

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	Investigation No.
CERTAIN COMPACT WALLET	)	337-TA-1355
AND COMPONENTS THEREOF	)	

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1 UNITED STATES INTERNATIONAL TRADE COMMISSION
2 Washington, D.C.
3 BEFORE THE HONORABLE BRYAN F. MOORE
4 Administrative Law Judge

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6 In the Matter of:) Investigation No.
7 CERTAIN COMPACT WALLET) 337-TA-1355
8 AND COMPONENTS THEREOF)
9 _____

10
11 International Trade Commission
12 500 E Street, S.W.
13 Washington, D.C.

14
15 Wednesday, June 21, 2023

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17 Markman Hearing

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19 The Hearing commenced remotely, pursuant to the
20 notice of the Judge, in Courtroom A at 9:00 a.m. Eastern.

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25 Reported by: Karen Brynteson, FAPR, RMR, CRR

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

2 (9:00 a.m.)

3 JUDGE MOORE: All right. Good morning. This is
4 the Markman hearing for Investigation No. 337-TA-1355,
5 Certain Compact Wallets and Components Thereof.

6 Let's start by getting roll call, starting with
7 Complainants.

8 MR. WEED: Good morning, Your Honor.

9 THE REPORTER: I'm sorry, counsel, you have to
10 turn your mic on. Turn the round disc.

11 JUDGE MOORE: It's on the table there. Just tap
12 it on the edge. Good.

13 MR. WEED: There we go. Good morning, Your
14 Honor. This is Ben Weed from K&L Gates on behalf of the
15 Complainant. And with me is Caroline Vermillion, also from
16 K&L Gates.

17 JUDGE MOORE: All right. Thank you.

18 MR. YAO: Good morning, Your Honor. This is
19 attorney Yu-Hao Yao. With me, my colleague Wei Wang, on
20 behalf of Respondent ARW and SWZA.

21 MS. CHANG: Good morning, Your Honor. I'm Linda
22 Chang on behalf of the Office of Unfair Import
23 Investigations. With me is Mr. David Lloyd.

24 JUDGE MOORE: Okay. So I guess the first thing
25 is that we are going to use my normal hearing schedule for

1 breaks. So at least for the morning, that is -- has been
2 thrown off recently. And when is our first break, usually?
3 All right. So 10:45, first break; 12:30, lunch. And then
4 I think we have a reasonable number of terms and issues,
5 but if we need it, we'll also have an afternoon break.

6 Why don't we have the parties let me know if
7 there's an agreement how we should proceed in terms of
8 presentations.

9 MR. WEED: Yeah, Your Honor, we did confer with
10 Staff and with the Respondents. And we have agreed to
11 handle the terms in the order of, first, "interposed."

12 THE REPORTER: I'm sorry. When you flip your
13 papers, it's hitting the microphone.

14 MR. WEED: Okay. First, the term is
15 "interposed," the second term will be "minimal silhouette,"
16 and the third term will be "minimize the profile."

17 JUDGE MOORE: Okay.

18 MR. WEED: And I think our thinking, at least on
19 our side, is that we would go term by term and complete the
20 argument for that term, and then move to the next, if
21 that's acceptable.

22 JUDGE MOORE: Right. And then we will start
23 with Complainant and proceed to Respondent and then Staff.

24 MR. WEED: That works for us.

25 JUDGE MOORE: Okay. All right. Unless there is

1 any housekeeping issues, you can start with the first term
2 when you're ready.

3 MR. WEED: And, Your Honor, we do have some
4 paper copies of the slides if you'd like them.

5 JUDGE MOORE: No --

6 MR. WEED: We can also put it up on the screen.
7 And I think we'll be running the slides for the Staff as
8 well from our table.

9 You can go to slide 2.

10 Your Honor, we're here to talk about a few claim
11 terms in the '808 patent, which I think the parties all
12 agree is a fairly straightforward mechanical invention
13 involving a pair of plates and an elastic band,
14 essentially. But before I get into the first term, I just
15 wanted to note, and I think the record reflects agreement
16 on this point, there was never a rejection of any claim
17 term during prosecution as being indefinite.

18 So the terms that we're arguing about here were
19 never subject to any kind of a rejection. On that basis --
20 and also there was a prior case, I think we talked about it
21 on our opening conference call with Your Honor, where one
22 of the Respondents, Mosaic, which is not here today, got
23 all the way through summary judgment of invalidity in
24 California, and in that case, there was never an assertion
25 that any claim term was indefinite.

1 So for what it's worth, there's quite a lot of a
2 record here where the claims were understandable to those
3 people who were reading them, whether it was the patent
4 examiner, the lawyers in California, or the judge in
5 California. And these issues are all new now in this case.

6 So with that, we'll jump to the first term,
7 which is "interposed," as I mentioned. And as with the
8 other terms, the Complainant and the Staff propose that the
9 plain and ordinary meaning suffices. And the Respondents
10 say that it's indefinite.

11 So on slide 3, what we've -- sorry, slide 4, I
12 have reproduced the relevant language from the two
13 independent claims, and I think the important thing about
14 this slide is that "interposed" is used in two different
15 contexts in the claim, and they both have -- it's used both
16 times to have the same meaning.

