

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC, CHARTER
COMMUNICATIONS, INC., and ALTICE USA, INC.,
Petitioner,

v.

TOUCHSTREAM TECHNOLOGIES, INC.,
Patent Owner.

IPR2024-00322
Patent 8,356,251 B2

Record of Oral Hearing
Held: April 29, 2025

Before GEORGIANNA W. BRADEN, MATTHEW S. MEYERS, and
AARON W. MOORE, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JEFFREY A. MILLER, ESQ.

Arnold & Porter
3000 El Camino Real
Five Palo Alto Square
Suite 500
Palo Alto, CA 94306-3807
(650) 319-4500
jeffrey.miller@apks.com

SCOTT BORDER, ESQ.

Winston & Strawn
1901 L Street, NW
Washington, D.C. 20036
(202) 282-5000
sborder@winston.com

KRISHNAN PADMANABHAN, ESQ.

Winston & Strawn
200 Park Avenue
New York, New York 10166-4193
(212) 294-6700
kpadmanabhan@winston.com

ON BEHALF OF THE PATENT OWNER:

KYLE E. FRIESEN, ESQ.
ROBERT RECKERS, ESQ.
Shook, Hardy & Bacon, LLP
JPMorgan Chase Tower
600 Travis Street
Suite 3400
Houston, Texas 77002
(713) 227.8008
kfriesen@shb.com

RYAN DYKAL, ESQ.
PHILIP ECKERT, ESQ.
Boies Schiller Flexner
1401 New York Avenue, NW
Washington, D.C. 20005
(202) 237-2727
rdykal@bsfllp.com
peckert@bsfllp.com

The above-entitled matter came on for hearing on Tuesday, April 29, 2025, commencing at 10:00 a.m., at the U.S. Patent and Trademark Office, Texas Regional Office, 207 S. Houston Street, Dallas, Texas.

P R O C E E D I N G S

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(9:58 a.m.)

JUDGE BRADEN: Good morning. We are convened here for oral arguments in IPR-2024-00322, which challenges claims in U.S. Patent No. 8356251. I am Judge Braden. Also appearing along with me are my colleagues, Judge Meyers and Judge Moore, as you can see on the screens. So, welcome to the USPTO's Dallas office.

I want to take this opportunity to address counsel and their clients before we begin today. As an inter partes review as a contested proceeding, today's hearing provides an opportunity for counsel to orally advocate for your positions on patentability of the challenged claims as raised in the petition.

We understand that, in this case, as in all cases that come before us, the parties both Petitioner and Patent Owners have a lot at stake. So as judges here before you today, take our role in deciding this dispute seriously.

We have reviewed all of the briefs and all of the evidence and we are prepared here today with question. Some of us a lot of questions. These questions and your answers will help us in deciding the issues in this case.

In the interest of fairness and due process, however, we must limit our considerations to the arguments and evidence already presented in the record. Our role as judges on the panel is to assess your arguments and evidence and weigh those in accordance with the burdens established by our rules of procedure and precedential authority.

1 We remind the parties that the Petitioner has the ultimate burden of
2 establishing unpatentability by a preponderance of the evidence. We have
3 the briefs and all of the evidence available to us on our computers.

4 So, if we happen to look down or look at the screens or if one of the
5 other judges looks, appears to look away, please note that we are consulting
6 the documents in the record and taking notes. Please note that we are paying
7 close attention to your arguments and are carefully considering the case.

8 And if we interrupt you, which I promise I know I will at least be
9 doing, I want to apologize in advance because we're doing this to ask you
10 questions that may be essential to our resolution of the issues and also to
11 help keep track of the time.

12 So, recording of any PTAB hearing is prohibited. We do have a court
13 reporter here that will provide a transcript of the hearing. That will be the
14 official record of the hearing and it will be entered into the proceeding
15 record at a later date.

16 To ensure that the transcript of the hearing is clear, we ask that you
17 please speak directly into the microphone either at your table or at the
18 podium. And when you are up at the podium, please identify specific slides
19 numbers, numbering of figures and any other pertinent identifying
20 information when you are referring to the demonstratives.

21 That will help us when we go back to look at the hearing transcript
22 and compare it to the evidence. It will help us to be able to find the place
23 and know what you're talking about whenever we go back to review the
24 record.

25 Per the hearing order, which is Paper 41 in this proceeding, each party
26 has 60 minutes total time to argue their case. Petitioner will open the

1 argument and may reserve rebuttal time, which may not exceed more than
2 half of Petitioner's total argument time.

3 Patent Owner then may respond to Petitioner's argument, may address
4 the motion to strike and may reserve surrebuttal time, which is also not
5 allowed to exceed more than half of Patent Owner's total argument time.

6 Please remember that your arguments should be limited to only those
7 arguments previously presented in your briefs. Please make it clear which
8 challenges and claims you are addressing at all times. We ask that the
9 parties please hold any objections regarding the party's arguments until it is
10 your time at the podium, which is the appropriate time to note your
11 objections.

12 We understand that there's a motion to strike in the record, but we ask
13 that you please address any argument when it's your turn at the podium.
14 Please don't make objections during the other person's turn at the podium.

15 So, we're going to go ahead and get started with appearances for both
16 parties for who will be arguing today. If anyone else is attending in person
17 or remotely with you today, but will not be speaking, please identify them as
18 well.

19 For example, if your client is here, but they're attending
20 telephonically, please let us know. Following the hearing, I ask that you
21 please confer with the court reporter to make sure there's no questions
22 regarding spelling of names or terms or anything like that.

23 So we're going to go ahead and get started with appearances for
24 Petitioner. Petitioner?

1 MR. BORDER: Good morning, Your Honor. Scott Border on behalf
2 of Petitioner Altice. With me is my colleague, Krishnan Padmanabhan, and
3 behind me is Jeffrey Miller from Charter.

4 JUDGE BRADEN: And I do understand that Altice USA, Inc., is
5 designated as lead counsel for Petitioners. Is that correct?

6 MR. BORDER: That's correct, Your Honor, and I believe some
7 members from our client are on the remote session.

8 JUDGE BRADEN: And I didn't see anything in the record as
9 regarding any LEAP practitioners joining you today. Can you confirm that?

10 MR. BORDER: That's correct, Your Honor.

11 JUDGE BRADEN: All right, thank you, gentlemen.

12 MR. BORDER: Thank you.

13 JUDGE BRADEN: Now for Patent Owner.

14 MR. FRIESEN: Kyle Friesen, lead counsel for Patent Owner
15 Touchstream Technologies; my co-counsel, Ryan Dykal, who will be
16 arguing today; and an associate of his, Phil Eckert. I believe we also have
17 representatives of our client on the -- appearing telephonically.

18 JUDGE BRADEN: Excellent. And please confirm for me that you
19 do not have a LEAP practitioner. Do you?

20 MR. FRIESEN: We do not. That's correct.

21 JUDGE BRADEN: Thank you very much. Then I will maintain a
22 clock and I will endeavor to do my best to give each party a five-minute
23 warning during your opening argument and an appropriate warning nearing
24 the end of your reserved rebuttal time.

25 Now our hearing room does have a timer that I'm going to set up for
26 each party with the requested time allotment and the light on the clock

1 changes to yellow when you're nearing the end of your time. So, you'll see
2 on both sides you've got red, yellow, green so during the majority of your
3 argument, it will be green.

4 When you start getting close to your rebuttal time, it will turn yellow.
5 When you get at the end of your time, it will turn red. And then when it
6 turns red, it will start blinking very angrily at you so keep that in mind. That
7 means you have run out of time.

8 All right, so Petitioner, you have 60 minutes total time. How much, if
9 any, would you like to reserve for rebuttal time?

10 MR. BORDER: Twenty-five minutes for rebuttal, Your Honor.

11 JUDGE BRADEN: Twenty-five minutes. And Patent Owner, you
12 have 60 minute total time. How much would you like to reserve, if any, for
13 rebuttal?

14 MR. DYKAL: Fifteen, Your Honor.

15 JUDGE BRADEN: Fifteen. Before we begin, we're going to make
16 sure that both of our remote judges are connected. Can you please confirm
17 that Judge Moore has been reconnected? All right so stand by. We're
18 making sure that everything, I want to make sure that everything is
19 connected and that we're good before we even start.

20 (Off-microphone comments.)

21 JUDGE BRADEN: It appears that both of my colleagues are now
22 back live and we are ready to go. So, are there any questions or issues from
23 either parties before we begin, Petitioner?

24 MR. BORDER: No, Your Honor.

25 JUDGE BRADEN: Patent Owner?

26 MR. DYKAL: No, Your Honor.

1 JUDGE BRADEN: Very good. So, Petitioner, you may begin your
2 argument when ready.

3 MR. BORDER: Thank you, Your Honor. May I approach with a
4 copy of our demonstratives?

5 JUDGE BRADEN: Yes. Although please note that I do have an
6 electronic copy.

7 MR. BORDER: Right. I just, sorry, it's force of habit.

8 (Simultaneous speaking.)

