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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MONOLITHIC POWER SYSTEMS, INC.,
Petitioner,

v.

GREENTHREAD, LLC,
Patent Owner.

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IPR2024-00468 (Patent 8,421,195 B2)
IPR2024-00469 (Patent 9,190,502 B2)
IPR2024-00470 (Patent 11,121,222 B2)
IPR2024-00550 (Patent 10,510,842 B2)
IPR2024-00551 (Patent 10,734,481 B2)
IPR2024-00552 (Patent 11,121,222 B2)
IPR2024-00553 (Patent 11,316,014 B2)

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Record of Oral Hearing
Held: September 10, 2025

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Before KRISTEN L. DROESCH, GRACE KARAFFA OBERMANN, JON B. TORNQUIST, and MONICA S. ULLAGADDI, *Administrative Patent Judges.*

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Wednesday, September 10, 2025, commencing at 10:00 a.m., via video teleconference.

1 P R O C E E D I N G S
2 - - - - -
3 JUDGE ULLAGADDI: Good morning. We are here today for
4 oral arguments in inter parties review matter numbers 2024-00468 involving
5 U.S. Patent Number 8,421,195; 2024-00469 involving U.S. Patent Number
6 9,190,502; 2024-00470 involving U.S. Patent Number 11,121,222; 2024-
7 00550 involving U.S. Patent Number 10,510,842; 2024-00551 involving
8 U.S. Patent Number 10,734,481; 2024-00552 involving U.S. Patent Number
9 11,121,222; 2024-00553 involving U.S. Patent Number 11,316,014.
10 In these cases, Monolithic Power Systems is the Petitioner, and
11 Greenthread is the Patent Owner. I am Judge Ullagaddi. Please note that
12 due to an unexpected unavailability, Judge Tornquist on the video will be
13 replacing Judge Praiss. A panel change order will be filed in P-TACTS in
14 due course, and there is a two-hour delay before it is visible to the public,
15 but rest assured, it is happening.
16 The panel for IPR2024-00468 includes Judges Ullagaddi,
17 Obermann and Tornquist. The panel for IPR2024-00469 includes Judges
18 Obermann, Ullagaddi and Tornquist. The panel for IPR2024-00470 includes
19 Judges Ullagaddi, Obermann and Droesch. The panel for IPR2024-00550
20 includes Judges Ullagaddi, Tornquist and Obermann. The panel for
21 IPR2024-00551 includes Judges Ullagaddi, Obermann and Droesch. The
22 panel for IPR2024-00552 includes Judges Ullagaddi, Obermann and
23 Droesch. And the panel for IPR2024-00553 includes Judges Droesch,
24 Ullagaddi and Obermann.
25 I would like to start by getting appearances of Counsel. Who do

1 we have on behalf of Petitioner?
2 MR. ESTHERHAY: This is John Esterhay of Perkins Coie for
3 Petitioner, Monolithic Power Systems.
4 JUDGE ULLAGADDI: Thank you, Counsel.
5 MR. WHITEHURST: And good morning. Alan Whitehurst from
6 McKool Smith for the Patent Owner, Greenthread.
7 JUDGE ULLAGADDI: Thank you, Mr. Whitehurst. The judges
8 have the parties' demonstratives. Please remember when referring to the
9 demonstratives to identify what slide number you're on so we can all follow
10 along and make the transcript clear. Also, I would like to remind everyone
11 that the recording of this proceeding either by audio or video is prohibited.
12 As set forth in our oral hearing order, each party will have 90 minutes to
13 argue. Petitioner, who bears the burden to show unpatentability of the
14 challenged claims by preponderance of the evidence, will begin by
15 presenting its case in chief. Patent Owner will then respond to Petitioner's
16 arguments.
17 Thereafter, Petitioner may use any time it has reserved for rebuttal
18 to respond to Patent Owner's argument. Petitioner's rebuttal may not be
19 more than half the allotted time and thereafter Patent Owner may use
20 whatever time it has reserved for surrebuttal to respond to Petitioner's
21 rebuttal.
22 We will then proceed to the nonconfidential portion of the hearing.
23 Mr. Esterhay, will you be discussing anything confidential?
24 MR. ESTHERHAY: Nothing confidential, Your Honor.
25 JUDGE ULLAGADDI: Thank you. Mr. Whitehurst, will you be
26 discussing anything confidential?