17 So the first time the word "interposed" is used
18 is in the first clause, where it says "at least two rigid
19 plates interposed to sandwich card-like contents." And
20 then the second time that it uses "interposed," it says
21 "interposed with the at least two rigid plates or
22 interposed in the grooves."

23 And I think in both cases what you can see is
24 that while the language -- I think the Staff cited a case
25 that talks about the language being a bit awkward. In both

1 cases the word "interposed" describes the relationship
2 between three things: the two rigid plates and the
3 card-like contents in the first example or the elastic band
4 and the rigid plates or the elastic band and the grooves in
5 the second example.

6 So I think the dispute here comes down to the
7 fact that the claims don't say that the elastic band is
8 interposed between one groove and the other groove. But
9 the way the claim language is written, from our
10 perspective, it is clear what is meant by the word
11 "interposed."

12 Now, if we go to slide 5, I've put a little bit
13 more of the intrinsic record on the screen here. And as
14 the Court is aware, the case law says we must look not only
15 at the claims but also at the intrinsic record to determine
16 whether a challenger has met the burden, the heavy burden,
17 to show indefiniteness.

18 And here I don't think anybody disputes the way
19 the intrinsic record reads. This is a picture, Figure 13;
20 it's one of many that we could have used to show the
21 relationship of the various components. And then on the
22 right-hand side of this slide is the two places where the
23 most detailed description of the relevant relationships
24 between the structures is shown.

25 And so as you can see in the top callout from

1 column 3, lines 53 to 65, there's a discussion here of the
2 two rigid plates 10, and it actually uses the phrase
3 "bookends," describing their relationship to the card-like
4 contents that are stored between them.

5 So what you can see is that there are two rigid
6 plates 10, and a credit card or something similar is in
7 between those plates. There's not a dispute that the
8 specification clearly describes and illustrates that
9 concept.

10 Now, as I mentioned, there are two uses of the
11 word "interposed" in the claims. The second one relates to
12 the relationship between the band and the channeling means
13 or the groove or whatever the particular claim language
14 says, and that's described in the bottom callout on slide
15 5, which is from column 4, lines 2 to 9, of the '808
16 patent.

17 And, again here what you can see is that there
18 is a groove. It's called a longitudinal groove 21 in that
19 passage. And that goes the length of each rigid plate 10.

20 And then what it says is that -- it tells us
21 what the relationship is between the band and the groove.
22 And it says the longitudinal groove is of such ample
23 dimension as to receive a corresponding part of the
24 encircling elastic band 4 and allow it to slidingly expand,
25 and it goes on. But, again, what we see from this

1 description is that there's a groove and a band, and those
2 things are sized so that the band can fit inside of the
3 groove.

4 So, again, with this term, I don't think there's
5 any dispute between the parties that the description in the
6 patent is clear. I think the dispute comes down to a
7 linguistic one about the way the word "interposed" is used
8 in the claims.

9 Now, on slide 6, I have highlighted part of the
10 deposition of Dr. Cameron, which was Respondents' expert in
11 this case. And so here I'm asking her about the product,
12 the Respondents' product, not the patent claims, but in
13 this passage she has no trouble understanding what the
14 product did, how it works, and what it looks like.

15 And there's actually some -- the second question
16 and answer on this page on slide 6, she actually agrees
17 with me that if you use the word "interposed" the way the
18 claim uses that word, it makes sense to her. It may not be
19 the most natural reading, but it does make sense to her and
20 she understands what it means.

21 The conversation was outside the context of the
22 claim because, obviously, her opinion is that it's
23 indefinite, but when we were talking just about the
24 products, she didn't have trouble understanding how the
25 parts fit together and didn't disagree with me that

1 "interposed" could be used if it was used linguistically
2 correctly to describe those relationships.

3 Similarly, on slide 7, I have called out another
4 part of her deposition, and this is exactly to the first
5 point, which is she agrees with me that in the description
6 of the '808 patent, it would be correct to say that the
7 credit card is interposed between the two plates of the
8 wallet. She had no problem with that articulation using
9 the word "interposed." So, again, it comes down to a
10 linguistic dispute, but she knows exactly what's meant by
11 "interposed" in the context of the '808 patent spec.

12 And then the last point on this term, Your
13 Honor, is about the reliance on extrinsic evidence. So
14 Dr. Cameron, in her report, went through and pulled a bunch
15 of dictionary definitions of the word "interposed." And,
16 of course, there was no trouble finding definitions. It's
17 a standard English-language word, and it showed up in all
18 the dictionaries she looked at.

19 And I pulled one up in particular. This is her
20 Exhibit 3 to her opening declaration, and this one is
21 interesting because, as I said, I think the problem the
22 Respondents really have here is the claim doesn't say A is
23 interposed between B and C. It's linguistically a little
24 bit different. But if you look at some of the alternative
25 definitions in this particular dictionary, it doesn't

1 always follow that construct. It doesn't always use the
2 word "interposed" by saying it means something between
3 something else and something else.