9 MR. BORDER: Thank you. Good morning, Your Honors. May it
10 please the Court, Scott Border for Petitioner, Altice and the remainder of the
11 Petitioners. We're here to talk about three grounds advanced in IPR 00322.

12 They're presented on the slide in front of you. This is Slide 2. Quick
13 roadmap of the issues that I plan to address. I'm going to focus on the
14 disputed issues. I don't intend to go into every single limitation. I want to
15 focus on truly the issues that are disputed between the parties today. And
16 let's start with a quick overview of the '251 patent.

17 The '251 patent describes a three-part system comprising a personal
18 computing device which we've shown in blue, a server system which we've
19 shown in green and a display device which we've shown in red.

20 The purpose of the system is to permit a user at the personal
21 computing device to, which functions as a remote control, to control what is
22 being shown. What is being shown on the display device in red.

23 The server system between those two devices receives what are
24 described as universal commands from the personal computing device shown
25 here in blue. Those commands are simple commands like play, stop, pause,

1 and what the server system does is it converts those commands to a format
2 specific to the media player on the display device.

3 The patent described that the conversion is done with a look-up table
4 that associates the user's command, play or pause, with a command that
5 corresponds to the specific media player which was shown in red.

6 This is essentially a cloud-based version of the universal remote
7 control we all used as kids to control VCRs, TVs, and cable boxes. Very
8 briefly, this is Claim 1 of the '251 patent. Again, we're not going to go into
9 every single limitation here. Claim 11 is also in dispute.

10 It is not substantively different with respect to the issues that we're
11 going to be discussing today. In here I've highlighted the issue principally
12 with Claim 1, Claim 11 and that relates to conversion by the server system
13 and we'll get into some details on how that, how the issues are in dispute.
14 Let's start with a prior art overview.

15 This is the Danciu system. On the left here I've shown the '251
16 patent, this is the same diagram that we included in our petition and, again,
17 this is a Demonstrative Exhibit No. 9. The figure on the left is from the '251
18 patent.

19 It's colored in the way we showed it in the petition and that's broken
20 up between personal computing device service system and display device.
21 And at the right you see Danciu. It's essentially the same architecture.

22 You've got a remote control or a personal computing device on the
23 left. You've got a server system sitting in the cloud in the middle highlighted
24 in green. And you've got a controlled device on display in red.

1 And Danciu discloses that the remote control can control various
2 media content on the control device including through such media players
3 like Hulu, Netflix and YouTube. One of our other grounds relies on Aldrey.

4 Aldrey is very similar to the '251 patent and similar to the Danciu
5 reference. Again, it has a personal computing device shown here in blue. It's
6 got a server system that operates in the cloud in green and it's got a display
7 device shown here in red.

8 The purpose of the Aldrey system is like the '251 and the Danciu and
9 it's essentially to control a device or a remote display from a personal
10 computing device for media such as YouTube, Netflix and -- and very briefly
11 this is Mahajan. This is an overview of Mahajan.

12 Mahajan is the reference that we combined Aldrey and Danciu with
13 and Aldrey describes a system that involves a collaboration between a local
14 device and a remote device. Mahajan's techniques involve translating
15 specific commands to universal commands.

16 And then translating, again, those universal commands to the specific
17 type of media player on the remote device. And you'll note our coloring here
18 on Slide 11. This was presented in our petition. This sort of demonstrates
19 how Mahajan describes how they locally control or send commands on the
20 personal computing device and those commands are substantively executed
21 on a remote device.

22 And here on the left this is from the petition of Pages 10, 11, and 40.
23 We describe how Mahajan, the specific capability to translate specific to
24 generic and generic to specific.

1 JUDGE MEYERS: Mr. Border, if I could interrupt you for a moment.
2 If you could please tell us the page number that you're referring to on the
3 slides, that would be helpful.

4 MR. BORDER: I apologize, Your Honor. I'm currently looking at
5 the Mahajan overview on Demonstrative Slide 11.

6 JUDGE MEYERS: Okay. Thank you so much.

7 MR. BORDER: Yes, Your Honor. And now let's move to Slide 12.
8 Slide 12, again, here's our road map. Let's talk briefly about what we
9 presented in the petition. And now I'm showing Demonstrative Slide 13.

10 This is the Danciu Mahajan combination. And in the petition the
11 Petitioner relied on the Danciu system shown in the center here in
12 combination with Mahajan's, what we call the command translation
13 teachings. And this was in the petition in Pages 31 and 32.

14 We also have a description in it, about it, on the reply on Page 4
15 which we've shown here. And what we explained was a POSITA would be
16 motivate to implement Danciu's system using the techniques described in
17 Mahajan.

18 This obviously is a point of dispute between the parties. And I think
19 I'll share some slides later that I hope resolve that dispute.

20 JUDGE BRADEN: Well, then why don't we go ahead and maybe get
21 to those? Because I have questions about how Mahajan and the claims and
22 how this all works, because the claims, as you note, specifically say
23 converting by the server system, the universal playback control command
24 into corresponding program control code to control playing the video content
25 on the display device, whereas when I read Mahajan, it seems to say to me --
26 and I'm looking specifically at paragraphs 13 and 14 of Exhibits 11, 14

1 Mahajan, where it says you translate a platform specific media playback
2 command of the server into a generic media playback command.

3 The generic media playback command can then be translated into a
4 platform specific media playback command for media platform supported on
5 the client.

6 What this says to me is that the generic media playback commands
7 sound like the universal playback control command that's translated on the
8 server to a generic command. But the client is the one that converts the
9 generic command into the specific code whereas the claims here require that
10 the server do this. And so I would like to know a little bit more about how
11 you see this working and explain to me, because some of what I see in the
12 petition as far as this rationale to use Mahajan seems to say somebody of skill
13 in the art could do this. But I need to know why they would do this as the
14 claims require.

15 MR. BORDER: Well, yes, Your Honor. If I may, let me skip
16 forward to Demonstrative Slide 19.

17 JUDGE BRADEN: That would be excellent.

18 MR. BORDER: And let me address that first question. I think some
19 of the confusion here is the nomenclature described in Mahajan. It sort of
20 reverses what it calls a client and server in the way that it sort of applies it,
21 but let me explain.

22 So, in Mahajan, the server, which here in Slide 19 is shown in blue, is
23 essentially commanding a remote collaboration session that is hosted on what
24 they are calling the client. So it sort of reverses the two in that sense, but it is
25 absolutely the local device shown here in blue at the bottom of Slide 19. And
26 this is in our petition at Pages 31 to 32. And I guess this specific reference is

1 on 39 to 42. The local device, the personal computing device in blue,
2 translates from specific to universal. It sends it to this module that we
3 highlighted in green in the petition. And that translates it from universal to
4 specific to the player that is resonate on the remote devices shown here in
5 red.

6 So I think that's where some of the confusion occurs because of the
7 specific description in the way that Mahajan describes the architecture there.
8 But to be clear, Your Honor, we were not relying on the architecture of
9 Mahajan. We were relying on its teaching which is, essentially, specific to
10 universal, universal to specific, the way that it would apply these techniques
11 to a remote device that might have a different media player. And that goes
12 into our motivation to combine and if I may, --

13 JUDGE BRADEN: Well, I want to stop you there. I understand and I
14 do know that you had citations to the petition where you talk about applying
15 the teachings of Mahajan and not necessarily the architecture. I get that. But
16 my concern is that the claims require specific architecture. It requires
17 converting by the server system. And so how is it that we can take the
18 teachings and not the architecture, but then apply it to the teachings of
19 Mahajan's and not the architecture of Mahajan, but apply very specific
20 architectural requirements that are in the claim. How do I get from one to the
21 other?

22 MR. BORDER: Well, Your Honor, a couple of different ways. Let
23 me explain why someone looking at Danciu would want to take a system like
24 Mahajan and implement its teachings. And I'm showing here, this is Slide
25 16. I've highlighted a lot of things here.

1 There's a couple of things I wish I had highlighted and probably a
2 couple of things I wish I had not. But critically in the bottom left-hand
3 corner here and this is from the petition at Slide 31 and 32, we explained that
4 a POSITA would have been motivated to apply Mahajan's teachings of
5 command conversation specifically because of they would have understood
6 that Danciu's remote control which may be a portable device such as a cell
7 phone, would likely employ different applications than Danciu's controlled
8 device.

9 And so what we're explaining there is this ability to translate a
10 command locally among multiple different media players as taught by
11 Mahajan. That would be something that a POSITA would want to implement
12 in the Danciu system.

13 And Danciu system explains and this is actually at the top right of our
14 slide, it contemplates that there may be messages at the server and that those
15 messages may need to be repackaged. And Tom, if you could call open the
16 ELMO here, I have this passage that we cite here on the top right. This is the
17 petition at Pages 26 to 27.

18 JUDGE BRADEN: And please note that if you do something on the
19 ELMO, I'm not sure, can our remote judges see what is on the ELMO? Can
20 you --

21 USPTO IT SUPPORT AGENT: I can send it.

22 MR. BORDER: And I am happy to read it into the record, Your
23 Honor.

24 JUDGE BRADEN: Okay. Thank you.

25 (Pause.)

