooth is used as part of that detection process. It is the initial process
8 whereby the hash value from one WTRU is detected by another WTRU
9 because that is the nature of Bluetooth technology and Bluetooth discovery,
10 Your Honor. So I would still submit that the patent claims cover or read on
11 AirDrop.

12 JUDGE QUINN: Thank you. I have no further questions. All right.

13 MR. HEJNY: Your Honors, thank you for your time.

14 JUDGE QUINN: All right this concludes the arguments for these two
15 cases. We will take everything under advisement and issue a final written
16 decision on these cases as dictated by the schedule. We are going to break
17 and we can be off.

18 (Whereupon, the above-entitled matter went off the record at 11:09
19 a.m.)

IPR2024-00305 (Patent 8,737,933 B2)
IPR2024-00306 (Patent 9,173,054 B2)

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