1 MR. WHITEHURST: I don't believe so. We plan to use the
2 redacted demonstratives this morning and when I get to any slides that
3 potentially contain confidential information, I'll be extra careful to not say
4 the confidential portions.
5 JUDGE ULLAGADDI: Okay.
6 MR. WHITEHURST: So at this time I believe it was
7 (INDISCERNIBLE).
8 JUDGE ULLAGADDI: Okay. We'll need to know ahead of time
9 if it does change.
10 MR. WHITEHURST: Thank you. We'll be sure to do that.
11 JUDGE ULLAGADDI: So before we begin, I'd like to start by
12 indicating that this is a combined hearing. The parties have elected to file
13 the same demonstratives in seven proceedings. So it is incumbent on the
14 parties to make clear if they wish to distinguish arguments among the cases.
15 For example, the parties may wish to indicate whether some arguments are
16 applicable to only a subset of cases.
17 With that, Mr. Esterhay, would you like to reserve any time for
18 rebuttal today?
19 MR. ESTHERHAY: Yes, Your Honor, I'll reserve 30 minutes.
20 JUDGE ULLAGADDI: Thirty minutes. So that leaves 60 minutes
21 for your main case. And when you are ready, you may begin.
22 MR. ESTHERHAY: Good morning, Your Honors. This is John
23 Esterhay for Monolithic Power Systems Incorporated. Turning to Slide 2 of
24 my demonstratives today, I'll be doing an overview of the pending IPR
25 petitions, an overview of the challenged patents, the instituted grounds.
26 Then I'll be addressing some of the arguments that Greenthread has made

1 including their argument that the petitions are time barred. I will explain
2 how the prior art discloses all the claim limitations and then address the
3 main arguments that Greenthread has remaining in these matters.
4 Turning to Slide 4, it's an overview of the seven IPR proceedings
5 and the grounds that have been instituted for each proceeding. There are
6 seven patents in the combined proceedings here. They are all semiconductor
7 patents in the same patent family, and they're all relatively similar. The
8 IPRs have been filed in two waves. The first set is for the '195 Patent, '502
9 Patent and Claim 44 of the '222 Patent. And the second set is for the '842
10 Patent, the '481 Patent, the '222 Patent remaining claims besides '444 and the
11 '014 Patent.
12 The grounds that have been instituted for Set 1 are an Onoda, a
13 single reference obviousness ground. Ground 2 is Onoda combining
14 Nishizawa and Ground 3 is a single reference ground of Kawagoe. It's the
15 same very similar grounds that have been instituted for Set 2. The order is a
16 little bit different. Kawagoe is the first ground. Onoda is in the reference
17 obviousness ground in the second and the Onoda combining Nishizawa is
18 third.
19 And at this point, I will also add that these demonstratives have
20 references to certain papers filed in the one -- mainly the IPR proceeding
21 number 468 for the '195 Patent. However, most of the arguments that I will
22 be presenting today are applicable to all Patents. And there is a citation table
23 at the end of the demonstratives that gives the cites in the other proceedings
24 should be (INDISCERNIBLE).
25 Also here I'd like to just give some context. This Petitioner set of
26 IPR proceedings is one of three sets of ongoing IPR proceedings. The other

1 two have been filed by petitioners that go by Cirrus Logic and onsemi.
2 Those remain pending and those petitioners have also separated out their
3 Patents into the same sort of sets one and two in the same way that the
4 Petitioner in this proceeding has. So I'll explain a little bit more why that's
5 relevant.
6 Particularly, the Patents that are at issue in these proceedings have
7 already been found invalid on several final written decisions. These final
8 written decisions were later vacated as a result of a director review ruling
9 regarding privity, which is at issue in this matter. However, the merits were
10 not overturned in those proceedings -- in that review order. And the final
11 written decisions in the other proceedings addresses many of the same
12 arguments that Greenthread has raised, that Patent Owner has raised in this
13 proceeding and finds them meritless. So it's Petitioner's position that many
14 of the arguments in these proceedings can be rejected for the same reasons
15 that they were rejected in the other final written decisions.
16 So just turning briefly to the Patent Claims, here we have the set
17 one exemplary Claims from each of the Patents. These are actually fairly
18 basic semiconductor Patents. The structure is not really all that complicated.
19 As you can see, all of the Patent Claims in set one involve a Cima
20 semiconductor device comprising a surface layer which is on top and a
21 substrate on the bottom and in between there is a drift lawyer. Now, in the
22 surface layer there is an active region which includes a source in the drain.
23 And then in the drift layer in between the surface layer and the substrate
24 there is a graded dopant concentration which creates a static directional
25 electric drift field which aids the movement of the carriers from the surface
26 down to the substrate.