26 JUDGE BRADEN: Excellent.

1 MR. BORDER: Oh, boy, that's really small.

2 USPTO IT SUPPORT AGENT: That's all right.

3 JUDGE BRADEN: I think you may be able to --

4 MR. BORDER: Is there a zoom button?

5 JUDGE BRADEN: Yes.

6 MR. BORDER: There we go.

7 JUDGE BRADEN: And where are you in the record?

8 MR. BORDER: So, what we're looking at right now is Danciu.

9 Because I don't have my readers on, I'm looking for the -- this is Column 16
10 and this is line 65 to 67. And what Danciu explains is that server 24 may
11 process and/or repackage the control information of the message into a new
12 message.

13 So we identified this as one of the reasons that, or as one of the simple
14 reasons that Danciu or that a POSITA looking at Danciu would consider
15 implementing the type of Mahajan command conversion techniques at the
16 server. It certainly contemplates the need to repackage or process those, that
17 control information.

18 JUDGE MEYERS: Where is that in the petition that you're
19 suggesting that kind of a modification?

20 MR. BORDER: Thank you, Your Honor. This is in the petition at
21 Pages 26 to 27. And we sort of paraphrase there, but we explained there that
22 Danciu contemplates that there may be separate messages from the remote
23 control to the server and from the server to the control device.

24 We also have a support there, a cite to Mr. Lett's declaration in
25 paragraph 153. And to be clear, Your Honor, this was also certainly
26 appreciated by Your Honors in the Institution Decision in a couple of

1 different places and since I've got the ELMO on, I might throw the Institution
2 Decision here at Page 33. This is -- can you zoom in a little bit here?

3 And this is Page 33 of the Institution Decision and it states Petitioner
4 also asserts that Mahajan teaches using a distributed computing environment
5 and that it would have been obvious to a person of ordinary skill that one or
6 more RTS media extraction modules could operate at a service such as server
7 24 and 29, 24(a) and 24(n) in Danciu.

8 And so this is, this is sort of -- this is the other aspect of what we
9 describe because Mahajan explains that it can be implemented in a
10 distributed environment. It's the same paragraphs that we rely on. They're
11 included there.

12 They include 51, 58 and 78 of Mahajan that describe that its
13 techniques could be implemented in a distributed environment. And I have
14 here on this slide, well actually can we go back to the slides? And this is
15 Slide 16. Thank you. And this is Slide 16.

16 We explained in the reply that, you know, there was this argument
17 that, of this distinction between would and could. I think we were explaining
18 here in the reply at 14 that our discussion of petition about how it could be
19 implemented in the servers was simply a description of why a POSITA
20 would have a reasonable expectation of success of implementing Mahajan's
21 techniques into the server.

22 And those techniques in particular are the universal to specific
23 translation as described in the '251 patent.

24 JUDGE BRADEN: So, again, my difficulty here is and I understand
25 why you're saying we're, you know, you're putting together Danciu and
26 Mahajan and you're giving a reason for that, but I guess where I'm getting

1 hung up is in Mahajan talking about going from being on specific, you know,
2 talking about you're going from a specific on-the-server into a generic.

3 The generic going to the client and it being converted at the client to
4 whatever media platform is supported on the client. My question is, why
5 would you move that? Why would you not just, if you're putting Danciu and
6 Mahajan together, why wouldn't you just do what Mahajan does?

7 Why would you change it to meet the specific language of the
8 challenged claims?

9 MR. BORDER: Well, Your Honor, I think you would do that because
10 of, again, we're implementing Mahajan's teachings into Danciu and, but
11 Danciu doesn't describe a specific way to complete that conversion. It also
12 doesn't describe how --

13 JUDGE BRADEN: But Mahajan does. Correct?

14 MR. BORDER: Mahajan does. And so a person of skill looking at
15 Mahajan would see that it does describe a technique where if you're going to
16 be using multiple media players and you're on your local device, this
17 describe, Mahajan describes a technique that can be used to do that
18 translation. And there are only a finite --

19 JUDGE MEYERS: It's a bifurcated technique though. It is split up
20 between two different servers, the server and client though.

21 MR. BORDER: It's a bifurcated --

22 JUDGE MEYERS: Unless consecutively.

23 MR. BORDER: Yes, Your Honor. It's a bifurcated technique in that
24 in the Mahajan description, there's, the first translation takes place on the
25 local device. And the second translation takes place on a remote device.

1 All we are explaining is that you would shift that translation on the
2 remote device to the server, to the cloud. And you would do that because
3 Danciu contemplates that one would want to do a sort of repackaging or
4 processing of the control information at the cloud.

5 And again, this is -- I mean, this is just -- this is describing exactly the
6 type of translation that occurs in the '251 patent and there are only a number
7 of finite and predictable places where you could place that functionality.

8 You could put it on the client, you could put it on a server or you can
9 put it on a remote device. Mahajan explains that it puts it on a local device
10 and a remote device. But it says it can be distributed. And that means that
11 you could put these things anywhere.

12 For example, on an intermediary device such as the server in
13 Danciu. Hopefully that answered those questions. I'll move on to Aldrey.
14 And this was Slide 14. We also presented an obvious combination based on
15 the teachings of Aldrey, the system in Aldrey and the teachings of Mahajan's
16 command translation.

17 This is a very similar argument that we just addressed. We explained
18 that a person of skill would be motivated to implement Mahajan's command
19 translation techniques. And again, this is just specific to universal, universal
20 to specific.

21 In the Aldrey system, again, because Aldrey also contemplates having
22 different media players on the remote device than are on the local device.
23 And so that type of translation would need to occur. I'll skip ahead to Slide
24 19. This is demonstrative Slide, excuse me, Demonstrative Slide 17.

25 This is, again, this is my busy slide that I didn't highlight the thing that
26 I wanted to highlight and probably highlighted too much. But at the lower

1 left-hand corner here, and we explained in the petition at Pages 67 and 68,
2 similar to the Danciu reference, Aldrey contemplates that the end terminal
3 which would be a portal of advice such as cell phone, would likely employ
4 different applications than Aldrey's remote device or television.

5 And so that's why you, a person of skill would be motivated to
6 implement these Mahajan teachings into a system like Aldrey. Again, it's this
7 contemplation of different media players on the remote device.

8 JUDGE BRADEN: Okay so now what is there in Aldrey that would
9 be like Danciu as far as repackaging or moving things from, you know, this
10 end terminal or server or something like that? You said that would, yes,
11 there's a reason why you would recognize that you've got different
12 applications and so you might want to have this universal remote.

13 But what is there in Aldrey that would be similar to Danciu about
14 where you would put this versus, you know --

15 MR. BORDER: I think that type of description in Aldrey is not as
16 specific as it is in Danciu.

17 JUDGE BRADEN: Okay.

18 MR. BORDER: I do know that we also really -- similar to Danciu, we
19 relied on the distributed nature of Mahajan to specifically suggest to a
20 POSITA why they would want to implement in the Aldrey system.

21 Again, Aldrey system does teach that, you know, it's got the same
22 architecture, it's got a server, it's got a personal device. And it's got a remote
23 device. The description is not as specific as Danciu on why you would want
24 or that you would to convert some of those commands at the server.

25 But, again, the distributed nature of Mahajan would teach a POSITA,
26 you know there's a finite number of places you could implement those

1 command teachings. No one disputes that first specific to universal would
2 occur at the personal computing device.

3 The only dispute here is where that second translation occurs. We're
4 saying move it from the end device to a server. That's the entire sort of
5 combination. Shifting it essentially to a server. We've sort of already
6 touched on this. I'm on now Demonstrative Slide 19.

7 I think we see in the Patent Owner response consistent with your
8 questions, Your Honor, sorry that's another issue. I see in the Patent Owner
9 Response that Patent Owner has suggested that we have not made this
10 argument that we're discussing right now.

11 We demonstrate in the petition that we did. We taught, we explained
12 that and as I explained earlier in the afternoon by showing the Institution
13 Decision that a person of ordinary skill would be inclined to do the universal
14 to specific translation at Danciu's server.

15 And we explain the same about Aldrey's server. In the Patent Owner
16 response, they didn't address that argument. Instead they explained that we
17 have always maintained that those translations occur at the end-user device.
18 That obviously is not true, Your Honor.

19 Your Honors appreciated that we were relying on Mahajan's
20 teachings, universal to specific teachings at the server, but this is in the
21 petition at Pages 39 to 42. This is our diagram of blue on the left, red on the
22 right and the green abstraction module signifying that the translation of
23 universal to specific occurs at the server.

24 This is also in our petition at Pages 67 and 72. You'll find a very
25 similar figure there describing how it would be implemented in the Aldrey
26 technique or in the Aldrey system. To the extent there's any confusion,

1 Patent Owner asked our expert whether they were relying on Mahajan's
2 architecture.

3 JUDGE BRADEN: I think for the benefit of our remote judges, you
4 may want to let them know where you are.

5 MR. BORDER: Thank you, Your Honor. I apologize. I'm at
6 Demonstrative Exhibit 20. And I'm reading from a passage of Mr. Lett's
7 cross-examination. This is Exhibit 2027, line 42. Or Page 42, lines 4 to 11.

