

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION
Petitioner,

v.

PROXENSE, LLC,
Patent Owner.

IPR2024-00405 Patent 10,073,960 B1
IPR2024-00407 Patent 9,679,289 B1

Record of Oral Hearing
Held: April 21, 2025

Before: THU A. DANG, DAVID C. MCKONE, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

IPR2024-00405 Patent 10,073,960 B1
IPR2024-00407 Patent 9,679,289 B1

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The above-entitled matter came on for hearing on April 21,
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P R O C E E D I N G S

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

10:00 a.m.

JUDGE DANG: Good afternoon, everyone. We are here today for our combined oral arguments in IPR2024-00405 challenging patent number 10,073,960 and IPR2025-00407 challenging patent number 9,679,289. Microsoft Corporation is the Petitioner, and Proxense, LLC is the Patent Owner. Your panel today includes myself, Judge Thu Dang along with Judge David McKone and Judge Norman Beamer.

Okay. Let's start with appearances. Who do we have for Petitioner today?

MR. DEVOTO: Yes, good afternoon, Your Honors. My name is Roberto Devoto of Fish and Richardson. I'll be representing Microsoft at this hearing. My colleagues Karl Renner, Jonathan Driesslein, and Chris von Gunten of Fish and Richardson and Microsoft's in-house counsel, Nate Kim (PHONETIC) are present as well at this hearing as listeners, Your Honors.

JUDGE DANG: I'm sorry, could you spell your last name just for the record?

MR. DEVOTO: My last name is spelled D as in David, E, V as in Victor, O, T as in Thomas, O. Devoto.

JUDGE DANG: Great. Thank you so much. And who

1 do we have for Patent Owner?

2 MR. HECHT: Good afternoon, Your Honor. This is
3 David Hecht and with me is my colleague James Zak. Mr. Zak
4 will be doing the primary argument, and I may respond to some
5 miscellaneous rebuttal.

6 JUDGE DANG: Okay. Great. Thank you. Mr. Devoto,
7 you will be mostly presenting today?

8 MR. DEVOTO: That is correct, Your Honor.

9 JUDGE DANG: Okay. Great. Thank you. Okay.
10 Thank you, everyone, for joining us today. Before we get started, I
11 have a few administrative details to go over. First, please be
12 reminded that unless you are speaking, please put yourself on
13 mute. And when are you speaking, please identify yourself first.
14 Okay? We have access to all the papers filed with the Board. So
15 when you are referring to a demonstrative or an exhibit, please
16 refer to the number so we can follow along. There might be an
17 audio lag, so observe a slight pause before you speak and it will
18 also help to prevent any crosstalk. I would also like to ask the
19 parties to remain online at the end to answer any questions our
20 court reporter may have. Okay? And also, please be reminded
21 there is a public line connected.

22 With that, let's begin. Petitioner, you are to present first.
23 You have 60 minutes in total. And so would you like to reserve
24 any time?

25 MR. DEVOTO: Yes, Your Honor. We would like to

1 reserve 15 minutes for rebuttal.

2 JUDGE DANG: Okay. So 45 minutes for the main
3 argument. With that, thank you very much. Let me know when
4 you'd like to start and we'll start the clock.

5 MR. DEVOTO: I guess I'd like to start now, Your
6 Honor.

7 JUDGE DANG: Okay. Thank you.

8 MR. DEVOTO: So as I indicated previously, my name
9 is Roberto Devoto of Fish and Richardson. I'm representing
10 Microsoft at this hearing. If we can please turn to Slide 2, Your
11 Honors. This slide shows the main topics for discussion related to
12 these proceedings. I'm going to begin by providing a brief
13 overview of the proceedings including identifying the grounds that
14 we advanced in our '289 and '960 petitions as well as presenting
15 the independent claims that have been challenged in the '289 and
16 '960 patents.

17 I will then spend the rest of my time on the main dispute
18 at issue in these proceedings, which is a claim construction
19 dispute. Specifically, the parties dispute whether four distinct
20 claim terms recited in the independent claims should be construed
21 as means-plus-function, or MPF, claim terms with Proxense, the
22 Patent Owner, arguing in favor of MPF constructions.

23 Now, if Your Honors reject Proxense's MPF
24 constructions, Proxense has not advanced any arguments against
25 our mappings or our combinations that we set forth in our

1 petitions. Given this and the -- given the time constraints that
2 we're operating under at this hearing, I do not intend to spend any
3 time on the particular prior art combinations and mappings set
4 forth in our petition. However, if Your Honors have any questions
5 about any of those items, I of course stand ready to answer your
6 questions.

7 If we could please turn to Slide 4, Your Honors. This
8 slide shows the grounds of our petitions against the '960 and '289
9 patents respectively. As you can see, the grounds rely on either the
10 Giobbi-157 or Broadcom as primary references. Giobbi-157 is
11 combined with one or both of Giobbi-137 and Dua as secondary
12 references while Broadcom is advanced alone or in combination
13 with Giobbi-157 as a secondary reference. So if we could please
14 turn to Slide 5.

15 Now, the '289 and '960 patents are directed to assist in
16 the use of personal digital keys, also referred to as PDKs that are in
17 communication with a receiver-decoder circuit, also referred to as
18 RDCs, to enable proximity based selective access to applications,
19 functions or services. Now, as shown in Figure 14, Your Honors,
20 which is reproduced in this slide, Figure 14 of the patents in
21 particular, a hybrid device includes both an integrated PDK and an
22 integrated RDC with an integrated PDK being able to
23 communicate with an external RDC of an external device.

24 In the integrated PDK being able to communicate with an
25 external PDK, or for example, an external device. Now, the hybrid

1 device may be, for example, embodied in a cell phone. Now,
2 through communications between these PDKs and RDCs,
3 applications, functions or services, both internal to the hybrid
4 device and on external devices associated with external RDCs can
5 be selectively enabled. Now, if we can please turn to Slide 6, Your
6 Honors.

7 This slide shows the two independent claims of the ‘289
8 patent. Independent Claim 1 is a device claim that’s directed to a
9 hybrid device while independent Claim 14 is a method claim that
10 recites similar limitations as independent Claim 1 but does so in
11 the context of a process rather than a device. Now, the disputed
12 claim terms, which I will describe in detail soon, are highlighted in
13 this slide. Note that while these claims expressly recite integrated
14 RDCs, they do not expressly recite integrated PDKs. Instead, they
15 more broadly recite an integrated secure memory storing local
16 secured information.

17 If you can please turn to Slide 7, Your Honors. Now,
18 this slide shows the two independent claims with the ‘960 patent.
19 Now, as you can see, these claims were not identical to the claims
20 of the ‘289 patent. Nevertheless, share many similarities with
21 those claims. That being said, the claims of the ‘960 patent are
22 distinct from those of the ‘289 patent in the following ways. First,
23 rather than reciting a hybrid device, independent Claim 1 of the
24 ‘960 patent more broadly recites a device. Second, independent
25 Claim 1 more broadly recites an integrated wireless

1 communication interface rather than an integrated RDC.

2 And third, independent Claim 1 of the '960 patent is
3 narrower than independent Claim 1 of the '289 patent and it
4 further requires that the device include a battery and that the
5 communication interface be coupled to draw power from the
6 battery.

7 Now, independent Claim 14 of the '960 patent which is
8 the method claim exhibits these same distinctions but with respect
9 to independent Claim 14 of the '289 patent, but of course, does fill
10 in the context of a method claim. Now, the disputed claims are
11 again highlighted in this slide. If you could please turn to Slide 9,
12 Your Honors.

13 Now, as shown by the text of the Patent Owner responses
14 and our petition replies, which are reproduced in this slide, the
15 main dispute between the parties as I noted earlier is a claim
16 construction dispute. And specifically, it's a dispute regarding the
17 claim construction at four distinct claim terms recited in the
18 independent claim which I will now present in detail next. If you
19 could please turn to Slide 10.

20 Now, the first claim term in dispute, Your Honors, is the
21 integrated RDC claim which is shown in this slide and is recited in
22 the claims of the '289 patent. Microsoft proposed a construction
23 for this term consistent with the related litigations as requiring "a
24 component or a collection of components capable of wirelessly
25 receiving data in an encrypted format and decoding encrypted data

1 for processing.”

2 Now, in contrast, Proxense asserts that this claim term is
3 an MPF claim term. First, because the claim term is related to the
4 recited function enabling one or more of an application, a function
5 and a service. And second, because the claim term, while not
6 expressly reciting means fore language, only recites the equivalent
7 of “a processor and a transceiver”. Which, according to Proxense,
8 “amount to nothing more than a general-purpose computer.”

9 So, given this, Proxense asserts that the recited structure
10 is, simply put, Your Honors, it’s insufficient to save the claim term
11 from MPF treatment. Now, as reflected by the record and as I will
12 explain in more detail later, we believe the case law on MPF
13 constructions does not support Proxense’s analysis as it does not
14 support Proxense's dismissal of a structure expressly recited in a
15 claim simply because that structure is that of a component of a
16 general-purpose computer.

17 Now, Your Honors, having concluded in this way that
18 the claim term is an MPF term, Proxense then asserts that a
19 POSITA would have turned to the ‘289 patent specification for
20 further guidance as to the scope of that claim term. And in doing
21 so would have concluded that the RDC is required to perform the
22 enabling function consistent with the algorithm of control logic
23 250 described in the ‘289 patent specification. Now, if we could
24 please turn to Slide 11, Your Honors.

25 So the second claim term in dispute is the wireless

1 communication interface claim term which is shown in this slide
2 and is recited in the claims of the '960 patent. Now, Microsoft
3 implicitly construed this term in its petitions as encompassing but
4 not being limited to, but as encompassing an RDC with the RDC
5 being construed consistent with the related litigations.

6 In construing this claim term, Proxense again, yet again,
7 applies the same erroneous legal analysis where Proxense
8 acknowledges that the claim term recites the structure of a
9 processor and a transceiver but then dismisses this structure from
10 precluding MPF treatment of the claim term because the structure
11 allegedly corresponds to a general-purpose computer. If you can
12 please turn to Slide 12.

13 Now, the third claim in dispute is the integrated secure
14 memory claim term which is shown in this slide and is cited in the
15 independent claim terms of both the '960 and '289 patents.
16 Microsoft implicitly construed this term in its petitions as
17 encompassing but not being limited to a PDK with a PDK being
18 construed consistent with the related litigations.

19 Here again Proxense applies its same erroneous legal
20 analysis by first acknowledging that the claim term recites the
21 structure of a computer readable media or storage device but then
22 dismisses the structure from saving the claim from an MPF
23 treatment. Because the structure allegedly corresponds to the
24 general purpose computer. If you could please turn to Slide 13.

25 Now, the fourth and final claim term in dispute, Your

1 Honor, is the enablement single claim term which is shown in this
2 slide and is recited in both the '289 and '960 patent claims.
3 Microsoft implicitly construed this term in its petitions in
4 accordance with its ordinary and customary meaning. Here
5 Proxense advances a somewhat different analysis than what it
6 advanced for the other three disputed claim terms. First, Proxense
7 acknowledges that the term does not recite "means for" language
8 but asserts that the term nevertheless is an MPF term because it
9 recites "meaningless nonce" that merely recites the function it
10 performs.

11 According to Proxense, the enablement signal term
12 would not be recognized by those of ordinary skill and the art for
13 performing the enabling functions. Now, having concluded in this
14 manner that this is an MPF term that is with the enablement signal
15 is an MPF term, Proxense then asserts that the recited generating
16 an enablement signal feature is required to perform the enabling
17 function in accordance or consistent with the algorithm of control
18 logic 250 described in the '289 and '960 patent specifications. If
19 you could please turn to Slide 14, Your Honors.

20 Now, at this time, I have walked through all four of the
21 different claim terms in dispute. I've identified the constructions
22 we advanced. I've also identified the constructions that were
23 advanced by the -- by Proxense, the Patent Owner. This slide
24 shows now the specific topics that I would like to present next
25 related to this claimed construction dispute. Now, as noted in the

1 briefs, Your Honors, I'm going to begin by showing that
2 Proxense's claimed constructions advanced in these proceedings
3 are, simply put, inconsistent with the claimed constructions that it
4 advanced in the related litigations.

