

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

ENTROPIC COMMUNICATIONS, LLC,
Patent Owner.

IPR2024-00446
Patent 8,223,775 B2

Record of Oral Hearing
Held: June 2, 2025

Before JON M. JURGOVAN, FREDERICK C. LANEY, and
AARON W. MOORE, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing on Monday, June 2, 2025, commencing at 11:58 a.m. CDT, at the U.S. Patent and Trademark Office, 207 S. Houston Street, Dallas, Texas.

P R O C E E D I N G S

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11:58 a.m.

JUDGE JURGOVAN: We'll get started in just a minute here.

JUDGE MOORE: Okay, good day, everyone. Welcome to the Board.

We're here for a hearing in our matter IPR2024-00446, captioned
Comcast Cable Communications vs. Entropic Communications.

The Patent at issue in this case is U.S. 8,223,775.

I'm APJ Moore. I'm attending by video.

Judge Jurgovan is present in our Dallas hearing room with the parties.

And Judge Laney is also present by video.

May I have appearances for the Petitioner, please?

MR. MEEKER: Fred Meeker with the law firm of Banner and
Whitcoff, representing Comcast Cable Communications, LLC.

My partner, John Fleming, also of the law firm of banner and
Whitcoff.

We have remote listeners, Heather Fulton, who's Vice President and
Senior Deputy General Counsel of Intellectual Property for Comcast
Communications, LLC and Kevin Chung, who's Associate Deputy General
Counsel of Comcast Cable Communications, LLC.

Thank you.

JUDGE MOORE: Thank you.

And for Patent Owner?

MR. LOWENSTEIN: Good afternoon, Your Honors, this is Nathan
Lowenstein from Lowenstein and Weatherwax on behalf of Entropic
Communications.

1 I'm joined by my colleague, Collette Woo, also of the same law firm
2 and by our Lead Counsel, Jason Engel of KL Gates who's seated behind me.

3 JUDGE MOORE: Okay, thank you.

4 I will ask you all to identify yourself for the court reporter each time
5 you begin speaking.

6 Please be sure that when you're referring to demonstratives, papers, or
7 exhibits that you identify the item for the record.

8 I'll also note that this hearing is open to the public.

9 I believe our Hearing Order allocated 60 minutes for each side.

10 Judge Jurgovan is going to keep the time in the room.

11 And Petitioner, you may begin when ready. You should tell me – or
12 please tell me how much time you wish to reserve for rebuttal?

13 MR. MEEKER: Your Honor, we'd like to reserve 10 minutes for
14 rebuttal.

15 JUDGE MOORE: Thank you.

16 MR. MEEKER: Okay, we're going to start on Slide 2.

17 Slide 2 shows that, throughout prosecution, the Examiner rejected all
18 claims for anticipation or obviousness except for dependent claim 7, which
19 included the requirement that the downstream packet data units, PDU
20 packets, are processed without involving the DOCSIS controller. We refer
21 to this as the bypass feature.

22 The Patent Owner has not disputed that Rabenko teaches the bypass
23 of its voice and data processor.

24 As we will show, Rabenko's voice and data processor is a DOCSIS
25 controller and performs DOCSIS functions.

1 So, moving to Slide 3, Slide 3 shows that the basic structure of the
2 ‘775 Patent. So, it’s got a data networking engine which is essentially a
3 router/gateway with ethernet on one side and a cable modem on the other
4 side, which is the cable modem engine.

5 The cable modem engine is a cable modem connected to an HFC
6 which is high frequency coax or hybrid fiber coax, excuse me.

7 And the invention is basically, if you integrate sort of the
8 router/gateway with the cable modem, you can get an advantage by
9 bypassing downstream data packets. And that’s on 118.

10 So, the downstream data packets come into the cable modem and
11 directly out of the DOCSIS by layer, they are bypassed right to the data
12 networking, or the gateway.

13 So, that’s the innovation claimed and that’s primarily in dispute in
14 these proceedings.

15 So, walking through the claim, Slide 3 shows claim 18 in relation to
16 Figure 1 of the ‘775 Patent.

17 Shown in green is the data networking engine 120 which performs
18 data networking functions, including interfacing with customer provided
19 equipment with respect to a LAN. And it’s got ethernet and USB as
20 examples.

21 Shown in orange box is a cable modem engine 110, basically a cable
22 modem which performs cable modem functions, including interfacing with
23 cable media, hybrid fiber coax cable.

24 Within the cable modem engine is a DOCSIS controller shown in red,
25 and a DOCSIS MAC processor shown in blue.

1 So, DOCSIS is the protocol that's used by all cable companies today
2 to communicate over hybrid fiber coax cable.

3 Shown in purple is a bypass of the DOCSIS controller from the
4 controller from the DOCSIS MAC processor directly to the data networking
5 engine via the data bus 118.

6 And the downstream flow of data packet units is shown as the light
7 purple arrow path. So, basically, on the left, there's a light purple arrow and
8 it – in the protocol stack, you'd have the physical DOCSIS layer, then you
9 have the MAC DOCSIS layer, then you have a DOCSIS controller that
10 processes upper DOCSIS layers.

11 But in this invention, the concept is you go from the MAC DOCSIS
12 processor or the DOCSIS layer directly to the data networking engine or the
13 gateway, bypassing any higher functions.

14 Slide 4 similarly correlates claim 18 of the '775 Patent to the main
15 reference which is Rabenko. So, Rabenko has exactly the same structure.
16 Rabenko has – it's got a WAN connection which can be fiber – hybrid fiber
17 coax.

18 It has a DOCSIS MAC/PHY layer which is 134. It has a proxy
19 gateway and a voice data processor which form the remaining parts of the
20 DOCSIS cable modem or DOCSIS controller.

21 JUDGE LANEY: Could I interrupt you for one second on that?

22 MR. MEEKER: Yes.

23 JUDGE LANEY: So, 136, you identify as the DOCSIS controller,
24 correct?

25 MR. MEEKER: Well, yes, the DOCSIS controller is one 136.

26 (SIMULTANEOUS SPEAKING)

1 MR. MEEKER: Yes, but in the spec, there are two embodiments.
2 One is where 136 is just the voice data processor and the second
3 embodiment is where the voice data processor 136 actually includes the
4 proxy gateway 142.

5 So, Rabenko teaches two different embodiments and we've asserted
6 both.

7 JUDGE LANEY: Okay, so let's start with the one that you showed on
8 the slide, just the – where it shows the VDP, you equate that as the DOCSIS
9 controller, right? That's what this slide shows?

10 MR. MEEKER: Correct, yes.

11 JUDGE LANEY: Okay, now, if you go above to Slide 3, it seems to
12 be, number 119, is a DSP, right?

13 MR. MEEKER: It is, yes.

14 JUDGE LANEY: But yet, in the context of the Patent, the DSP is
15 clearly a separate and different structure than the DOCIS controller?

16 MR. MEEKER: And they're described differently.

17 So, their DSP here, 119, is ascribed no functions at all. It's not
18 ascribed any function of reformatting. So, like the POTS line can be
19 connected to their DSP. But in this specification, the '775 specification, if
20 you read it, it has no functions at all in the specification aside to that DSP.

21 All of the –

22 JUDGE LANEY: But it illustrates that a person skilled in the art
23 would understand it to be something different. I mean, it may not have gone
24 into detail because that wasn't relevant to what the purpose of the invention,
25 but with the figure clearly shows that the DOCSIS controller is something
26 different than the voice DSP.

1 MR. MEEKER: It shows two components. But what's key is what is
2 the function of the DOCSIS controller?

3 So, the DOCSIS controller encapsulates any of that voiceover IP
4 packet in a format that then can be sent over DOCSIS.

5 So, you can't just take any format and get it to go over to DOCSIS.
6 You have to have a format and it's typically called PacketCable, in order for
7 DOCSIS to accept those voice packets.

8 JUDGE LANEY: Okay, so now we're – I think you're getting a little
9 bit more into where we're ultimately going to lead because you're telling me
10 that – what I hear you telling me is that, well, yes, it shows DSP as separate
11 from the controller, but that doesn't really tell the whole story.

12 You have to look at their functionality to say whether or not it actually
13 is a DSP voice or is it part of a DOCSIS controller? Am I correctly
14 characterizing what you just said?

15 MR. MEEKER: Correct.

16 Now, if you look at what their DOCSIS controller does here, they –

17 JUDGE LANEY: Hold on, I don't want to – I just want to make sure
18 – I don't necessarily want to get into the – where I think you're going. I just
19 want to raise it – a different issue, which I think you're ultimately going to
20 get to. I just want to put it in context for myself.

21 MR. MEEKER: So, yes, so, these two controllers, they're right next to
22 each other. You could allocate function however you wanted to amongst
23 those two controllers. Right?

24 You could put DOCSIS functions in one, DOCSIS functions in the
25 other and the key is, how is the spec written? The spec is –

26 JUDGE LANEY: Well, I – hold on, hold on one second.

1 I just – here’s the issue. So, in your petition under the claim
2 construction section, all you say is, all terms here should be given their
3 ordinary and customary meaning to a POSITA.

4 You don’t provide for any single term other than that maybe what was
5 discussed in the litigation, but definitely not the DOCSIS controller. You
6 offer nothing, you don’t talk about the spec, you know, this functionality.
7 You don’t go into any detail about how we should come about
8 understanding what qualifies or doesn’t qualify as a DOCSIS controller.
9 You just say, everything’s claimed in the ordinary meaning. And by you,
10 I’m referring to Petitioner.

11 And then, it seems as though you fault Patent Owner for their
12 response coming back and saying, well, X, Y, Z is not the DOC controller
13 because – and it talks about its functionality, how it works and functions
14 differently. And it’s not a DOC controller – DOCSIS controller.

15 And then, in your reply, you say, well, now, they’re trying to construe
16 the claims. They’re trying to narrow it.

17 And now, all of a sudden, you’re accusing them of being something –
18 trying to introduce a late claim construction and redefine the term from its
19 plain and ordinary meaning.

20 Yet, Petitioner has never, at any time prior to that, given us anything
21 to let us know what you’re suggesting the plain and ordinary meaning is.

22 So, if I could have you – let’s start, I think it’d be helpful if you start
23 with giving me a clear and concise statement of what you believe, you being
24 Petitioner, believe the plain and ordinary meaning of DOCSIS controller to a
25 person in this field of art at the time of the invention would mean?

1 MR. MEEKER: So, the DOCSIS controller isn't defined specifically
2 in the spec. DOCSIS is a label in front of DOCSIS controller. And there's
3 no functions in the claim associated with the DOCSIS controller other than
4 the cable modem engine.

5 If you look at Claim 18 –
6 JUDGE LANEY: Okay, I don't – you want to go somewhere else.
7 If you can, and if you can't, you can't, I just – if you can, I'd like you
8 to answer my question.

9 MR. MEEKER: So, I'm trying, Judge Laney –
10 JUDGE LANEY: Which is –
11 MR. MEEKER: -- which is we start with the claim language itself.
12 The claim language itself explains what a DOCSIS controller is.

13 And John, could you put up Claim 18? Oh, we have it here.
14 So, it explains the function of the DOCSIS –

15 JUDGE LANEY: Which slide are you looking at?

16 MR. MEEKER: It's Slide 3.

17 JUDGE LANEY: Okay.

18 MR. MEEKER: Okay, so, it says, includes at least one processor, the
19 second circuit being separate from the first. The cable modem engine being
20 programmed with software that can execute by the at least one process of the
21 second circuit causes the cable modem engine to perform cable modem
22 functions other than home networking functions.

23 So, that is the only function that the processor in the cable modem
24 engine must perform.

25 And then, it says, the cable modem –

26 JUDGE LANEY: Yes, but we have to –

1 MR. MEEKER: Can I finish?

2 JUDGE LANEY: If you could stop for one second?

3 MR. MEEKER: Okay.

4 JUDGE LANEY: What I'm a little bit – my concern is a little bit
5 different. My – the claim clearly recites a DOCSIS controller. Right?

6 MR. MEEKER: Yes.

7 JUDGE LANEY: Okay.

8 And you clearly state in your petition that all claim terms should be
9 given their plain and ordinary meaning. Right?

10 MR. MEEKER; Yes.

11 JUDGE LANEY: What is the plain and ordinary meaning of the term
12 a DOCSIS controller?

13 MR. MEEKER: And we think it's found in the cable modem section
14 which says, be at least one process to perform cable modem functions. So,
15 it's a DOCSIS cable modem, a DOCSIS controller performs cable modem
16 functions from the claim.

17 And the only other function associated with it is in order to boost
18 downstream throughput.

19 Those are the only two functions ever ascribed to a DOCSIS
20 controller. Anything else is importing limitations from the specification into
21 the claim.

22 So, they've said, now, it's only – in their first claim construction, they
23 say, it's DOCSIS functions. And then, they say, it's DOCSIS functions in
24 accordance with the DOCSIS specification.

25 None of those are in their claim language. So, I think –

26 (SIMULTANEOUS SPEAKING)

1 JUDGE LANEY: -- DOCSIS control.

2 MR. MEEKER: It does say DOCSIS controller.

3 JUDGE LANEY: It controls DOCSIS. And what a person of skill in
4 the art would understand DOCSIS to be –

5 MR. MEEKER: Well, it –

6 JUDGE LANEY: -- according to the standards of DOCSIS.

7 MR. MEEKER: In the claim it says, controls cable modem functions.
8 So –

9 JUDGE LANEY: No, in the claim it says, engine and cable – the
10 cable modem engine including a DOCSIS controller.

11 MR. MEEKER: And but, it goes on to say, that it performs cable
12 modem functions.

13 JUDGE LANEY: Well –

14 MR. MEEKER: The one processor of the second circuit performs –

15 JUDGE LANEY: But where does it say that the DOCSIS controller is
16 an –

17 MR. MEEKER: The –

18 JUDGE LANEY: -- it's part and parcel of the same thing as
19 controlling the cable modem function. I mean, it says, the engine includes a
20 DOCSIS controller.