4 So, for example, in a different context, it says
5 "interposed" could mean to say words as an interruption.
6 If I might interpose a personal remark. So, in other
7 words, sometimes, depending on the context and the usage,
8 the dictionaries actually support the notion that a
9 different linguistic construct is appropriate, and it
10 doesn't need to say between B and C. That's not some kind
11 of magical incantation that makes the use of the word
12 "interposed" correct or incorrect from an English-language
13 perspective.

14 So unless you have other questions on that,
15 that's all we wanted to cover on the term "interposed."

16 JUDGE MOORE: Okay. Give me a moment.

17 MR. WEED: Sure.

18 JUDGE MOORE: From your perspective, is there a
19 disagreement about the standard in the law in terms of the
20 standard that I'm to use to determine indefiniteness in
21 this?

22 MR. WEED: I don't think -- I don't think there
23 is, Judge. I think the -- we made the point in our
24 responsive brief that the cases that the Respondents cite
25 are the correct cases. I think the disagreement you might

1 have seen in our brief was more about the fact that the
2 Respondents really seem not to look at the rest of the
3 intrinsic record when trying to determine whether the
4 claims are insolubly ambiguous.

5 And so we just made the point that the case law
6 requires us to look not just at the claims but at the
7 entire intrinsic record to see if we can figure out what
8 the claims mean.

9 And that's consistent with the clear and
10 convincing evidentiary burden and the sort of presumption
11 of validity that attaches to an issued patent claim. So I
12 think there's not a disagreement about the law. I think
13 there may be some misapplication or imprecise weighing of
14 the facts here, but there's not a dispute about the law.

15 And then on the point about -- I'm not sure if
16 you're asking about the ordinary skill in the art level,
17 but I don't think there's a dispute on that issue either.

18 JUDGE MOORE: Okay. All right. Thank you.

19 MR. WEED: Thank you.

20 JUDGE MOORE: Respondent, when you're ready.

21 MR. YAO: Yes. Good morning, Your Honor. So
22 before we start, Mosaic called and said that they also join
23 in Respondents ARW and SW -- excuse me, SWZA 's argument of
24 indefiniteness, so even though they're not here, but we'd
25 like to reflect the record and let Your Honor know that

1 Mosaic joins with that argument as well.

2 So with respect to the first claim that we're
3 here talking about is, it's "interposed." So before we
4 start, let's take a look at what a person of ordinary skill
5 in the art should be. So if we could -- sorry.

6 So I think all of the parties agree on what the
7 ordinary -- the person of ordinary skill in the art is. So
8 it's a hypothetical person who is presumed to be aware of
9 all the pertinent art and would have the knowledge of the
10 compact wallets and the technical degree such as a
11 mechanical engineering, so that's what a POSA would be in
12 this case.

13 And so in this case, the word "interposed," even
14 though "interposed" is a very common term where it's used
15 to describe something that's placed between, but, like, the
16 way it has been used in this patent, it's very unclear.
17 And our argument is it's indefinite because if we look at
18 the claim -- so these are the three claims in dispute.
19 We'll go through the first claim, the "interposed." So
20 claims 1, 14, and 19 requires at least two rigid plates
21 interposed to sandwich card contents like there between.

22 First off, if we just take a look at that
23 sentence, the way it's written, it's very uncommon. It's
24 not a linguistic issue where it's -- as -- as we all are
25 aware what "interpose" means, but the way it's been used

1 here is very -- very unique, I would say.

2 And even as a POSA, just by reading off without
3 reading any -- without reviewing the intrinsic record and
4 the evidence, or just by plainly looking at the sentence,
5 it is unclear what "interposed" means in this context and
6 given -- even though it is a very common term.

7 You know, it could be used in the -- I'm sorry,
8 and then claim 14 and 19 talks about at least one
9 encircling band interposed with the at least two rigid
10 plates over the longitudinal extents thereof. Again,
11 that's very -- it's also very unclear what interposed --
12 its use in that meaning. Again, it's not a simple
13 linguistic issue.

14 And if we look at this in conjunction with claim
15 1, it's sort of very indefinite what exactly -- what
16 interposed is being used here. Even with a POSA, it's also
17 very unclear. And, you know, as a POSA, one might
18 interpret that there is one circular band interposed with
19 the plates, but there could be another interpretation, and
20 just without a clear, clear exact definition of what
21 "interposed" is used -- used in this context doesn't really
22 help to construct a claim and to see how that would view in
23 terms of claim construction.

24 If we take a look at the next slide --

25 JUDGE MOORE: Counsel --

1 MR. YAO: Yes.

2 JUDGE MOORE: -- could you just sort of make it
3 plain, what are the two different ways to interpret
4 "interposed"?

5 MR. YAO: Well, so if we look at the sentence,
6 "at least two rigid plates interposed to sandwich card-like
7 contents" there, if we just take a look at that sentence,
8 you know, one meaning could be there's two rigid plates
9 that are maybe -- that are placed together like this. For
10 the record, it's one on the left, one on the right. And
11 you put something in between that. That could be one
12 interpretation.