5 And this is relevant for two reasons, Your Honors. One
6 because it undermines the credibility of Proxense's and/or experts'
7 exertions about the MPF constructions and two, it indicates that if
8 the Board were to adopt Proxense's MPF constructions, the
9 adopted constructions would lead to undesirable inconsistencies
10 between the PTAB and the District Court.

11 After describing those inconsistencies then, I will explain
12 how and why Proxense's MPF constructions are the result of
13 Proxense applying a legal framework in a manner that is, simply
14 put, Your Honors, inconsistent with and indeed not supported by
15 Federal Circuit case law. And, finally, I will go over the evidence,
16 Your Honors, that we introduced into the record supporting in
17 conclusion that a POSITA would have recognized structures being
18 recited in these claim terms and structure that would be understood
19 to be able to perform the recited function. And, therefore,
20 Proxense's MPF construction should be rejected. If you could
21 please turn to Slide 16.

22 Now, Your Honors, as we noted in our replies, Proxense
23 never asserted MPF constructions in the copending Microsoft
24 litigation. If you can please turn to Slide 17, Your Honors. Now,
25 this slide shows Proxense's claim construction brief in connection

1 with the Microsoft litigation. As shown in the table of contents,
2 Proxense did not advance any MPF constructions. The two
3 relevant constructions that it did advance are for the terms personal
4 digital key and receiver-decoder circuit.

5 None of which, according to Proxense, triggered 112(f)
6 or required a configuration that is consistent with the algorithm of
7 the control logic 250 of a specification. If you could please turn –
8 which is of course what they’re advocating for in these
9 proceedings, Your Honors. Can you please turn to Slide 18?

10 Now, this slide shows Proxense’s inconsistent
11 construction of the RDC and PDK terms that it advanced in the
12 copending Microsoft litigation, as you can see. And as I’ve
13 already stated, Proxense’s constructions do not assert that these
14 claim terms are MPF terms. And the District Court, in adopting
15 the final construction, did not deem these claim terms to be MPF
16 terms. In fact, as shown in this slide, and important to note,
17 Proxense expressly accepted the non-MPF constructions of the
18 earlier Proxense v. Samsung litigation which were in fact
19 ultimately the constructions that were adopted by the District
20 Court in the copending Microsoft litigation. Which is still
21 pending, as you know, Your Honors. If you could please turn to
22 Slide 19.

23 Now, the claim construction dispute, Your Honors, in the
24 Samsung litigation, it bears further mention. Because Proxense
25 has attempted, as I’m sure you know, to argue that its MPF

1 constructions in these proceedings are in fact consistent with the
2 constructions adopted by the District Court in that earlier
3 proceeding. Now, this slide shows, however, that the claim
4 constructions advanced by both parties in the Samsung litigation,
5 as before, do not include MPF constructions. Will you please turn
6 to Slide 20?

7 Now, this slide
8 you'll see is highlighted and the highlighted section
9 shows the construction that Proxense advanced in the Samsung
10 litigation. Again, Proxense had not asserted any construction that
11 demanded MPF treatment or assert that these are MPF terms. And
12 it's important to further note, Your Honors, that look – this
13 particular construction dispute did involve the term “enablement
14 signal” where Proxense themselves asserted that an enablement
15 signal is a message that enables or authorizes.

16 Nowhere did Proxense assert that enablement is a nonce
17 term, as they are now asserting in these proceedings. And, frankly,
18 as they are now asserting in these proceedings as we can gather
19 because they're dealing with very difficult invalidating prior arts.
20 If you could please turn to Slide 22, Your Honors.

21 Now, Your Honors, Proxense appears to recognize that
22 its constructions in the sense on litigation are problematic. But as
23 shown in this slide -- and as a result in recognizing that they're
24 problematic, they have attempted to continue to harmonize in
25 constructions in the Samsung litigation to the current MPF

1 constructions that they're advocating for. Specifically in doing so,
2 Proxense overtly says, hey, we accept the District Court's
3 constructions of the claim from PDK and RDC as being correct in
4 the Samsung litigation.

5 But then they say this. They say but these constructions
6 are nothing more than a general purpose computer. Given this, as
7 best understood, Your Honor, is Proxense appears to be taking the
8 position that the District Court did not consider the impact of the
9 later recited enabling function in its claim constructions. Which,
10 according to Proxense, converts the claim terms to MPF terms.
11 Because according to Proxense's erroneous legal analysis, which I
12 will describe in detail shortly, the recitation of a structure of a
13 general purpose computer component in a claim term is simply
14 insufficient to save that claim term from MPF treatment.

15 Now, in an attempt to argue further consistencies, Your
16 Honors, and as I'm sure you'll remember, Proxense also tries to
17 rely on the memorandum that was issued by the Samsung Court in
18 connection with the -- that accompanied the Markman order. But
19 as Your Honors correctly observed in your institution decision, this
20 memorandum, or at least the portion that was relied on by
21 Proxense, is not directed to claim construction. Rather, it's
22 directed -- whether or not the term hybrid device is or is not
23 definite and these are not the same things.

24 Now, Slide 24 to 27, Your Honors, I'm not going to go
25 into them in detail but those show similar inconsistencies between

1 Proxense's claim constructions in these related proceedings and
2 those advocated -- I'm sorry, in these proceedings. And those
3 advocated by Proxense in the related Apple and Google litigations
4 of which of those two litigations, Apple remains pending. The
5 Google litigation terminated. If you could please turn to Slide 30,
6 Your Honors.

7 Now, once again, in an effort to continue to beat the
8 drum of consistency, Your Honors, Proxense again attempts to
9 defend itself in its sur-replies this time from our accusations of
10 inconsistency by this time pointing to its preliminary infringement
11 contentions in the Samsung litigation. But these infringement
12 contentions, Your Honors, they do not indicate consistency for at
13 least two reasons.

14 First because they are not claim construction briefs.
15 They are infringement contentions. And second because even if
16 they did have language that appears to define certain words, that
17 language was -- never made its way into Proxense's claim
18 construction briefs indicating that any such definitions were
19 frankly discarded as not meaningful by Proxense and were not
20 used either for asserting infringement or for possibly opening the
21 door to non-infringement arguments by the accused defender. In
22 this case, Microsoft. If you could please turn to Slide 32, Your
23 Honors.

24 Now, Your Honors, at this point I would like to turn to
25 the legal framework advanced by Proxense to support its MPF

1 constructions. This slide is particularly helpful in doing that. As
2 shown on this slide, Proxense identifies the enabling function
3 recited in the claims as the function for the various claimed -- or
4 claim limitations that are in dispute. Proxense further notes that “it
5 must be determined” -- and this is a quote -- “it must be
6 determined if each of Claims 1 and 14 recite a sufficiently definite
7 structure for performing that action other than a general purpose
8 computer”, Your Honors. And as I will discuss in more detail, we
9 simply took issue with this last clause.

10 That is, we take issue with the “other than a general
11 purpose computer” clause. Now, if you could please turn to Slide
12 33. Now, in Proxense’s sur-reply, as shown in this slide, it really
13 explains succinctly not only their view of the case law related to
14 MPF construction. But frankly it also explains and shows a
15 fundamental misunderstanding of that case law.

16 Specifically, Proxense argues that the law has been
17 consistent and clear to claim a means for performing a specific
18 computer implemented function and then should disclose only a
19 general purpose computer as the structured design to perform that
20 function amounts to pure functional claiming. We agree with this
21 characterization of the law. That is, the proper framework for an
22 MPF construction analysis consists of two steps -- two steps. The
23 first step is to determine whether the limitation is or is not an MPF
24 limitation. And, hence, whether it “claims the means for
25 performing a computer implemented function.”

1 Only if the limitation is determined or deemed to be an
2 MPF limitation and therefore claims a means for performing a
3 computer implemented function do you then proceed to step 2 of
4 the analysis where you analyze the specification of the patent to
5 identify structure corresponding to that MPF limitation. And if the
6 specification “discloses only a general purpose computer as the
7 structure designed to perform that function”, this disclosure has
8 been deemed by the Courts to be insufficient structure for
9 implementing the function because of the generally boundless
10 nature of the term “general purpose computer”. Which speaks to a
11 computer that can come in innumerable different combinations or
12 permutations of hardware and software.

13 Given that such a broad disclosure is simply insufficient
14 to cabin in the scope of the functional limitation in any meaningful
15 way resulting in “pure functional claiming” and making the scope
16 of the functional limitation indefinite. Now, thus Proxense, Your
17 Honors, they correctly characterize the law applicable to MPF
18 constructions. However Proxense incorrectly applies this law.
19 That is, Proxense mistakenly moves up the consideration of
20 general purpose computer components into the first step of the two
21 steps of the analysis. Specifically into the step where a
22 determination is made whether a limitation is or is not an MPF
23 limitation.

24 Simply put, this is error. In performing the first step of
25 the analysis, no Court and no Board has dismissed consideration of

1 a structure expressly recited in the limitation simply because the
2 structures directed to the structure of a general purpose computer
3 or a general purpose computer component. And that is exactly
4 what Proxense is urging Your Honors to do in these proceedings.

5 Stated differently, all of the case law identified by
6 Proxense limits this general purpose computer analysis to the
7 second step of the MPF analysis. That is to the step where a
8 limitation has already been determined to be an MPF limitation
9 because the limitation itself does not recite sufficient structure. In
10 only this case does the inquiry then turn to considering the
11 specification disclosure of structure for performing that function.

12 And it is only in this case that with the disclosure of a
13 mere general purpose computer is insufficient structure for
14 supporting an already identified MPF limitation because of, again,
15 the relatively boundless nature of a general purpose computer
16 which can come in innumerable different configurations of
17 hardware and software. Can you please turn to Slide 34?

18 Now, Your Honors, this slide shows the various key
19 cases that were relied upon by Proxense to support its arguments
20 with relevant quotes advanced by Proxense for each. Now, all of
21 these cases show one important thing in common, Your Honors, all
22 of them show this one important thing in common. That the
23 analysis and the disregarding of general purpose computer
24 structure is performed only in step 2 of the MPF analysis, not step
25 1. That is a general purpose computer structure's only disregarded

1 after the limitation at issue has already been deemed to be an MPF
2 limitation. And only to determine whether the scope of that
3 already determined MPF limitation is definite or indefinite.

4 Proxense's assertions to disregard such a general purpose
5 computer structure in step 1 as part of determining whether the
6 limitation is or is not an MPF limitation is, simply put, not
7 supported by any of these cases. And this makes sense because a
8 limitation that expressly recites structure, Your Honors, a
9 limitation that expressly recites structure, even if that structure is a
10 structure of a particular component of a general purpose computer
11 such as a memory or a receiver is definite because it is bounded in
12 scope with respect to how the recited function is performed.

13 The recited function is performed by the structure of this
14 particular component which meaningfully bounds the scope of the
15 limitation making the limitation not a black box. It's not a black
16 box. You've bounded the scope of the limitation by having
17 expressly recited structure used to perform that function. And
18 therefore it's not an MPF limitation.

19 Now, in contrast, a limitation that does not expressly
20 recite a structure for performing the recited function and is an MPF
21 limitation and then only describes a general purpose computer in
22 the specification does not meaningfully bound the scope of the
23 limitation. Because, again, because of the generally boundless
24 nature of the general purpose computer which can come in
25 innumerable different combinations or permutations of hardware

1 and software.

2 So it's a relatively boundless disclosure, introduces a lack
3 of clarity as to the -- as to which structure or structures actually
4 performed the recited function. And therefore consistent with this
5 case law, the scope of such an MPF limitation is unclear and
6 therefore indefinite. Will you please turn to Slide 35, Your
7 Honors?

8 Now then Your Honors correctly -- Your Honors
9 recognize Proxense's incorrect legal analysis in the institution
10 decision that you issued in connection with the Google IPR
11 proceeding. Now, as shown in this slide, prior to performing the
12 MPF analysis, Your Honors of course recognized that these claim
13 terms do not recite "means for" language and therefore there's a
14 rebuttable presumption that the claim terms themselves are not
15 MPF claim terms.