21 MR. MEEKER: It does, but the processor in the second circuit is the
22 DOCSIS controller, including the DOCSIS controller. There's only one
23 controller in a cable modem engine. It's the DOCSIS controller.

24 JUDGE LANEY: I know, but do you understand my –

25 MR. MEEKER: But Judge Laney --

26 (SIMULTANEOUS SPEAKING)

1 MR. MEEKER: -- when under any construction. We literally went
2 under any construction.

3 JUDGE LANEY: Okay.

4 MR. MEEKER: So, any construction you construe this to be –

5 JUDGE LANEY: But how do I know how to evaluate it? How do I
6 know how to evaluate it if we can't come to an agreement of what exactly it
7 is that I'm supposed to be evaluating?

8 In other words, if I'm evaluating – I'm looking for – because the
9 claim tells me I have to look for a DOCSIS controller. Now, what it tells it
10 to do, what functions it has to serve or what is something else. But first and
11 foremost, I have to be able to identify and distinguish between something
12 that is or is not a DOCSIS controller.

13 Now, when I look at the specification of the Patent – the '775 Patent,
14 what – at least I can – at a surface level that it makes clear is that a voice
15 DSP is not a DOCSIS controller.

16 Why do I know that? Because it clearly and unambiguously shows
17 them as two separate structures.

18 Now, does the specification go into great detail or any detail about
19 what exactly a DSP does or functions it serves, I agree with you, I don't see
20 much on that front.

21 But it does tell me that those two things are two different things.

22 MR. MEEKER: It – we don't dispute that in the '775 those two things
23 are two different things. But their DOCSIS controller's split in half.

24 Can you put up Figure 2 of the '775?

25 Their DOCSIS controller takes all of the voiceover IP functions and
26 moves it into their DOCSIS controller.

1 So, just – can you find Figure 2?

2 So, if you look at Figure of the '775 Patent, items 220 to 228, they're
3 all the things connected to the voice DSP, all of those things, Judge Laney,
4 are voiceover IP DOCSIS functions.

5 So, in Rabenko, all of the things packetizing the dockets, the real-time
6 protocol, putting those dockets out onto the MAC layer, all of that's done by
7 Rabenko's voice data processor, not –

8 So, this voice DSP is assigned whatever function it's assigned, the
9 Patent doesn't say. But the critical functions of packetizing the packets, the
10 voiceover IP packet so you can put them on DOCSIS, those are handled by
11 220 to 228.

12 So, the cable modem engine – the processor in the cable modem
13 engine, the DOCSIS processor has two halves. The one half takes things
14 from the voice DSP and packetizes those things so it can go out over the data
15 – over the MAC/PHY layer.

16 So, that's the exact same function that in Rabenko is moved into their
17 voice and data processor.

18 So, Rabenko, if you look at the voice and data processor in Rabenko,
19 it handles all those packetization functions and actually has an interface.

20 If you trace the voice and data processor of Rabenko, which is Figure
21 2, it's got a data bus that goes down and directly to the – to the downstream
22 DOCSIS interface. Like it outputs DOCSIS packets directly to the DOCSIS
23 interface, that's bus 232, it comes out of the voice and data processor and
24 goes directly to DOCSIS.

1 So, what they've done in Rabenko is that voice and data processor
2 takes in the voice and directly outputs it to DOCSIS. And that's exactly the
3 functions that are in Figure 2 assigned to the DOCSIS processor.

4 The DOCSIS processor's split into two halves. The one half, 220 to
5 228, takes in the packets, the voice packets or voice data from the voice and
6 data digital signal processor, packetizes it into something compatible with
7 DOCSIS, in this case, PacketCable, and sends it out to DOCSIS.

8 On the other half of the DOCSIS engine is items 208 through 212.
9 And 208 through 212 take the ethernet packets in, packetizes them in
10 DOCSIS packets and send them out over the DOCSIS MAC channel.

11 So, the DOCSIS cable modem engine in the '775 Patent has two parts,
12 one deals with voice and one deals with the ethernet LAN.

13 Now, in Rabenko, the voice and data processor does the packeting to
14 send it out over the DOCSIS system. And the other side, it says, it can also
15 be the proxy gateway controller which handles the ethernet packets. It can
16 all go into the same processor.

17 So, they're trying to get you to construe the '775 drawings and figures
18 in accordance with how they've written the – they're trying to get you to
19 construe Rabenko's figures with how the '775 Patent is written. You need
20 to use Rabenko's specification to construe Rabenko and the '775
21 specification to construe the '775. You can't mix and match the two or it
22 doesn't work.

23 And if you use Rabenko's specification, the voice and data processor
24 is what packets packetizes, the voice, in order to make it compatible with the
25 DOCSIS modem, the DOCSIS MAC/PHY layer.

1 And so, both those functions are in the voice and data processor in
2 Rabenko.

3 JUDGE LANEY: And I guess the part that troubles me is, I hear what
4 you're saying, and – but I'm still left with a claim that identifies something,
5 and this is a system claim, and it identifies a DOCSIS controller.

6 It then identifies that we are going to do something without the
7 DOCSIS controller.

8 I have Petitioner, who in the petition, doesn't provide me any kind of
9 guidance, instruction, or anything to articulate and say specifically the way
10 one skilled in the art would understand what a DOCSIS controller is.

11 Here, I hear you talking about how it's functionality and it doesn't
12 matter where the functionality lies or, you know, it can reside anywhere and
13 you pick out the similarities between the functionalities.

14 But a functionality is going to be very difficult for me to get on board
15 with finding is a DOCSIS controller given the fact that Petitioner hasn't
16 defined or told me anything other than plain and ordinary meaning.

17 And I'm questioning, and the question for you also is, if I'm stuck
18 being confused by what a DOCSIS controller is, isn't it – isn't that fatal to
19 the Petitioner? Because isn't it the Petitioner that has the burden of making
20 sure I understand what the Petitioner's contentions are which necessarily
21 includes, to the extent you have a term that Petitioner wants to be understood
22 in a very specific, particular way so that it reads onto the prior art, that they
23 make that clear and particular.

24 MR. MEEKER: So, Judge Laney, I mean, we've been 36 minutes of
25 our argument. I can tell you that our petition, I believe, is crystal clear.
26 DOCSIS controller does exactly in Rabenko what it does in the '775 Patent.

1 These are virtually identical systems. The only difference is they
2 don't say what's in their voice and data – their side processor. They don't
3 say what's in their voice DSP. The Patent's totally silent on it.

4 The only functions that they have for DOCSIS controller are the voice
5 packetization functions, and that's performed by Rabenko.

6 So, the only way you can tell what their DOCSIS controller is, is you
7 look at their Patent. Their Patent has two sides for their DOCSIS controller.
8 One is packetizing voice so it goes out over the cable modem network,
9 Rabenko does that in its voice and data processor.

10 The other half of the function is taking ethernet packets from the
11 LAN, packetize them so they go out over voice and data – over the DOCSIS.
12 Rabenko does that in its voice and data processor.

13 It has two embodiments, one is the voice and data processor includes
14 both the LAN packetization and the voice packetization and the other one is
15 it includes the voice packetization.

16 We win on both counts. So, I think we're clear on that, Your Honor.
17 I'm not sure how we could be any other clear. And how else do you define
18 it by looking at what the '775 claim and the '775 describes what that
19 DOCSIS controller does. And those functions are in Rabenko. And they're
20 in Rabenko's voice and data processor.

21 So, it could have other processors out there like the voice and data
22 processor talks about going to a slick. It talks about going to a media
23 terminal adapter. So, there could be other voice and data processors out
24 there that are connected to Rabenko's voice and data processor.

25 All that's saying is there could be a media terminal adapter through
26 one of these I/Os or through the slick control, that doesn't change it. Like

1 you could have added functions and it doesn't affect the claim as long as our
2 claim meets the limitations.

3 So, I'd like to return to our argument. Have I answered your
4 question?

5 JUDGE LANEY: Yes, let's move on.

6 MR. MEEKER: Okay.

7 JUDGE MOORE: Counsel?

8 MR. MEEKER: Yes?

9 JUDGE MOORE: This is Judge Moore, I have one kind of follow-on
10 question.

11 Which is – if we set aside DOCSIS, what is a controller in your view?

12 MR. MEEKER: A controller's just a computer, a microcontroller. It's
13 a microprocessor. That's –

14 JUDGE MOORE: So, is it then a processor?

15 MR. MEEKER: It's no different than a processor. A controller, in
16 this case, it's an ARM-9 processor. But there are hundreds of different
17 processors used in cable modems. It's just a processor.

18 DOCSIS is a label on that. It's in a DOCSIS modem. They called it a
19 DOCSIS processor.

20 There is no other function ascribed to it other than what's in the claim.
21 And like you're trying to import limitations from the spec, but all those
22 limitations they're trying to import are actually in Rabenko.

23 Rabenko's voice and data processor does exactly what their DOCSIS
24 processor does.

25 So, if you go down to the second and third layer, it's still in Rabenko.

1 So, we're saying we don't think it needs to be construed, but if you
2 want to construe it, it's still there. And they didn't construe it this way in the
3 litigation. In the litigation, they took plain meaning. They could have
4 construed it the way they've done here, but they didn't. They construed it as
5 just a DOCSIS controller.

6 Go ahead, Your Honor?

7 JUDGE MOORE: Yes, I was just wondering if it's just a processor,
8 why did they call it in the claim a controller, where elsewhere they use the
9 term processor?

10 MR. MEEKER: I don't know the answer to that. The – it's
11 implemented in an ARM-9 which is a risk-based processor. It's an advanced
12 reduced instruction set processor, but it's just an ARM-9. Like ARM
13 processors are used ubiquitously throughout consumer electronics.

14 I don't think there's a meaningful difference between processor and
15 controller.

16 JUDGE MOORE: Is there a typical function that a device called a
17 controller performs?

18 MR. MEEKER: There's not, Your Honor. Like they're all imbedded
19 processors. A keyboard has an 8051 microcontroller. It had processors in it
20 as well. So, there's just no distinction.

21 Microcontrollers usually have imbedded software where processors
22 have external software. That's their primary difference.

23 JUDGE MOORE: Okay.

24 MR. MEEKER: Okay, so, we could jump to Slide 7 at this point. And
25 this may answer your question.

1 So, Slide 7 shows that Rabenko's voice and data processor, in fact,
2 performs the same operation as the claim DOCSIS controller. Like the
3 DOCSIS controller 116 of the '775 Patent, Rabenko's voice and data
4 processor 136, 213 processes and transports voice in Rabenko's DOCSIS
5 packet-based network.

6 The '775 Patent interchangeably identifies the DOCSIS controller 116
7 as controller 116 and the DOCSIS MAC processor 114 as processor 114.
8 So, these two terms are used interchangeably in the Patent.

9 Also seen in the excerpt of the '775 Patent states that the processor
10 114, which is the DOCSIS MAC processor exchanges voice data in both
11 directions which – with controller 116, the DOCSIS controller.

12 Similarly, as can be seen in Rabenko's excerpt on the right,
13 Rabenko's DOCSIS MAC/PHY exchanges voice data with the voice and
14 data processor.

15 As Rabenko describes, all incoming packets are received by the
16 DOCSIS MAC/PHY. If the DOCSIS MAC/PHY determines that the packet
17 is voice, it is routed to the proxy gateway. If the voice is destined for the
18 POTS telephone 108, the packet is routed to the voice and data processor for
19 decompression and depacketization.

20 The DOCSIS voice – the voice and data processor generates an
21 analogue voice signal from the decompressed signal and delivers the
22 analogue signal to the POTS telephone line.

23 For this reason alone, Rabenko's voice and data processor teaches the
24 claim DOCSIS controller.

25 Turning to Slide 8 –

1 JUDGE LANEY: Why is that in the '775 Patent, why is the DOCSIS
2 controller shown as something separate from the DOCSIS processor if a
3 controller and a processor are the same thing?

4 MR. MEEKER: I don't know that in the '775 Patent the DOCSIS
5 controller is shown as being separate from the DOCSIS processor.

6 If you look at the '775 Patent, there's a DOCSIS processor which, in
7 their claim, they have claimed as –

8 JUDGE LANEY: I mean, it's separately cited –

9 MR. MEEKER: -- as DOCSIS controller.

10 JUDGE LANEY: Right. Well –

11 MR. MEEKER: They've used them interchangeably, Your Honor.

12 JUDGE LANEY: So, the claim separately recites a DOCSIS
13 controller and DOCSIS processor.

14 MR. MEEKER: It does, and throughout their spec, they've used them
15 to be the same thing.

16 JUDGE LANEY: Well, you're asking us to say they're same thing.

17 MR. MEEKER: In they spec, they've used them interchangeably.

18 JUDGE LANEY: So, in the claims when it identifies those two things,
19 it's really just identifying one thing is Petitioner's contention?

20 MR. MEEKER: In the claim, it identifies at least one processor. And
21 then, later, it identifies including a controller. The at least one processor
22 includes a controller is Petitioner's contention, Your Honor.

23 We think that's clear.

24 All right, if we could turn to Slide 8, John?

25 Slide 8 shows that Rabenko's voice and data processor teaches the
26 claim DOCSIS controller for a separate second reason. Like the '775 Patent,

1 DOCSIS controller 116, Rabenko's voice and data processor implements
2 voiceover IP, the PacketCable, and Rabenko's DOCSIS network.

3 So, the PacketCable is what the format that is compatible with
4 DOCSIS. And the DOCSIS controller in the '775 formats the voiceover IP
5 in a manner that is compatible with the DOCSIS network.

6 Referring to the excerpt in the '775 Patent describes that the DOCSIS
7 controller implements voiceover IP functionality.

8 Similarly, referring to the excerpt on the right, Rabenko's voice and
9 data processor similarly implements voiceover IP also using the PacketCable
10 specification.