1 So all of the Patents, even set one, set two, all of the Patent Claims
2 share this basic structure. The differences are relatively minor and with one
3 exception, the arguments that the parties are narrowly addressing do not
4 depend on any differences in Patent Claims. The one exception is that for
5 the '195 Patent and '502 Patent, there is a requirement that the carriers be
6 minority carriers and Patent Owner in its surreply for the first time raised an
7 argument that the minority carrier as a whole and not an electron. And
8 Petitioner has moved to strike that argument as newly raised in the surreply
9 as well as objected to the slides in Patent Owner's demonstratives addressing
10 that argument. But that is the only argument that depend on any differences
11 really between the Patent Claims.
12 Turning to Slide 7, this has the representative Claims for set two
13 from all four Patents in set two. Again, it's the very similar structure
14 surface, active region in the surface, source of drain, drift layer and then
15 substrate with a graded dopant concentration in the drift layer that aids the
16 movement of the carriers from the surface to the substrate.
17 JUDGE ULLAGADDI: Can I pause you just for one quick
18 second, Counsel?
19 MR. ESTHERHAY: Yes, you may.
20 JUDGE ULLAGADDI: I just wanted to let you know that I am
21 timing your arguments on my phone, but if it is your preference that I use
22 the timer up there, I can do that as well.
23 MR. ESTHERHAY: The phone is fine, Your Honor. Thank you.
24 JUDGE ULLAGADDI: Thank you. Continue.
25 MR. ESTHERHAY: So it's really the same basic structure in set
26 two. The main difference between set one and set two is that set one

1 specifically mentions the static unidirectional electric drift field where set
2 two does not use that language, although it's the same physical phenomenon.
3 And set two also requires more than one active region. But otherwise, the
4 Patents are mostly the same between set one -- the Patent Claims are mostly
5 the same between set one and set two, which is why the arguments are fairly
6 common between the two.
7 And here you can see side by side exemplary Claim for set one.
8 This is on Slide 8. Both Claim 1 of the '195 Patent and Claim 1 of the '842
9 Patent from set two. And I have highlighted here the -- where it's graded
10 concentration of dopants to aid the movement of minority carriers in the set
11 one Claim and the one graded dopant concentration to aid carrier movement
12 in the set two Claim. So at this point there's not really any dispute about the
13 other Claim limitations. What's at -- what remains at dispute here is whether
14 the graded concentration of dopants creates a static unidirectional drift field
15 and whether that drift field will aid in the movement of minority carriers
16 from the surface to the substrate. So I'll be focusing on the Claim limitations
17 that remain in dispute.
18 But before I get to that, I'd like to address Patent Owner's argument
19 that the petitions are time barred. Turning to Slide 10, a little bit of context
20 is necessary for this argument because it sort of had a procedurally
21 interesting history. As I mentioned before, there are three sets of pending
22 IPR petitions. This set here filed by the Petitioners here, Monolithic Power
23 Systems as well as a set filed by Petitioner named Cirrus Logic and a
24 Petitioner named onsemi. The set here for Monolithic Power Systems is
25 actually the furthest back, the furthest behind set of the three. So the other
26 two sets are procedurally more advanced than these proceedings.

1 When all three sets of proceedings were filed originally, the Patent
2 Owner moved for discovery on an issue that they had raised in their response
3 to the institution decision that the Petitioners in each set of proceedings was
4 time barred based on some kind of privity relationship with prior companies,
5 prior third parties that Petitioner had sued more than a year before the
6 proceedings were filed, particularly Intel. And Patent Owner had moved for
7 discovery on this issue pre-institution for each of the Petitioners
8 relationships with entities like Intel that have previously been sued. These
9 discovery motions were all rejected pre-institution and all three sets of
10 proceedings.
11 In the furthest along proceeding, the onsemi proceedings, the
12 Patent Owner appealed that decision to the director and the director denied
13 that review. So all three proceedings reinstituted, all three sets of
14 proceedings were instituted and all proceeded along accordingly. Once
15 again, these proceedings were the furthest behind but the proceedings for
16 onsemi and Cirrus Logic went through a merits hearing and reached a final
17 written decision where all Claims were found unpatentable. And that
18 decision was again appealed to the director by the Patent Owner and in the
19 onsemi proceedings and that we seen on the Cirrus Logic proceedings, the
20 director issued an order vacating those final written decisions and ordering
21 that certain discovery should take place as related to the privity issue. So
22 that happened in the other two sets of proceedings.
23 These proceedings were not far enough along to reach that point.
24 However, after that director review order in those other proceedings, the
25 board sua sponte in these proceedings asked Patent Owner if it would like to
26 pursue any discovery on Petitioner's relationship with entities like Intel that