16 Now, after noting this rebuttable assumption, Your
17 Honors correctly performed step 1 of the MPF analysis by first
18 assessing whether the disputed claim terms are MPF terms. In
19 doing so, you concluded that the claim terms are not used as
20 generic terms or black box recitations or abstractions and therefore
21 are not MPF terms. In concluding this, you also credited the
22 *Linear Tech. Corp v. Impala Linear Corp.* decision by the Federal
23 Circuit that states that "when a structure-connoting term is coupled
24 with a description of the terms operation," section 112, paragraph
25 6 did not apply.

1 Now, having concluded that the terms are not MPF
2 terms, you did not need to turn to the specification, you didn't need
3 to go look at general purpose computer structures or not. You
4 were done. There's no need to turn. It is not an MPF claim term.
5 There's no need to look for disclosure of a general purpose
6 computer or a special purpose computer. In the specification, the
7 job was done, the analysis done. It's not an MPF claim term. If
8 we could please turn to Slide 46.

9 Now, Your Honors, before turning to each of the
10 disputed claim terms, which I do want to talk about them just
11 individually and show how we placed evidence into the record --
12 abundant evidence we would say -- that indicate that these claim
13 terms do recite structure for performing the enabling function. It is
14 important to reiterate again that Proxense does indeed bear the
15 burden. And to rebut, it's a burden to rebut a presumption that
16 these claim terms are not MPF claim terms. Because after all, they
17 don't recite means fore language.

18 Now, we submit, Your Honors, as a preliminary matter
19 that they have, simply put, failed. Failed to meet this burden
20 because they only rely on -- parts of the conclusory assertions by
21 their expert in terms of their constructions. In contrast, and as I
22 have forecasted, I'm going to describe next, we have placed ample
23 evidence into the record indicating that POSITA would have
24 recognized that each of these disputed claim terms recite to
25 structure for performing the recited function. Those substance

1 claim terms are not generic terms or black box recitations or
2 abstractions and therefore are not MPF terms. If you could please
3 turn to Slide 50.

4 Now, Your Honors, let's turn to the first disputed claim
5 term. Specifically, the "local secured information stored by the
6 integrated secure memory" term. Now, we explained in our briefs,
7 Your Honors, you can see part of it here, with supporting evidence
8 that this term would be understood to denote structure,
9 recognizable structure, to a POSITA for performing the recited
10 function. And that is the term memory would have been
11 recognized by a POSITA to speak to a broad class of structures
12 used to retain data for various purposes.

13 The definiteness of this structure, as we indicated in our
14 reply, is further reinforced by the adjectives "integrated" and
15 "secured". Which further narrow the class of memory structures to
16 memories stored locally at the device and to tamper proof memory
17 structures. If you could please turn to Slide 51.

18 Now, moreover, as we explained in our replies, a
19 POSITA would have recognized in light of the disclosures of the
20 '960 and '289 patent specifications that the recited memory
21 structure could perform the recited enabling function by simply
22 storing access or authentication information that can be retrieved
23 by other components to enable the recited application function or
24 service. If we could please turn to Slide 53.

25 Now, Your Honors, in its sur-replies, Proxense notably

1 does not dispute -- they do not dispute that the local secured
2 information claim from recites of memory and a memory structure
3 or that the memory structure could be used to enable the function
4 application or service by storing retrievable access or
5 authentication information as we assert in our replies. Instead,
6 Proxense simply asserts that the memory structure -- well, it's a
7 general purpose computer structure, so just doesn't count. I can
8 dismiss it.

9 But as I indicated previously, Your Honors, this
10 dismissal of an expressly recited structure in its expressly recited
11 in the limitation simply because the structure they alleged
12 corresponds to a general purpose computer component, it's not
13 supported by any of the case law. It just isn't. It's an erroneous
14 legal analysis. If we could please turn to Slide 56.

15 And when we turn to the second disputed claim term,
16 specifically the integrated RDC term, Your Honors, we explain
17 with supporting evidence that this term would not be understood to
18 be a black box recitation of structure but rather would be
19 understood to denote a specific class and structure readily
20 recognized by a POSITA such as the structure in an RFID tag or
21 the structure in a garage door opener or in a television remote or in
22 a gate opener.

23 Now, these structures are presented in the various brief,
24 you know, citations from our briefs that present these structures
25 are shown in Slide 58 of this slide deck. We also noted, as you can

1 see here from this slide that the Federal Circuit in the EnOcean
2 case, which was directed to a very similar term, the receiver term,
3 also arrived at a conclusion similar to ours. And that term, of
4 course, is even broader than the receiver-decoder term. I mean,
5 decoder has an extra decoding element functionality to it. Now, if
6 we could please turn to Slide 57.

7 Additionally, as we explained in our replies, Your
8 Honors, a POSITA would recognize in light of the '289 and '960
9 patent specifications that the recited integrated RDC structure
10 could perform the recited enabling function by simply
11 communicating access information or authentication information
12 to other components to enable the recited function application or
13 service. If you can please turn to Slide 59.

14 Now, Your Honors, it really shouldn't come as any
15 surprise at this point that in its several replies, Proxense again they
16 don't dispute that the integrated RDC claims form recites a
17 structure. Or that the integrated RDC structure could be used to
18 perform the recited function by, for example, communicating
19 access or authentication information as we asserted in our replies.

20 Instead, they rely, yet again, on their incorrect legal
21 analysis and their incorrect application of the case law to simply
22 assert that the integrated RDC structure -- well, you know what?
23 It's just a transceiver and a processor, so it's just a general purpose
24 computer and that just doesn't count, according to them. And it
25 doesn't count for saving that limitation from an MPF treatment.

1 But, again, this is not supported by the case law. If we could
2 please turn to Slide 63.

3 Regarding the third disputed claim term, I'm going to go
4 through this one relatively quickly. Specifically the integrated
5 wireless communication interface term. We again advanced
6 evidence that a POSITA would have recognized or understood
7 this, that this term recites a structure and that the structure would
8 have been understood by a POSITA to perform the recited
9 enabling function by communicating access or authentication
10 information.

11 Proxense, not surprisingly, responds to this assertion in
12 the same way as it did for the other two assertions. It said, well,
13 I'm sorry, but this integrated -- you know, this integrated wireless
14 communication term, it really is just talking about a processor and
15 transceiver. These are general purpose computer structures, they
16 don't count. That's dismissed. It's a general purpose computer
17 structure, it doesn't count, it will not save your limitation from
18 MPF treatment, despite the fact that it actually recites those
19 structures in the limitation. And, of course, that's not the case law,
20 nor supported by the case law. If you could please turn to Slide
21 70, Your Honors.

22 Now, Your Honors, turning to the fourth and last
23 disputed claim terms. The enablement signal term -- and they took
24 a different -- Proxense took a different position on the enablement
25 signal term. They -- instead of arguing that -- well, instead of

1 acknowledging that it recites structure and then dismissing the
2 structure as being a general purpose computer, they here argue that
3 it's a meaningless nonce term. Because it "merely recites the
4 function that it performs."

5 Now, in our replies, we provided evidence in the form of
6 multiple dictionary definitions as well as the unrebutted testimony
7 of our expert who they did not depose, that this is not a nonce
8 term, but rather that it's a well known term used in the art that
9 implicates a type of signal structure such as a trigger signal or a
10 pulse used to initiate an operation, start or activate a process or
11 allow processes to take place.

12 In fact, Your Honors, even a perfunctory knowledge of
13 electrical engineering or telecommunications, you know, in
14 software would recognize that the term "signal" itself is commonly
15 used. "Itself" denotes a type of structure. It is a detectible or
16 measurable phenomenon or message that conveys information or
17 instructions. These are not black boxes. This is not a black box.
18 In fact, for further evidence of this, not only do you see or use
19 definitions use the word "signal" in them, corroborating the term
20 "signal" is not a black box.

21 And further corroborating, because again, we are looking
22 at a class or some class of signals as being an enablement signal.
23 Look no further than their own contentions, their own recognition
24 and the Samsung litigation where they themselves said yeah, this
25 enablement was a message, it's a message that enables or

1 authenticates. It's used to enable or authenticate. They recognize
2 it's a message. They recognize it's a structure. And we also
3 identified in the *Greenburg* and *Flo Healthcare Solutions* cases,
4 which of course, are representative of structures that just take their
5 name from the function they perform. That does not in any way
6 mean or reduce them to nonce terms. And, therefore, this is not an
7 MPF term.

8 A POSITA would have further understood in light of the
9 specification, as we indicated, that enablement signal could enable
10 an application, function or service by simply containing or
11 otherwise communicating access or authentication information.
12 Now, Your Honors, we did do something in our briefs where we
13 touched upon this enablement signal in the context of the broader
14 limitation in which it's found which is generating an enablement
15 signal step. So it's found in a step. And given it's found in a step,
16 we assessed that step for step plus function analysis as well. And
17 in doing so, we applied the structure that was used in *Masco Corp.*
18 This case that we identified, that would indicate that the inquiry
19 should look at the function identified but then see whether the
20 limitation recites acts for performing that function.

21 And in this case, we asserted well, this is not a step plus
22 function limitation because, well, the function is the enabling
23 function. But we have an act for performing the enabling function.
24 And specifically that act is generating an enablement signal to
25 perform that enabling function. So that was not an arduous step

1 plus function limitation, nor is the MPF term itself an isolation --
2 or excuse me, the enablement signal term itself an isolation an
3 MPF term.

4 Because it's not a nonce term because it speaks to
5 structure and because our evidence that we have placed on the
6 record in the form of dictionary definitions in the form of our
7 un rebutted expert testimony who, again, they did not depose,
8 unilaterally shows that this is a term that is not a nonce term but
9 rather denotes structure.

10 So with that being said, I'd like to now turn to the
11 response to these arguments which they set forth in their sur-
12 replies. Now, I've shown in this slide, in its sur-replies, Proxense
13 begins by conflating a step plus function analysis with a means
14 plus function analysis in incorrectly alleging that the *Williamson v.*
15 *Citrix* case overruled the *Masco* case that we had relied upon. But
16 it did not, Your Honors. I'm sure you -- take a look at the case.

17 What the *Williamson v. Citrix* case took issue with was
18 simply that the presumption that a claim term is not a means plus
19 function or a step plus function claim from if it lacks the words
20 "mean for" or "step for" had been interpreted as a very strong
21 presumption by previous courts. And they said no, it -- the
22 presumption exists but it's not a very strong -- it's not that -- it's a
23 weaker presumption. It exists, but it's still a weaker presumption.
24 So what was overturned there or the change that was represented
25 in that *Williamson* case is not a change that said hey, the *Masco*

1 Court later, you know, the later issued *Masco* -- or the earlier
2 issued *Masco* Court case got it wrong in terms of how they did the
3 step plus function analysis.

4 Instead, it simply talked about the degree of the
5 presumption. That was it. The actual framework set forth and
6 used in the *Masco* Court case, how you determine or analyze the
7 step plus function limitation was not in any way disturbed by the
8 *Williamson* case, contrary to Proxense's assertions. Now, it
9 should be noted that Proxense didn't really disagree or argue
10 against our application of the step plus function framework where
11 we identified the act and the function. And they certainly didn't
12 even depose our expert on this as well. If you could please turn to
13 Slide 73.

14 Now, Your Honors, after addressing the step plus
15 function analysis, Proxense then turns to our assertion that the
16 enablement's who don't -- is not an MPF term because it is a
17 recognized structure such as, for example, pulsar trigger structure,
18 that starts a process or allows one to take place. Now, in response
19 to our assertions, Proxense does something rather interesting. It
20 relies on the claim language of itself. That is, the claim language
21 itself to assert -- in relying on the claim language, that is the
22 language of the claim itself, it asserts that the recited first wireless
23 link and the recited first signal somehow indicate that receipt of a
24 signal or creation of a link are according to the claim insufficient
25 to perform the enabling function.