8 He was asked whether, about his combination of Mahajan with the
9 other prior art and he explained, I did not rely on Mahajan for the
10 architecture. I relied on Mahajan teaching of conversation from generic
11 commands to specific media commands and vice versa.

12 So it has never been a mystery that Petitioner has relied on Mahajan's
13 teachings, not it's specific architecture, not where it's specifically
14 implemented in it's grounds. Let's go to some of the other issues that we saw
15 in Patent Owner's response.

16 This is Demonstrative Exhibit Slide 22. This relates to whether
17 Mahajan does the selection of a media player. As the '251 patent confirms,
18 this selection in the patent is done through the use of a lookup table. And so
19 we showed on the petition at Page 40, the same type of lookup table that
20 occurs.

21 And if Your Honors are interested, you can go to the '251 patent at
22 Column 6, lines 7 through 18 and I'll read that briefly because I think this
23 selection is not as complicated as Patent Owner is suggesting.

24 JUDGE BRADEN: So you're at Column 6 and what was the line
25 number?

26 MR. BORDER: Yes, Your Honor. Column 6, lines 7 through 18.

1 JUDGE BRADEN: Thank you.

2 MR. BORDER: It explains the universal adapter 26 can be
3 implemented, for example, as a lookup table. Example of entries in such a
4 lookup table are illustrated in Figure 5. Thus, for a universal command, a
5 new video, the universal adapter 26 provides the corresponding command for
6 each of several specific media players.

7 For example, Y2_load video for YouTube. And so the way that the
8 patent, the '251 patent works is exactly the way that Mahajan works. It has a
9 lookup table that has a command on the one side and the translation on the
10 other and that includes or contemplates multiple translations.

11 And on Slide 22, like we have this on the right-hand side there, this is
12 from our reply at Page 15, we explained that Mahajan also describes how
13 other mapping tables can include multiple translations. And we explain that
14 Mahajan provides an example of the client having two media players,
15 QuickTime and Ogg.

16 And so Mahajan describes the exact same lookup table. It describes
17 this aspect of multiple translations and one of Your Honors --

18 JUDGE BRADEN: And, counsel, I'm going to ask you to pause for
19 just one moment.

20 MR. BORDER: Yes, Your Honor.

21 JUDGE BRADEN: I'm going to pause your time and we're going to
22 get Judge Moore back online. I believe he might be having some
23 connectivity issues.

24 (Pause.)

25 JUDGE MOORE: I'm going to get on another way that's more stable.
26 Give me just a moment please.

1 JUDGE BRADEN: Thank you.

2 (Pause.)

3 JUDGE BRADEN: Nice to have you back with us, Judge Moore.

4 JUDGE MOORE: Yes, sorry about that.

5 JUDGE BRADEN: And, Counsel, you may proceed.

6 MR. BORDER: Thank you, Your Honor. All right moving on to
7 Slide 24 and Claim 22 of the '251 patent, a few different issues disputed in
8 this with respect to this claim. I've highlighted them here. The elements
9 22C, 22D and 22E, we'll go into some of the reasons that these issues are
10 disputed here in a moment.

11 First, let's take a look at Slide 26. This relates to Touchstream's
12 argument that Danciu only discloses running the same application on the
13 remote control at once. And it explains for that reason Danciu doesn't
14 identify the first media player, but this is wrong for a number of reasons,
15 Your Honor.

16 First, I mean even if a phone is running an instance of YouTube and
17 the remote device such as a TV is running YouTube, those are still two very
18 different applications. I also note that in the Institution Decision, Your
19 Honor, the Board recognized and I think this is in the next slide, you found
20 no support for the argument that Danciu only focuses on a single media
21 player.

22 As you recognized and as we explained, this is on Slide 27. Danciu
23 mentions YouTube twice and Hulu and Netflix. So certainly Danciu
24 contemplates the use of more than one media player and certainly through its
25 translation techniques identifies more than one media player.

1 There's a second reason the Board found that this is already taught.
2 And that's through Calvert. Calvert, in the Institution Decision on Page 29, I
3 don't have a slide for this, Your Honor, but the Board already found that
4 Calvert satisfies this limitation.

5 I think the only argument in response from Patent Owner was that a
6 person of skill would not combine them. Calvert, like Danciu, like the '251
7 patent, like Aldrey, is about controlling media from a, from a local device to
8 a remote device. It's --

9 JUDGE BRADEN: And, Counsel, I just want to remind everyone
10 that the Institution Decision was based on a reasonable likelihood. It's a
11 different standard for a final written decision for a preponderance of the
12 evidence so even if there were preliminary findings in the decision of the
13 Institute, that's under a different standard than what we would review for the
14 final written decision.

15 MR. BORDER: Of course, Your Honor. And my only point, my
16 only reason to point that out is that you had previously identified it. Patent
17 Owner has offered no argument against the finding that you made so I would
18 submit that sort of rises to the next level under your examination. If we may
19 move to Slide 28, please.

20 This relates to the retrieving element. The Patent Owner argues that
21 this claim requires an active step to retrieve the information from the server.
22 We think that's an implicit claim construction. We don't know that appears in
23 the claims.

24 However, we submit that Danciu nonetheless teaches it. Here on
25 Slide 29, we explain that Danciu was configured to transmit data requests and
26 some of these data requests include HTT commands. Which a POSITA

1 would know includes a get command for retrieving data by a client from a
2 server.

3 We also asked Dr. Wicker, Patent Owner's expert, on cross-
4 examination about this and he explained that, yes, one can retrieve
5 information from a get command, one can retrieve information using a get
6 command as part of the HTTP protocol.

7 And, again, you'll find that description and citations to Dr. Wicker's
8 testimony in the reply at Page 19. With respect to the Aldrey Mahajan
9 combination, again, this is Claim 22 and I'm on Slide 31, this relates to the
10 obtaining and loading limitations.

11 You know, not a lot of dispute here. I think Aldrey demonstrates that
12 the media can be essentially loaded into a container on the remote device and
13 we also explained that a POSITA would understand that in order for the
14 media player to execute and display content, it would be loaded on that
15 device.

16 This is in the petition at Page 84. Turning to Slide 32, this is an
17 excerpt from the reply at Pages 23 to 24. We explain how Aldrey describes
18 the remote application and how it can be overlaid on the display device and it
19 functions as the media player, how it contemplates multiple different types of
20 internet content including audio, video and pictograph.

21 The citation to Aldrey here is at Exhibit 115, paragraph 52. Mr. Lett,
22 our expert, also explained that flash media and HDML is also described in
23 Aldrey and those can separately use to play video embedded in web players.
24 This is Slide 33.

1 This is a passage from reply, our reply at 24 and we're citing to Mr.
2 Lett's reply to our brief at paragraph 34. If Your Honors have no further
3 questions, I would like to reserve the rest of my time for rebuttal.

4 JUDGE BRADEN: Judge Moore, Judge Meyers, do you have any
5 questions?

6 JUDGE MEYERS: No further questions.

7 JUDGE BRADEN: Very good, thank you so much. And Patent
8 Owner, confirming that you are still requesting 15 minutes rebuttal time?

9 MR. DYKAL: Yes, Your Honor.

10 JUDGE BRADEN: Very good. You may begin your argument when
11 ready.

12 MR. DYKAL: Thank you and may it please the Board, as Patent
13 Owner has pointed out in its various papers, the fundamental problem is that
14 Petitioner has not provided a motivation to combine Mahajan with the other
15 references in a way that's necessary to teach the challenged claims.

16 As the Board has pointed out, Mahajan describes a very particular
17 architecture that is well suited to accomplish the goals that Mahajan sought to
18 achieve. If you look at the disclosures of Mahajan, each device—whether
19 server or client—has this RTS abstraction module.

20 And Mahajan explains that makes sense because that way the server
21 does not have to know all of the different media players and configurations
22 that can be on that client. Rather, under the disclosure of Mahajan, it is left
23 to each device and each client to have the abstraction layer that's necessary to
24 go from the universal or generic commands to the specific commands that are
25 implemented on the particular device.

1 And that's very different from the challenged claims here. Claims 1
2 through 22 describe a specific architecture where that conversion is
3 specifically done on the server. The server in the '251 patent has knowledge
4 of the different media players and the different programming code that is
5 used by those media players.

6 It is the server that receives the universal translation or the universal
7 command, translates it into specific programming code for the particular
8 clients. In the petition, there was no specific motivation to combine Mahajan
9 in the way that the Petitioner now asserts.

10 And that is the subject of our motion to strike. In particular, regarding
11 the motion to strike, after the Board made its, some of its thinking clear in the
12 Institution Decision, later Petitioner went back, claimed there was a
13 typographical error that made it, the original mapping that it had not accurate.

14 And purported to fix that typographical error. A couple of points with
15 that, there were many opportunities to fix a typographical error including
16 those provided by the regulations as we point out in our motion to strike.