11 At least for this additional reason, Rabenko's voice and data processor
12 teaches the claim microcontroller.

13 Moving to Slide 9 –

14 JUDGE LANEY: I can't get past this, I'm really having a hard time
15 understanding it.

16 So, Claim 18 expressly said, you have a DOCSIS controller and a
17 DOCSIS MAC processor.

18 And what I hear you telling me now is that those are the same thing.

19 MR. MEEKER: It claims at least one processor.

20 JUDGE LANEY: No –

21 MR. MEEKER: Do you agree with that?

22 JUDGE LANEY: Column 8, line 17 says, the cable modem engine
23 including a DOCSIS controller and a DOCSIS MAC processor.

24 MR. MEEKER: The DOCSIS –

25 (SIMULTANEOUS SPEAKING)

1 MR. MEEKER: No, wait, wait, the DOCSIS MAC processor is
2 completely different. That's the thing in –

3 JUDGE LANEY: Well, that's what –

4 MR. MEEKER: -- blue.

5 JUDGE LANEY: That's what I was – I mean, I asked you earlier if
6 you're saying they're the same thing –

7 MR. MEEKER: No, no, I'm not, Your Honor, we –

8 (SIMULTANEOUS SPEAKING)

9 MR. MEEKER: -- have crossed wires.

10 The DOCSIS MAC processor is completely different. It's the thing in
11 blue.

12 So, the multiple microprocessors includes the controller as one
13 processor and the DOCSIS MAC processor is another processor.

14 JUDGE LANEY: And so –

15 MR. MEEKER: You could have other processors.

16 JUDGE LANEY: Okay.

17 But then, I go back to the question I was asking you earlier, when it
18 says a DOCSIS controller and a DOCSIS processor, which now you're
19 telling me they are two separate things, what make a controller – a DOCSIS
20 controller different from a DOCSIS processor?

21 I mean, you're –

22 (SIMULTANEOUS SPEAKING)

23 MR. MEEKER: One is a –

24 JUDGE LANEY: Can I finish the sentence?

1 I mean, clearly, it's not the fact that they're being a processor, because
2 you've said very clearly a controller is a processor and a processor is a
3 controller, is what I understood you to be saying.

4 So, the term processor is not what distinguishes these two things. I
5 have a DOCSIS controller and I have a DOCSIS processor.

6 MR. MEEKER: It's a MAC processor, it's a DOCSIS MAC
7 processor.

8 JUDGE LANEY: And what's the difference between a DOCSIS
9 MAC processor structurally and a DOCSIS controller structurally?

10 MR. MEEKER: Well, structurally, they're both ARM-9 processors.
11 So, structurally, they're both ARM -9.

12 JUDGE LANEY: Well, then, that's not –

13 MR. MEEKER: But the MAC handles the MAC layer of the DOCSIS
14 protocol. There's a protocol stack. There's a physical layer, there's a MAC
15 layer, and then, there's packetization layers that occur above the MAC layer.

16 So, the DOCSIS –

17 JUDGE LANEY: So, real quick –

18 MR. MEEKER: -- controller –

19 JUDGE LANEY: -- if you could –

20 MR. MEEKER: -- handles the –

21 JUDGE LANEY: I'm trying to understand and you keep going off to
22 something else and I understand, you know, have a basic understanding
23 which is, is you have – so, are you telling me that if you have DOCSIS – let
24 me start over.

25 You said that the controller and the processors are both, what'd you
26 say, 9 ARM processors?

1 MR. MEEKER: They're ARM-9 processors, Your Honor, yes.

2 JUDGE LANEY: They're both ARM-9 processors? Okay.

3 Are you saying, you can have one ARM-9 processor, only a single
4 one, and that single one is the DOCSIS controller and the DOCSIS MAC
5 processor? Or do you believe the claims require you to have two ARM-9
6 processors, one that is a DOCSIS controller and one that is a DOCSIS MAC
7 processor?

8 MR. MEEKER: The latter. They're programmed differently. One is
9 programmed to channel the –

10 (SIMULTANEOUS SPEAKING)

11 JUDGE LANEY: -- two ARM-9 processors?

12 MR. MEEKER: Well, not in this claim, but in later claims, yes.

13 JUDGE LANEY: Well, why not in Claim 18?

14 MR. MEEKER: It requires two functional units. One is programmed
15 to handle the MAC layer, which Rabenko has, one is programmed to handle
16 the higher layers of packetization which Rabenko has.

17 JUDGE LANEY: But –

18 (SIMULTANEOUS SPEAKING)

19 MR. MEEKER: They're programmed differently.

20 JUDGE LANEY: -- the engine includes a DOCSIS controller and a
21 DOCSIS MAC processor.

22 MR. MEEKER: We agree with that, Your Honor.

23 JUDGE LANEY: So, doesn't that require two processors?

24 MR. MEEKER: Yes, programmed differently. One's programmed to
25 handle the MAC –

26 JUDGE LANEY: Okay, well, that's –

1 (SIMULTANEOUS SPEAKING)

2 JUDGE LANEY: - Just now, you said that it could be one.

3 MR. MEEKER: No, no, no, no.

4 JUDGE LANEY: That's what I'm just trying to understand. So –

5 MR. MEEKER: I've never said it can be one, if I did, I misspoke.

6 JUDGE LANEY: Okay.

7 So, there has to – so, Claim 18 requires to processors, one processor
8 which is a DOCSIS controller and one processor that's the DOCSIS MAC
9 processor?

10 MR. MEEKER: Correct, I believe that to be correct.

11 JUDGE LANEY: Okay.

12 And so, in Rabenko, show me what is – well, I'm just going to start in
13 the physical, show me which processor is the DOCSIS controller and then,
14 show me which processor is the DOCSIS MAC processor?

15 MR. MEEKER: Okay, so if we turn to Slide 4, the voice and data
16 processor of Rabenko is the DOCSIS controller.

17 Now, in another embodiment in Rabenko, it says, the voice and data
18 processor –

19 JUDGE LANEY: Could you just –

20 MR. MEEKER: No, no, I need –

21 (SIMULTANEOUS SPEAKING)

22 JUDGE LANEY: -- slide – I'm trying to get to Slide 4 so I can –

23 MR. MEEKER: Okay.

24 JUDGE LANEY: -- read it while you're –

25 MR. MEEKER: Okay.

26 JUDGE LANEY: -- explaining, if you don't mind.

1 Can you help me? Okay, I'm at Slide 4.

2 MR. MEEKER: Okay, so, the MAC processor, do you see DOCSIS
3 PHY proxy 134 or DOCSIS PHY, which is the DOCSIS MAC and PHY
4 later at 134? That's the DOCSIS MAC processor. It's in blue.

5 JUDGE LANEY: Okay.

6 MR. MEEKER: Now, the – what's in red is the voice and data
7 processor which says it can also include the proxy gateway.

8 So, there's two embodiments. One says the voice and data processor
9 is separate from the proxy gateway and another says the voice and data
10 processor can include all of the functions of the proxy gateway. So, those
11 are the two embodiments.

12 And in each of those two embodiments, the DOCSIS controller in
13 Rabenko does exactly what the DOCSIS controller does in the '775. It
14 packetizes voice so it's compatible with packet data and it packetizes
15 ethernet packets coming out of the gateway so you can send them over
16 DOCSIS.

17 They do the exact same function, Your Honor. It's literally an
18 overlay, a 100 percent overlay of the architecture. It's not surprising, and
19 they're both building this stuff for my client, one was MaxLinear and one
20 was Broadcom. They're both building to my client's specifications that they
21 developed through cable labs.

22 So, the DOCSIS is a specification developed through cable labs. The
23 PacketCable is another specification developed by cable labs.

24 JUDGE LANEY: And so, your application, 142 and 136 would be on
25 one processor and 134 would be on a separate processor?

26 MR. MEEKER: That's correct.

1 JUDGE LANEY: Okay.

2 MR. MEEKER: That's correct.

3 It's literally the identical architecture. And to the right, you could
4 have like what they call media terminal adapters or SLICs or other functions
5 out to the right, what the '775 has as their DSP.

6 Like in the old days, you used to – when people had landlines, you
7 wanted to hook them to your cable modem. So, there's two ways to do it,
8 one is you've got – you can't hook analogue telephone to your cable
9 modem. You've got to somehow convert that into digital.

10 And so, you can do it through a digital signal processor, often called a
11 media terminal adapter. But once you get into digital format, then you've
12 got to repackage it so you can put it out over cable. That's what the voice
13 and data processor does. It repackages that digital voice so it can go out
14 over cable.

15 And that's exactly what the '775 does. Those blocks we just
16 discussed in the '775 which are blocks 220 to 228, those blocks repacketize
17 that digital voice so it can go out over the packet – over the cable modem.

18 The two architectures are 100 percent identical. And that argument
19 they made about the DSP –

20 JUDGE LANEY: Just to –

21 (SIMULTANEOUS SPEAKING)

22 MR. MEEKER: Okay.

23 JUDGE LANEY: So, you're saying 136, the evidence shows 136 and
24 142 handles or controls DOCSIS protocols?

25 MR. MEEKER: DOCSIS protocol, DOCSIS functions, it's a DOCSIS
26 controller. How ever you want to formulate it, we win, Your Honor. Like it

1 is literally identical, like it's an identical overlay, these specifications are
2 literally identical. So, no matter how you construe that claim, we still win.

3 And this argument about this DSP wasn't made until their sur-reply.
4 Like it's waived in their Patent Owner response.

5 JUDGE LANEY: Well, and that's -- I mean --

6 MR. MEEKER: It's irrelevant, but it is waived in their Patent Owner
7 response, but still win even under their argument.

8 JUDGE LANEY: Is it waived? I mean, I don't understand -- I don't
9 know that they're saying -- why is it waived?

10 MR. MEEKER: Well, they didn't bring up --

11 JUDGE LANEY: I don't understand --

12 (SIMULTANEOUS SPEAKING)

13 MR. MEEKER: -- this whole DSP argument until their sur-reply. So,
14 in your own rules, it's waived in their sur-reply --

15 JUDGE LANEY: Are you saying it's not responding to any argument
16 you made in a reply?

17 MR. MEEKER: They have to bring that argument up in their Patent
18 Owner response or they've waived it. Like the Board's own rules --

19 JUDGE LANEY: I understand what our rules are, you don't have to
20 read me the rules.

21 MR. MEEKER: And the Federal Circuit agrees with that. Like the
22 new argument -- we've raised it in our objections in the papers. We've
23 preserved those objections, Your Honor.

24 So, I think like it's an identical overlay between the two things. Like
25 there could be a dozen DSPs out there that are media terminal adapters. If

1 you have four lines in your home, you're going to need four media terminal
2 adapters that basically take your telephone line and convert it into packets.

3 Now, you've got to get those packets out over DOCSIS, you need
4 something to convert those packets to DOCSIS. And that's what, in
5 Rabenko, its voice and data processor does. And it's exactly what these
6 functions are in Figure 2 of the '775, Your Honor.

7 Okay, so, if we could go to Slide 8, I'm almost into my rebuttal time.

8 All right, but let's go to Slide 9.

9 So, Slide 9 is on the sur-reply, the Patent Owner construes DOCSIS
10 controller as controlling functions in the DOCSIS protocol. So, the first
11 time this claim construction came forth is in their sur-reply.

12 So, even under this construction, we still win, but we believe that, you
13 know, the arguments made in the sur-reply concerning the DSP processor
14 and functions in the DOCSIS controller under the applicable Federal Circuit
15 law, and in particular, 37 CFR Section 42.120, arguments not made in the
16 response are waived *in re Nuvasive* 842 F.3d 1376, at 1380 to 1381, *Federal*
17 *Circuit* 2016 Docket, arguments not made in the Patent Owner response are
18 waived.

19 *Parkervision, Incorporated v. Vidal* 88 F.4 969 –

20 JUDGE LANEY: Is that a new argument, though? Isn't it just what
21 the plain meaning is? I mean, how is that new?

22 (SIMULTANEOUS SPEAKING)

23 JUDGE LANEY: -- plain meaning is plain meaning.

24 You say, X satisfies the plain meaning. They say X doesn't satisfy
25 the plain meaning because it doesn't do Y.

1 Then, you say, well, that's claim construction because they're saying
2 it has to do Y when, in fact, the plain meaning of the term requires it do Y.

3 How is that a new argument?

4 MR. MEEKER: Well, Judge Laney, we feel it's clearly a new
5 argument. You may have a different perspective, but you – functions in the
6 DOCSIS protocol was never brought up before their sur-reply.

7 This whole argument on the DSP was never brought up until their sur-
8 reply.

9 We haven't had a chance to properly join issue on that. If you make
10 your argument for the first time in your sur-reply, under the Board's rules,
11 there is no way we can address those arguments.

12 So, now, I've had to spend almost my entire oral argument addressing
13 two arguments that weren't brought up until sur-reply because we couldn't
14 properly join issue on those arguments.

15 We feel they're waived, Your Honor. And even if they're not waived,
16 we still win. Even under this construction, we still win. We win like no
17 matter how they construe this, we think we have a 100 percent overlay on
18 their embodiment.

19 Okay, let's go to Slide 11.

20 All right, referring to Slide 10, Slide 10 addresses that even the
21 evidence that Patent Owner relies on makes clear that the voiceover IP is a
22 DOCSIS function.

23 In its sur-reply, Patent Owner tries to further limit the construction by
24 clarifying DOCSIS functions are functions in the DOCSIS protocol.

1 But as Petitioner argued in its reply, the Patent Owner cited DOCSIS
2 specification Exhibit 2011 does not purport to define what DOCSIS
3 functions are nor does it use the term DOCSIS controller.

4 However, the DOCSIS specification does provide for service flows to
5 manage voiceover IP.

6 So, this quote comes directly out of the DOCSIS specification and it
7 says, the service flows, in order to enable PacketCable to send voice over
8 DOCSIS, is a DOCSIS function. And that's exactly what's happening in the
9 voice and data processor in Rabenko.

10 So, even if you take the arguments made in sur-reply and you look at
11 the DOCSIS specification, it says that its function, the DOCSIS function, is
12 to packetize those voice packets in a PacketCable format so that it can go out
13 over DOCSIS.