1 have previously sued. Patent Owner declined to do that, explicitly declined
2 to do that. So the panel sua sponte ordered that certain discovery should
3 take place. So that's where we are on Slide 10 addressing the sua sponte
4 order for discovery.
5 And that order for discovery ordered Petitioner to produce any
6 sales agreements between Petitioner and Intel for the Intel accused products
7 and I will say the Intel accused products are the accused products in the prior
8 Intel litigation, not products that were accused in any litigation that Patent
9 Owner brought against Petitioner. It was the prior Intel litigation and
10 indemnification agreements between Petitioner and Intel for that same set of
11 products, a declaration that would establish there are no such documents. If
12 there are no such documents, a declaration that would answer whether
13 Petitioner was the supplier to Intel of any component, any product or
14 component that was accused in the Intel litigation and whether Petitioner
15 was in a position to control or actually controlled Intel's defense of that
16 litigation.
17 This was based on, again, the directors review order that had
18 occurred in the other proceedings, the onsemi and Cirrus Logic proceedings
19 where the director had ordered relatively similar discovery that was focused
20 on indemnity and sales agreements. Turning to Slide 11, Petitioner provided
21 that discovery in the form of a declaration. This declaration was provided
22 by Ms. Carly Summers who is the Senior Corporate Counsel at Petitioner.
23 She's responsible for negotiating contracts like sales contracts and contracts
24 that would include indemnity agreements. She did a comprehensive search
25 and determined there are no sales agreements at all between Petitioner and
26 Intel, never mind any that would cover the Intel accused products. There are

1 no indemnification agreements at all between Petitioner and Intel, never
2 mind any that would cover the Intel accused products. Petitioner is not a
3 supplier to Intel of any component or product used in the infringement in the
4 Intel litigation. And Petitioner first learned of the Intel litigation on the day
5 that Petitioner was sued which was May 26, 2023. That was after the Intel
6 litigation had already concluded, had already settled and all the proceedings
7 had been dismissed.
8 JUDGE ULLAGADDI: Counsel, can I clarify one point with you?
9 Were there no sales agreement and no -- sales agreements and no
10 indemnification agreements to Intel at all or to Intel concerning the Intel
11 accused products and components thereof?
12 MR. ESTHERHAY: At all.
13 JUDGE ULLAGADDI: At all.
14 MR. ESTHERHAY: There were none at all.
15 JUDGE ULLAGADDI: Thank you.
16 MR. ESTHERHAY: And so Ms. Summers determined that the
17 Petitioner first learned of the Intel litigation on the date Petitioner was sued.
18 And the way that Ms. Summers determined that is actually described in the
19 declaration. She had everyone in the legal department search for the word
20 "Greenthread" in their email and she had IT search for I believe there were
21 three former employees in the legal department. She had IT search their
22 emails as well and there were no hits whatsoever on Greenthread, the word
23 Greenthread until the day that Petitioner was sued. Which, again, was after
24 the Intel litigation had concluded.
25 As a result, Petitioner had no knowledge of involvement in Intel's
26 defense. Did not actually control Intel's defense nor could it. It had no