17 Petitioner did not fix this typographical error after Patent Owner's
18 preliminary response where we relied on that alleged typographical error. It
19 did not fix the typographical error even after the Board's Institution Decision
20 which specifically relied on that typographical error. It waited until the reply.

21 Secondly, with respect to that, we think it's quite clear that it's not a
22 typographical error because the same alleged error was made with respect to
23 the Aldrey methods. This was not an error. This is hindsight and it's the
24 same flaw that the entire petition suffers from. The petition --

25 JUDGE BRADEN: Counsel?

26 MR. DYKAL: Yes.

1 JUDGE BRADEN: So I'll let you finish that thought in a moment,
2 but perhaps you can help me to understand because in listening to Petitioner
3 and in reading their briefs and looking at the evidence, they're talking about
4 the fact that Danciu contemplates that there can be these separate messages
5 from the remote control to the server and from the server to a controlled
6 device.

7 And then they specifically say, that they are talking about applying
8 this in the petition, applying Mahajan's teachings of command conversion.
9 They don't say about applying the architecture. So perhaps you could help
10 me understand why that wouldn't be obvious to do if they're saying going
11 from generic to specific or going from specific to generic to specific.

12 Why would that not be something that a person of ordinary skill in the
13 art at the critical time, why wouldn't they understand that? Why wouldn't
14 they have thought of that?

15 MR. DYKAL: Yes, well, it goes to the specific teachings of Mahajan.
16 So if one of skill in the art were looking at Danciu and seeing the remote
17 device talking to the controlled device, the first thing I would point out is
18 there's really no role for the server in Danciu.

19 The one passage that Petitioner points to and that they rely on in Page
20 26 and 27 of the petition is not talking about conversion. It is simply talking
21 about receiving commands at the server. We are not disputing that Danciu
22 discusses receiving commands from the server and forwarding them to a
23 device.

24 But there's no role of the server in Danciu for actually changing
25 commands. There's a quick mention of repackaging the commands, but if
26 you read the rest of that package, I'm sorry, if you read the rest of that

1 paragraph, Danciu goes on to say those commands are sent and received.
2 There is no discussion of different commands ever coming out of that server.
3 So the --

4 JUDGE BRADEN: But I do believe that Petitioner is saying that
5 Mahajan, they're relying on Mahajan for the conversion and then just
6 applying that to Danciu so why doesn't that work?

7 MR. DYKAL: Yes, so the first point is the server in Danciu has no
8 role. And so the first leap that one of ordinary skill in the art would have to
9 make is like, oh, what if I had the server in Danciu that has no role in this
10 conversion. What if I had to do in the conversion?

11 That would be the first leap that there's no basis for in the petition.
12 Then they would look to the teachings of Mahajan and say, okay, how could I
13 implement this conversion in Mahajan in this architecture of Danciu. And
14 the solution as presented in Mahajan, -- did we lose Judge Moore?

15 JUDGE BRADEN: I was --

16 MR. DYKAL: Oh, I think he's back.

17 JUDGE BRADEN: Judge Moore, can you confirm oh, I -- there you
18 go.

19 MR. DYKAL: Okay.

20 JUDGE BRADEN: Please continue.

21 MR. DYKAL: Okay so starting with the premise that there's no real
22 role for the server in Danciu other than forwarding the commands, one of
23 ordinary skill would have to make believe okay, what if we had a role for the
24 server here?

25 Then let's say they looked at the teachings of Mahajan. Mahajan
26 teaches that the server can translate from universal to specific for that device.

1 And that's every disclosure of Mahajan. The generic to the specific is on
2 device.

3 There's no disclosure of Mahajan where it goes generic to specific for
4 another device. That is not within the corners of Mahajan. So Mahajan
5 would actually have to be modified to use it in the way the Petitioner is
6 asserting. And there's no basis in the petition for modifying.

7 There's no reason one of ordinary skill in the art would do that. What
8 one of ordinary skill in the art would do, what we would point out, they
9 would configure the client device if translation was necessary, the generic
10 command would just end up at the client device and be translated on that
11 device for the media players on that device.

12 The intelligence of Mahajan is on the end devices which, again, goes
13 to the fundamental point that Mahajan is trying to convey. It is easier for all
14 of the client devices to understand their own needs and do their own
15 conversion rather than have it being done on a server that needs to know the
16 programming codes and the media players run by all of the clients.

17 And there's no rationale in the petition for modifying Mahajan or
18 combining them in this way that we think was not present at all which is the
19 focus of our motion to strike.

20 JUDGE BRADEN: So then, if that's the case, then what is the point
21 because whenever I look at or go to Mahajan and I'm looking at their
22 conversion table, Figure 3, if you're saying that this is all, all of this has to be
23 on the client, wouldn't if you look at Figure 3 -- why is this not something
24 that's applicable the way that Petitioner has envisioned it with these
25 abstraction layers, the abstraction modules 210 and 214 to be able to go from
26 the conversions from this generic to specific?

1 And then go to the client sec because when you look at this, I'm not
2 sure why you can't go from one to the other, from the server to client.

3 MR. DYKAL: Well the point that we would make is that this is,
4 again, really antithetical to what Mahajan is contemplating. If you look at
5 Figure 3, the important thing to note here is that the messages never leave a
6 device. They never leave server as anything specific for that device.

7 The entire concept of Mahajan is if you translate them to something
8 generic that everybody can understand, then you don't have to worry about
9 the details of implementation on the client device. You send a generic
10 command and leave it to the client device to use its own RTS media extract
11 module to convert it into something that it needs to be converted to. Does
12 that answer your question?

13 JUDGE BRADEN: It does, thank you.

14 MR. DYKAL: I also wanted to make on point that Petitioner's
15 counsel made regarding this idea that there's disclosure in Mahajan for
16 translating a universal command into a specific media player command
17 depending on the specific media player.

18 If you actually look at the passage from Mahajan that discusses that, I
19 think it was paragraph 46, let me see. Oh, yes, I'm sorry, paragraph 41. So
20 they point to this disclosure in Mahajan that discusses the quick time and
21 Ogg could be on the client device.

22 And they say that discloses this mapping table to multiple clients. But
23 if you actually read more closely what it's talking about is having multiple
24 mapping tables for each of the different clients. So there is not a
25 determination of which command needs to go to the specific command in
26 Mahajan.

1 And then if you read the very next paragraph, paragraph 42 of
2 Mahajan, the second sentence says, for example, the server RTS mapping
3 table may not need to take into account all the possible media platforms that
4 can be employed on the client.

5 In other words, the server's media table such as RTS mapping table
6 302 can be independent of the client's media platform. Again, that goes
7 directly to the entire point of Mahajan. Mahajan teaches you do not want the
8 server to have to know all the configurations on the client because it could
9 change. It would be dynamic.

10 That passage from Mahajan, paragraph 42 we think supports the idea
11 that it's teaching a way from this supposed combination.

12 JUDGE BRADEN: Pause one moment.

13 MR. DYKAL: I will pause. Thank you.

14 (Pause.)

15 JUDGE BRADEN: I apologize, gentlemen, for the technical
16 difficulties we're getting to enjoy together today. All right, I see Judge
17 Meyers. I do not see Judge Moore.

18 JUDGE MOORE: I apologize.

19 JUDGE BRADEN: Judge Moore? Are you there there? Can you
20 hear us?

21 JUDGE MOORE: Yes, I can hear you.

22 JUDGE BRADEN: Oh, there you are. All right. Then we're going to
23 turn the time back on and we're going to proceed. Counsel?

24 MR. DYKAL: Okay. Thank you, Your Honor. So I spent the first
25 bit of my time addressing some of the arguments from Petitioner. I think it

1 would maybe make sense logically to go through my presentation and then,
2 obviously, we wanted to hear questions from any of the judges.

3 Go to Slide 3. So this is the general structure of the presentation
4 today. I think I'll breeze through the challenged claim. It sort of references
5 the Board is clearly familiar with the material. Claims 1 through 21, we want
6 to point out first that our motion to strike the improper reply is really
7 dispositive of the petition as to Grounds 1 through 21.

8 Without the new arguments and the improper arguments made in the
9 reply, there's no rebuttal to Patent Owner's positions and those grounds, those
10 Claims should be upheld. The second bullet point, all grounds fail for relying
11 on Mahajan's deficient disclosure is an independent ground.

12 And so that is really if the Board declines to grant the motion to strike.
13 The challenge to Claims 1 through 21 fails independently. And then after
14 going through that, we would like to address Claims 22 through 26 which as
15 the Board noted in an Institution Decision is, does have some different
16 language from the other claims including it lacks that specific conversion
17 verb.

18 But the grounds as to Claims 22 and 26, 22 through 26 also fail as to
19 both the Danciu and the Aldrey combinations. So maybe it was, we can skip
20 through I think the challenged claims and the asserted references portions.

21 So Petitioner's motion to strike, so the theory number one, we note
22 that the petition never says which module does this alleged conversion. One
23 thing I want to point out in the Institution Decision is that the Board noted
24 that Mahajan does discuss that this could be implemented and a distributed
25 computing environment.