14 So, if you look at the Patent Owner's own evidence they submitted, it
15 includes PacketCable packetization. Now, the Patent Owner puts in a slide
16 that says it's a needle in a haystack. It's in the DOCSIS specification. It's
17 written very succinctly in being able to send packets using PacketCable
18 format is what the DOCSIS controller does. It's a DOCSIS functions in
19 accordance with the DOCSIS protocol, exactly what their arguing on sur-
20 reply.

21 So, we think we win, even under the definition of sur-reply.

22 Slide 11 shows the Patent's Owner claim construction. Rabenko's
23 voice and data processor still teaches the claim DOCSIS controller.

24 Again, under Patent Owner's finely developed construction as set out
25 in its sur-reply, the DOCSIS controller must control DOCSIS functions
26 which are functions in the DOCSIS protocol.

1 According to the Patent Owner, DOCSIS functions block 200 to 212
2 of the '775 Patent Figure 2 are examples of DOCSIS functions that are
3 performed by the DOCSIS controller.

4 The '775 Patent states that DOCSIS functions block 206 carry out
5 SNMP, SMP, and DHCP and TFTP.

6 And if you look at Rabenko, these are exactly the DOCSIS functions
7 carried out by Rabenko, SNMP, DHCP, and TFTP. Like these DOCSIS
8 functions, if you go into the '775 and look at what they call out are DOCSIS
9 functions, this is what the Patent Owner refers to in their papers.

10 And then, you go to what's in Rabenko, and those same functions,
11 SNP, SNMP, DHCP, and TFTP, they're all packetization functions that are
12 directly in Rabenko and in the voice and data processor.

13 So –

14 JUDGE LANEY: So, how do you – why do you dispute their
15 construction? I mean, I – you have all your evidence that even under their
16 construction, you win.

17 MR. MEEKER: I think their –

18 JUDGE LANEY: So, I don't understand, and what I'm trying – I feel
19 like the way you're arguing makes me feel like I'm missing something
20 because you're fighting real hard against – you're saying they've waived it.
21 You criticize them for putting forth construction which, let's hypothetically,
22 let's say their construction sounds like your construction because it sounds
23 like the plain and ordinary meaning.

24 So, it doesn't sound like a claim construction in the traditional sense
25 that we're trying to change it from what its plain and ordinary meaning is.

1 We're just using different words to say the same thing which is plain and
2 ordinary meaning.

3 And that's where I'm – that's why I get a little bit lost because it
4 sounds like you're saying, well, look, all our evidence satisfies the plain and
5 ordinary meaning.

6 They're saying these things, but that's really the plain and ordinary
7 meaning and we've – all the evidence we've provided and all the evidence
8 they have does exactly that.

9 And so, I don't – what is wrong with their construction?

10 MR. MEEKER: So, Judge Laney, I think they're taking items from
11 their specification and importing them into their claims. It's not supported
12 by the claims themselves. It's not supported by their District Court claim
13 construction.

14 But –

15 JUDGE LANEY: What –

16 (SIMULTANEOUS SPEAKING)

17 MR. MEEKER: -- even if we construe it the way say it should be
18 construed, which we don't admit to or agree with, we still win. Like even if
19 you take their construction, we still win under both configurations. We win
20 –

21 JUDGE LANEY: If I want to go with you on the waiver argument, I
22 need to understand what is it that they waived? And so, what is it that
23 they're – what is new about their argument? Let's – in other words, in order
24 to get there, explain to me what about their argument is not exactly what you
25 argued, which is plain and ordinary meaning? What is it that they're adding
26 –

1 MR. MEEKER: They've changed their construction –
2 (SIMULTANEOUS SPEAKING)

3 JUDGE LANEY: -- that's not necessarily part of the plain and
4 ordinary meaning?

5 MR. MEEKER: They say it's DOCSIS functions and they say it's
6 functions in the DOCSIS protocol.

7 You can be a DOCSIS processor without specifically functions in the
8 DOCSIS protocol. That has been waived. And even if it's not waived, it's
9 not prior claims.

10 So, I'm going to reserve the remainder of my time.

11 JUDGE JURGOVAN: Thank you.

12 JUDGE MOORE: Thank you, Mr. Meeker.

13 Mr. Lowenstein?

14 MR. LOWENSTEIN: Your Honors, may we take a –
15 (SIMULTANEOUS SPEAKING)

16 MR. LOWENSTEIN: May we take a two minutes recess just to
17 connect and maybe have a restroom break and we'll be back in five minutes?
18 Does that work?

19 JUDGE MOORE: Okay.

20 MR. LOWENSTEIN: Very good, thank you.

21 (Whereupon, the above-entitled matter went off the record at 12:56
22 p.m. and resumed at 12:59 p.m.)

23 JUDGE MOORE: We're ready. How much time do you wish to
24 reserve for rebuttal?

25 MR. LOWENSTEIN: Fifteen minutes, Your Honor.

26 JUDGE MOORE: Okay.

1 MR. LOWENSTEIN: Okay. So I thought –

2 JUDGE MOORE: Proceed.

3 MR. LOWENSTEIN: Before we get into the slides I thought I might
4 comment briefly upon what we heard. And I thought what we heard was, in
5 some respects of brilliant oration, Mr. Meeker is obviously a very intelligent
6 man, he knows a lot about the references, the underlying technology to some
7 extent. But I think what we heard was very unmoored from the record, the
8 actual record in this case.

9 And what defines the metes and bounds of this case, it's the argument
10 presented in the petition and the appropriate briefing thereafter. This is not,
11 the hearing is not a time for new arguments, new claim constructions. The
12 record, Rabenko, is not to be used sort of like, if you remember the old style
13 chain letters, the ransom letters where you just cut out different pieces here
14 and there, put together a new argument, that's not the fair bounds of a IPR.
15 It's, what did they say in the petition, did they prove their case, and did they
16 barely respond to our arguments, and we go from there.

17 I think almost everything that we heard here was new constructions,
18 new arguments, new constructions of DOCSIS controller. Your reasons
19 why Rabenko's voice and data processor is allegedly a DOCSIS controller.
20 Some arguments, like functions here and there that was not made in the
21 briefing.

22 And so I think the great majority of what you heard is not really what
23 this is about. And so what I hope to do in my presentation is to re-anchor us
24 in what the actual case is about.

25 So let's go to Slide Number 3. On behalf of the DOCSIS controller
26 and the DNE and CME separate circuits, my colleague, Ms. Woo, will

1 handle the remaining arguments. Although I think her focus will be on
2 independent upgrades.

3 Now let's go to Slide 4. What does the claim require? We all know
4 by now, but it requires a cable modem engine, including a DOCSIS
5 controller.

6 Now Slide 5 we know by now. They said in their petition, Rabenko's
7 cable modem engine includes voice and data processor 136/213.

8 Now this slide is important. Slide 6. What was the entire basis for
9 their argument? They say, "like the DOCSIS controller of the 775 patent,
10 Rabenko's voice and data processor, 136/213, is used for processing and
11 transporting voice over packet based networks." Now I would posit Your
12 Honors, if I did not exist and I did not submit any Patent Owner response
13 and we didn't show up today, you should ask yourself, is that enough? Why
14 would that make it a DOCSIS controller? It doesn't mention DOCSIS. It
15 doesn't say anything about DOCSIS at all.

16 That's my dog on the slide, he's very pretentious. So he's asking the
17 question I think you should ask, why does that make it a DOCSIS
18 controller?

19 Now what are they saying? They say, the 775 handles voice and data
20 processing. That DOCSIS controller, it says, our voice and data processor
21 does the same thing so therefore it's a DOCSIS controller.

22 Slide 7. I would submit to Your Honors that is a logical fallacy. If we
23 say, there are lots of things that have things in common. Cars and planes,
24 they both carry passengers. They are not the same. It turns out, and maybe
25 I'll prove this to be so over the course of the proceeding, I share about 98 to

1 99 percent of my DNA is in common with a chimpanzee, but I am not the
2 same thing. Okay?

3 That two things that share overlap does not mean that they are the
4 same thing. So is the thing, the point of overlap they pointed to is not what
5 makes the DOCSIS controller the DOCSIS controller.

6 It says, Slide 8, a DOCSIS controller. That seems to suggest it has
7 something to do with DOCSIS.

8 Now this is critical. Slide 9. What makes our DOCSIS controller a
9 DOCSIS controller? We see it says, controller 116 implements the
10 following DOCSIS functions. Now we're not saying it has to be every
11 single one of those to be a DOCSIS controller, but that's language. That's
12 what tells us it's a DOCSIS controller, is that it's controlling or
13 implementing DOCSIS functions.

14 Now let's look down. It says, "in addition, controller 116 also
15 implements all packet cable functionality. Now let me use another analogy.
16 Michael Jordan is the greatest basketball player of all time, or close enough,
17 because he is the greatest basketball player of all time. He is not the greatest
18 basketball player of all time because he did other stuff like play baseball.
19 That's essentially their argument.

20 The DOCSIS controller controls DOCSIS functions. It also does other
21 stuff like mangle in VOIP or packet cabling. And they basically saying,
22 well, because our voice and data processor mingles in packet cable and
23 VOIP, voila, it's a DOCSIS controller. And therefore apply their logic,
24 Nolan Ryan is also the greatest basketball player of all time. But that does
25 not follow logically.

26 JUDGE LANEY: Why?

1 MR. LOWENSTEIN: Because a single point of block, it's like the --
2 because. So let's go back.

3 JUDGE LANEY: Well, real quick.

4 MR. LOWENSTEIN: Yes.

5 JUDGE LANEY: I think the significance of a single point of overlap
6 is only as good as how many points of overlap have to be required in order
7 for something to be something. In order for something to be a DOCSIS
8 controller, I think Petitioner's point is a processor that does these packets is
9 a DOCSIS controller. You're saying, well it doesn't say DOCSIS controller,
10 it doesn't, it's not its own off the shelf it's, you know, specialized just for
11 DOCSIS controller. And is that really relevant?

12 I mean, the claim just requires a DOCSIS controller. And it requires,
13 let's go as far as to say a processor for the DOCSIS controller, processor for
14 the DOCSIS MAC processor. But what does that tell you? Anything, I
15 mean, do you disagree with Petitioner that a controller is a processor?

16 MR. LOWENSTEIN: I believe the controller can be a processor, I
17 don't think it's limited to that.

18 JUDGE LANEY: What else is it other than a processor of some
19 form?

20 MR. LOWENSTEIN: And so this is, it's not something we briefed,
21 but I think if you look at the claim you'll see it says a cable modem engine,
22 including at least one processor. And then it says, a DOCSIS controller and
23 a DOCSIS MAC processor, or, yes, I think that's right.

24 JUDGE LANEY: Well I understand the --

25 MR. LOWENSTEIN: Yes.

1 JUDGE LANEY: Yes. The DOCSIS processor is separate from the
2 DOCSIS controller, but they're both, they're both processors they just, they
3 have, they're designed differently for different functions, right?

4 MR. LOWENSTEIN: I don't mean to be nitpicky, but just to be clear,
5 I think they can be a controller because one implementation of that is it can
6 be in an ARM processor, but I don't think their claim requires that. So I just

7 —

8 JUDGE LANEY: Okay.

9 MR. LOWENSTEIN: Yes.

10 JUDGE LANEY: Well what do you, just so -- well I guess going
11 back to your argument about Michael Jordan and everything, you understand
12 my point, it's about overlap, right?

13 MR. LOWENSTEIN: Yes.

14 JUDGE LANEY: You can tell me that it's one point, and I
15 understand similarities don't always make one thing the other unless all that
16 the other requires to be, in order to be the same thing, is that it has those sort
17 of layers.

18 MR. LOWENSTEIN: Yes. I think I understand --

19 JUDGE LANEY: So --

20 MR. LOWENSTEIN: Sorry. Go ahead please.

21 JUDGE LANEY: No, I'm just -- so that's the problem I'm having
22 with your argument on that point.

23 MR. LOWENSTEIN: I see.

24 JUDGE LANEY: I understand Petitioner's argument which is, look, a
25 DOCSIS controller is something that does these things. And we're showing
26 you that the prior art discloses something doing those things and therefore

1 that is evidence that the prior art discloses the DOCSIS controller. Your
2 argument seems to be, well they didn't use the, you know, they don't point
3 into where there is a magic word of DOCSIS controller, so --

4 MR. LOWENSTEIN: I think, I understand your point. I don't think
5 that's quite my argument, if I may.

6 JUDGE LANEY: Okay.

7 MR. LOWENSTEIN: So I want to, let's start with what the claim
8 says. A DOCSIS controller. Not a VoIP controller, not a packet cable
9 controller, a DOCSIS controller. And then we see the description in our
10 patent, which we're looking at on Slide 9, and it says, controller 116
11 implements the following DOCSIS functions.

12 So if you're trying to think, what makes it a DOCSIS controller, that
13 seems like a pretty good place to look. And then it says, in addition, the
14 controller also does patent cable. So when you're thinking, what is the thing
15 that makes it a DOCSIS controller, I think it's reasonable to conclude it's
16 because it's controlling many DOCSIS functions because that's what the
17 words of the claim say.

18 JUDGE JURGOVAN: Counsel, can I ask a question here?

19 MR. LOWENSTEIN: Yes.

20 JUDGE JURGOVAN: Is a controller, or a processor that performs
21 SNMP, is that a DOCSIS controller or processor?

22 MR. LOWENSTEIN: I think it may, sir. Let's posit a controller that
23 controls SNMP. Okay? And let's say, let's assume for the sake of the
24 argument it's within the, all the other aspects of the claim are met.

25 JUDGE JURGOVAN: Okay.

1 MR. LOWENSTEIN: That might well be. But I want to cut to where
2 I think you're getting. If I may. So did they ever show that the VDP, the
3 voice data processor, carries out that controls or implements, that or any
4 other DOCSIS function? The answer to that is clearly no. Clearly not in the
5 petition.