1 contractual ability to do so. And there simply is no basis for any kind of
2 privity argument here whatsoever. This is in line with -- I'm turning to Slide
3 12. This is in line with the Federal Circuit and PTABs rulings on privity
4 which is focused on control, indemnity agreements, sales agreements and
5 fairness. And that was what the director's review order as well as the
6 Board's discovered order focused on. And, of course, as I mentioned,
7 Petitioner simply did not know about the lawsuit, could not control it and
8 had no contractual ability to do so.
9 Fundamentally it would be unfair to hold Petitioner privity for a
10 lawsuit that it had no knowledge about, could not control and where it had
11 no agreements that it would allow to do so on any basis. Turning to Slide
12 13, Patent Owner's main argument here is that there is maybe some
13 hypothetical situation where Petitioner's components wind up incorporated
14 in the Intel accused products. As a threshold matter, that makes no sense.
15 The Intel accused products are microprocessors. Petitioner doesn't make
16 chips to go in chips. That's just nonsensical. It's possible hypothetically that
17 there is a Petitioner chip on a board with an Intel accused processor, but it's
18 not incorporated into the Intel accused processor.
19 And, furthermore, Patent Owner has had evidence, has had these
20 products identified for years since the Intel litigation, since they were
21 recused in the Intel litigation. Patent Owner has never put forth one shred of
22 evidence that there is a single Petitioner product inside an Intel accused
23 product. Not one shred of evidence. The point is, it was not Petitioner's
24 products that were implicated in the Intel lawsuit, it was Intel's
25 microprocessors. Petitioner is a fabless semiconductor company. It
26 contracts out fabrication, it designs the chips but it doesn't make them itself.

1 So it's just -- it's not -- there's no practical ability for Petitioner to provide
2 some kind of component or supply component or product that would go into
3 an Intel microprocessor.
4 So the point is that even if somehow there was some Petitioner
5 product that wound up on a board with the accused Intel microprocessors, it
6 would not matter for privity's purposes because there are, again, no
7 agreements, no sales agreements, no indemnity agreements, no ability to
8 control the litigation and no knowledge of the litigation when it was actually
9 ongoing. So it's pretty clear under the Federal Circuit case law and the
10 PTAB rulings on this issue that there can't possibly be a finding of privity in
11 these circumstances. If there are no further questions on that issue, I'll move
12 on to the merits.
13 Turning to Slide 15, I'll start with the single reference obviousness
14 ground Onoda. That's Ground 1 in set one and Ground 2 in set two. And
15 Onoda, as you can see, the object listed on the screen there, it's very similar
16 object to the Patents that are challenged in the proceedings at issue here
17 today.
18 I'll quickly pass through the limitations that aren't in dispute.
19 Onoda has a surface layer as highlighted in blue, and this is on Slide 16.
20 Surface layer is highlighted in blue. A single drift layer noted in yellow and
21 a substrate noted in gray. It has the graded dopant profile shown there on
22 the right. The line is sloping downward in the graphic on the right which is
23 Figure 11 of Onoda. And these limitations aren't in dispute.
24 Turning to Slide 17, you can see the disclosure in Onoda in the
25 active region including the source and drain. And source and drain are in
26 red there. And it disclosed -- turning to Slide 18, Onoda discloses the

1 relevant surfaces of the surface layer from which the carriers are moved
2 downward which the drift layer is the movement downward from the bottom
3 surface of the surface layer.
4 Turning to Slide 19, again, Onoda has the disclosure of the graded
5 concentration of dopants. That's the slope, the line that's sloping downward
6 in the Figure on the left. And then on Slide 20, we get to the limitations that
7 actually remain in dispute which is a first static unidirectional electric drift
8 field to aid in the movement of minority carriers from said surface layer to
9 said substrate. And I'll get to Patent Owner's arguments on that in a little bit.
10 But the point is, again, as I mentioned before, with all these Patents, your
11 -- the graded concentration of the dopants is aiding the carriers from the top,
12 from the surface down through the drift layer where there is the electric drift
13 field to the substrate on the bottom.
14 So these limitations remain in dispute. However, the arguments
15 that Patent Owner has presented in these proceedings as well as the other
16 proceedings is 180 degrees at odds with what they told the Patent office
17 during prosecution of these Patents. It's pretty remarkable. They said the
18 exact opposite thing in prosecuting these Patents that they're trying to argue
19 here today. And specifically there was a rejection in the prosecution of the
20 first Patent in the family, the '195 Patent where the examiner said, as you can
21 see in the highlighting there, the unit directional drift field does not
22 reasonably provide enablement for drawing all minority carriers from said
23 substrate to said surface layer.
24 Patent Owner's response is in the block below where Patent Owner
25 says this argument appears to not consider that the graded dopant
26 concentration itself creates a built in electrical field that forces the