1 And perhaps that lends some support to this area. Two points in
2 response to that. First, the Mahajan disclosure really is a distributed
3 computing patent. It talks about having servers and clients exchange
4 information in an operating way. But again, just because it says it could be
5 implemented in a distributed computing environment, doesn't mean that one
6 of skill in the art would modify it in a way that's really antithetical to what
7 Mahajan is trying to accomplish.

8 In order to really do this in the way that Petitioner suggests, you
9 would need to break out that RTS abstraction module and split it between
10 two devices which really defeats the purpose of Mahajan which is that none
11 of these devices should have to know the specifics for the media players on
12 the other devices so that's the first reason that distributed passages doesn't
13 satisfy the language.

14 And the second is I would note that one of the passages that's relied on
15 by Petitioner about those distributed computing environment is paragraph 18
16 of Mahajan. And it discusses that, you know, various things could be
17 implemented on various devices.

18 But one thing I do want to point out is in paragraph 18 Mahajan says,
19 the client may have more, less or equal processing capabilities than the
20 server. Sorry, going back one further. Further, the terms client and server as
21 used herein, do not connote any relative capabilities of the two devices.

22 The client may have more, less, or equal processing capabilities than
23 the server. Rather, and this is the important part, rather, in this description,
24 the name server and client describes the relative relationship of the two
25 components.

1 So Mahajan even says, yes, you can do it in distributing way, and the
2 term server might have different capabilities and the client might have
3 different capabilities, but the relationship between the two is preserved.

4 And I think that's important because what Petitioner is attempting to
5 do is switch the relationship and then not only introvert the relationship with
6 client server, but then break apart the RTS abstraction module for being on
7 one device, being on separate devices.

8 And Petitioner has provided no motivation for why one of ordinary
9 skill in the art would do that other than what we feel is hindsight by us seeing
10 that its mapping was deficient after the Patent Owner's response and
11 Institution Decision going back and identifying an alleged typographical
12 error to back fill the record to try to make this mapping work. Petitioner --

13 JUDGE MEYERS: Counselor, if you could refer to the Page number,
14 I would appreciate it.

15 MR. DYKAL: Yes. I apologize, Your Honor.

16 JUDGE MEYERS: Thank you.

17 MR. DYKAL: So we are at Page 12 on Patent Owner's
18 Demonstratives. So petition theory number two, we note that there's no role
19 for Danciu's servers in this theory. And again, the disclosure of Danciu never
20 really talks about the servers doing anything but passing information from the
21 remote control to the controlled device.

22 There are no mapping tables on the server, there's no conversion on
23 the server. At best, it says some of the control messages can be repackaged.
24 But those control messages are still past forward in a new package. There's
25 no intelligence of the server in Danciu.

1 And that's from the petition, again, Danciu's remote control would
2 translate commands to a generic format and then transmit them to the
3 controlled device which would translate them for execution. I pointed out
4 petition theory number two, sorry, we moved to Page 13, Your Honor.

5 Petition theory number two was not a typographical error. Point A,
6 the petition is very consistent. Danciu's remote control transmits commands
7 to the control device and the servers are only a pass through. We think that's
8 very apparent from the petition.

9 And, again, Point B, if it was an alleged typographical error, it persists
10 throughout the entire position. It's the same position that Petitioner took with
11 Aldrey. And there was no contention that Aldrey was also a typographical
12 error.

13 So we think it's a fairly obvious attempt to backfill a record that
14 Petitioner recognized was lacking. So, again, if the motion to strike is
15 granted which we feel there are very strong grounds for, again, if you look at
16 the timing, if Petitioner really wanted to fix this typographical error as we
17 pointed out in our motion to strike, there is ample time to do it after Patent
18 Owner files its reply, after the Institution Decision.

19 I think it's almost a year before Petitioner sought to correct this
20 typographical error. Now if the Board does not grant the motion to strike,
21 there are independent grounds for why Claims 1 through 21 should not be
22 cancelled. They should remain patentable.

23 And that boils down to there's no disclosure of converting for a third
24 device and that's really the fundamental heart of this, that Mahajan never
25 talks about converting for a separate device. The conversion is on device for

1 that device and that is really the teachings of what Mahajan is trying to
2 accomplish.

3 The petition failed to provide a motivation for why one of ordinary
4 skill in the art would modify Mahajan in the way that's necessary. One thing
5 I did want to point out, counsel or Petitioner said that this was very clear even
6 from the Lett depo, we would point out that the Lett depo was the second Lett
7 depo after the reply where we wanted, where it became clear what our
8 positions were and that the petition was lacking.

9 And then at that point, Mr. Lett did say, oh, I was just applying the
10 teachings, not the architecture, but that was the second depo well after our
11 position was clear. So that's we feel another attempt to backfill the record.
12 And then there wherein clause in Claims 1 through 21 is missing.

13 And that's wherein the server, in the conversion step wherein the
14 server chooses particular programming code for the media players. That is
15 also lacking in the petition. And then, finally, arguments on Claims 22
16 through 26 fail for independent reasons.

17 Okay, you can go to the next slide. So these are the independent
18 grounds if the Board chooses not to grant the motion to strike. In the
19 petition, they say they rely on the techniques for sending commands for
20 media play back between a server and a client as is taught by Mahajan.

21 Again, there's no reference for modifying Mahajan in the way that
22 they now attempt to. And, again, Petitioner is exclusively side for Mahajan
23 for the converting limitations. That's really all that they're pointing it to.

24 And we point out, no matter where you pick and choose for Mahajan,
25 there's no disclosure of one device converting for a second device. That's

1 really what's antithetical to the Mahajan disclosure. And this is the three-part
2 system from the Touchstream claims.

3 And again, it's, I think the Board recognizes it's very clear that the
4 conversion in Claims 1 through 21 occurs by the server system. It's explicit
5 in the claims. And it's simply not taught in this way by any of the references.
6 I think we've discussed this amply.

7 I don't think we need to go over it more. But this is the Figure 3 from
8 Mahajan which shows that when communicating between devices, it's always
9 a universal command or a generic command. There's no disclosure of
10 converting universal for one device for something specific on the second
11 device.

12 JUDGE BRADEN: And now we're moving on to Slide 19?

13 MR. DYKAL: Yes. I am sorry, Your Honor. Yes. Apologies. Slide
14 19 and this discusses the surreply Page 4. Again, Mahajan each device has
15 an RTS abstraction module. And so if one of skill in the art was applying the
16 teachings of Mahajan, regardless of the architecture of Mahajan, the
17 teachings of Mahajan would be to give each device an RTS extraction
18 module to do conversion on device.

19 And that simply does not teach the limitations of Claims 1 through 21
20 which require conversion on the server for the client. Slide 20 please.
21 Again, Mahajan's disclosure discusses a kind of shared language where every
22 device can use this generic language and talk to each other. And because of
23 that, each has its own module.

24 And because each has its own module, there's no need for a server to
25 know all of the media players of every client and be able to do that

1 conversion specifically for that client. Slide 21. There's no motivation to
2 achieve the converting as claimed which has to be done by the server system.

3 In Danciu, the remote control sends commands to the control device.
4 There's really no role for the server. And in Mahajan, it's server to client
5 using the generic language. And nothing in the petition has a motivation to
6 combine them in the way that is required to teach these claims. Slide 22
7 please. I think we discussed this.

8 The distributing computing passage does not supply motivation to
9 combine. It simply discusses the fact that different devices could be used, a
10 mobile device could take the place of a PC, a server could take the place of a
11 PC, we don't contest that.

12 But regardless, if it was a mobile device in Mahajan or a server, they
13 would have an RTS abstraction module because that's the teachings of
14 Mahajan.

15 JUDGE BRADEN: Can you point where in Mahajan it does say that
16 every device has an abstraction module? Is there a requirement in Mahajan
17 that everyone has an abstraction module?

18 MR. DYKAL: Yes, I don't think there's a specific passage that says
19 every device must have an abstraction module. But all the scenarios
20 discussed in Mahajan discuss each device having an RTS distraction module.
21 There's no disclosure of a device not having one and relying on a different
22 device as RTS abstraction module.

23 JUDGE BRADEN: All right, thank you, counselor.

24 MR. DYKAL: Slide 23. This abstraction layer from Figure 1, this
25 really is a depiction of the RTS abstraction layer in between computers that
26 allows them to communicate seamlessly. And this was, came out in Dr.

1 Wicker's deposition where he described that he was asked, couldn't the
2 abstraction layer reside on both the server and the client? Or a server and the
3 network? Right?

4 And he says it's not described that way in the application. Slide 24
5 please. Oh, yes, Slide 25, you're right. I think the Board recognized there's a
6 five-step translation in the entire Mahajan process, but in particular a two-
7 step translation here.

8 And, you know, gone over this many times. I don't think we need to
9 belabor it. But the specific commands go to generic on the server, generic
10 goes out of the server, the client receives generic and converts to the specific.
11 Slide 26 please. So this is a separate argument.

12 This is the wherein clause from the claims of the '251. And in that
13 wherein clause, the claims require the server to select a specific command
14 from among a plurality of specific commands for different media players.