13 And the other interpretation could be there are
14 two rigid plates interposed, so it could be -- they could
15 be put together or they are not put together. So it's just
16 really unclear as to how an ordinary POSA would interpret
17 this.

18 And, certainly, the drawing -- and if we just
19 take a look at this drawing now from the patent, it
20 certainly -- it's very -- it's not as clear as Complainants
21 put it to be, that the words "interposed" as has been used
22 in this context is certainly not as clear and is -- as a
23 reasonable POSA, it's subject to different interpretations.

24 Unless you have anything else, Your Honor.

25 JUDGE MOORE: That's fine. Have you completed

1 your --

2 MR. YAO: Yes, for the indefinite -- I'm sorry,
3 for "interposed," yes.

4 JUDGE MOORE: Okay. All right. No further
5 questions. Thank you.

6 Whenever you're ready.

7 MS. CHANG: Good morning, Your Honor.

8 So from what I've heard, and I'll try not to
9 repeat anything Complainants have said already, it seems
10 like the parties have agreed that "interposed" has a
11 meaning, that it has a plain and ordinary meaning, and that
12 various dictionary definitions support it. And I believe
13 the parties agree that it means "placed between."

14 If we could please go to slide 5. There we go.
15 Apologies, Your Honor.

16 So from Staff's perspective, the claim language
17 is clear as to what "interposed" means in the context of
18 the claim language. And so from what I understand, the
19 issue here is twofold. First, Respondents argue that it's
20 not clear what the two rigid plates are required to be
21 placed between, and they argue that it's not clear for the
22 second clause whether the encircling elastic band is
23 between the two rigid plates or the two rigid plates are
24 between the encircling elastic band. That's what I
25 understand the dispute to be here.

1 And for both disputes, it's Staff's perspective
2 that the context of the claims provide clear guidance as to
3 the bounds of the claim. So for the first clause, "the two
4 rigid plates interposed to sandwich card-like contents
5 there between," while, as I said in the briefs, the use of
6 the word "interposed" is a little awkward in that -- in
7 that clause, the language of the claim clearly provides a
8 context, because the claims say it's interposed to sandwich
9 card-like contents there between; in other words, the two
10 rigid plates sandwich the card-like contents, just
11 card-like contents are between the rigid plates. And that
12 makes sense based on the claim language.

13 And, notably, Respondents don't refer to this
14 part of the claim language in their briefs at all or make
15 any -- or I haven't heard any argument responding to this
16 claim language to show what "interposed" means in that
17 context.

18 JUDGE MOORE: Right. In my -- counsel, my
19 understanding is, as to indefiniteness, you can have two
20 different definitions. The problem is whether you can't
21 determine which of those is the proper or there's something
22 about those definitions that makes them opposing in a way
23 that you can't understand which of those should be the
24 correct one?

25 MS. CHANG: That's correct.

1 JUDGE MOORE: Okay.

2 MS. CHANG: Your Honor. And I think in this
3 case, the first clause, the claim language tells you
4 exactly which one it should be.

5 And so, similarly, in the second clause, it
6 requires encircling elastic band to be positioned between
7 the two rigid plates. And so the term "interposed" here is
8 used consistently with the -- with the dictionary
9 definition of "interpose," to place between.

10 And if we could go to the next slide, please.

11 And the intrinsic record also supports this,
12 this understanding of the claims. There's no dispute as to
13 whether the specification actually discloses two rigid
14 plates with card-like contents in between and two rigid
15 plates with an encircling elastic band in between.

16 Now if we could go to the next slide, please.

17 So for the second clause, from their briefs,
18 Respondents say that they're not sure whether the
19 encircling elastic band is interposed with the two rigid
20 plates or if the two rigid plates are interposed with the
21 encircling elastic band. And in support, they -- they
22 point to a second elastic strap, which is highlighted in
23 orange in Figure 6 of this slide, to say that they're not
24 sure whether the elastic strap should be around the two
25 rigid plates.

1 But it's clear that -- from the embodiments
2 disclosed in the specification, that the second elastic
3 strap only covers really one of the rigid plates; whereas
4 the claims require the encircling elastic band interposed
5 with at least two rigid plates. And so their other
6 interpretation of the claims, that the two rigid plates
7 could be interposed with the encircling elastic band,
8 because of the disclosure of the second elastic strap, in
9 Staff's perspective does not make any sense.

10 And so that's all that Staff has on the record.
11 Do you have any questions?

12 JUDGE MOORE: No, no further questions.

13 MS. CHANG: Thank you, Your Honor.

14 MR. WEED: I think we'll move on to "minimal
15 silhouette" now, if that's all right.

16 JUDGE MOORE: If Respondents have nothing
17 further? I know it's sort of an unusual -- there's three.
18 So since Staff has made a presentation, Respondents would
19 have a right to respond to the Staff.

20 MR. YAO: We don't -- nothing further. Nothing
21 from Respondent.

22 JUDGE MOORE: Thank you.

23 MR. WEED: All right, Your Honor. So we will
24 turn our attention to "minimal silhouette," which is a term
25 that occurs in claims 1 and 14.