1 movement of carriers into a particular direction. And where the direction of
2 the electrical field and the resulting direction of movement depends solely
3 on the slope of the graded concentration and dopant.
4 So the point here is the main argument that Patent Owner has
5 presented and will continue to present today is that there's not enough
6 evidence somehow that there is an aiding of the movement simply from the
7 graded dopant concentration itself. But during prosecution, Patent Owner
8 told the Patent office the exact opposite. It's complete 180 degree turn on
9 what they're arguing. So it's pretty remarkable that it's a situation where it's
10 such a spot on statement that clearly contradicts their argument here.
11 In addition to making this statement, Patent Owner introduced
12 some references during the prosecution that it said made it apparent that a
13 graded dopant concentration alone would cause the creation of this electric
14 field. One of these references is Kamins, and this is on Slide 22, where the
15 slope of the graded concentration creates, necessarily creates an electric drift
16 field depending on which direction the slope goes as shown in the graphic on
17 the right. And that reference also has text noting that the carriers created
18 below the maximum dopant concentration are accelerated into the substrate
19 based on the creation of that field. This again was a reference that Patent
20 Owner itself gave to the Patent office during prosecution.
21 Turning to Slide 23 is a second such reference. This is the
22 Jastrzebski. I'm butchering that pronunciation reference. And, again, the
23 Figures on the right show a graded dopant concentration necessarily
24 generating an electric field that caused carriers to move downward. And the
25 text of that reference also supports Petitioner's argument here. Not only did
26 Patent Owner make directly contradictory statements in prosecution, it did

1 so in Claim construction proceedings in Texas in the Intel matter as well.
2 This is a statement from Patent Owner's Claim construction
3 briefing in the Intel litigation. It says when the dopant concentration is
4 greater than a particular direction, other charge carriers will move in the
5 gradient direction or opposite direction depending on the charge, carries,
6 polarity. So, again, it's saying that the graded dopant concentration alone is
7 what causes the carriers to move. And this is on Slide 24.
8 Turning to Slide 25, the Patent Owner went on to say in the same
9 briefing that a POSITA would have readily recognized that when a static
10 unidirectional electric drift field is present, this is the movement of the
11 minority carriers. It's -- if it isn't present, then it doesn't. So it's saying if the
12 field is there, movement is aided. If not, no aid. It's completely 180 to what
13 Patent Owners are arguing here today.
14 Patent Owner also made a very helpful analogy in its Claim
15 instruction briefing in the Intel matter. It compared the graded dopant
16 concentration to a wheelchair ramp to aid movement of a wheelchair from a
17 first level to ground level and specifically said there is no requirement that
18 the Claim specify the length of the slope -- the length or slope of the ramp as
19 long as it allows the wheelchair user to get to ground level. Again, the same
20 is true here. When the Claims specify what is providing the movement and
21 the direction of the movement, nothing more is required.
22 So, again, this is Patent Owner's own words in the Intel litigation
23 saying it doesn't matter what the slope is, it doesn't matter how long the
24 ramp is, as long as there is aiding of the movement in that direction then the
25 Claim is satisfied. And we've drawn a little wheelchair icon on Slide 26
26 onto the Onoda (INDISCERNIBLE) slope to demonstrate how that is like

1 the wheelchair ramp analogy that Patent Owner has created.
2 JUDGE ULLAGADDI: Counsel, not to change your course or
3 anything but at some point I would like to hear about what Petitioner
4 identifies as the minority carrier.
5 MR. ESTHERHAY: Okay. Would you like to hear that now?
6 JUDGE ULLAGADDI: No, whenever it comes up.
7 MR. ESTHERHAY: So lastly, this is the last limitation of the
8 '195 Patent on Slide 27. And this is not in dispute anymore for any reason
9 other than what I've just described for the prior limitation. So altogether you
10 can clearly see that Onoda teaches all the implementations of the '195
11 Patent. On Slide 28 and Slide 29, it's the same thing for the Claim set in set
12 two, the exemplary Claim from the '042 Patent is presented here. And the
13 Onoda reference teaches all the limitations for (INDISCERNIBLE).
14 There's also a ground presented for obviousness over Onoda in
15 view of Nishizawa. Onoda is used for most of the limitations under this
16 ground. The main purpose of Nishizawa is Nishizawa explicitly mentions
17 the electric drift field. Onoda says that there is a graded concentration of
18 dopants that causes the carriers to move down and Nishizawa explicitly
19 mentions electric drift field. Although, of course, Patent Owner said that the
20 graded dopant concentration creates a built in electric drift field.
21 In Nishizawa, the closures there are geared towards moving the
22 carriers from -- and this is on Slide 32, from the top of the P plus region
23 down towards the bottom of the substrate labeled with 11. And the reason it
24 does that is the progressively lowered concentration as stated in the text
25 there. I'll briefly touch on the single reference ground of Kawagoe. This is
26 Ground 3 of set one and Ground 1 of set two. It's very similar to Onoda.