6 Because what did they say in the petition? They said the DOCSIS
7 controller, the proxy gateway is implemented in the MIPS core. And then
8 they said, the MTA call client can be a part of the proxy gateway, and that
9 too is in the MIPS core. Or they didn't mention MTA call client at all in the
10 petition.

11 So in the reply what do they do? They say, the proxy gateway is now
12 implemented in the VDP where they previously said the MIPS core.

13 And then they refer to the MTA call client. That is the thing that is
14 doing SNMP. What it's doing with SNMP, I don't know. Is it controlling
15 it, implementing it, I don't know. But I do know, is the figure they rely
16 upon, Figure 5b, shows that the MTA call client is separate from the DSP, it
17 is not in the VDP.

18 So I think what you're asking is, if we posit a controller that controls
19 SNMP, well that might well be a DOCSIS controller. But not in their
20 argument. It's not in their argument, it's not in the VDP, it wasn't in the
21 petition. It's in the MTA call client which is clearly not in the voice and
22 data processor. That's what the very evidence they cite says. That's what
23 Paragraph 97 says, that's what Paragraph 98 says, and that's what Figure 5b
24 says. Is that clear?

25 JUDGE JURGOVAN: I think I understand your argument. Thank
26 you.

1 MR. LOWENSTEIN: Okay. To Judge Laney's point, you were
2 speaking my language. They didn't offer a constructive DOCSIS controller.
3 They didn't prove that the VDP has anything to do with DOCSIS in the
4 petition. Or later for that matter. That should be fatal.

5 What does this VDP do? Is it, we can maybe overlook some
6 cursoriness if it's a forgone conclusion that of course this is a DOCSIS
7 controller and they just forgot to dot an I. Well, it processes signals for a
8 plain old telephone. So it takes additional signals, it makes them analog,
9 goes vice versa, does some compression, that sort of stuff. That's not
10 DOCSIS. Has nothing to do with DOCSIS.

11 So what is this then? It's a voice -- it's on Slide 12. It's a digital
12 signal process. So the question is, is that a DOCSIS controller? Slide 13.
13 No. or at least we see no reason to assume that it is because as Your Honors
14 pointed out, the DOCSIS controller is separate from the voice DSP in our
15 patent. Clearly so.

16 JUDGE LANEY: So if I, I just want to make sure I'm understanding
17 what you're saying. Are you saying, look, a DOCSIS controller is a, let's
18 just, is a controller of DOCSIS functionality --

19 MR. LOWENSTEIN: Yes. Controls --

20 JUDGE LANEY: -- while, well just let me, and you can tell me
21 where I'm wrong. Okay?

22 I'm going to characterize my understanding, you tell me how your
23 understanding of your argument needs to be massaged or clarified.

24 MR. LOWENSTEIN: Understood.

25 JUDGE LANEY: A DOCSIS controller, plain ordinary meaning,
26 controller of DOCSIS. Okay?

1 Now, a controller of DOCSIS. Now in doing that, there may be all
2 kinds of different functionalities that are occurring. And just because you
3 have something else you can point to that does similar individual
4 functionalities, unless all those different functionalities, everything together,
5 taken together, amounts to something that controls DOCSIS, it is not a
6 DOCSIS controller.

7 MR. LOWENSTEIN: I --

8 JUDGE LANEY: And you're suggesting that Petitioner is simply
9 pointing out to functionalities that may be used or performed or may have
10 some similarities to what a DOCSIS controller does. But all those things
11 together in that step don't define that thing in the prior art to be a DOCSIS
12 controller.

13 MR. LOWENSTEIN: I think that's substantially correct. I just want
14 to clarify one thing because I don't want to stray --

15 JUDGE LANEY: Okay.

16 MR. LOWENSTEIN: -- from what we said in our paper. So we --
17 you said the DOCSIS controller controls DOCSIS. And I think to be
18 consistent, to stick with what we've said, the location we've used is the
19 DOCSIS controller controls or implements DOCSIS functions. So I think
20 that's very, very close to what you're saying.

21 JUDGE LANEY: And you said that in the Patent Owner response?

22 MR. LOWENSTEIN: Absolutely.

23 JUDGE LANEY: Okay.

24 MR. LOWENSTEIN: And that's been our consistent finding
25 throughout this proceeding. But I substantially agree with you. So it has to

1 control implement DOCSIS functions, and did they show the VDP does that,
2 and I would say no. And now we're getting into why.

3 So we've seen on Slide 13, if I may?

4 JUDGE LANEY: But to your point, that it controls DOCSIS
5 function, and your point is, you can't simply point out one function that is
6 similar to DOCSIS functions and say that's a DOCSIS controller because in
7 order to be a DOCSIS controller it has to be more robust. You understand
8 this is where I think it gets, the argument is a little confusing. In other
9 words, in order to be a DOS, control DOCSIS functions you need to be able
10 to control ten functions related to DOCSIS.

11 MR. LOWENSTEIN: No.

12 JUDGE LANEY: They only identify something that controls three.
13 And while that might be nice, it doesn't make it a controller.

14 MR. LOWENSTEIN: No, no, no, that's not our argument.

15 JUDGE LANEY: Okay.

16 MR. LOWENSTEIN: So our argument is, the DOCSIS controller
17 controls one or more DOCSIS functions. And so it's not our argument that
18 they did two but not ten so that's not good enough. What the VDP does,
19 according to their argument and what they've shown is it's doing things
20 relating to, basically processing signals for a telephone.

21 And yes it's in a context where there is packet cable and VoIP, but it's
22 essentially processing these signals to and from the voice, a plain old
23 telephone. And so, what our argument is, that's not shown, and we don't
24 believe it has anything to do with DOCSIS. Because DOCSIS is not
25 processing signals from digital to analogue for a telephone. That's
26 something very far downstream and unrelated to DOCSIS.

1 And we know that because I was the -- the colloquy that I was having
2 with Judge Jurgovan. Because when they finally get to showing what they
3 claim are DOCSIS functions, SNMP and whatever it is, they have to go to
4 the MTA call client. And that's not in the DOCSIS, that's not in the
5 Rabenko's VDP. And so --

6 JUDGE LANEY: Is it your point that what they identified -- the
7 things that they identify can be done and are, were known to be done without
8 in fact a DOCSIS controller?

9 MR. LOWENSTEIN: So the point, like let's focus on what the VDP
10 does. It's processing, I don't mean to keep belaboring it but it's processing
11 signals for a phone. So like the packets come in, it processes, its analogue,
12 analogue comes back, it compresses, decompresses, whatever, sends it back
13 up the chain.

14 So let's, can I take a step back and maybe I can give an analogy which
15 might help? Or confuse more perhaps.

16 JUDGE LANEY: Okay.

17 MR. LOWENSTEIN: But let's think of DOCSIS as, kind of like a
18 road, okay? Let's think of DOCSIS as the physical, there's a physical layer
19 like the road, surface of the road, and then there are kind of rules to the road.
20 There is traffic cop, there are lights, there is speed limit, there is this, there's
21 that. That's sort of DOCSIS.

22 And then you can have things that are built on top of DOCSIS like
23 packet cable. So packet cable you think of as kind of like a trolley tracks
24 and like a cable line. So it's some infrastructure on top of DOCSIS that does
25 a particular thing. What does it do? It helps transfer VoIP in a DOCSIS

1 environment. It's still on top for a particular type of data. Or voice data in
2 this case.

3 And what is the VDP? It's not the road, that's DOCSIS, the rules of
4 the road. It's not the cable infrastructure. I mean, let's call it trolley car
5 cable infrastructure. It's not the trolley car. It's not the passengers, which
6 you might think of as the voice packets, it's like the door on the trolley car.
7 It's the ticketing that allows the passengers to get in and off. And to, are you
8 getting on this trolley car or not, are you dressed appropriate. That sort of
9 thing.

10 So we're like four layers removed from DOCSIS. And that's the
11 problem. Does that make sense?

12 JUDGE LANEY: It does. But it sounds, I mean, this sounds to be
13 where are we cutting the lines. Because it seems like, how, and so the
14 ticketing that you're, in your analogy. The door for ticketing, if that is in
15 fact a DOCSIS function that has to occur and their identifying something
16 that controls that function, while it may not be a robust DOCSIS controller,
17 while it may not have as much ability to control as many different
18 functionalities of the DOCSIS, it sounds like it would still, I mean the claim,
19 one thing we can claim, nobody is -- the claim doesn't say it has to do
20 everything that DOCSIS, all the functionality available of the DOCSIS. So
21 if it can do just one functionality of one DOCSIS functionality, is it in a
22 DOCSIS controller and is it that what you just said it does.

23 MR. LOWENSTEIN: So we have not shown that. So I want to be
24 clear, the patent distinguishes between DOCSIS functions and VoIP
25 functions. They distinguish between DOCSIS functions and packet cable
26 functions.

1 And then, so we know, DOCSIS, packet cable, VoIP, these are
2 completely different specifications. Yes there is some relationship, but we
3 know what a DOCSIS function is versus what a voice function is versus
4 cable. We know they're not the same for the patent. And then don't make, I
5 know you won't, but don't make the mistake of confusing the VDP with
6 either VoIP or packet cable because it's not. It's a downstream processor
7 that is making sure you're, you know, the old grainy phone still can get
8 analogue voice.

9 It has nothing to do with DOCSIS. And at the very least they never
10 proved that it did. And I think if you read the language of the patent you
11 can't reach the conclusion that they perfected it.

12 Okay. So I think we have already shown that the DOCSIS is
13 controlling the voice DSP. It's not, the DOCSIS controller similar thing.
14 Did they prove they can, we'll they're pointing to something that's distinct
15 from the DOCSIS controller and that sounds like a problem.

16 Slide 14. Moreover, the voice DSP, not even in the CME, it's outside
17 looking in. I think we all know that by now. So further pointed away from
18 the thing, the DOCSIS controller.

19 Slide 15. You would think --

20 JUDGE MOORE: This is Judge Moore. Didn't Petitioner tell us that
21 there is an embodiment in which the VDP is in the DOCSIS gateway?

22 MR. LOWENSTEIN: So let's go back to what they said in the
23 petition. What they said in the petition was, the most generous, we go back
24 a couple of slides and they cite, it's a DOCSIS controller, I guess, because
25 the DOCSIS controller patent does some VoIP stuff and we do some VoIP
26 stuff so voila, we're a DCOSIS controller.

1 And what did they say about the proxy gateway? That's in the MIPS
2 core. Separate processor in Rabenko. The staff about the MTA call client,
3 that's not mentioned at all previously. And it's not in the VDP. So I don't
4 think they offered separate embodiments. I think they said the proxy
5 gateway is in the MIP core. MIPS core.

6 They didn't mention the MTA call client at all. And the MTA call
7 client is the only place where they colloquy point to any DOCSIS function.
8 They don't show the MTA call client controls or implement DOCSIS
9 functions. And then they don't prove that it's in the VDP.

10 So too late, not consistent with the record. That's where I think they
11 are. Again, so --

12 Now I think at this point, Slide 16, I don't know that I need to belabor
13 this, but I think you understand where I think we all right now. They didn't
14 make the case in the petition, no construction, a fallacious argument that I'm
15 a chimpanzee essentially, or Michael Jordan is Nolan Ryan.

16 They have no showing in the petition that the VDP has anything to do
17 with DOCSIS. And it's clearly not, if you look at, or at least doesn't seem to
18 be, if you look at 775 versus Rabenko. And they can't change this later.
19 Judge Laney, are you --

20 JUDGE LANEY: No, I was just asking for them to turn up the
21 volume here.

22 MR. LOWENSTEIN: Sure. Okay. So if more is needed, I don't
23 think it is, but if more is needed, what we've said all along, oh, the DOCSIS
24 controller controls one or more DOCSIS functions. And we see examples,
25 exemplary examples in the patent in Slide 17.

1 Slide 18 there was a misapprehension at the institution decision about
2 what we meant. I think that's pretty clear. We never said it had to be all of
3 them.

4 Slide 19. Similar vein. These are examples. They don't need to be
5 all of them, they don't need to be, that's what they are. I think that's clear.

6 I think they're constantly trying to rewrite and put words into our
7 mouths about what our construction is. I think we've been very clear.
8 DOCSIS controller must control or implement one or more DOCSIS
9 functions. We've said that consistently throughout the case. They keep
10 trying to change our construction and then attack that. I think that's a pretty
11 clear sign that our construction is reasonable.

12 And again, if you just take a step back there is no showing in the
13 petition, Slide 21, that the VDP in Rabenko has anything to do with
14 DOCSIS. We've had so many different constructions from them.

15 JUDGE JURGOVAN: Counsel?

16 MR. LOWENSTEIN: Yes please.

17 JUDGE JURGOVAN: Just one question --

18 MR. LOWENSTEIN: Of course.

19 JUDGE JURGOVAN: -- before you move on. You said the VDP,
20 that doesn't perform any DOCSIS function. What about the proxy 142?

21 MR. LOWENSTEIN: So, okay. So in the reply they put the proxy in
22 the MIPS core. In, I'm sorry. In the petition they put the proxy in the MIPS
23 core, in the reply they tried to put it in the VDP. And then they said the
24 proxy is a way to smuggle in the MTA call client. So that's where they're
25 saying the DOCSIS functions lay.

1 And I think it's fairly clear, at least not shown -- well first of all, that's
2 208. And it's at least not shown that the MTA call client is in the VDP.
3 And we can, we'll come back to it in slides later, but I think we're going to
4 show those are separate elements. And it's quite clear that if anything the
5 MTA call client is in the MIPS core.

6 JUDGE JURGOVAN: Thank you.

7 MR. LOWENSTEIN: So we have so many constructions now, but I
8 think what they're really saying, and I think Judge Laney may have picked
9 up on this, is they're basically saying the DOCSIS controller doesn't mean
10 anything because they say it has to be a part of the cable modem mentioned,
11 it has to be bypassed. But if you look at the claim, those are already
12 elements of the claim. And so they say it does not limit, but that means it
13 has no meaning.