1 But, frankly, the claim doesn't say this, Your Honors. It
2 makes no statement as to the involvement or lack thereof of the
3 first wireless link or of the first signal with respect to performing
4 the enabling function. Nor do the claims say that the step
5 generating an enablement signal is the only step involved in
6 enabling one or more of an application of function and service. As
7 such, Proxense's arguments are simply inconsistent with the
8 breadth of the claim language and therefore are not credible.

9 In fact, if you think about the claim language and you
10 would look at it, it indicates that the generating of an enablement
11 signal is at the very least unnecessary and possibly insufficient but
12 we don't know. Unnecessary steps to perform the enabling
13 function. But it does not tell you whether the other steps that is the
14 creation of the first wireless link or the receiving of the first signal
15 are also necessary steps. It's silent. Maybe they are, maybe
16 they're not.

17 We do know that the generating and enablement signal is
18 a necessary step for performing the enabling function and could be
19 done by simply having the enablement signal contained or
20 otherwise communicate authentication or access information. And
21 I think in considering this claim, Your Honors, you can envision
22 how the claim is supported by the specification itself. At least in
23 one implementation of how it's supported.

24 So, for example, one implementation described in the
25 specification would have an employee having a badge, you know,

1 on their person. Which could be the external PDK that stores, say,
2 their fingerprint information. And then there is a, you know,
3 there's a hybrid device that has on it an integrated PDK and an
4 integrated RDC. When the -- when that employee is trying to get
5 access to, say, I don't know, perform a credit card transaction, let's
6 say. And they want to get the secure financial information that's
7 stored on the integrated PDK, that the process with the system
8 could operate consistent with a specification would be that the
9 RDC, the integrated RDC in the hybrid device could bond or link
10 to the integrated PDK. And this is establishing the link. This is
11 that first link step.

12 It could bond or link to the badge. It's an external PDK
13 that has a fingerprint data securely stored on it. And it could, after
14 successful bonding, it could receive the fingerprint data securely
15 from the badge. And then that fingerprint data, if the hybrid
16 device has a scanner for fingerprints, a user could be prompted to
17 scan their fingerprint and then there could be a comparison
18 between what was received in that first signal that, of course, was
19 received as a byproduct of establishing a link was received. And
20 that first signal matches.

21 So the fingerprint that was just scanned to the user and
22 only then if they match do you then have a generating of an
23 enablement signal that includes, say, the credit card information
24 that was securely stored in the integrated PDK of the hybrid device
25 being communicated outwards to complete a financial transaction.

1 So on that example that I just gave you, all of the steps
2 were necessary to perform the enabling function. They were
3 necessary. They all had a role to play in performing the enabling
4 function. So this notion that somehow the claim language itself
5 would cab it in or otherwise prevent the enablement signal from
6 performing the enablement function is not only not credible given
7 the scope of the claim, it's not credible in light of the specification
8 and it's also not credible because we know that the enablement
9 function, oftentimes in the most preferred implementations
10 requires other devices to be involved.

11 After all, when I send this financial information, there is
12 another device that receives it and has to make sure it's correct.
13 Like, if you -- if I sent my credit card information, there's another
14 device that says is it valid before I allow you to complete the
15 service or transaction. That had to involve somebody else. So this
16 notion that this enabling function must be done entirely by one of
17 these components and can't be done by the others, which is
18 implied in the reasoning events by Proxense is just not credible,
19 Your Honors. And it's inconsistent with both the breadth of the
20 claim language and the specification itself. So, woah. That's,
21 actually, Your Honors, I spoke a lot. Those are the only topics I
22 wanted to get through today. Do you have any questions about
23 anything I said?

24 JUDGE DANG: That's great. Thank you very much.
25 You have 15 minutes and a half left for your rebuttal.

1 MR. DEVOTO: Wonderful. Thank you so much.

2 JUDGE DANG: Thank you. Mr. Zak, you will be
3 presenting for Patent Owner? Mr. Zak.

4 MR. ZAK: Yes, yes, Your Honor.

5 JUDGE DANG: Hi. Would you like any time for
6 rebuttal?

7 MR. ZAK: I think we'll reserve 15 minutes. But I don't
8 think I'm going to do such a marathon.

9 JUDGE DANG: Okay. Great. But just in case. Okay.
10 So 45 minutes and please let us know when to start --

11 MR. ZAK: Before we start, can I make sure Mr. Hecht
12 can put up our slide deck for everybody to see?

13 JUDGE DANG: Okay. Great. And just let us know
14 when you're ready and we'll start the timer.

15 MR. ZAK: And we apologize as we figure out, these old
16 people, how to use computers.

17 JUDGE DANG: No worries. Yeah, we won't start until
18 it's up.

19 MR. HECHT: Hold on one second. It's just a little
20 difficult to pull it up. One second. All right. Everyone's able to
21 see?

22 JUDGE DANG: Yes, we are. Let us know when you're
23 ready and we'll start the clock.

24 MR. ZAK: All right. I think I'll start now. If it may
25 please the Board, I am James Zak and I'll be representing Proxense

1 in this matter. And I have just never heard such stipular -- sorry, I
2 don't want to start with an insult. But I do want to thank
3 Microsoft. They have come up with a great way of avoiding
4 established case law that I'm going to have to use next time I
5 prosecute an application. That's wonderful. Thank you for
6 finding me that loophole.

7 But let's get started on what's actually here today. So if
8 we could start out, I want to address something about
9 inconsistencies. We've never been inconsistent. We have
10 consistently applied the same instruction, the same interpretation
11 of these patents to either infringement contentions and our claim
12 construction. In fact, if you look at Exhibit 1035, which Microsoft
13 introduced. And, Mr. Hecht, could you pull that up, please? I
14 think you might want to rotate it, too.

15 MR. HECHT: You've got it.

16 MR. ZAK: Okay. And if you scroll down to page 5, or I
17 think you might need to go up one. I don't think -- page 5 of the
18 full document. Is this -- well, I'm not sure I'm necessarily seeing
19 it here on 1035. Let me -- it would be the one that Exhibit 1035,
20 page 5. It would be the one that has -- it starts out with a
21 screenshot that become a Microsoft compatible vital security key
22 vendor. I don't think Mr. Hecht -- Mr. Hecht, I don't know if you
23 have the right document up. If you could scroll down one more
24 page. No, that is definitely not the right document, Mr. Hecht.
25 I'm looking at Exhibit 1035 from the 407 IPR. But that's all right.

1 We can go on with this.

2 MR. HECHT: This is 407. Sorry. One second. So it's
3 1035, should be the same thing. Maybe it's different. Is this it?

4 MR. ZAK: Yes, that's it. That's it. Thank you.

5 MR. HECHT: There you go. Sorry about the confusion.

6 MR. ZAK: We're on page 5. And as we can see, right
7 on the beginning of that last paragraph on that page, we see, "as
8 noted per the specification of the '289 patent, integrated secure
9 memory storing local secured information is memory holding
10 information that can only be accessed with the corresponding
11 access key." We informed Microsoft and our infringement
12 contention what our construction of that term was. We could not
13 have been more clear.

14 They chose not to challenge that construction during
15 claim construction. We each get our choice to choose what terms
16 we want to challenge. They made their choice. They chose not to
17 challenge that term. Now, they challenge it here. Well, if we're so
18 objectionable to them, why not challenge it in the District Court?
19 We could have had this done already with claim construction. But
20 they didn't. They waited.

21 And if we go down to the last page of the infringement
22 contentions, I think it would be page 10 -- actually, it might not be
23 the last page, but it is page 10. Again, right here. Right at the top
24 of the page, "an enablement signal is a message comprising
25 information received from a PDK in exchange for an access key

1 provided by the application function to be enabled that permits the
2 application function of service to operate.” Again, right there in
3 our infringement contentions. Our construction is right there, right
4 at the top.

5 This is what we’re basing our infringement allegations
6 on. Very consistent. And they chose again not to challenge that.
7 Now, did we ask for construction of a new element signal on the
8 Samsung case? Yes, we did. We were confused because the
9 patent had authorization signal, enablement signal, authorization
10 enablement signal, and we were confused that if we didn’t get
11 some kind of construction, the jury would be confused by which
12 signal we were referring to. Was it an authorization enablement
13 signal, was it an authorization signal, was it an enablement signal?
14 And we said, Your Honor, please, can we get a construction so we
15 can make sure the jury knows what term we’re talking about and
16 what time?

17 And the judge said, no, I don’t think that’s necessary so
18 I’m not going to construe that. Okay. We accepted that and we
19 moved on. We have to accept that and move on. Once we get an
20 order from a court that binds us, if we choose not to appeal it,
21 which we did not, we have to accept it. That’s the way estoppel
22 works. We don’t get to keep relitigating things. So we have been
23 very, very consistent. And speaking of estoppel, we also got an
24 order from the District Court that talked about the definiteness of
25 the claims.

1 And definiteness is related to construction because we
2 generally construe the claims to preserve validity. And part of
3 validity is definiteness, enablement, 112. I know we're not
4 supposed to talk about 112. Here it's a dirty word. I'm sorry. But
5 we do have to acknowledge that a 112 analysis is sometimes part
6 of claims construction. We want to preserve the claims, the
7 validity of the claims. So we will try, if possible, to construe the
8 claims to preserve the validity. And when an indefinite challenge
9 was brought up in claim construction, it was part of the claim
10 construction argument.

11 The Court said, okay, I got to look at the specification to
12 find some kind of algorithm to consider the claims. Because the
13 Judge caught onto something. He realized that what he was
14 construing at that point in time, PDK, I already see the mean for
15 general purpose computers. And he knew from Aristocrat that if
16 it's a general purpose computer, you've got to go back to the spec.
17 And with that, Mr. Hecht, we can switch back to the slide deck.
18 And so he did. And let's just move on to Slide 3. One back.

19 We all know Aristocrat. We all know the Aristocrat line
20 of cases. It is well established case law that if you have a function
21 that's attributed to a general purpose computer, you go back to the
22 specification and find the algorithm. I don't need to go into this in
23 any more detail. We all know that law. It's well stated in the
24 MPEP. I think it's almost gospel law now for anybody studying
25 pat law in law school.

1 But Microsoft has come up with a loophole to that. Hey,
2 hey, hey, you can get around Aristocrat if you just had your claims
3 recite general purpose computer. In fact, make your claims recite
4 general purpose computer in the most annoyingly, nauseatingly
5 technical detail you can. And then we're not going to use
6 Aristocrat's. And you can get away with almost pure functional
7 claiming just because you found a way how to put general purpose
8 computer into your claims. That would be going right up against
9 Aristocrat.

10 Now, Aristocrat came on and then we had *Williamson v.*
11 *Citrix* come out. And *Williamson v. Citrix* was a great case. And
12 we used -- discussed it in our brief with respect to ring computing
13 and it does set up the analysis. *Williamson v. Citrix* says, okay,
14 we have these presumptions. And if we don't have means, we're
15 going to presume means plus function doesn't apply. But we're
16 going to rebut that presumption. How? We're going to look to see
17 that the claims define the structure.

18 Okay. All right. So do the claims decide the function.
19 Now, do they recite a sufficiently definitive structure for
20 performing that function? If no, we're going to then use plus
21 function applies and the presumption is rebutted. If yes, means
22 plus function doesn't apply and the presumption is not rebutted.
23 Okay. So sufficiently definitive structure. What is a sufficiently
24 definitive structure? Well, they give us one example in
25 *Williamson*. It was (INDISCERNIBLE). Okay. So that's a

1 general umbrella. But *Aristocrat* has to fit under that general
2 umbrella. And *Aristocrat* came first.

3 So *Williamson v. Citrix* was kind of like a redo of the
4 roof to the general -- to the house that holds *Williamson v. Citrix*.
5 I'm sorry, *Aristocrat*. Well, *Aristocrat* said a general purpose
6 computer is not sufficiently definitive structure. Well, there you
7 go. A general purpose computer is not a sufficiently definitive
8 structure. If the claims recite a general purpose computer, it's not
9 sufficiently definitive structure for performing the function.