1 Again, you have on Slide 35 it shows this. You have the surface
2 layer with the source and drain which constitutes the active region. You
3 have the single drift layer in the middle and the substrate on the bottom.
4 And you have the graded concentration of dopants, the sloping line on Slide
5 37 the sloping line that goes downward just like Onoda. So, again, on Slide
6 40, Kawagoe teaches all of the limitations of the challenged Claim.
7 Turning to Slide 43, a key point in this proceeding is that the
8 Claims here are directed to a device and that puts this under the
9 ParkerVision case. The apparatus Claims cover what a device is, not what a
10 device does. So the fact that the references have the drift layer with the
11 graded concentration of dopants, there doesn't need to be any proof that the
12 carriers actually move. This is not a method Claim where there need to be
13 some kind of proof of movement which is what Patent Owner has effectively
14 argued.
15 And in Patent Owner's surreply, Patent Owner brought up a new
16 case, INBT, which also cites another case Ball Aerosol. These cases
17 actually support Petitioner's position. They -- the INBT case refers to
18 configuration-type Claims. And what INBT and Ball Aerosol stand for is
19 that if -- and they were both involving infringement (INDISCERNIBLE). If
20 an accused product is not capable of infringement in its original
21 configuration and requires some manipulation, then that might not infringe
22 but that has nothing to do with the situation here.
23 In INBT it was a base station that needed to be changed to a
24 different mode of operation in order to be capable of infringing. In Ball
25 Aerosol, it was a candle placed on a candle holder that needed to be changed
26 to a different physical orientation to be capable of infringing. Both of those

1 cases involve products that require some sort of manipulation from the
2 default mode to be capable of infringing. That's not what's happening here.
3 The device always had that graded slope and graded dopant concentration.
4 So there's no change or manipulation that's necessary. So these
5 cases actually support Petitioner's position because they do say that when by
6 default a device is capable of infringing, then that meets the Claim
7 limitation. And, of course, when according to Patent Owner's own words,
8 when there's a graded dopant concentration, there's necessarily a built in
9 electric drift field that causes the carriers to move downward.
10 On Slide 45, it just shows how the slope of the graded dopant
11 concentration causes that. Slide 47, I briefly touched on this before. There's
12 no specific requirement for a magnitude of the slope. Many of Patent
13 Owner's arguments have centered around this idea that there needs to be
14 some showing of sufficiency of the slope or sufficiency of the force that
15 overcomes other forces or is a strong enough gradient at the surface. There's
16 no requirement whatsoever in the Claims. And, of course, that in line with
17 what Patent Owner itself argued in the Intel proceeding.
18 As I mentioned before, Patent Owner said in the Claim
19 construction briefing when the slope -- when the Claims specify what is
20 providing the movement and the direction of the movement, nothing more is
21 required. So there's no requirement in the Claims of the prior references to
22 show that there's some kind of sufficiency or adequacy of the strength of the
23 effect.
24 And turning to Slide 49, that's what we have pictured again using
25 Patent Owner's own wheelchair analogy, wheelchair ramp analogy that it
26 introduced in the Intel litigation. The sloped downward ramps of both

1 Onoda and Kawagoe have that graded downward slope that aids the
2 movement from the top to the bottom just like the wheelchair ramp,
3 regardless of how long or how sloped the ramp is.
4 Turning to Slide 51 -- oh, and I would just like to add that specific
5 argument that there needs to be some sufficient slope or adequate size of the
6 effect, side of the field, strength of the field, that was specifically rejected in
7 the previous (INDISCERNIBLE). Another argument that was specifically
8 rejected in the previous final written decisions is Patent Owner's argument
9 that Kawagoe does not (INDISCERNIBLE) limitations because it prevents
10 the carriers from moving up. This argument really defies logic because
11 there's only three things that carriers can do. They can move up, they can be
12 locked in place or they can be pushed downward.
13 So when Kawagoe says that the carriers are prevented from
14 moving upward, it's teaching that they are in fact pushed downward because
15 locking them in place would require all forces to exactly cancel each other
16 out. And this is just completely impractical. Again, this argument was also
17 rejected in a previous final written decision.
18 Another argument that was previously rejected is Patent Owners
19 -- and this is Slide 55, Patent Owner's argument that there needs to be some
20 kind of accounting for all possible forces that would act on the carriers and
21 that there needs to be some kind of calculation that the downward movement
22 caused by the electric drift field would overcome these other forces in some
23 manner. Again, this is -- this goes into their argument that movement
24 actually needs to be proven which is -- it doesn't. That would be a method
25 claim, this is an apparatus claim.
26 But in any event, the forces or so-called forces that Patent Owner