15 And so the '251 is really discussing the server receives this universal
16 command and because the messages that go into the server also include an
17 identification of the media plan, the server can take that information, what
18 media player is being used, what client is being used, and the universal
19 command to select from among a plurality of different media players on the
20 server.

21 And regardless of where it's done, there's really no disclosure of this
22 in any of the references, at least Mahajan and Danciu from selecting among a
23 plurality of different commands for different media players. And, again, I
24 point this out, counsel for Petitioner pointed out that passage in Mahajan that
25 discusses quick time in Ogg.

1 But if you read that passage more clearly, it discusses separate
2 mapping tables on the client, always on the client for each of the different
3 media players rather than selecting from different commands within,
4 selecting from different commands for each of the specific media players.

5 The petition argues that Mahajan's commands may be specific to
6 events associated with the playback of media files. But that doesn't really
7 address the idea that there's a plurality of media players that need to have
8 their specific commands.

9 YouTube might need its own particular command as discussed in the
10 '251 patent versus Hulu or other media players. And there's no argument at
11 all presented for these grounds based on the Aldrey combination. So this is
12 really just the Danciu and Mahajan.

13 And then Petitioner's reply already for the first time, I'm sorry back to
14 26, for the first time the Mahajan teaches multiple translations that Ogg,
15 QuickTime, we don't think it's present in Mahajan at all, but again, this wasn't
16 something that was raised in the petition.

17 Slide 27, please. Okay so that was Claims 1 through 21. Again, if the
18 Board grants the motion to strike, we feel that the evidence is unrebutted and
19 those claims should be converted as patentable. If the Board declines to grant
20 the motion to strike, those independent grounds including the wherein clause
21 and the selection, I mean a failure to provide an ample motivation to combine
22 are ample grounds to confirm compatibility.

23 And so moving on to Claims 22 through 26, and as the Board noted in
24 its Institution Decision, Claims 22, Claim 22 is independent and it does lack
25 that specific conversion limitation. Now there is an argument that it's

1 inherent because it does discuss that a universal command is received by the
2 server.

3 And then something indicating a programming code is retrieved by
4 the client, but that was not our primary grounds, but I did want to point out
5 that there is sort of at least some sort of translation from universal to
6 something more specific inherent in Claim 22.

7 But, okay, moving onto Slide 28, Danciu does not teach or suggest
8 retrieving first or second information. As we pointed out, the different verbs
9 used in the claims of the '251 should be given different meaning. And
10 receiving something is not the same as retrieving something. Retrieving is an
11 active verb.

12 And there's no indication in Danciu that retrieving is present and, in
13 fact, in the petition, the petition simply relied on the same grounds from
14 Claims 1 through 21 and pointed back to those grounds when providing
15 grounds for Claim 22.

16 So the petition made no effort to distinguish between the different
17 verbs that are used from Claims 1 versus Claims 22, for instance. Danciu
18 does not teach or suggest identifying first and second media players as
19 claimed.

20 We will acknowledge that Danciu does discuss YouTube and Hulu.
21 The point Patent Owner was trying to make is there's no disclosure of Danciu
22 of the remote control device controlling multiple media players on the other
23 side.

24 And in Danciu, I think Patent Owner in its preliminary response
25 suffered a little bit from having too much knowledge of Danciu. Patent

1 Owner had a previous case against Google where Danciu was raised so we
2 knew where Danciu came from.

3 That came out of the YouTube effort to build a way to control
4 YouTube remotely. But if you look at the disclosure of Danciu, there's no
5 discussion of controlling multiple media players using the remote control
6 device. This is reflected in Figure 1.

7 You can see the same content is on both displays. And while there is
8 a disclosure that, you know, Hulu and some of these other applications could
9 be present, there's no discussion of a remote controlled device controlling
10 multimedia players on the controlled device.

11 And the need to have different sorts of commands that would be used
12 to control those different media players. Because that's now what Danciu's
13 focused on. There's also no discussion of conversion because, again, Danciu
14 is contemplating a YouTube app on a phone controlling a YouTube app on a
15 TV.

16 Those two apps would know how to talk to each other. Even if the
17 apps may be slightly different, they're both running YouTube. And so a
18 YouTube app on a phone can understand how to control a YouTube app on a
19 TV and there's no need for this intelligence to be built into the server. Okay
20 we can go to Slide 31.

21 Oh, so that was Grounds A and B for Claims 22 through 26. Ground
22 C, the combination with Aldrey also fails. Slide 32 please. So our main
23 point here is that Aldrey does not teach or suggest obtaining and loading the
24 first or second media players.

25 The disclosure in Aldrey, this remote application, is a configuration
26 interface on a set-top box. There's no discussion that these set-top boxes

1 could be dynamically obtaining media players after retrieving information
2 from a server.

3 All it really discusses is configuring this remote application which is
4 not a media player at all. And therefore, the disclosures of Aldrey similarly
5 don't talk about different programming codes necessary for different media
6 players because it's really not contemplating this scenario. Slide 33 please.

7 Other aspects of the petition --

8 JUDGE BRADEN: Is there a specific claim construction of media
9 player because isn't the remote application not playing media on the top, on
10 the box top?

11 MR. DYKAL: The disclosure in Aldrey indicates that the remote
12 application is a configuration layer that might go over the top of the media
13 player, but the actual media player, there were constructions and I believe we
14 submitted some to the Board after the initial Patent Owner Response.

15 And media player was construed by the District Court as software for
16 playing media. Importantly there, it needs to play the media. It's not just an
17 overlay on top of --

18 JUDGE BRADEN: Okay so what you're saying that this is the
19 overlayer --

20 MR. DYKAL: Yes.

21 JUDGE BRADEN: -- application, this is not actually playing media.

22 MR. DYKAL: Yes, Your Honor. That's correct.

23 JUDGE BRADEN: Okay. Thank you.

24 MR. DYKAL: And Petitioner has made no attempt to rebut that the
25 remote application is preloaded on the STBs. Not obtained or loaded which

1 is the specific requirement of Claim 22 and its dependents. And then they
2 never even mentioned a second media player.

3 Again, Claim 22 talks about obtaining, loading, executing a first
4 media player. And then obtaining, loading, executing a second media player.

5 So neither of those are disclosed or even argued in the petition and they
6 made no attempt to rebut that point. Slide 34, that may be the end. Okay.

7 So I'm happy to answer any questions that the Board might have or I
8 can reserve the remainder of my time.

9 JUDGE BRADEN: Judge Moore, Judge Meyers, do you have any
10 questions at this time?

11 JUDGE MEYERS: No.

12 JUDGE BRADEN: All right, I'm hearing nothing from my
13 colleagues, so thank you and we will reserve the rest of your time for
14 rebuttal.

15 MR. DYKAL: Thank you.

16 JUDGE BRADEN: Thank you. Petitioner? The podium is yours and
17 you have 26 minutes remaining.

18 MR. BORDER: Thank you, Your Honor.

19 (Pause.)

20 PARTICIPANT: So I will, I did reach out. They will not be able to
21 see it remotely.

22 MR. BORDER: Okay. I'll distribute it.

23 PARTICIPANT: Just so you're aware.

24 MR. BORDER: Thank you and I will, just a couple of brief points,
25 Your Honor. Again, on this, you know, I think our opposition to the motion
26 to strike lays out our position pretty clearly. One thing I wanted to note that

1 in their request for director review, certainly Patent Owner appreciated the
2 fact that we were applying Mahajan's conversion techniques to Danciu
3 server.

4 This is Paper 16 on Page 13. It says Petitioner argues in the
5 alternative that it would have been obvious for Mahajan's conversion to occur
6 in Danciu's server and it cites to the petition at 41. So certainly --

7 JUDGE BRADEN: And can you tell us what page that is in the
8 Director Review --

9 MR. BORDER: Yes, Your Honor. This is Page 13.

10 JUDGE BRADEN: Thank you.

11 MR. BORDER: And they refer to Page 41, Your Honor, and here is a
12 quick just to show here is Page 40. And it's a little blurry, but that's okay.
13 And here is the petition at Page 40 where we are explaining that the
14 abstraction module that translates from universal to specific would occur on
15 the green server.

16 And the explanation I think is on the other side. And this is Page 41
17 from the petition and I read this earlier and Your Honors also cited this in the
18 Institution Decision, but we explained based on Mahajan's express teachings,
19 they can operate under a distributed environment.

20 It would have been obvious to a POSITA that one or more RTS media
21 abstraction modules can operate as a server --

22 JUDGE BRADEN: Can we go back to that figure that you had
23 highlighted in Green?

24 MR. BORDER: Yes, Your Honor.

25 JUDGE BRADEN: All right so what you have highlighted in green is
26 the client RTS media extraction module 214. Is that correct?

1 MR. BORDER: That's correct, Your Honor, and this relates to my
2 discussion that the way that Mahajan describes the differences between client
3 and server, they seem to conflict with what we're describing, but let me
4 describe it a little bit more clearly.