10 I don't care if I can pick up a general purpose computer.
11 I don't care if I can take the memory from a general purpose
12 computer, the processor from a general purpose computer.
13 They're still not sufficiently definitive structures for performing a
14 recited function. That would be just flying in the face of
15 *Aristocrat*. As Microsoft proposes, I can get around all of this --
16 all of this, by just amending my claims to recite a general purpose
17 computer. That would be ridiculous.

18 But now let's look at the claims. This, these are the
19 claims in question. And as I look at these claims, I don't know
20 how anything is sufficiently definitive there aside from the issue of
21 general purpose computer. And here's why. We look at Claim 1
22 of the '289 patent, an integrated RDC. So what RDC is defined in
23 the specification -- it's an acronym. It's defined in the
24 specification and early in the claim as the receiver-decoder circuit
25 So it's something that's receiving and decoding and

1 communicating. Okay. That's one function. That's something
2 that the claim states it receives the codes and communicates. And
3 then I got to that last portion and now it's enabling. Okay. You're
4 enabling, it's different than receiving, decoding and
5 communicating. Those are different functions.

6 How do I bridge those two? The claim doesn't tell me.
7 And then I -- if I go onto the next, B, the other option or the local
8 secured information stored by integrated secured memory. Again,
9 storing is different than enabling. It's a different function. So how
10 do I have components that are defined in the claims to perform one
11 function to perform suddenly a completely different function?

12 That's indefinite. I don't know how to logically put that together.
13 And it gets even worse if we look at the Claim 1 of the '960 patent.

14 Now we don't even have receiving or decoding, we just
15 have communicating. Communicating is somehow enabling.

16 Well, I have a section that's defined because it communicates, and
17 it somehow enables. And again, the (INDISCERNIBLE) is in
18 place. And this right here is why *Transocean* (sic) is so
19 inapplicable to this case. *Transocean* was reciting -- was dealing
20 with the receiving function of a receiver. Yes, a receiver receives.
21 Nobody was -- that's not the case here. We're not saying the
22 receiver receives. We're not saying the receiver does what it --
23 what the name would imply.

24 What's, how it's defined in the specification to do. Here
25 we think we have received and then we have a completely

1 different operation. These are not the physical operation of
2 receiving. Now we have a logical operation that's performing,
3 enabling, and we have no bridge in the claims. So if I just stop
4 right here, don't apply *Aristocrat*. Don't apply *Williamson v.*
5 *Citrix*. I have indefinite claims that are invalid under 112. So I
6 have to do something.

7 Now, we could stop right here and if the Board wants to
8 say sorry, we're not going to go any farther than that, we don't --
9 we think (INDISCERNIBLE) definitive structures, we're not
10 going to move on to the next step even though *Aristocrat* would
11 devise us otherwise. Then there's no point in even trying to
12 defend these claims. There's no point even addressing the grounds
13 and the validity. And I don't mean that to be rude. I mean that to
14 say the Board statutorily can't address 112. They can't invalidate
15 claims under 112.

16 But arguing claims, the validity of claims under 103 or
17 102 which the Board can address. (INDISCERNIBLE) under 112,
18 we would feel would violate so many duties of candor that we
19 wouldn't do it. And that's one of the reasons why we focused
20 mostly on the proper construction of the claims because that's the
21 only valid construction and the only way to preserve validity that
22 we can argue and debate.

23 So let's move on now to our next slide. We have
24 integrated secure memory storing local secured information. And
25 we have to ask ourselves if it is not a sufficiently definite structure.

1 Well, no, no it's not. Because, again, it's performing -- it's
2 defined as performing one function when it's brought up and then
3 it's being attributed to performing another function that's within
4 the link. And while I know what integrated secure memory could
5 be, I happen to have -- and I hope (INDISCERNIBLE), but, I
6 mean, I happen to have some RAM on my desk that I was about to
7 install on my daughter's computer. This is memory. How does
8 this enable anything? It doesn't. It just holds things. And I
9 apologize for that. I did not mean to be -- to introduce any new
10 evidence. I was just saying that's an example. I happened to have
11 that here. I was just thinking about that.

12 That doesn't do -- and we know from the case law right
13 from the case law that memory by itself is insufficient. It's a
14 general purpose computer and that's in rein computing. And in
15 rein computing, it was very clear. The CAFC was very clear, it
16 said the District Court erred, however, in concluding that the
17 disclosure of computer readable medium or storage devices
18 provided sufficient structure for the control access function. And
19 that's what we have here. We have an access function. We have
20 an enabling function. These computer readable media or storage
21 devices amount to nothing more than a general purpose computer.

22 JUDGE MCKONE: (INDISCERNIBLE - TECHNICAL
23 DIFFICULTY).

24 MR. ZAK: Hmm?

25 JUDGE MCKONE: (INDISCERNIBLE - TECHNICAL

1 DIFFICULTY).

2 MR. ZAK: I'm sorry, was there a question?

3 JUDGE MCKONE: No, this is Judge McKone. I was
4 having difficulty with my microphone. Can you confirm that you
5 can hear me?

6 MR. ZAK: Yes, we can. Yes.

7 MR. HECHT: We can hear you, Judge.

8 JUDGE MCKONE: Okay. Sorry to interrupt. Thank
9 you.

10 MR. ZAK: I just wanted to make sure I wasn't missing a
11 question or speaking over anybody. But that's range computing
12 and that was discussed in our brief and that citation is right there.
13 So right now we know that the CAFC has said, the Federal Circuit
14 says memory by itself is a general purpose computer and that is not
15 a sufficiently definitive structure. Now, I don't know how that
16 changes because I recite memory in the claims.

17 I mean, if that's the case, I just have to recite general
18 purpose computer in the claims and I could avoid *Aristocrat* and
19 *Williamson v. Citrix* and have unbound functional findings. Well,
20 I guess that's wonderful but then everything's indefinite because
21 we have no idea what the metes and bounds are and even
22 Microsoft in its own evidence says that they say it could be this, it
23 could be that, it could be anything. Yeah, that's the problem. It
24 could be anything. It's indefinite at that point. That's why we
25 need to limit and reign these in. and we do that with a means plus

1 function analysis.

2 And also with respect to integrated secure memory, we
3 even defined it in the specification. If we could go on to the next
4 slide, please. Or I'm so sorry, not integrated secure memory.
5 Storing local secured information. We say what local secured
6 information is in this specification. We defined it very
7 functionally as information unlocked by providing an access key.
8 An access key is provided and the information is unlocked. Now,
9 it's used once in the specification. Once local secured information
10 is used once in the specification, it's used in the claims and then
11 it's used right here in this one part of the specification.

12 Now, is that referring to a specific embodiment? Yes.
13 Local secured information is used with respect to this one
14 embodiment shown here. But that information is also repeated in
15 the claims. And so although reluctant to exclude an embodiment,
16 we have to defer to the express language of the claims. And this is
17 well known case law. This is *Rolls-Royce, DLC*, the *United*
18 *Technologies*. Also in tip system where the federal -- where,
19 again, the Federal Circuit says we have to limit the claims to what
20 -- to the exact words. And so if the exact words of the claims are
21 limited to one embodiment then that's it.

22 We're not -- we can't (INDISCERNIBLE) them to cover
23 other embodiments because that would be contradicting the words
24 in the claims. Here the words of these claims all say local secured
25 information. It's used once in the patent with respect to one

1 embodiment clearly referencing that embodiment. And then let's
2 talk about the other words. We have receiver-decoder circuit. We
3 said what a receiver-decoder circuit says it does. It receives and
4 decodes as to enable wireless communication. And somehow that
5 enables.

6 Well, again, that was addressed in *HTC Corp* where the
7 Federal Circuit said a District Court misstated the law when it
8 stated that the disclosure of a processor and transceiver alone was
9 sufficient to provide structure to these claims. The processor and
10 transceiver amount to nothing more than a general purpose
11 computer. We have consistently required that the structure
12 disclosed in the specification be more than a simple general
13 purpose computer or microprocessor.

14 And this was really where Microsoft gets its hangup. It
15 says, well, that only accounts if the general purpose computer is
16 disclosing the specification. But if you put it in the claims, it's all
17 right, and we could avoid all this. If that's the loophole, if that's
18 going to be a valid loophole, then that makes all this meaningless.
19 I just have to recite a general purpose computer for doing almost
20 anything and I can get indefinite claims, and (INDISCERNIBLE)
21 functional claiming. No, that would violate *Williamson v. Citrix*.
22 And that would violate *Aristocrat*. And that would put those cases
23 in complete contradiction and conflict with each other.

24 And then we can also look at *Ergo Licensing*. When we
25 think about just the idea of receiving data and decoding data where

1 ergo licensing has specifically said receiving and processing,
2 storing, these are functions of general purpose computers. So
3 something that receives and processes data, how each thing
4 receives and decodes it, that's -- again, that's a general purpose
5 computer. A wireless communication interface, that would be
6 receiving and sending data. Again, *Ergo Licensing*, a general
7 purpose computer. I don't understand how we can avoid all of
8 *Aristocrat*, all of *Williamson v. Citrix*, all of the established case
9 law that's come out simply by saying oh, we'll put the general
10 purpose computer in the claims, to which you know, now we've
11 outsmarted the case law and we get to get around this. No, it just
12 can't work that way. If it does, then that is a wonderful loophole,
13 and I think everybody is going to be very happy with Microsoft, at
14 least, all the patent practitioners I know.

15 But we do have an algorithm and a specification. And as
16 we stated, if I can go on to the next slide, please. That's algorithm
17 250. And that's right there. And consistent with how the
18 specification defines local secured information, that's also repeated
19 right here in algorithm 250. We have that right there. That's
20 perfect. It goes through all the examples. Microsoft gave an
21 example. I don't know where it came from. Fingerprints, credit
22 cards, all of these missing things. I'm not exactly sure which
23 example in the specification it was. I don't remember it for such
24 an example.

25 We detailed all the examples in the specification in our

1 brief and our expert went through them and said yeah, none of --
2 all of this stuff is just general purpose computers. Absent an
3 algorithm, I don't know how something that stores suddenly
4 enables. And all that is in the declaration. And so I don't think I
5 need to reread any of that or go or repeat any of that here. I don't
6 think that would be a good use of the Board's time. But we have
7 all those in the slides. And you can even see on the left side, just
8 to remind the Board, when we integrated all these examples kind
9 of pictorially and we'll recall you back for a better and more
10 thorough explanation of them and the declaration of our expert,
11 Mr. Jacobson.

12 And then we get to the last claim, Claim 14. And Claim
13 14 really confuses me. In fact, Mr. Hecht, if you could put up
14 Claim 14 if I have it caught on the screen. Excuse me, getting over
15 allergies today. What do we have here? Microsoft says an
16 enablement signal is a signal that starts a process. Okay. I'll go
17 with that instruction. But then I got an indefinite claim. I'm sorry.
18 Because what do we say? We say receiving a first signal. Well, if
19 an enablement signal is a signal that starts a process -- a pulse is
20 something that triggers a process, well, there's our first signal. It's
21 the first signal. It's the beginning. That's the start.

22 And then we have generating another start signal. Well,
23 wait a minute here. I have two beginnings? I can't have two
24 beginnings; I have one beginning. So what they're saying is, and
25 their construction contradicts the language of the claims. It says I

1 have a first signal that starts everything. That's why it's called the
2 first signal, first. Then I generate an enablement signal. We have
3 a first and then subsequent later we -- that starts everything.

4 And then we have another signal that's subsequent later
5 starts everything? No, we started everything at the beginning. We
6 can't then say an enablement signal is a signal that starts a trigger
7 signal. We've already started then triggered. So it would just be,
8 again, indefinite. We gave them our construction of enablement
9 construction in our claim, in our infringement contentions. They
10 decided not to challenge it when they knew the District Court's
11 construction, a hybrid device with respect to the 042 patent which
12 is almost this identical language terms. Not in front of us today
13 but will be in about two weeks I think. And we had to have
14 consistently applied that holding.