14 So Slide 23. I think we have all in this room been doing this for a
15 very long time. I think we know that's not how claim construction works.
16 You got to give every term meaning. You have to give effect to every term
17 in the claim. And if you say it has no limit aside from that which is
18 otherwise expressly stated, you've essentially written it out of the claim.

19 And these arguments, oh it's a processor, it's an armed processor, it's
20 microprocessor, it's a this, it's a that, well, okay, the time for that is in the
21 petition, not an oral argument. I can't shoot down 12 different claim
22 constructions I haven't heard before. I mean, I could but I don't have the
23 time for that.

24 JUDGE LANEY: Is there any evidence in the record that at the time
25 of the invention someone skilled in the art could just go purchase a DOCSIS

1 controller? Like was that something you could go purchase a DOCSIS
2 controller?

3 MR. LOWENSTEIN: I haven't seen any --

4 JUDGE LANEY: Or --

5 MR. LOWENSTEIN: I'm sorry, go ahead.

6 JUDGE LANEY: I'm sorry. I was just going to say, or is that
7 something people had to create?

8 MR. LOWENSTEIN: I haven't seen any evidence to that effect.

9 JUDGE LANEY: Okay.

10 MR. LOWENSTEIN: And so I can't speak to all things. All I can
11 confidently say is I'm aware of no argument to that effect, and no evidence
12 to that effect.

13 JUDGE LANEY: Okay.

14 MR. LOWENSTEIN: Okay. So now they start to switch, they start
15 talking, Slide 24, they start talking about VoIP and packet cable. But as we
16 said, Slide 25, and this may be a useful slide to go back to later, I alluded to
17 it earlier. The patent clearly distinguishes between DOCSIS and VoIP
18 functionality. And we talk about DOCSIS functions separate from the VoIP
19 functions.

20 And then additionally the patent says, implements all packet cable
21 functionality. And the packet cable functionality is represented by
22 functional blocks 220 and 228. The functional blocks they kept talking
23 about by the way. Separate and distinct from the DOCSIS functions.

24 Now we know, Slide 26, minor point that DOCSIS and VoIP, they're
25 not joined at the hip. You got DOCSIS without VoIP, VoIP without
26 DOCSIS.

1 We know, Slide 27, that these are separate specifications. That's not
2 in dispute. I gave you this analogy about the trolley car, I'm not going to
3 repeat it again. I think we know what it, hopefully we know what it means
4 now. But basically using DOCSIS [inaudible] mean being DOCSIS I think
5 is the take home from that.

6 They say something about service flows, but they don't show that
7 Rabenko implements any service flow so it's not clear what that has to do
8 with anything.

9 Slide 29. They point to a single reference in a 300-page specification
10 which mentions service flows. But that's, that's just an example of the
11 service flow that I think now that you have heard my tortured analogy
12 perhaps you understand why that's neither here nor there.

13 They, now to get to Judge Jurgovan's points, they make new
14 arguments. So now in reply they say the VDP includes the proxy gateway
15 and the MTA call client. Well what did they say in the petition? Slide 33.
16 In the petition they said the proxy gateway would be implemented by the
17 MIPS core. What did they say in reply? The exact opposite. Proxy gateway
18 functions can be implemented in the voice and data processor. New
19 argument.

20 On Slide 34. I think we know the why. You can't present new
21 arguments if your original argument was correct.

22 Slide 35, also to Judge Jurgovan's point, what do we see? And they
23 say, you waive this argument about the voice DSP, how dare you. A bit of
24 chutzpah perhaps in view of the new argumentation, but let's see if it really
25 is a new argument or responsive reply.

1 So they point you to Figure 5b. in Figure 5b has the voice DSP in it.
2 And they say the MTA call times in the voice DSP, I think we're allowed to
3 respond to that. I mean, they're not allowed to make the argument but we're
4 certainly allowed to respond to it. They're not the same thing, they're
5 separate.

6 And we see in MTA call client, that's the one that's dealing with the
7 SNMP and all these other things, it's not the DSP. Now, what is our
8 evidence of that, that the MTA call clients and the DSP. Let's look at their
9 expert reply. He says, okay, 5b. But then my colleague, Ms. Woo, asked in
10 the deposition, so where is the voice data processor in this? And as they
11 mentioned, he had no clue. So he's telling you that the MTA call client is in
12 the DSP, and he has no evidence. He doesn't know where it is.

13 So I think that goes to show where that analysis, that untimely
14 analysis is at if you even get to the [inaudible]. So again, if anything, if you
15 look at Slide 37, the MTA call client is not in the VDP it's probably in the
16 MIPS core. Because there is a HAPI between the MTA call client and DSP.
17 And what does Rabenko tell us in the very paragraph that they cite, that the
18 HAPI allows for communications between the MIPS core and the VDP.

19 So if you're going to speculate about where Rabenko's MTA call
20 client is, you conclude it's not in the VDP, and it's probably in the MIPS
21 core.

22 So Slide 38. I think, I don't even have time to go through this, on
23 Slide 39, I think they have the burden of proof. And I think their case
24 collapses at every single point. This is Slide 39, it collapses at the petition, it
25 collapses at the, what is this VDP, and it collapses at the reply because all
26 they have are untimely and incorrect arguments.

1 With that I'm going to go briefly through the next argument so my
2 colleague has some time for her argument as well. And it's going to be a lot
3 of the very same issues. So you have the DNE in a first circuit, a CME in a
4 second circuit. And the functions are completely partitioned.

5 Skip ahead a little bit. Slide 44. I think their argument was fairly
6 conclusory. They just said, look, these are some elements, those are some
7 elements, we're going to assign them to engines.

8 Slide 45, Rabenko doesn't mention a DNE, doesn't mention a CME,
9 doesn't mention separation. Doesn't say two are functionally partitioned or
10 completely partitioned. So this is all an expos factor after the fact
11 identification.

12 Slide 46, we see in the 775 a very clear delineation between the DNE
13 and the CME. But we don't see anything like that in Rabenko. It's not even
14 a Rorschach test, it's just after the fact.

15 So what you have ultimately is they're sort of conjuring these
16 identifications, these engines, but they're not arising out of Rabenko's
17 disclosure. And I think that's not how you do IPR analysis or obviousness
18 analysis. You don't just get to, after the fact, define these things in that
19 fashion.

20 So let's dig deeper. Why would this VDP be in the CME? Well it's
21 not directly on the system bus, it's connected through two interfaces so it's
22 sort of out of an island. Out on an island.

23 And the question arises, 49, why would this be in a circuit with these
24 other two elements? There is no clear explanation given.

1 And so what we're left with, Slide 50, I was a redistricting consultant,
2 don't judge me for that in a prior life, but I think what we have is essentially
3 after the fact gerrymandered assignments.

4 So, now here is why I think, if I'm reconstructing their case, why did
5 they pick Rabenko? They picked Rabenko because they really like this
6 comparison. They think it's a knockout blow. Is it? So they're comparing
7 Slide 51, Rabenko's 1b with our Figure 1. And I think that's -- we just got
8 them because it's the same thing. Identical I heard. Is what I heard. Okay.

9 But they don't give a colorful reason why the VDP would be in the
10 CME. And then we get to a lot of the arguments we had before, which is,
11 again, this is a voice DPS, Slide 53. It's distinct from the DOCSIS
12 controller, Slide 54, and it's outside the CME in our patent. So why is their
13 VDP in an interface out on an island magically forming a CME in Rabenko?
14 We're not told.

15 Now let's take a step back. It's true that you have two elements
16 named the same thing, but again, different, functioning different ways like
17 theoretically. Yes. But that's a case. That's a rigorous case you got to
18 prove. You're the Petitioner.

19 You can't just say, at the oral argument, here is why these are
20 different. They have to prove that in the petition. If they're telling you to
21 believe something, with the very same element with the very same name is
22 not the DOCSIS controller, is not the CME. How they carry their burden, it
23 falls on its face. It doesn't get past go.

24 And there is no dispute, Slide 55, their expert acknowledges that the
25 voice DSP is clearly not in the CME. And he's right about that. And so
26 what are we left with? It's a false comparison. Their comparison relies on

1 you believing that the voice DSP, that their patent is the DOCSIS controller.
2 And they did not lift that. That's a heavy lift. And I think we can all agree
3 that they didn't carry it.

4 So again, Slide 57. I don't think time permits, but I think we can see
5 how at every stage their argument just doesn't pass go and all signs point in
6 a single direction. With that, I will turn the microphone over to my
7 colleague who can take it from there.

8 MS. WOO: Good afternoon, Your Honors. I'll be focusing on the
9 independent software upgrades. My name is Colette Woo by the way.

10 So Slide 60. The claims require two important aspects. The first --

11 JUDGE LANEY: You said 60?

12 MS. WOO: Yes, 60. Slide 60.

13 JUDGE LANEY: Okay.

14 MS. WOO: So first, it's the CME has to be configured to enable
15 upgrades to its, its software. So throughout petitioner's briefing and their
16 slides, even though they didn't get to it, there was no discussion of what
17 upgrades to its, the CME's own software means. And then the second thing
18 that the claims require is that the software upgrades be independent to the
19 upgrades to the DNE.

20 Slide 61, as Dr. Russ, our expert testified, this independent software
21 upgradability is a key aspect of the claimed invention because it allows the
22 flexibility so that upgrades can be implemented with minimum impact on the
23 system. Petitioners don't dispute that this is a key aspect.

24 Slide 62. So first I'll discuss their Rabenko-Kim theory. So they
25 argue that Kim teaches this modular type residential gateway and somehow
26 their modularity will be imported into Rabenko's system.

1 Slide 63. But what does Kim teach? So Kim is about CME
2 components. Or not about CME components, it's about a DNE component.
3 It says, a modular homePNA controller that's part of the DNE. It says, a
4 modular ADSL controller. That's not part of the DNE or the CME so it has
5 nothing to do with CME components.

6 Slide 64. And that we can have modularly replaceable DNE
7 components doesn't suggest that we can have modular CME components.
8 You can replace a knee, you can't replace a brain.

9 Slide 65. And Petitioner doesn't explain how modular DNE
10 components translate to modular CME components.

11 Slide 66. And this is for a good reason. So Kim teaches that its
12 components are modularly replaceable because they're detachable. They're
13 basically expansion cards that you can take in and out. By contrast,
14 Rabenko teaches, "a highly integrated solution implemented in a single
15 chip." So it's an integrated chip. To replace a component on the integrated
16 chip you have to pry it off somehow and then you get a new component and
17 you're supposed to solder it on. It just makes no sense.

18 Slide 67. And more, Kim doesn't mention software upgrades, only
19 mentions software two times. And that's in the context of a system reset.
20 There is a software reset signal.

21 Slide 68. Kim simply doesn't ever mention replacing software, let
22 alone upgrading software.

23 Slide 69, and even if you could get new software through new
24 hardware, as Dr. Russ explains and the claims require, a CME needs to be
25 configured to enable independent upgrades to its software. So it has to be
26 that CMEs own software, it can't be new software.

1 Slide 70. And what's happening --

2 JUDGE LANEY: Just to test that point a second.

3 MS. WOO: Yes, of course.

4 JUDGE LANEY: What if the company went from Windows 1 to
5 Windows 12? I mean, I think, would you say that is upgrading its software?

6 MS. WOO: I think some people would disagree that Windows, I
7 think 11 that we're on, is better than Windows 10 --

8 JUDGE LANEY: Well I don't --

9 MS. WOO: -- but I --

10 JUDGE LANEY: Well upgrade I know is subjective, right?

11 MS. WOO: Yes.

12 JUDGE LANEY: But let's say earlier Window was on DOS, right,
13 now it's not. If I, you change the computer so that it's no longer the one
14 running DOS but it's windows and it's the whole new software, so you
15 would say that's not upgrading its software that would be something
16 different?

17 MS. WOO: So I think if you change the computer you no longer have
18 the same computer it would be new software on a new computer. But even
19 if you change, say the entire windows on the computer, it wouldn't be an
20 independent software upgrade so you need to independently upgrade one
21 component from the upgrade to another component.

22 JUDGE LANEY: Okay, I see what you're saying.

23 MS. WOO: Yes. So Slide 70. If we're looking at what's happening
24 in their combination they're saying you would somehow pry off the CME
25 from Rabenko's integrated chip, throw that away, get a new CME,
26 supposedly with new hardware even though Kim doesn't say anything about

1 that, and then somehow the software is upgraded on the old CME. Again,
2 their combination doesn't make sense.

3 Slide 71. And as Dr. Russ explains, replacing software via new
4 hardware results in new software on new hardware, not as the claims
5 require. Upgrades to it, the CME's software.

6 Slide 72. And this distinction is consistent with the 775 specification
7 which teaches that this independent upgrade allows for different software
8 partnering models such as third-party models because they don't need to
9 depend on the cable modem provider.

10 So Slide 73. Basically their case fails because replacing hardware
11 just doesn't mean upgrading its, the CME's software.

12 Slide 74, next I'll discuss their Rabenko alone theory. So even though
13 Rabenko doesn't say anything about upgrading software, Petitioner argues
14 that it would be obvious to try based on Rabenko alone.

15 Slide 75. But as the federal circuit has said, when we're in a single
16 reference obviousness scenario, such as here, that faces a high bar,
17 particularly when it goes to the heart of the invention. Which as discussed,
18 Petitioner doesn't dispute. And also, we can only use commonsense when
19 the limitation is unusually simple and the technology is particularly
20 straightforward. Petitioner hasn't argued that.

21 Slide 76. And importantly, Petitioner concedes Rabenko "does not
22 explicitly teach these independent software upgrades."

23 Slide 77, rather Petitioner turns to the end of Rabenko, to the
24 boilerplate which says, those in scale would know that you can implement
25 Rabenko in a number of ways. And says that it's obvious based off of this

1 boilerplate. But what is the boilerplate lacking? It's lacking any mention of
2 upgrading software let alone independently upgrading software.