1 And if we could go to slide 10, like with the
2 last term, I've highlighted the passage of the claims that
3 uses this claim term. And these, I think, are identical
4 passages in the two independent claims. And in both cases,
5 what the claim tells us is that -- it's a "whereby" clause,
6 and it says, "whereby card-like contents may be carried
7 with minimal silhouette on or with a person." That's one
8 thing. And while you're doing that, while you're carrying
9 with a minimal silhouette, the wallet also allows
10 expandable capacity.

11 So the claim tells us what dimensions we're
12 talking about here. I'm not sure if you read the
13 deposition of Dr. Cameron, but we established kind of an X,
14 Y, Z axis frame of reference in the deposition, with the
15 X-Y axis being sort of the plane of the credit card or
16 card-like contents, and then the Z axis being the
17 expandable dimension of the wallet.

18 And from our perspective, this claim is pretty
19 clear that when it's talking about minimal silhouette, it's
20 talking about the card footprint or the X-Y axis because
21 the next clause talks about permitting movement, expansion,
22 in that Z direction.

23 So as with the last term, I think the claims
24 themselves tell us exactly what the minimal silhouette
25 concept means and confirms that that is about the footprint

1 dimensions, the X-Y dimensions, in the wallet embodiment.

2 So the next slide, as we talked about before,
3 the intrinsic record is oftentimes relevant to determining
4 whether something is definite. And in the abstract, you
5 don't get past the second sentence before the patent tells
6 you exactly what "minimal silhouette" means.

7 So in the abstract, it says, "Novel features
8 hold the silhouette to the minimal dimensions of a credit
9 card, while affording maximal expandability." So the
10 minimal concept is the silhouette matching very closely the
11 footprint of a credit card. There's this maximal concept,
12 expanding -- there's a maximal expandability concept
13 described right there in the abstract of the patent when
14 it's talking about the phrase "silhouette."

15 Slide 12, we've reproduced the Staff's brief,
16 the responsive brief on this, because I think the Staff's
17 brief does a really nice job summing this point up. I
18 really don't think there's much dispute, either from the
19 intrinsic record specification portion or the claims, that
20 silhouette does talk about sort of the footprint of the
21 credit card, the X-Y axes and not the Z axis.

22 Unless you have any questions, that's all I
23 have.

24 JUDGE MOORE: No. Thank you.

25 MR. YAO: Good morning, Your Honor. So --

1 sorry.

2 So with respect to this minimal silhouette that
3 Complainant was just referring to, if we take a look at --
4 sorry, if we take a look at this again, the claim 1 recites
5 "whereby card-like contents may be carried with minimal
6 silhouette on or with a person while allowing expandable
7 capacity from between the at least two rigid plates."

8 So, first, by reading this sentence, it seems
9 like where it says the card-like content -- so, for
10 example, since we're talking about compact wallets so we're
11 probably talking about credit cards or maybe some other
12 transportation cards that may be used, it says carried with
13 minimal silhouette on or with a person. So it seems like
14 from just first off reading this, without looking at any --
15 without reading the claims or reading the intrinsic record
16 of this patent, it is unclear of what minimal silhouette is
17 referring to.

18 So as we see, a silhouette, it's a term that's
19 used to refer -- it's a term that talks about referring to
20 shirt, pants, or purse pockets.

21 So with respect to this, it says to -- it says
22 to maybe carry minimal silhouette. So does that mean it's
23 talking about the compact wallets? Or we're unclear of
24 what it's talking about. And even, further more, is the
25 minimal silhouette referring to the thickness of the credit

1 card or is it talking about the length and the width of the
2 -- either the wallet or with the credit card? Because it's
3 very unclear even with -- as an ordinary POA reading this,
4 it is also very unclear. And as Complainant has talked
5 about the different directions, you know, I believe the
6 Staff and Complainants, we're all having different issues
7 with respect to how to meet the opening direction there.
8 So that presents an issue where it is already indefinite
9 right there.

10 And if you just take a look at -- and if we go
11 to the -- if we take a look at it, like I said, you know,
12 it's -- we talked about the dimensions of the credit card
13 with this or -- and also, if it's not, if we're talking
14 about the thickness, because, you know, if it's a compact
15 wallet, could it be very thick, could it be very thin? We
16 are unclear of minimal.

17 So if we just go by very plain meaning, "minimal
18 silhouette," it could be possible to mean it's small, but
19 it's just very unclear as to what exactly what this term
20 means.

21 And unless you have -- other questions, Your
22 Honor?

23 JUDGE MOORE: Give me one minute. One minute.

24 No questions. Thank you.

25 MR. YAO: Thank you, Your Honor.

1 MS. CHANG: Your Honor, just to address a few
2 things that Respondents brought up. I think Respondents
3 argues that the silhouette could refer to either the X-Y or
4 the thickness. From Staff's perspective, I think everyone
5 here would agree that, you know, a silhouette, as used in
6 its ordinary meaning, refers to some sort of
7 two-dimensional area. Usually, if you think of a
8 silhouette, you would think of a person's profile, that is
9 -- that uses a shadow and you would see a solid profile of
10 a person with a white background.