15 And for us, these are the patents which we tried to do in
16 our infringement contentions. That addresses it
17 (INDISCERNIBLE) grounds. Again, we've construed terms to be
18 general purpose computers, and now we're saying those general
19 purpose computers perform functions that are (INDISCERNIBLE)
20 indefinite. The District Court did all that. We have to be
21 consistent with it and Microsoft never challenged it.

22 Microsoft had the ability to challenge the District Court's
23 previous constructions and previous determinations. They had the
24 ability to challenge their constructions and determinations we put
25 in our infringement contentions. We do not have the luxury,

1 having waived appeal rights in the Samsung case, of ever
2 challenging those holdings again. They are forever binding on us.
3 Microsoft had the ability. They were the one that's not
4 estopped. We are. And instead, they're trying to use that estoppel
5 against us. I don't know. I don't even know how to respond to
6 that. Once I get a holding on my -- once we get a holding, we're
7 bound by it. We can't challenge it and we have to rely on it. And
8 we did so consistently in our infringement contentions and they
9 had the chance, they had the opportunity and they -- had sole
10 opportunity to challenge it and they waived it except for here. I
11 don't know who's being inconsistent but we're doing our best not
12 to be. And with that, I think that basically wraps everything up.

13 MR. HECHT: I did want to interject. And can I -- I said
14 I would talk about some miscellaneous rebuttal. You know, it
15 always crosses you the wrong way to hear that we're
16 mischaracterizing anything or we're being inconsistent. We have
17 seen slides from Microsoft that I believe mischaracterizes our
18 positions in the various copending litigations. I just want to be
19 clear. As Mr. Zak said, Proxense has always been consistent in
20 maintaining throughout the algorithmic requirement that he
21 discussed, across the various filings and infringement contentions.
22 But the key here is, the terms that were construed in these various
23 proceedings were different. They were little bits and pieces of
24 receiver-decoder circuit on its own. We did not construe the same
25 aspects as we're asking the Board to construe here.

1 So, for example, Microsoft's Slide 17, Exhibit 2006 does
2 show Proxense's proposed claim construction on PDK and RDC.
3 But that's not the limitation here. We're taking a more expansive
4 view of what is actually problematic. And I think to take a step
5 back, this was also something that -- and, again, as far as
6 consistency goes, we were here before the Board a couple of years
7 ago. There were -- and this is in the record. Microsoft briefly
8 touched on this in their slides.

9 But I appeared in 2021-1438 and 1439 on related apps.
10 Very, you know, same family. This was the 188 patent in the 1438
11 proceeding and the 700 patent and the 1439 proceeding. Same
12 exact arguments raised there. And nonetheless, Microsoft did not
13 raise these terms as much Mr. Zak said before the District Court
14 but were aware that we were taking these positions regarding
15 needs plus function. And I think it's really important -- and this is
16 one thing that I think popped out at me when I was preparing for
17 this with Mr. Zak.

18 If you look at the claim, we have a big problem. Because
19 if you take -- if you strip it down like you would, you know, take
20 an automobile and say what component is this, what component is
21 that. So we have this hybrid device. Right? We're looking at
22 Claim 1 on the screen. You have an integrated secure memory
23 storing local secured information. Even their own expert said
24 that's anything. That's memory. Right? It's nothing specific that
25 doesn't do any of this generic memory.

1 Then you have this second component, sorry, second
2 component starts with an integrated reader decoder circuit for
3 communicating wirelessly with at least one external device within
4 a proximity zone. Okay. That can be a cell phone, that could be a
5 -- there's any number of things. Again, it's a black box. Now,
6 where does this idea, where did we get this concept of the means
7 plus function?

8 And, what Mr. Zak kept showing was the last limitation
9 here, the wherein, and this is where it clicked for me. Because I
10 see AMB. Those are the two components that were defined
11 previously. Right? And it says, "enabling one or more of an
12 application, a function, or a service." So two different black
13 boxes. Black box memory, black box RDC communicating
14 wirelessly, it could be anything. Right? And it says, "enabling
15 one or more of an application, a function or a service." So two
16 different black boxes. Black box memory, black box RDC
17 communicating wirelessly. It could be anything. Right? Doing an
18 enablement of one or more of an application, a function or a
19 service.

20 The only way that this could possibly be a valid claim is
21 if you look back at the specification. Otherwise, this is anything.
22 This is the general purpose computer and that's why this is not a
23 sneaky argument that we try to make. This is not something that's,
24 you know, creative and outside of the bounds of case law. This, as
25 it reads, is a general purpose computer that's enabling one or more

1 of an application or function or service. If we don't look for the
2 spec for what their algorithm is, this has to be indefinite.

3 And I think that's where Mr. Zak has pause. And when I
4 looked at this again, because it's very easy to get lost in the
5 language. Because the prosecutor did a good job of using, you
6 know, very interesting language, very colorful language here. But
7 at core, there's nothing here. And that, as Mr. Zak said, if
8 Microsoft thought this was a problem, they could have gone right
9 to the Court and said this makes no sense. This is indefinite,
10 indefinite, indefinite. The whole thing is indefinite. Right? And
11 so that's where it sort of clicked for me. Right? And there has
12 been absolutely no inconsistency. We've made very similar
13 arguments. We didn't -- Your Honors, the Board did not reach a
14 final written decision in the Samsung IPR that I mentioned earlier,
15 the 1438, 1439. But there's extreme consistency. And with
16 respect to that framework --

17 JUDGE MCKONE: This is -- Mr. Hecht, can you hear
18 me? This is Judge McKone. I'm just -- I'm trying to make sure I
19 understand what you're saying. So this receiver-decoder circuit,
20 RDC, is that the, I guess the nonce term or the term that you think
21 has insufficient structure?

22 MR. HECHT: Yes, I think --

23 JUDGE MCKONE: That's the means plus function
24 term?

25 MR. HECHT: Yeah, what clicked for me when I was

1 reviewing --

2 JUDGE MCKONE: No, I'm just trying to understand
3 your position. So --

4 MR. HECHT: Not specific. Sorry, Your Honor. Not
5 specifically RDC, but the phrase. The integrated RDC for
6 communicating wirelessly with at least one external device within
7 a proximity zone. That's what I see as the means. In the same
8 way --

9 JUDGE MCKONE: No.

10 MR. HECHT: -- integrated --

11 JUDGE MCKONE: No, in the -- it seems like in the
12 District Court you were able to offer up a construction of the
13 receiver-decoder circuit.

14 MR. HECHT: Correct.

15 JUDGE MCKONE: It looks like --

16 MR. HECHT: Yes.

17 JUDGE MCKONE: Okay. So you didn't seem to have
18 any difficulty understanding or finding receiver-decoder circuit
19 down in the District Court. Right?

20 MR. HECHT: Yeah, that's right. Just on its own,
21 receiver-decoder circuit is something. Now, it's --

22 JUDGE MCKONE: Now, where -- now, help me find
23 out where in the District Court litigation did you say that any term
24 was a means plus function term? Or if you didn't, please tell us.

25 MR. HECHT: I believe Mr. Zak showed you the

1 infringement contentions in the Microsoft case.

2 JUDGE MCKONE: Yep, and I looked all over those to
3 try to see where you said means plus function, 112(6) or anything
4 that might invoke that. And I didn't. Am I missing something
5 other than --

6 MR. HECHT: Nope.

7 JUDGE MCKONE: -- ex post facto argument that, well,
8 somebody would have gleaned it from the infringement
9 contentions. You didn't -- I'm looking for where it was actually
10 stated.

11 MR. HECHT: Well, no, because we didn't raise it. We
12 don't believe that this is indefinite, obviously. We believe that you
13 just need to look at the actual specification to look at the algorithm
14 which we've always done consistently.

15 JUDGE MCKONE: So you didn't raise 112(6) in the
16 District Court; is that correct?

17 MR. HECHT: We did not raise it, no.

18 JUDGE MCKONE: Okay. But you're raising it here,
19 right?

20 MR. HECHT: Correct. Because we believe this is how
21 this needs to be interpreted in light of the prior -- to understand
22 what is actually being covered, not just in a particular term, but
23 what the claim in its entirety means needs to be construed in light
24 of making -- in order for our ability to argue against the prior art.

25 JUDGE MCKONE: Okay. I think I understand your

1 position.

2 MR. HECHT: Thank you, Your Honor. Yeah, I mean,
3 the only other comments I have are just with respect to the case
4 law. You know, I'm not going to beat a dead horse. I think we've
5 talked a lot about the *Williamson* case, the *Rain* case. But I think
6 Microsoft incorrectly claims that the general purpose computer
7 components cannot be disregarded in step 1. Whether a limitation
8 invokes 112(f) depends on whether the limitation recites sufficient
9 structure. Right?

10 And our whole argument, as you know and you've heard,
11 is that it does not. And the general purpose computer doesn't
12 provide enough structure to perform the function as part of the step
13 (INDISCERNIBLE). Right? Merely naming a memory or
14 receiver does not provide meaningful structure for performing
15 specialized functions including, you know, any of, enabling one or
16 more of an application of function or a service. And the Court has
17 been clear that if a claim recites a general component like a
18 processor or memory without disclosing how it performed the
19 claimed function, then that's governed by 112(f).

20 Microsoft argued that the presence of any structural noun
21 or receiver memory suffices to bound the scope of the claim, that
22 can't be correct. The proper inquiry is whether the term can
23 sufficiently deafen a structure. And so here, unlike the previous
24 case with Samsung, the previous IPRs that I mentioned, here we
25 have an expert declaration that supports our 112 argument

1 regarding the lack of structure and what a person of ordinary skill
2 would understand these terms to mean.

3 Just because the claim recites the memory or receiver
4 doesn't automatically mean that the claim escapes 112(f). The
5 Courts have always just said look at the full context including
6 whether the function is something that a person of ordinary skill
7 would understand to be performed by that structure without further
8 elaboration. Here the answer is no, it can't be. The step 1 can
9 consider the specification contrary to Microsoft's implication.
10 Courts are allowed and the PTAB is certainly allowed to look to
11 the specification at step 1. Not to supply the missing structure but
12 to confirm whether the claim term is used in a structural or
13 functional sense. And that's really what we're arguing here. So
14 we -- unless there is some specific questions, you know, I think --

15 JUDGE MCKONE: I did have a --

16 MR. HECHT: Yeah.

17 JUDGE MCKONE: -- clarifying question. You've been
18 talking almost exclusively about this alleged means plus function
19 term. If we decide that it's not a means plus function term, is it
20 your position that we should find that the prior art meets that term,
21 or do you have an argument to the contrary?

22 MR. ZAK: Your Honor --

23 JUDGE MCKONE: Who am I talking to? It looks like
24 somebody else is talking now.

25 MR. ZAK: This is Mr. Zak. Sorry, Your Honor. As I

1 addressed, if these claims don't invoke MPF, they're indefinite.
2 They are invalid under 112. And at that point, I don't know how
3 to -- I don't know how to advise you to write your opinion, and I
4 don't know how to respond to even a 103 argument if I'm looking
5 at the claims and I'm saying, these are indefinite. I don't know
6 (CROSSTALK) --

7 JUDGE MCKONE: Maybe I'll ask it this way. If we
8 decide that Claim 1, for example, is not a means plus function
9 claim, do you have any 103 based arguments that you're
10 advancing?

11 MR. ZAK: If you decide that it's not a means plus
12 function claim, then it falls under 112 and I can't defend a claim
13 that I know is invalid under 112.

14 JUDGE MCKONE: Okay. But you -- so you're
15 confirming that you don't have any 103 arguments as to --

16 MR. ZAK: No, Your Honor, I'm saying --

17 JUDGE MCKONE: -- (CROSSTALK) a means plus
18 function term?

19 MR. ZAK: That might be one way of looking at it.
20 What I'm saying is, I never got to that point.

21 JUDGE MCKONE: No, I'm asking you is that the
22 correct way to look at it? Because we're not -- it puts us in a
23 difficult position to -- as to whether or not we're going to
24 determine whether a claim is indefinite since that's not one of the
25 grounds that the Petitioner can raise. So standing at --

1 MR. ZAK: (CROSSTALK).

2 JUDGE MCKONE: -- just straight up, if we decide that
3 this is not a means plus function claim term, do you have any 103-
4 based arguments that we would still consider?