5 What it is describing as the server is the local device where the user
6 sets. The client is the remote device that is hosting media content. So it uses
7 the terms client and server a little bit differently, but it, but the truth is that
8 the server is the local device.

9 The blue, the personal computing device. The remote device is the
10 red similar to the display and it is controlling the media that's being hosted on
11 that red device. So that does cause some confusion, but there is no confusion
12 that we were relying on this type of mapping with the, with the serve
13 techniques with the RTS media abstraction 214 which does universal to
14 specific operating at Danciu servers.

15 And, Your Honors, I don't need to put it up there, but you'll find the
16 same type of description at Page 71 and 72 that relates to Aldrey and, of
17 course, at the Institution Decisions at Page 28 and 33, Your Honors also
18 recognized that we were applying the universal to specific command
19 techniques and Danciu server and Aldrey server.

20 And then one other point if I could, I heard my colleague here
21 suggesting that Mahajan only teaches one-to-one translation. I don't recall
22 where he said that appeared in the paper. That sounds like a new argument to
23 me, but in any event, that's also a physical compatibility argument which this
24 Board and the Federal Circuit has rejected multiple times.

25 We are not physically combining Mahajan's architecture in the Danciu
26 and Aldrey we're combining its teachings. And Danciu certainly

1 contemplates multiple devices. And I don't have it with me, but at Column
2 line, or Column 8, line 52, it certainly explains that the remote control could
3 apply for many devices.

4 And I'm, oh, I have it here, right here. And I think that makes sense.
5 Because if you look at Figure 2 of Danciu, it certainly shows Control Device
6 64(a) to 64(n) so Danciu certainly contemplates the ability to control multiple
7 devices.

8 JUDGE BRADEN: So I hate to do this to you, but I'm going to need
9 you to go back.

10 MR. BORDER: Okay, Your Honor.

11 JUDGE BRADEN: I need you to go back to, you can look at Figure
12 2. Let's look at Figure 2 and then I need you to make this argument that
13 we're confusing server and client and that it's backwards in Mahajan.

14 And that that's causing confusion because Mahajan when they say,
15 when Mahajan says server, it means client. When it says client, it means
16 server.

17 MR. BORDER: I don't, sorry, Your Honor. Let me be clear. I don't -
18 -

19 JUDGE BRADEN: I just want to see, I want you to point out where
20 that's explained because when I look at paragraph 11 in Mahajan, I'm not
21 getting that. When it defines client computer and server computer and the
22 collaboration between the two of them, I'm not getting where this split.

23 So I'm hoping you can explain that to me so I understand it a little bit
24 better.

25 MR. BORDER: Yes, Your Honor, and to be clear, I'm not suggesting
26 that Mahajan made a mistake. It's just the terminology they are using in that

1 terminology, the server is the local device. That is the device that the user
2 sits at.

3 The device that is being controlled is the client device. That is a
4 device where someone is hosting some type of media. So for example, if
5 you're on a Teams meeting, or Zoom meeting and someone shares their
6 screen, and you as sort of the local device can go in and manipulate the
7 person's PowerPoint presentation or Word presentation so I want to be clear,
8 there's not a mistake in Mahajan.

9 But the way that Mahajan describes the server, that is the local device
10 where the user sits and the initial commands are made. And the client is the
11 remote device, the device that the server is sending commands to. That is
12 and then that is the --

13 JUDGE BRADEN: And they gained that from the fact that the server
14 had the graphical user interface of the client?

15 MR. BORDER: That's one of the reasons, Your Honor. And again, --

16 JUDGE BRADEN: I just want to make sure I understand this because
17 I think that this is critical to your argument.

18 MR. BORDER: Well, Your Honor, I don't think it's critical to our
19 argument. I think it's, it may explain why Patent Owner is now
20 misunderstanding what our argument was. And even if you could look at
21 their slides, they sort of switch them.

22 They put the red highlighting on the left and the blue highlighting on
23 the right. But that's not what Mahajan describes. Mahajan describes the
24 local device, the device being controlled, the personal computer is the server.

25 It's sending commands to a remote device which it calls the client.
26 And that has consistently been our argument since the petition, Your Honor.

1 They recognize it as our argument. Certainly, in their preliminary Patent
2 Owner Response and in their request for director review.

3 JUDGE BRADEN: All right, thank you.

4 MR. BORDER: One other point, this was the Mahajan point. The
5 reason I put this up is that Danciu contemplates multiple devices and so that's
6 why the teachings of Mahajan apply perfectly because this need for
7 translation from a universal command to a specific could be implemented in
8 this type of distributed architecture with multiple devices. And the same with
9 Aldrey.

10 If you look at Figure 1, it contemplates a multiple set-top boxes. And
11 if Your Honors have no further questions, oh, I did want to show you which I
12 had then I lost, the section from Mahajan that I quoted and this was from
13 Danciu. This was Column 8, line 52.

14 And it states or the line 50 to 52 states a remote control such as
15 remote control 62(a) may also be paired with more than one of the control
16 devices via a server. So this is, this is again, another -- thank you. This is
17 another explanation of why Danciu, why someone would be motivated to
18 implement these teachings from Mahajan, these translation teachings
19 Mahajan in Mahajan because this remote control can control multiple
20 devices.

21 And those multiple devices will have multiple media players. And if
22 Your Honors have no further questions, that completes my presentation.

23 JUDGE BRADEN: Judge Meyers, Judge Moore, do you have any
24 questions?

25 JUDGE MEYERS: No further questions. Thank you.

1 JUDGE BRADEN: Counsel, thank you so very much. We appreciate
2 your presentation and your willingness to indulge the Board and answer our
3 questions.

4 MR. BORDER: Thank you, Your Honor.

5 JUDGE BRADEN: Patent Owner? You may begin the remainder of
6 your presentation. You have 28 minutes --

7 MR. DYKAL: Thank you.

8 JUDGE BRADEN: -- remaining.

9 MR. DYKAL: Just a few, I want to, just a couple of very brief points.
10 With respect to the director review request, there are the director review
11 requests. We don't contest that they did argue that conversion can be done at
12 the server.

13 We contest the way they mapped it was incorrect and would not result
14 in the claims of the '251.

15 JUDGE BRADEN: So do you agree with Petitioner that in Mahajan
16 that the user is at server 102 and not at client 104 in Figure 2?

17 MR. DYKAL: No, because if you look at Figure 2, actually --

18 JUDGE BRADEN: So you don't believe that there's this -- that the server is
19 where the user is sitting and that the remote desktop 204 is where you got all
20 the processing?

21 MR. DYKAL: No, if you look at Figure 2, it says user commands and
22 they're going from the client up to the server. User commands is kind of in
23 the middle of user commands 230, so they're clearly the user commands are
24 coming from the user at the client which makes sense, that's where client is.

25 And then just the fundamental point. Even if you switched them
26 around, it wouldn't get you there. Because Mahajan still shows that each

1 device has its own RTS extraction module. To get where they needed to, you
2 would have to take the RTS extraction module and break it across devices
3 and there's simply no motivation to do that and certainly no teaching of the
4 that.

5 JUDGE BRADEN: All right. Thank you, counselor.

6 MR. DYKAL: Thank you. That's all I have.

7 JUDGE BRADEN: Okay. Fair enough.

8 MR. DYKAL: If you have more questions, I will happily answer.

9 JUDGE BRADEN: Judge Meyers, Judge Moore, do you --

10 JUDGE MEYERS: No, thank you counselor. No further questions.

11 MR. DYKAL: Thank you.

12 JUDGE BRADEN: Very good. Thank you, counselor. And I will
13 stop your time as well. Very good. Thank you, gentlemen for appearing here
14 today and answering all of our questions. Your answers have helped the
15 Panel.

16 We will take this case under advisement and issue our decision in due
17 course. As a reminder, we ask that you please stay here a bit longer and
18 answer any questions the Court Reporter may have regarding spelling. We
19 wish you all a very good day. Thank you and this hearing is now adjourned.

20 (Whereupon the above-entitled matter went off the record at 11:34
21 a.m.)

PETITIONER:

Frederic Meeker
Paul Qualey
John Fleming
Joshua Davenport
John Hutchins
BANNER & WITCOFF, LTD.
fmeeker@bannerwitcoff.com
pqualey@bannerwitcoff.com
jfleming@bannerwitcoff.com
jdavenport@bannerwitcoff.com
jhutchins@bannerwitcoff.com

PETITIONER (IPR2024-01231 Joined)

Jeffrey Miller
Elizabeth Long
ARNOLD & PORTER KAYE SCHOLER LLP
jeffrey.miller@apks.com
elizabeth.long@arnoldporter.com

PETITIONER (IPR2024-01262 Joined):

Scott Border
Christopher Gresalfi
WINSTON & Strawn LLP
sborder@winston.com
cgresalfi@winston.com

IPR2024-00322
Patent 8,356,251 B2

PATENT OWNER:

Kyle Friesen
Jason Mudd
Ryan Dykal
Robert Reckers
SHOOK, HARDY & BACON LLP
kfriesen@shb.com
jmudd@shb.com
rdykal@shb.com
rreckers@shb.com