11 And so from that perspective alone, I don't
12 think that it makes sense that there's ambiguity as to
13 whether the minimal silhouette that is referenced in the
14 claim refers to the thickness, which is arguably
15 one-dimensional.

16 If we could go to slide 10, please. Thank you.

17 And so here in the abstract, the intrinsic
18 record certainly supports that idea that the silhouette is
19 a two-dimensional plane. Here it defines the silhouette as
20 being minimal dimensions of a credit card. And so here you
21 would understand that the silhouette is talking about the X
22 and Y and not the Z.

23 And that's all I have on the "minimal
24 silhouette," unless Your Honor has any questions.

25 JUDGE MOORE: All right. Thank you.

1 All right. So we'll -- if Complainant doesn't
2 have a response, then we'll ask if Respondent has a
3 response.

4 MR. YAO: Nothing from Respondents, Your Honor.

5 JUDGE MOORE: Okay. All right.

6 MR. WEED: All right.

7 JUDGE MOORE: And we only have, as far as I've
8 seen, one person arguing, but we'd like for the record to
9 just get your name on when we start a new argument. So
10 just for everyone, less important for the Staff, but just
11 repeat your name again as we move to the next term. Sir.

12 MR. WEED: All right. This is Ben Weed again
13 for Complainant. I'll address the last term in dispute
14 which is "minimize the profile." And this is a very
15 similar term to the one we just talked about. In fact,
16 Dr. Cameron's -- Respondents' expert has one paragraph
17 about the prior term, where she essentially says "see
18 above" for her analysis of this "minimize the profile"
19 term. So it may seem a little bit repetitive.

20 But if we go to the claim language, it is used a
21 little bit differently in the claims. So this only shows
22 up in claim 1, and it shows up in connection with the
23 description of the channeling means. And in the claim,
24 it's the channeling means that's configured to minimize the
25 profile of the wallet.

1 So this is a feature, if you will, of a term
2 that the parties agree is governed by 112(6) and where the
3 parties have, in fact, agreed to a construction of the term
4 where part of the function in the agreed construction is to
5 minimize the profile. So I just want to point that out
6 first.

7 But like we saw with the other term, the claim
8 itself tells us that two things are happening at the same
9 time. One, the channeling means is minimizing the profile
10 of the wallet. And, two, the channeling means is allowing
11 freedom for the dynamic extension and contraction of the
12 band over the entire running length thereof.

13 And that happens in the context of the patent.
14 When something is inserted between the plates, the wallet
15 gets thicker, it expands and the band stretches. So,
16 again, we have a discussion about minimizing in the X-Y
17 direction while allowing for expansion in that Z direction.
18 So it's a very similar concept to the prior term, although
19 this is a feature of the channeling means itself.

20 Now, if we look on slide 15, there are a couple
21 of passages in the intrinsic record that help us to further
22 understand what "minimize the profile" means. In fact, in
23 column 4, lines 2 to 8, there is an "in other words" clause
24 that says, "In other words, no structures projecting from
25 the profile 14 are needed to fixture the encircling band 4,

1 as in the case of prior art."

2 And this follows the profile minimization
3 discussion in lines 4 and 5 that I didn't highlight. But
4 that's important because it's telling us exactly what the
5 structure looks like and why it's different from the prior
6 art.

7 And then in the column 5, at lines 54 to 55, the
8 patent actually tells us exactly what's meant by "profile."
9 In that column, it says, "the profile 14 by definition
10 preferably measure approximately 8.5 centimeters by 5.4
11 centimeters." That's the size of a credit card.

12 So the patent tells us what the profile is.
13 It's the credit card footprint. And it tells us what it is
14 to minimize the profile, which is there's nothing extending
15 beyond the credit card footprint by virtue of the use of a
16 channeling means.

17 Now, on slide 16, during her deposition, I asked
18 Dr. Cameron some questions about a number of IPR
19 declarations she put together, and this was one of them.
20 And in this case, it's not about compact wallets, but it's
21 a mechanical invention case. And she has a section in the
22 beginning of her IPR declaration where she explains some
23 concepts, just concepts that mechanical engineers would
24 have known.

25 And, not surprisingly, in paragraph 36 of that

1 declaration, she articulates that one of the goals would be
2 to minimize the overall structural profile. That phrase to
3 her, in a completely different context, but that phrase to
4 her gave her no pause about writing a declaration and
5 explaining concepts like this to the PTAB under oath. I
6 don't do that to really even touch her credibility in this
7 case, but my point is this phrase, this is a phrase she was
8 comfortable with in another seating, and I think it's a
9 very understandable phrase in the context of this patent.

10 The last thing I want to say about this term,
11 and we mention this in our responsive brief, but I wanted
12 to put the testimony from Dr. Kurfess up on the screen
13 because Dr. Kurfess, which is Complainant's expert, during
14 his deposition explained this concept in a way that I
15 thought was very helpful and visual.

16 So what he basically said is if you think about
17 a standard wristwatch, one way that you could affix the
18 band to the wristwatch is by having a pair of arms on each
19 side and a pin. I'm sure Your Honor has seen watches like
20 that. You've probably had those pins break before. But to
21 affix that kind of a band to the watch, you have to extend
22 the footprint of the watch part a little bit to accommodate
23 those pins. Another way to do it would be to put a
24 sandwich structure under the face of the watch and run a
25 band through an opening in that structure.