5 MR. ZAK: I would say you could put in the --

6 JUDGE MCKONE: The arguments that you've made.

7 MR. ZAK: I would say, Your Honor, that you would put
8 into the record, and this would be a fair and accurate statement,
9 that Patent Owner concedes that if means plus function does not
10 apply to Claim 1 of these patents or claim 14, I think they're both
11 Claims 1 and 14, that they are -- he concedes that the claims are
12 invalid for indefiniteness which is a ground that we cannot address
13 here and thus would have to concede and cannot present arguments
14 under 103.

15 JUDGE MCKONE: Okay. Thank you.

16 JUDGE DANG: Yeah, this is Judge Dang, and I think
17 Mr. Hecht, when he was explaining the claim, I think he said that
18 the first limitation memory could be anything and that the RDC
19 circuit could be anything. Right? And therefore, everything
20 hinges on the wherein clause. And therefore that's why you said it
21 is important to, I guess, incorporate the algorithm in order to have
22 that wherein clause make sense. Am I correct?

23 MR. HECHT: That's correct. Right? Because on its
24 own -- and, you know, I was being a little facetious in terms of
25 anything. Obviously, there are -- there was construction of

1 integrated secure memory. There's certainly a bunch of memory
2 that could not qualify. But essentially, it's a black box. It's a
3 black box 1, black box 2, and when you look at the wherein, that's
4 where if you're looking at what the inventive concept is, it
5 certainly wasn't (INDISCERNIBLE) on its own. It wasn't the
6 integrated receiver, the quarter circuit. It was how they were used
7 and how they were used according to the algorithm. That's why
8 this was patented.

9 JUDGE DANG: So is it a fair statement to say that it is
10 your position that if the claim, any claim, not just your claim
11 alone, but in the case law supports -- the interpretation of the case
12 law is that if you have a black box claim that a general purpose
13 computer or black box is in a wherein clause, you have to read into
14 the algorithm in order to breathe life into this claim?

15 MR. HECHT: If it's a general purpose computer, yes. I
16 think --

17 JUDGE DANG: On any claim. On any claim. Any
18 claim that has general purpose computer, or else it would -- or
19 because it would fall under a means plus function and therefore
20 you have to have the algorithm in order to have life into the claim.
21 Is that what --

22 MR. HECHT: Unless the claims recite storing or
23 receiving. The functionality is important. You know, here the
24 wherein is specific to these two black boxes enabling one or more
25 of an application function or service. *In Re: Katz* (PHONETIC)

1 mentions that absent a possible narrow construction of the terms
2 processing, receiving, storing, the disclosure of a general purpose
3 computer was sufficient. So this is sort of outside of that. That's
4 why we're taking the position we are.

5 So I wouldn't say -- I never like to use absolutes. Right?
6 But here I think unless the claims were specific to things like --
7 analogous terms like processing, receiving, storing, like in Katz,
8 there could be an issue.

9 JUDGE DANG: Okay. Thank you very much. Yeah, if
10 you have no other comments and if -- yeah, it seems like the panel
11 has no more questions. You have 18 minutes and 42 seconds left.
12 Thank you.

13 MR. HECHT: Thank you, Your Honor.

14 JUDGE DANG: Mr. Devoto, you have 15 minutes and a
15 half. Please start whenever you're ready.

16 MR. DEVOTO: Sounds great. Thank you, Your
17 Honors. So I'd like to touch upon a few of the items that were
18 presented by Proxense in their rebuttal. So as a preliminary
19 matter, there really is no 103 argument. The record did not reflect
20 them advancing any type of 103 argument in any of their briefs.
21 And as such, the answers should have been quite simple from
22 opposing Counsel. And the answer is, there's no 103 argument.

23 Also, there's a lot of -- the opposing Counsel has
24 leveraged this notion of a presumption of validity. As I'm sure
25 Your Honors know, there is no presumption of validity in an IPR

1 forum. So that really should be given little weight. Probably the
2 most egregious thing that opposing Counsel did is they again try to
3 muddle the case law. They point to Aristocrat, they point to Rain,
4 they point to HTC. And yet all of these cases, all of them, began
5 with the recognition or the determination that these are MPF terms.
6 That is that the terms themselves do not, in and of themselves,
7 recite sufficient structure. And it's only then when they were
8 deemed to be MPF terms was there any consideration or
9 classification of general purpose computer disclosure in the spec,
10 an assessment of whether that disclosure was sufficient or
11 insufficient to indicate that these MPF terms are indefinite in the
12 scope.

13 And Your Honors, there's also a -- frankly, there's a
14 deep conceptual problem in the way that the opposing Counsel has
15 tried to frame the case law. The bottom line is these claims are not
16 reciting general purpose computers. They're reciting a particular
17 component of a general purpose computer that they themselves
18 have acknowledged, such as a memory or a processor and a
19 transceiver. That is not a general purpose computer.

20 So the problem with -- and the part that seems to allude
21 their thinking is that the reason why this general purpose computer
22 disclosure's a big problem, why the courts have looked at it and
23 go, I don't like this general purpose computer disclosure in your
24 spec is because when they're dealing with an MPF limitation and
25 they're trying to figure out, okay, what structure is performing this

1 function? My God, all I have is general purpose computer. This
2 general purpose computer might be described as having memories
3 and receivers and transceivers, but you know what? I'm simply
4 guessing what parts of all these different components may or may
5 not be involved as structures for performing the function. I don't
6 know because the claim doesn't recite what parts.

7 So if the claim itself recites, well, it's the memory that's
8 doing it, well, then okay, now I know. I'm not guessing. So this
9 notion -- or a transceiver is doing the function. Well, now I know.
10 I know what structure is bounded. It's not a means plus function
11 term. This isn't black box. The scope of this limitation has been
12 narrowed not to a general purpose computer and its boundless
13 different permutations of tons of different components. What is
14 this? Is it the transceiver? Is it the memory? Is it the processor?
15 Is it this processor, or is it that? Maybe all of those might even be
16 described in the spec, but frankly I'm still guessing because I don't
17 know what the patent draftsman had in mind when they wrote that
18 limitation because they didn't say it.

19 Well, in contrast if they do identify one of the structures,
20 it is no longer a boundless entity, more of this general purpose
21 computer thing. It is a particular structure that is itself being used
22 to perform the recited function. And therefore, it is not a black
23 box. This idea that the minute you think, oh, well, I'm going to
24 just call -- you'll notice, they always call it a general purpose
25 computer. It's not. It's one component of a general purpose

1 computer. And a very specific component. So this notion of
2 conflating this boundless aspect of a general purpose computer the
3 Courts have scorned and don't like when they're dealing with pure
4 MPF limitations is inapplicable to claim limitations that don't
5 recite specific components like receivers or transceivers or
6 memory as performing functions.

7 Now, the other comment, Your Honors -- and, by the
8 way, you yourself recognized this in your decision when you
9 pointed to the Linear Tech Corp v. Impala Linear Corp when you
10 said where there's a structure connoting term coupled with the
11 description of the terms and operation, Section 112, paragraph 6
12 does not apply. That is correct. A structure connoting term, such
13 as a memory or transceiver receiver, is being recited in the claim
14 as performing this operation. Therefore, 112(6) does not apply.

15 Now, also, know one thing, Your Honors. As far as
16 somehow there being some mystique in going, oh, my goodness, I
17 have no idea -- I have no idea how an RDC or a memory to
18 perform this enabling function. And it's like, I have no idea. The
19 only way I could fathom that it could form this enabling function
20 to make the claim definite would be to look and import all of the
21 incredibly intricate guts of the control algorithm of the control
22 lodging at 250 into the claim. But that's silly.

23 Claim terms are read in light of the specification. And
24 when you look at the specification, you recognize, well, of course I
25 know how they could do it because the memory can store access or

1 authentication information. Of course, that's how it enables it
2 because it enables, it stores, access or authentication information
3 that can be retrieved and thereby enable that application function
4 or service, such as credit card information. Or, I don't know,
5 username and password. That's how it enables it, by storing
6 retrievable access or authentication information.

7 And similar for the RDC, it enables communication of
8 access or authentication information. It is the conduit by which
9 you can communicate it to other devices that will then enable the
10 application function or service. And note that when you look at
11 the specification and the breadth of the specification, you realize --
12 and this is a point we made in our replies, this enabling function is
13 not done entirely and completely done by that one memory or that
14 one RDC alone and on its own standing alone like an island. It is
15 performing the enabling function by being a necessary part or step
16 of multiple steps needed to perform the enabling function.

17 So it says the step of, for example, once you send out a
18 given username or password, either you know that was stored in
19 the memory or that was communicated by the RDC. There's
20 another device that has to be involved because, after all, you're not
21 just going to enable the service if this username or password is
22 wrong. You got to verify it. You're not going to enable the
23 service of the financial information, the credit card account
24 information as invalid. You're not going to enable it.

25 So this notion that this is somehow black box stuff, oh,

1 no, we got to save the claim -- even though there's no presumption
2 of validity because I have no idea how this memory or these RDCs
3 tie to the enabling function -- it's not credible. We repeatedly said
4 with expert testimony in our replies with supporting expert
5 declaration that they did not depose, that this would be clearly,
6 clearly understood in light of the '289 and '960 specifications of
7 how these different structures could indeed perform the enabling
8 function. And also we noted that you got to be thinking about
9 necessary versus sufficiency distinctions. Right?

10 A given component could be necessary for performing
11 the enabling function, but it may not be sufficient. So in this case,
12 if we identified it as necessary, well, then it is performing the
13 enabling function. At least it's performing the necessary step or
14 the multiple steps needed for the enabling function. And in that
15 sense, it is performing the enabling function, which is actually
16 more consistent with the specification.

17 And I'll also point one more thing, Your Honors.
18 There's absolutely no dodging that they're trying inconsistent
19 claim construction. No matter, these -- like, look at the RDC
20 example. Okay? The RDC example and the RDC construction
21 that they advocated for in these related litigations was interpreting
22 these terms in the context of the rest of the claim. And they
23 advocated for these, this structural understanding of that RDC term
24 in the context of the rest of the claim.

25 And nowhere, as Your Honors recognize, nowhere did

1 they ever, either in their infringement contentions or ever say you
2 know what, it's a 112(f) term -- it's a 112(f) term. Instead, what
3 they did frankly is brazenly import the specification into the
4 meaning of the term. They had all this self-serving language.
5 Well, here's what this patent specification does. But you don't get
6 to put that into your claim. You just don't. You don't get to put
7 that into your claim. Because you didn't draft your claim that way.
8 And now you're trying to backdoor it in through some argument
9 supported by no case law, that these terms, it clearly recites
10 structure that you yourself accept recites structure and that you
11 can't credibly dispute, nor did you depose our expert to say sorry,
12 but that's not enough to perform the enabling term. That doesn't
13 work.

14 You can't just communicate or store authentication or
15 access information to perform the enabling function. You never
16 deposed our expert. It's unrebutted evidence put into the record by
17 our expert. And then they say that sorry, that doesn't work
18 because we can't in our minds figure out how you could connect
19 these structures to this enablement function despite the fact that
20 these claims were understood in light of the specification.

21 And there's so many clear ways that the very simple act
22 of storing or communicating access or authentication information
23 does connect these structures, does have them perform the
24 enabling function, if not perform an absolutely necessary step for
25 enabling the application function or service, which can be said to

1 be the same as the enabling of the application function or service.

2 So, Your Honors, I think I've touched upon all the main
3 points. Do you have any questions on anything I've said?

4 JUDGE DANG: You can go ahead. Thanks.

5 MR. DEVOTO: Thank you. Yeah, and you know, as we
6 -- I'll make one final point, Your Honors. I mean, these claim
7 terms just aren't black box terms. It's just simply not credible to
8 say they are. We're talking about an integrated secure memory.
9 Okay? It's not just the memory, it's integrated secure memory. So
10 we've got a subclass of readily ascertainable structures
11 recognizable by a POSITA, as we indicated could readily be
12 recognized in light of the specifications for being able to perform
13 the enablement function.