3 Slide 78. And the federal circuit has said that vague boilerplate such
4 as this, it's not enough to establish obviousness.

5 Slide 79. Moreover, it wasn't obvious to try upgrading Rabenko's
6 software at all because Rabenko says its software was embedded. And Dr.
7 Russ testified that upgrading embedded software was generally impossible,
8 or at least difficult.

9 Slide 80. Moreover, it wasn't obvious to try independently upgrading
10 software. Dr. Russ, I want to say that he was a true expert in this field
11 because during the time of the invention he was working at Scientific
12 Atlanta developing gateway cable modems. So he was working on these
13 types of devices. And when he was asked in deposition whether this device
14 he worked on at the time of the invention, whether he was able to upgrade its
15 software he said yes, but the entire software would get replaced. So not in --

16 JUDGE JURGOVAN: Can I interrupt for a second?

17 MS. WOO: Yes.

18 JUDGE JURGOVAN: It seems like you're implying a particular
19 construction for replace. Meaning that, replace that means that some of the
20 software must be left intact and a part of it is replaced, or something like
21 that.

22 MS. WOO: So replace isn't in the claims. It says the CME has to be
23 configured to --

24 JUDGE JURGOVAN: Upgrade.

25 MS. WOO: -- enable upgrades to its software.

26 JUDGE JURGOVAN: Upgrade, okay. I'm sorry.

1 MS. WOO: Yes.

2 JUDGE JURGOVAN: It seems like you're implying a certain
3 construction of upgrade which implies that the software, some of the
4 software must remain as it's updated.

5 MS. WOO: So for the Rabenko-Kim combination, they're not just
6 arguing that you would replace some of the software, they're arguing that
7 you would take out the hardware and replace that and somehow there is new
8 software. Not necessarily, but they're saying that it would be new software
9 and that is an upgrade. We're saying that that is not an upgrade to the CME
10 software.

11 JUDGE JURGOVAN: Well, so an upgrade, in your view, is you are
12 replacing or changing a part of the software, but some of that software
13 remains in place?

14 MS. WOO: I think, so we're not just looking at the term upgrades
15 alone, it says upgrades to its software. So I think it's that the, it's that's
16 important because it has to be the CME software. And that CME, or the
17 CME, it has a part in antecedent basis. So it's referring to a CME earlier in
18 the claims.

19 JUDGE JURGOVAN: Thank you.

20 JUDGE LANEY: But when it upgrades, as long as it's the same
21 CME, none of the previous software after the upgrade has to remain, right?
22 So it could upgrade its software and that would change absolutely
23 everything. It's the same CME, and it's upgraded software, it's just
24 everything is upgraded to this new software?

25 MS. WOO: Yes, I believe that's right.

26 JUDGE LANEY: Okay.

1 MS. WOO: So Slide 81. Petitioner also relies on Gaspar to fill in the
2 gaps. So this is not another combination, it's part of their Rabenko alone
3 theory.

4 But the problem with Gaspar, it says that it teaches modifying a
5 homePNA controller. So just like Kim it's not about a CME it's about a
6 DNE.

7 So skipping to Slide 83. I think we've shown they're obvious to try
8 theory based off Rabenko's boilerplate, that just fails.

9 And then Slide 84, I'll give very brief description of our dependent
10 claim arguments. So Claims 2 and 19 require that all DOCSIS functions are
11 localized in the CME. They have failed to account for a component in
12 Rabenko that performs DOCSIS functions, but they haven't placed that in
13 the CME.

14 And then dependent Claim 12 requires the DOCSIS MAC processor
15 and the DOCSIS controller be certain R model processors. They just
16 haven't shown any evidence of these particular processors being
17 implemented and being particular models. And they haven't shown any
18 evidence that it would be obvious, an obvious design choice.

19 And unless Your Honors have any further questions, I'll reserve the
20 rest of our time for rebuttal.

21 JUDGE MOORE: I see none. Thank you very much.

22 MS. WOO: Thank you.

23 (Pause.)

24 MR. MEEKER: So, Judge --

1 JUDGE MOORE: Mr. Meeker, before you begin, you faced a lot of
2 questions in your opening portion so we wanted to offer you an extra ten
3 minutes on your time if that would be helpful?

4 MR. MEEKER: Thank you, Your Honor, that would be helpful.
5 Okay, I'd like to answer two specific questions. So one, Judge Jurgovan
6 said, with respect to the petition, the functions SNMP, DHCP and TFTP,
7 that those are DOCSIS functions admitted by the Patent Owner, and they're
8 functions associated with the proxy gateway side. I think Patent Owner
9 responded that we didn't state, or didn't cite in our petition the portions
10 where Rabenko says that the voice and data processor can include the proxy
11 gateway.

12 So I'd like to point you to Page 31 of our petition, which is, it's on the
13 screen. It's slide, let's see. We don't have it in the slide, but it is Page 31 of
14 our petition. And Page 31 cites to Paragraph 74 of Rabenko. And this is for
15 the DOCSIS controller.

16 And then, John, if you could take us to Paragraph 74 of Rabenko.
17 Paragraph 74 of Rabenko says, in the described embodiments the voice and
18 data processor, 213, includes the proxy gateway function described in
19 connection with Figure 1b. And that's the figure that has the two, two
20 processors. One is the proxy gateway and one is the voice and data
21 processor.

22 And it also appears, if we go back to Section 6A(1)(c), go back to the
23 petition. So in 6A(1)(c), if you go to that section which is described above,
24 it cites the Rabenko Paragraph 97. And, John, could you go to Rabenko 97?
25 There's where it cites the Rabenko 97. And go to Rabenko Paragraph 97.
26 And then highlight.

1 Again, Paragraph 97 says the proxy gateway function could be
2 implemented in the voice and data processor. So we think we fairly
3 preserved that in our petition.

4 And now for software upgrades. John, if you could go to Slide 34.
5 JUDGE LANEY: Just, I'm trying to find that in that Paragraph 97.
6 Rabenko.

7 MR. MEEKER: Oh, I'm sorry. Go back to 97 of Rabenko.

8 JUDGE LANEY: I can't see that, that's my problem.

9 MR. MEEKER: I'm sorry. Yes, if you turn to Rabenko Paragraph 97
10 I'll read it into the record.

11 JUDGE LANEY: I've got it.

12 MR. MEEKER: Okay. It says, as indicated above, the proxy gateway
13 function can be implemented in the voice and data processor period. That's
14 Paragraph 97 that starts. And then it goes on to describe it further. So we
15 think we fairly preserved that in our petition. We also think it's permissible
16 reply.

17 So when they came back and made the argument that it's only the
18 functions specified, and I think it's 208. John, can you go to the 775 where
19 it talks about 208 with the specific functions of, go to Slide 14. Go to our
20 Slide 14. It's all summarized on 14.

21 Oh yes, right here. So I'm sorry. So here is Rabenko where they're
22 saying the DOCSIS functions include Block 208. Right? And so, I'm sorry,
23 Block 206.

24 So they're saying, look, DOCSIS functions are --
25 (Simultaneous speaking.)

1 MR. MEEKER: Yes, I'm sorry, so you can't see this. So if we go to
2 Rabenko, column -- I'm sorry. We go to the 775, Column 3, and this is
3 specifically at Line 30 --

4 JUDGE LANEY: You're saying what starts at 26 and goes to --

5 MR. MEEKER: Yes, 26 to 33.

6 JUDGE LANEY: Okay. I'm there.

7 MR. MEEKER: Okay. So it says controller 116 implements the
8 DOCSIS blocks 200 to 212. It says DOCSIS functions (block 200 to 212.)
9 So Patent Owner says, look, the only thing our DOCSIS functions are
10 Blocks 200 to 212. Well Blocks 206 is SNMP, DHCP, TFTP and TOD
11 functionality. Well now if we go to Rabenko and look at the voice and data
12 processor in Rabenko, and if you could go to Slide 14 --

13 JUDGE LANEY: While he's looking for that, would it be your
14 contention that if you had a processor that just did the function block to
15 carry out SNMP, that would be an example of a DOCSIS controller?

16 MR. MEEKER: It is our contention, Your Honor. They list just
17 sample functions from DOCSIS. There are thousands of functions from
18 DOCSIS. Hundreds of thousands. And --

19 JUDGE LANEY: And as long the controller performs one of those
20 functions that of, for DOCSIS, it qualifies as a DOCSIS --

21 MR. MEEKER: It's a DOCSIS function in our point of view.

22 JUDGE LANEY: Okay.

23 MR. MEEKER: It performs more than the one --

24 JUDGE LANEY: No, I know. I'm just trying to --

25 MR. MEEKER: But like packet cable itself is a hundred thousand
26 functions so it performs, but we found -- they said these are the three that

1 matter to us. And then in our specification, John, this is not the one that's
2 got the, which one? Oh here it is. It's Slide 12, Your Honor.

3 So if you go to our Slide 12 it's got Rabenko Paragraph 15, refers to a
4 TFTP. So in fact if you look on the right, here is Rabenko Figure 5b. So the
5 three functions they specify, THCP, TFTP and SNMP, those three functions
6 are handled by the voice and data processor. This is a subblock from the
7 voice and data processor in Rabenko. So those are the DOCSIS functions --

8 JUDGE LANEY: Just a, and I want to make sure I'm clear. So if
9 there is a processor, it's Petitioner's contention that if you can identify
10 evidence that a processor does the SNMP, let's say that's all it does. It does
11 nothing else, just does the SNMP, then Petitioner's contention is, based on
12 the plain and ordinary meaning of DOCSIS controller, you have shown that
13 that reference discloses a DOCSIS controller.

14 MR. MEEKER: So I --

15 JUDGE LANEY: Regardless of context, regardless of, I mean, any
16 thing --

17 MR. MEEKER: Not regardless --

18 JUDGE LANEY: -- other than just --

19 MR. MEEKER: -- of context, Your Honor. It's regard -- it's in the
20 context of taken packets, whether they're voice packets or data packets,
21 reformulating them so that they can go out over DOCSIS. In this case the
22 DOCSIS MAC player.

23 So they say, well these are the only three functions, or four blocks that
24 matter, even those blocks are met by Rabenko. It's because it does --

25 JUDGE LANEY: You're going, and I apologize. You're going
26 somewhere, I'm just trying to take a baby step and understand your

1 contentions. I'm just trying to put a, and it's a small point, and you're going
2 off to making the arguments again.

3 MR. MEEKER: Well --

4 JUDGE LANEY: I just want to understand the small point which is,
5 is Petitioner's understanding of the DOCSIS. Can it just be a processor that
6 all it can do is SNMP? And what I understood you to say is, that's not
7 enough information. You wouldn't know just based off of that because you
8 would have to know the context at which that processor is doing SNMP.

9 MR. MEEKER: I think that's correct because you could do --

10 JUDGE LANEY: Okay.

11 MR. MEEKER: -- SNMP, like, let's say it wasn't in a DOCSIS
12 modem, let's say it was in a, an ethernet modem or something else. Like
13 there is a function that you could do in another context that would be outside
14 of DOCSIS. But in this context --

15 JUDGE LANEY: Okay.

16 MR. MEEKER: -- of Rabenko, which is a DOCSIS modem, we think
17 it's fairly taught, in fact, it's a hundred percent overlay. Like all of the
18 functions you need to get, whether it's a, you know, a voice packet from a
19 media terminal adapter can come out in a USB format, it can come out in
20 ethernet format, it could come out in a hundred different formats from a
21 DSP. But when you send it to DOCSIS it needs to be reformatted as a
22 packet cable in order to get those packets in the DOCSIS and get them
23 properly processed at the head end. Which is a cable modem termination
24 system.

25 The same thing with ethernet package. You have to repacketize them
26 and that's what the DOCSIS controller does. Is it performs that function to

1 put the packets in the appropriate format so they can go back upstream. And
2 we think that's exactly what Rabenko teaches.

3 JUDGE JURGOVAN: Counsel, I think one of Patent Owner's
4 arguments is that this is not in the petition. How do you respond to that?

5 MR. MEEKER: It's a permissible reply, Your Honor. So we laid out
6 a, what we felt was a prima facie case in our petition, they came back and
7 said, well it's not any of the functions, it's only these five functions. If you
8 don't have these five functions it's not a DOCSIS function. And we came
9 back and said, we have those five functions. We pointed to Paragraphs 74
10 and 97. And in our petition we pointed to those paragraphs. And in 74 and
11 97 it says, the proxy gateway functions can be included in the voice and data
12 processor. And one of those proxy gateway functions is, one of the five
13 functions they have identified. So we think that's fair reply.

14 It was in our original petition that it could include both. They came --
15 we thought, in fact, I still believe we cited enough DOCSIS functions on the
16 voice side. They came back and said, no, it has to be on the data side. We
17 said, it's in our petition, and here is where those five functions are.

18 We haven't abandoned our original arguments. We think the voice
19 repacketizing voice is enough of a DOCSIS function. That's like half of
20 what a cable modem does. It's half of their blocks, repacketizes those. And
21 the other half repacketizes data, all to go out over DOCSIS. We think we
22 have them both.

23 But like they're saying, it's only data is the one that's a DOCSIS
24 function, you can't look at any voices DOCSIS functions. We said, okay,
25 even if you construe a DOCSIS function it's only data and it has to be
26 something in the DOCSIS protocol. Like we still cite these things in our

1 petition. Like we cite to this specific paragraph that says the proxy gateway
2 is included in the voice and data processor. And in the proxy gateway are
3 the five functions that you've identified.

4 Like when we filed a petition they could have cited one of a thousand
5 functions in that patent, what's a DOCSIS controller. We didn't know which
6 five they're going to cite. We cited the ones that we thought were most
7 appropriate. They said, you missed the boat, it's these five, and then we
8 went back and said those five are shown too. I think it's permissible reply.