1 And that's what Dr. Kurfess is talking about.
2 He's saying what the patent is about is using that
3 channeling means so that you don't have to have pins or
4 some other kind of structure expanding beyond the profile
5 of the standard credit card, and you still get that
6 affixing that needs to be done to allow the wallet to hold
7 the contents.

8 So I just want to make sure that the Court saw
9 this testimony. I thought it really was a nice visual. I
10 think it proves the point about what the patent is talking
11 about, which is that, in the prior art, the way one might
12 have done this is to have structures extending beyond that
13 8.5-centimeter or so footprint of a credit card.

14 Unless you have further questions, that's all I
15 have for that term.

16 JUDGE MOORE: No. Thank you.

17 MR. YAO: Your Honor, this is Yu-Hao Yao on
18 behalf of Respondent ARW and SWZA. So we're here for claim
19 number 3. It's "minimize the profile."

20 So if we take -- sorry. So, again, if we take a
21 look at the claim 1, it says -- it describes "minimize the
22 profile as a channeling means configured to minimize the
23 profile of the wallet and hold the position of the at least
24 one encircling elastic band with respect to each rigid
25 plate."

1 So, just based on this pure reading of this
2 sentence, reading minimizing the profile, meaning that it
3 seems like it's minimizing or making the content or the
4 thickness -- make it thinner. That seems like what this
5 "minimizing the profile" means, but, however, another POSA
6 would read that minimize the profile could mean it's
7 relating to -- we're talking about the length and the width
8 of the wallet. So it's very unclear as to which it's
9 actually referring to.

10 And if we take a look at the -- and it's very
11 helpful for us to see what "profile" has been used in this
12 context. So, if we take a look at the patent where we have
13 taken, this is also from the '808 patent. And this was
14 also in the brief. But if you take a look at the profile,
15 it seems like -- excuse me -- the profile is referring to
16 the wallet itself or you could say the space where the
17 cards go into or like the middle, the middle section where
18 it is.

19 So if we could just take a look at, you know,
20 minimizing the profile, at least from this point of view,
21 it seems we're talking about the thickness. We're trying
22 to, you know, either trying to reduce the thickness or
23 maximize the spacing. And so by talking about minimizing
24 the profile, you could read that, you know, you're trying
25 to maximize your space, but then again, you're still trying

1 to make it as small as you can.

2 But then, if we take -- but then, like I said,
3 even though it says that it could probably measure
4 approximately 8.5 centimeters by 5.4 centimeters, it's
5 still -- if we take a look at that picture, it's probably
6 talking about minimizing the content, where we're talking
7 about thickness. But then here, it talks about the length
8 and the width. So it's very unclear.

9 And I believe, in the -- excuse me -- in the
10 Staff and Complainant's brief, where there was also
11 disagreements where the Staff thinks the profile is in all
12 three directions, while Complainant says it's in two
13 directions. So, as we see, there's already some
14 disagreements as well.

15 So it's very unclear, and it's indefinite as to
16 what really "minimize the profile" is when we have so many
17 disagreements around it.

18 Unless you have anything else, Your Honor, that
19 will be all.

20 JUDGE MOORE: Well, let's see. So in --

21 MR. YAO: Oh, would you like me to go back?

22 JUDGE MOORE: Yeah, no, it's fine actually.
23 It's good to have that. So from your perspective, the
24 profile could mean length and width --

25 MR. YAO: Um-hum.

1 JUDGE MOORE: -- right?

2 MR. YAO: Yeah.

3 JUDGE MOORE: Or thickness?

4 MR. YAO: Yeah. Yes.

5 JUDGE MOORE: Okay. And Staff will come up and
6 argue, but the Staff says even if it's all three, it's
7 still understandable. Why is the Staff, I guess, not
8 correct in that?

9 MR. YAO: Well, essentially, because if we just
10 take a look at this as a person with ordinary skill in the
11 art, if we're looking at this picture and reading it, it
12 seems like minimizing the profile, that at least when it
13 first comes to mind, you're trying to minimize or, I guess,
14 like the whole wallet, because, in essence, this is a very
15 compact wallet. Or since we're here, it's a compact wallet
16 where you can hold card-like contents, but in a very --
17 with a minimal -- minimal, compact, you know, product,
18 where you're trying to maximize your -- you could say your
19 capacity, but also making it very small.

20 So if you just think about it from that sense,
21 "minimizing the profile" means, you know, making it small
22 but you're also using it as max or as sufficient as you
23 can.

24 JUDGE MOORE: All right.

25 MR. YAO: Thank you, Your Honor.

1 MS. CHANG: If we could please go to slide 13,
2 please. Thank you.

3 So, Your Honor, I think I heard that Respondents
4 believe that Staff thinks that it could be all three. I
5 just want to make it clear that Staff believes that it's
6 the X-Y plane, the size of the credit card, that is the
7 profile. And I believe the intrinsic record and the claim
8 language supports that view.