14 And we're talking about a subclass of structures that are
15 dealing with memory structures local to the device, and they're
16 tamper proof. This speaks to structure. This is not a black box.
17 It's not a nonce term. It's not a black box. They themselves
18 acknowledge that structure, and you can similarly say the same
19 thing for wireless interface communication circuit where, again,
20 you're dealing with a wireless circuit. Well, that speaks to
21 structure. It's a wireless circuit. People know what wireless
22 circuits have in them. Right? They convey, they modulate
23 electromagnetic signals, communicate data. That is structure. So
24 it can't be dismissed. And certainly, it cannot be asserted to be
25 nonce terms.

1 And, frankly, one of the most damning assertions by
2 them regarding the enablement signal term, not only is the fact
3 they place no credible evidence on any of these terms into the
4 record other than conclusory assertion. So they didn't rebut the
5 presumption against MPF treatment. But also they don't even
6 believe it. They themselves said an enablement signal, it's not a
7 nonce term. They never said no, no, it's a nonce term. They said
8 in the Samsung litigation it's a message that enables or
9 authenticates. They don't themselves believe it, and they
10 shouldn't because all the evidence is against them.

11 And, again, they never deposed our expert on any of the
12 evidence we placed into the record with respect to all of these
13 terms where they could have easily said well, we don't -- you
14 know, they could have attacked him and tried to undermine him
15 and the credibility of all his statements. So they have simply not
16 met their burden. These are not MPF terms. To assert that they
17 are would be a gross violation of underlying case law that they
18 have manipulated to try to conflate the definiteness inquiry with
19 MPF inquiry.

20 And, frankly, to adopt their claim constructions would
21 absolutely be inconsistent and create undesirable inconsistencies
22 with all of the related litigations. With that being said, I have no
23 other items unless you have any questions, Your Honors.

24 JUDGE DANG: No, that's it. Thank you so much.

25 MR. DEVOTO: Thank you so much.

1 JUDGE DANG: Mr. Zak or Mr. Hecht --

2 MR. ZAK: Yes.

3 JUDGE DANG: -- if you will do the rebuttal.

4 MR. ZAK: I'll resume the rebuttal.

5 JUDGE DANG: Okay, Mr. Zak. Okay. Thank you.

6 MR. ZAK: As a first --

7 JUDGE DANG: You have 15 minutes and 38 seconds.

8 You can start any time you're ready.

9 MR. ZAK: All right. Thank you. As an initial matter, I
10 want to say I take issue with being characterized as somebody
11 who's manipulating, misrepresenting, or lying. I have done
12 nothing of that type. And I will not tolerate my character being
13 besmirched by that when I am trying to fairly and accurately
14 present the case law and fairly and accurately follow decisions of a
15 District Court that are binding upon me.

16 Now, with that said, and I apologize, let's start out with
17 our rebuttal here. They keep saying, but they're just structures.
18 They're structures. Yes, they are structures. And we cited case
19 law that says these structures are general purpose computers. We
20 cited Rain Computing that says memory is a general purpose
21 computer. We cited HTC that says transceiver receiver and
22 processor which would be used for decoding, of course, are
23 general purpose computers.

24 We cited In Re: Katz -- well, a case citing Katz that was
25 over licensing that said, you know, general purpose computers,

1 yeah, they receive process, store and send data. That's what they
2 do. Something that receives processes, stores and sends data,
3 that's a general purpose computer. We cited the case law that says
4 these components are general purpose computers. I was not
5 breaking the case law. Microsoft is asking this Board to ignore the
6 case law. We cited case law that said general purpose computer is
7 not a sufficiently definitive structure. They're asking this Board to
8 ignore it.

9 And they're saying because I can pick up or I know -- if I
10 can just find a smart enough way to recite general purpose
11 computer, and wait, no, draftsman trick. We don't allow
12 draftsman's tricks. At least, that's what I was taught when I was
13 going into prosecution. Now, Microsoft also says, oh, but the
14 structure, the structure. Yes, the structure is defined by the
15 function, storing. Like I said. Receiving sending, then we have to
16 make a mental jump to the other function of enabling. I don't
17 know how something stores and enables. I don't know of
18 something that receives, sends, decodes, then enables. I don't.
19 And Microsoft admits this when they say we go to go back and
20 look at the spec. And then when we look back at the spec, we
21 understand all this.

22 But you're not allowed to put -- Proxense isn't allowed
23 to look back at the spec, only we are. Well, that's inconsistent.
24 And that's a double standard. They admit themselves that these
25 claims can't be understood without looking back at the specs but

1 they're not self-explanatory. But there has to be something
2 imported from the specification but they don't want to say out loud
3 what that something is. It's the algorithm. They keep saying well,
4 you wouldn't understand how memory enables if you'd read the
5 spec. You wouldn't understand how a receiver decoder circuit
6 enables if you've read the spec. You wouldn't understand that a
7 wireless communication interface, how that enables if you've read
8 the spec.

9 Yeah, so it's the whole point of means plus function. It's
10 the whole point of Aristocrat. You understand this when you read
11 the spec because we're importing the algorithm from around the
12 spec into the claims because the general purpose computer itself is
13 not sufficient. And, again, we've recited the case law that says
14 everything that these claims have recited is a general purpose
15 computer. They say but these things weren't construed in the
16 District Court. That's because nobody in the District Court asked
17 for the construction of the enablement clauses or wherein clauses.
18 Nobody did that. They just focused on the first term trying to play
19 us a sneak attack on us here in this procedure.

20 We interpret the first terms; they were interpreted as
21 general purpose computers consistent with how the case law
22 recognizes a general purpose computer to be. There's no question
23 they're interpreted to be general purpose computers. And they're
24 interpreted to be nothing more than general purpose computers by
25 the District Court. And Microsoft wants to say, well, because they

1 were interpreted to be general purpose computers now they should
2 be definite. It doesn't work that way. I'm sorry, that's not what
3 the case law says.

4 Case law Aristocrat is the exact opposite. So we get
5 through all that and then they say oh, they keep trying to throw
6 back in our face instructions we did not get in the District Court.
7 As I said, yes, we might have proposed different terms for
8 enablement signaling the District Court. We did do that. And we
9 lost. And that case closed, we did an appeal, collateral estoppel
10 applies. We can't relitigate that issue. So we can't go and say
11 okay, we want to present that argument again. No, we can't. We
12 lost on it. We can never do that again. Now this is a different case
13 ahead of us. Microsoft was not part of the Samsung case.

14 Microsoft case was filed after the Samsung case.
15 Samsung case was closed. Those findings, those holdings were
16 binding on us. So I don't understand what Microsoft wants me to
17 do. Do they want me to go back to the Samsung case, reopen that
18 case, beg the judge and the Appellate Courts to let me reopen that
19 case and retry a dead issue? No, I can't do that. But what I can do
20 is accept what the Judge said. He said plain and ordinary meaning.
21 Okay. Well, what's the plain and ordinary meaning of an
22 enablement signal? That's what we're here today trying to figure
23 out.

24 They say the plain and ordinary meaning is a signal that
25 starts a process. And I go okay, well, that's a plain and ordinary

1 meaning then the claims start with before we get to the enablement
2 signal, it says receiving the first signal. Well, they said the first
3 signal is the signal that starts the process. How can a signal that
4 triggers or starts the process be later than the first signal? Because
5 the first signal starts the process. Now we have a second signal
6 that triggers and starts the process. And that just seems confusing
7 so that can't be the plain and ordinary meaning of an enablement
8 signal.

9 I would say the plain and ordinary meaning of the
10 enablement signal is as it's defined in the specification which we
11 addressed in our brief. And that's just it. We have been trying to
12 be consistent with the law fairly and accurately applied to law. We
13 were trying to be consistent with the orders that were binding on
14 us. And fairly and accurately follow them. I don't want to be
15 characterized, and I don't think it's fair to characterize us as trying
16 to be sneak attacks or inconsistent or manipulate the law. We are
17 trying to fairly follow it and apply it. The law has said the case
18 law is clear.

19 As we said in *Rain Computing*, memory is a general
20 purpose computer. I don't know how it becomes less of a general
21 purpose computer because I find more and more ways of
22 describing it. As we said with *Ergo Licensing* with regards to
23 Ergo Licensing, the federal circuit is in there just receiving,
24 storing, processing. Those are functions of a general purpose
25 computer. And as it says in *HTC*, a transceiver and a processor is

1 the general purpose computer. These things do not perform with
2 functions of enabling. We have to make a mental leap.

3 As Microsoft acknowledged, they said we had to make
4 that mental leap by looking at the spec. You've heard them say
5 that; I've heard them say that. Okay. That's *Aristocrat*. We're
6 going to make that mental leap. We're going to look at the spec
7 and we're going to find that algorithm. But no, you're not allowed
8 to make the mental leap and look at the spec and find the
9 algorithm. Only we can for invalidity but you can't for validity.

10 And as far as the presumption of the validity, that is not
11 what I was saying. I was saying one of the axioms under the bill
12 of standards is when possible, claims are construed to preserve
13 validity when possible. I'm not saying that's a presumption of
14 validity. I'm saying that's an axiom of claim construction. If I
15 have two constructions, one that would be invalid, that would
16 render the claims invalid for some reason, one that would render
17 the claims valid and they're equally likely -- the standard is, the
18 axiom is, well, then I choose the one that preserves the validity if
19 they're equally likely.

20 But that's only a guideline. Two, that's the one I'm
21 raising. The District Court seemed to follow that guideline. And,
22 again, you see the final opinion that were gone by and that
23 Microsoft didn't challenge. And I think that's it from me unless
24 Mr. Hecht wants to add anything regarding the points he discussed
25 earlier.

1 MR. HECHT: The only thing I wanted to add was the
2 assumption that because we didn't depose an expert means it's
3 unrebutted is wrong. We had our own expert that was directly
4 rebutting with his own points. They deposed them. You know,
5 it's just that's the way things go sometimes. Sometimes, you
6 know, you have another expert that undermines the opposing
7 Counsel's experts or the Petitioner's experts. That doesn't mean
8 that he's right. We have on the record our own expert that has
9 contrary positions. Thank you very much, Your Honors.

10 JUDGE DANG: Yes, Mr. Zak, this is Judge Dang. I
11 have a question. Could you I guess give me the case law that you
12 said is saying that claims should be construed to preserve the
13 validity?

14 MR. ZAK: Oh, I have a great case. I can't remember.
15 Mr. Hecht, maybe you can look this up while I'm trying to -- while
16 I say the name. It's *Sitrick vs. DreamWorks*. Sitrick is spelled *S-I-*
17 *T-W-R-I-C-K-S v. DreamWorks*. And that was -- I got that --

18 MR. HECHT: That's a different type of Sitrick. It's not
19 Citrix like the Citrix --

20 MR. ZAK: No, it's S-I-T-W-R-I-C-K-S v. DreamWorks.

21 MR. HECHT: Sorry, S-I-T-R-I-C-K versus
22 DreamWorks.

23 MR. ZAK: W-R-I-C-K I believe, S-I-T-W-R-I-C-K-S.
24 That might have been --

25 JUDGE DANG: Okay. Okay. Great. Thank you so

1 much.

2 MR. ZAK: And that is a wonderful case because it was
3 really kind of funny. The Court said normally we wouldn't do this
4 but since you're asking us to do it we'll do it because the Patent
5 Owner reported a construction that was completely -- that made
6 the claims invalid. And I'm laughing because it's so funny how
7 it's like hey, you got what you wanted, and you lost.

8 JUDGE DANG: All right. Thank you. So if you have
9 no further comments, we would call it the end of your
10 presentation. So the panel would like to thank the parties for your
11 presentations today. It's been very helpful. Your explanations of
12 the record will help us in our final determination. We will issue
13 the final written decision in due course. And with that, we are
14 adjourned and off record.

15 (Whereupon, the above-entitled matter went off the
16 record at 11:55 a.m.)

IPR2024-00405 Patent 10,073,960 B1
IPR2024-00407 Patent 9,679,289 B1

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