9 JUDGE JURGOVAN: Thank you.

10 MR. MEEKER: And then if you can go to Slide 14, John. Not 14,
11 the slide, Slide 34. Okay. So their whole software upgrade argument is,
12 assuming Rabenko is limited to a, to a hardwired computer chip, they're
13 saying you have to, you can't, their experts said you can't place software in
14 a computer chip. Well most microcontroller units are upgradable. Like you
15 download a new flash or you download a new bios. Or you go to your
16 printer and update your printer and the printer drivers on the other side, the
17 ones in the printer.

18 So our expert says, all of these are upgradable. Their expert says, well
19 if it's an embedded piece of, like a controller, it's difficult or impossible to
20 upgrade. Well difficult doesn't mean it can't be upgraded. There are lots of
21 things that are upgraded every day.

22 Your cable modem. Like when they go from DOCSIS 3.1 to DOCSIS
23 4.0, they're going to push out software upgrades where everybody can
24 upgrade their cable modem. You just download new software into your
25 cable modem.

1 But if you look at Rabenko, go back to 268, it's not limited to just
2 hardwired computer circuits, they're saying you have to tear the chip out.
3 Well first of all, that's not correct. And secondly, Rabenko describes it as it
4 could be in software, it could be in hardware. It has a very, very broad.

5 These are illustrative blocks, modules, circuits, algorithms maybe
6 implemented in any other number of ways. Maybe implemented as
7 hardware or software. Depends on a particular application and design
8 constraints of the overall system. Skilled artisans recognize the
9 interchangeability of software and hardware. Best to implement in a
10 particular application.

11 Rabenko alone or Rabenko in combination with either of our two
12 references teach upgradability. You know, we have a number of slides here.
13 One of which that talks about, like with respect to communication protocols.
14 They're being updated all the time. So if you have DOCSIS, DOCSIS went
15 from 3.0 to 3.1 to 4.0. And every time it's upgraded, if your hardware is
16 compatible you can upgrade your modem by simply downloading a software
17 update.

18 And so, our reference says, look, for communication protocols, now
19 whether that's ethernet or DOCSIS, you need to be able to update your
20 software and you should do it independently. So we think our combinations
21 are good. And so, you know, does the Panel have any other questions or
22 anything I can address?

23 JUDGE JURGOVAN: None from me.

24 MR. MEEKER: Okay, thank you, Your Honor.

25 JUDGE MOORE: Hang on. Thank you, Counsel.

26 (Pause.)

1 MR. LOWENSTEIN: Ready when Your Honors are.

2 JUDGE JURGOVAN: Ready.

3 MR. LOWENSTEIN: So I think, where do we start? I think this is
4 sort of the dog that didn't bark. So what did the DOCSIS do? I said a lot of
5 stuff, most of it was undisputed. So let's start here. Because this is what the
6 case is about. Slide 6.

7 What is the argument they presented in the petition. Does that pass
8 muster, on its face? Their argument. The entirety of their argument, like the
9 DOCSIS controller, the 775 patent, Rabenko's voice and data processor is
10 used for processing and transporting voice over packet-based networks.

11 They didn't say anything about SNMP, they didn't say anything about
12 the MTA call client or the proxy gateway. Oh, one of their paragraphs may
13 allude to the proxy gateway. That is not an argument, okay? That's
14 convenient, after the fact try to, you know, fill something in the blanks.
15 That's not the argument. This is the argument.

16 There is no showing, whatsoever, that Rabenko's VDP has anything
17 to do with DOCSIS. Now they say, a lot of their arguments, well we didn't
18 know it has to be these five. Well that's not true. What we have said, and
19 what we said all along, it's a DOCSIS controller. What might that mean?
20 Maybe it means something that controls or implements DOCSIS functions,
21 particularly because that's what the patent says. Okay?

22 That's something they had to figure out in the beginning. They had to
23 give you some explanation as to how this could be a DOCSIS controller.
24 And their only argument is something that has nothing to do with DOCSIS.

25 Now I said, their entire argument from the petition was rooted in a
26 logical fallacy. If that were not true you might have heard some argument

1 about that. We did not hear any argument about how their entire argument
2 from the petition was not rooted in a logical fallacy. As we said, it has to be
3 a DOCSIS controller. No one is showing that it was a DOCSIS controller.

4 So we see a complete and utter failure of proof. They did not dispute
5 that the patent clearly distinguishes between DOCSIS functions and VoIP
6 functions and packeting. So they said, there is some stuff relating to VoIP,
7 but the patent says that is not a DOCSIS controller.

8 We lost Judge Moore on the video, I don't know if he can still see us.
9 Oh there you are. Thank you.

10 So again, not just on its basis it failed, they're saying something called
11 a voice DSP is the DOCSIS controller. Well that's not what the patent
12 would suggest. And it's not even in the CME. So they got a big hill to
13 climb. They said something about VoIP. And that has nothing to do with
14 DOCSIS. That's a problem for me.

15 And again, is it in the CME, no, it's outside the game. We don't
16 anticipate that. We agree that if anyone just looked at our patent, would you
17 think the DOCSIS controller has a voice DSP, no. You wouldn't even think
18 that was in the CME. You would think that was forming a second circuit
19 with a CME when our patent says exactly the opposite.

20 So I think Slide 16, this is where we are. That's where their case
21 ends. But let's go a little bit deeper. Now, okay, let's go back to 18 for a
22 moment.

23 They kept saying, well we didn't know it had to be these five. Well I
24 don't know what they're talking about because what I've said all along, in
25 our papers, up to the present, is DOCSIS most controller or implement one

1 or more DOCSIS functions. That's it. And what else pray tell might it be
2 but that?

3 And again, this is another thing they don't dispute. I alluded to it
4 briefly. The patent clearly, Slide 25, distinguishes between DOCSIS and
5 VoIP function, DOCSIS and packet cabling. That's undisputed. So that's
6 quite clear. You can't just point to VoIP itself and say that's DOCSIS
7 because at the very least you didn't prove your case.

8 Now they said, we cited a paragraph, this is what they said. We cited
9 a paragraph that placed the proxy gateway and voice and data processor.
10 Well that's nice. But I think before Your Honors the question is not whether
11 you cited a paragraph that may have said something, the question is, did they
12 present the argument, and what did they actually say in their briefing?

13 Did they say the proxy gateway is implemented in the MIPS core in
14 their petition, no. They said, Slide 33, the proxy gateway would be
15 implemented by the MIPS core. And now they say the exact opposite, proxy
16 gateway can be implemented in the voice and data processor. This is an
17 entirely new argument.

18 Let's say we were incredibly gracious, and we ignored the federal
19 circuit and we said yes, well try a new argument, what then. You still have
20 the problem that we see on Slide 35. Which is the MTA call client. The
21 thing that they claim has something to do with DOCSIS is separate from the
22 DSP. It's not the same thing, it's separate.

23 So even if we allowed them to come up with a new argument, which
24 they can't, and even if we were generous and looked at the very evidence
25 that they point you to, you would conclude that even if you assumed the
26 MTA call client controls or implements some DOCSIS functions, which

1 they haven't shown, they say it has something to do with some DOCSIS
2 functions, it's not same as controlling or implementing, but let's say we
3 assume that, they still can't get over the fact that the MTA call client is not
4 in the DSP.

5 And their own expert, it's like in their business, what do you say, look
6 at Figure 5b. My colleague asked the question, where is the voice and data
7 processor depicted in 5b? Answer, "again, I have to sit down and do a lot
8 more analysis on that before I answer you, and as I said before when I was
9 mentioning about what I've told you up above, is 5b is the exemplary
10 embodiment for the embedded software in the application layer, et cetera, so
11 I did not go through the analysis of that, and my answer is the same. I need
12 a lot more time to be able to answer you."

13 So his entire argument, which is untimely, is that the voice and data
14 processor includes the MTA call client. He relies on Figure 5b and he hasn't
15 considered the fact that the MTA call client and the DSP are separate
16 elements. And he probably hasn't even considered the fact that the DSP is
17 the voice and data processor. So that's an untimely argument that is dead
18 wrong.

19 Now let's go to Paragraph --

20 JUDGE JURGOVAN: Counsel?

21 MR. LOWENSTEIN: Yes.

22 JUDGE JURGOVAN: I think Petitioner was pointing to Figure 10 in
23 saying that the TFT function was disclosed. I think basically petitioner's
24 argument was, if you include the proxy server with the VDP one of the
25 functions that's described for the proxy server is the TFT function and that
26 that is a DOCSIS function.

1 MR. LOWENSTEIN: So I --

2 JUDGE JURGOVAN: So you're pointing, my issue is, you're
3 pointing to different figures. You're pointing to Figure 5. You had it right
4 there. You just had the figure up.

5 MR. LOWENSTEIN: Yes, I want to, but I want to show you there
6 are others. So this will relay that. So look on the lefthand side of the check.
7 We're on Slide 36. This is from their expert.

8 Rabenko describes that the proxy gateway can be implemented in the
9 voice and data processor and can include MTA call client by 20. Where
10 does he cite? He cites Paragraph 97 in Rabenko, and he cites Figure 5b. So
11 that's his evidence.

12 And then we go to Figure 5b, what do we see, we see the VDP
13 separate from the MTA call client. Moreover, when he's asked where is the
14 VDP he doesn't know.

15 JUDGE JURGOVAN: Yes, you're saying this is what the expert is
16 saying, but in Petitioner's rebuttal he was pointing to a different figure than
17 you're pointing to.

18 MR. LOWENSTEIN: I mean, I'm looking at Figure 10. I apologize,
19 I have no recollection of them ever citing Figure 10. I didn't hear any
20 disagreement that this is in fact what they relied upon. And we can also look
21 at Paragraph 97, which they cite.

22 And so, if we look at Paragraph 97 of Rabenko, if you're able to pull
23 it up quickly that's great, if not that's okay. So if you zoom in it says, the
24 HAPI 522 facilitates the issuing of commands from the MIPS core to the
25 voice processor DSP. As well with descending events from the MIPS, I'm
26 sorry, the voice processor DSP to the MIPS core. Can you highlight that?

1 This does not suggest, you remember, HAPI is the think interpose
2 between the MTA call client and the DSP. So what this suggests is that the
3 MTA call client is in the MIPS score.

4 Now I'd like to move to the next paragraph. Sort of in the middle of
5 the paragraph, 98. It says, "the GCP logic controls the voice processor DSP
6 via the MTA call client." That does not suggest that the MTA call client is
7 in the VDP.

8 So again what we see is, they've got this late argument, comes out of
9 the blue. It's entirely reliant upon the MTA call client being in the VDP
10 because that's the thing that's interfacing with the SMP and the TFTP,
11 whatever it is. But they can't show, and they didn't show, that the MTA call
12 client is actually in the VDP. And what the very citations they point me to
13 suggests they're not. And their own expert doesn't even know where it is.

14 So I think it's too late and it fails on its own weight. So unless there
15 are other questions --

16 JUDGE LANEY: Can you say that sentence, that last one, one more
17 time? They can't actually show that the, the acronym is getting confused in
18 my head. Just that last sentence, will you walk me through that just one
19 more time?

20 MR. LOWENSTEIN: Yes. I want to go back to --

21 JUDGE LANEY: I'm on Paragraph 98.

22 MR. LOWENSTEIN: So I want to go back, if we look at this slide
23 again it may be clarify. So let's go to slide --

24 JUDGE LANEY: When you say this, just so you understand, I don't
25 see what you see.

1 MR. LOWENSTEIN: Sure. Sure. What I mean to say, Your Honor,
2 is if we can turn to Figure 5b again.

3 JUDGE LANEY: Okay.

4 MR. LOWENSTEIN: And so, what we just read was that the GCP
5 logic controls the voice processor DSP via the MTA call client. So the
6 narrative description suggests that the MTA call client is in the MIPS core
7 from the previous paragraph, and that the MTA call client controls the VDP.
8 Consistent, so they're not the same. They're not true.

9 Then we look at Figure 5b, which hopefully Your Honor has in front
10 of you?

11 JUDGE LANEY: I have it.

12 MR. LOWENSTEIN: We see the MTA call client separate and
13 apparent from the DSP. The thing that they're pointing to, the MTA
14 provisioning, that's where the SMP comes in. You see that on the left side.
15 That's interfacing with the MTA call client, it's not interfacing with the
16 VDP.

17 So even if you add generous assumption to them, which you
18 shouldn't, they still haven't shown that the VDP, the DSP, has anything to
19 do with the DOCSIS functions, much less controlling or implementing them.
20 Is that clear?

21 JUDGE LANEY: Yes, I understand.

22 MR. LOWENSTEIN: Okay. I will turn the baton to my colleague.
23 Thank you very much, Your Honors.

24 (Pause.)

25 MS. WOO: So on the independent software upgrades, I didn't hear
26 any dispute that Kim, it is not about a CME. That there is no discussion or

1 mention of replacing software, let alone upgrading software in Kim. Or any
2 discussion of what upgrade the CME software means.

3 And I didn't hear any dispute that Rabenko doesn't pay, say anything
4 about upgrading the software. Rather, Petitioner turns to the very
5 convenient boilerplate at the end of Rabenko which is very, very broad, and
6 very, very vague. And it says nothing about upgrading software. It doesn't
7 say anything about nonembedded software, and it says nothing about
8 independently upgrading software. There is simply no evidence in the
9 record at all of what the claims require, which is a CME independently, or
10 configure 2 enable upgrades to its software independent from upgrades to
11 the DME software.

12 Unless Your Honors have any further questions, I believe that is all
13 we have.

14 JUDGE MOORE: It looks like there are no further questions.

15 MS. WOO: Thank you very much.

16 JUDGE MOORE: Thank you very much. We thank both sides for
17 very well prepared, and very thorough presentations. It should be clear
18 enough to us as we move forward and issue an opinion. We'll issue in due
19 course. And subject to counsel remaining in the room for a few minutes to
20 see if the reporter has any questions, we're adjourned. Thank you very
21 much.

22 MR. FLEMING: Thank you, Your Honors.

23 MR. MEEKER: Thank you, Your Honors.

24 (Whereupon, the above-entitled matter went off the record at 2:16
25 p.m.)

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