9 So I think you saw this earlier from
10 Complainants, but the profile is -- shown as Number 14, is
11 similarly in the figure that Respondents showed. And it's
12 shown as being a perimeter roughly the size of a credit
13 card around, basically, the rigid plates. And as
14 Dr. Kurfess, Complainant's expert, testified, there aren't
15 any structures projecting laterally from that, like a
16 watch, for example, to hold the elastic band.

17 And so from my perspective, I think it's clear
18 that -- in view of the specification, that the profile that
19 is being minimized in the channeling means refers to in the
20 X-Y direction, not the thickness direction.

21 And, similarly to minimal silhouette, profile to
22 me, for example, seems like, you know, the profile of
23 Abraham Lincoln's head on a penny. To me, it's a
24 two-dimensional surface and not a thickness. So I would
25 just also put that out.

1 And one other note that, as Complainant's
2 counsel mentioned earlier, this patent was the subject of
3 litigation in the Central District of California, and the
4 Court did construe the term "channeling means" with a
5 function of to minimize -- to minimize the profile, along
6 with the rest of the function as listed in the claim
7 language. So I just wanted to point that out.

8 That's all from me, unless you have any
9 questions, Your Honor.

10 JUDGE MOORE: No questions.

11 MS. CHANG: Thank you.

12 JUDGE MOORE: Okay. And, again, if we have
13 anything from Complainant.

14 MR. WEED: Your Honor, just one comment about
15 this issue. I think this is something that Dr. Cameron
16 actually brought up in her deposition, but by choosing to
17 use the channel, and I talked about in the watch context,
18 what that actually does is it does make the wallet thicker
19 because there needs to be material into which a channel can
20 be formed.

21 So the wallet could be thinner in the Z
22 direction if structures were added sort of laterally. But
23 the point of this claim is that the wallet thickness is
24 almost sacrificed to ensure that you're not going beyond
25 the footprint of the credit card.

1 So that came to my mind as I was looking at the
2 slides from the Respondents, but that is something that
3 really well illustrates, I think, the point about
4 Dr. Kurfess's watch example, which is you could do it a
5 different way, but the inventors here decided to have a
6 little bit more material in the plates and they drilled a
7 bore through the middle and they have a pair of plates with
8 a channel in the middle. Just an observation.

9 JUDGE MOORE: All right. Thank you.

10 MR. YAO: Nothing from the Respondents.

11 JUDGE MOORE: Okay. Anything from Staff?

12 MS. CHANG: Nothing further from Staff, Your
13 Honor.

14 JUDGE MOORE: All right. Okay. So where are
15 we?

16 MR. WEED: I believe that was the last of the
17 three terms --

18 JUDGE MOORE: Okay.

19 MR. WEED: -- unless you would like us to
20 address the agreed construction. I think the briefing
21 reflects what that construction would be for the channeling
22 means term.

23 JUDGE MOORE: Right. Unless the parties wish to
24 make some argument on that.

25 MR. YAO: Nothing from Respondents.

1 JUDGE MOORE: Staff?

2 MS. CHANG: Nothing from Staff, Your Honor.

3 JUDGE MOORE: Okay. So a quick day, which is
4 always appreciated. Other than that, are there any
5 housekeeping issues or general issues, since you have me
6 here, that you want to bring up?

7 MR. WEED: The only thing that comes to my mind,
8 Your Honor, is we filed a letter about the stipulations
9 we've been trying to secure. And I know you had asked us
10 to do what we could for importation stipulations. We let
11 Your Honor know where that's at.

12 We'll continue to work with the Respondents,
13 both these Respondents and Mosaic, to get those agreements
14 on things. We took the deposition of Mosaic's corporate
15 representative last Friday, and I believe her testimony
16 supports importation. So I think perhaps, in view of that,
17 we can move the ball a little bit on that. But that's
18 where we are on that issue.

19 JUDGE MOORE: All right. Thanks.

20 Anything housekeeping-wise?

21 MR. YAO: Nothing from the Respondents, Your
22 Honor.

23 JUDGE MOORE: Okay.

24 MS. CHANG: Nothing from Staff, Your Honor.

25 JUDGE MOORE: All right. Let's see. Give me

1 one minute.

2 Okay. Thanks for your presentations, and we
3 will take those under advisement. And a Markman ruling
4 will come in a reasonable amount of time, because I think
5 there are not a whole lot of issues here. All right.
6 Thank you.

7 The hearing is adjourned.

8 (Whereupon, at 9:53 a.m., the Markman hearing
9 concluded.)

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1 CERTIFICATE OF REPORTER

2 TITLE: Certain Compact Wallets and Components Thereof

3 INVESTIGATION NO: 337-TA-1355

4 HEARING DATE: June 21, 2023

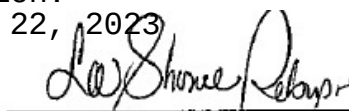
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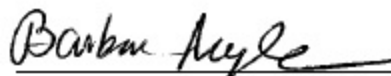
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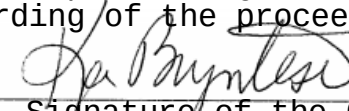
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