1 has identified, most of these just impede movement in all directions. So
2 while they may make the magnitude of the effect smaller, they do not
3 reverse the direction of movement. That would be true of resistance which
4 impedes movement to create a resistance. It would be true of temperature
5 which impedes movement (INDISCERNIBLE) temperature. It would be
6 true of imperfections. Patent Owner also brought up the capacitance at the
7 PN junction but that's a force that exists in every PN junction including the
8 claims, those disclosed in the claims of the challenge Patents.
9 So that was not a force that was discussed in the challenge Patents.
10 It's not something that the challenge Patents say needs to be overcome by the
11 electric drift field. And it also only applies when there's a voltage applied
12 for the electrons to flow from the source to the drain. And as we'll get to a
13 little bit more, the Claims of the challenge Patents are agnostic as to whether
14 the device is on or off. So it simply is not something that the claims say
15 needs to be accounted for.
16 Again, the challenges Patents -- and this is Slide 57, the challenge
17 patents themselves, of course, necessarily have PN junction capacitance
18 when the device is turned on. But that is not addressed as something that
19 needs to be measured against the electric drift field and what the Patent calls
20 the built in, you know, directional electric drift field.
21 Other evidence submitted by Patent Owner also supports that
22 there's no need to compare such a force to the drift field. This is the Patent
23 Number -- and this is on Slide 59, Patent Number 8,704,292 which notes
24 that such a graded dopant profile in combination with the capacity of
25 depletion effect of the gate and insulator regions may provide a substantially
26 uniform electric field within the drift region is saying yes, when the device is

1 working as it's supposed to, the drift field still exists that cause the
2 downward movement. And that's what the challenge Patent says.
3 Another point, and this is Slide 61, another point disputing Patent
4 Owner's argument that there needs to be some sufficiency or magnitude to
5 the slope of the gradient, the challenge Patents themselves give this range of
6 a slope, a difference in concentration that would work from 10 to 100 X as
7 examples of what would work. Although, of course, you know, it was
8 Patent Owner itself that said the slope doesn't matter. But even the asserted
9 claims to the extent they do disclose any kind of magnitude that's 10 to 100
10 X. And as you can see on Slide 62, this is in line with the prior art that's
11 been presented. Onoda has a decreasing concentration of about 10 X.
12 Nishizawa has, discloses up to 1000 X change in concentration. And
13 Kawagoe discloses what amounts to be about a 46 X change in
14 concentration right in the middle of that 10 to 100 X that the challenge
15 Patents mention in the specification.
16 And, of course, the main point. Patent Owner's arguments here are
17 completely inconsistent with what is said during prosecution after the
18 examiner rejected these Patents because the examiner stated it does not
19 appear that simply the presence of a unidirectional drift field in itself can
20 achieve dragging all minority carriers from set surface layer to set substrate.
21 On Slide 65, I mentioned these -- some of these statements above
22 and these are the statements that Patent Owner used to get the Patent issued
23 over that rejection. The Patent Owner says a unidirectional drift field
24 -- electric -- unidirectional drift electric field necessarily fits all the present
25 minority carriers in the same way. And at the bottom we see that the Patent
26 Owner told the Patent office depending on the particular slope of the graded

1 concentration dopant, all minority carriers are either sloped down in the
2 surface layer to the substrate or up from the surface -- substrate to the
3 surface layer.
4 Slide 67, I mentioned this before, Patent Owner's argument
5 remains inconsistent with its positions taken in the Intel litigation during
6 claim construction where it said electric drift fields are a well-known
7 phenomenon that cause carriers to move and a POSITA would have readily
8 recognized that when a static unidirectional electric drift field is present that
9 it aids the movement of minority carriers. If it isn't present, then it doesn't.
10 It's a binary thing. If it's there, movement is there. If not, no.
11 Slide 68, Patent Owner's arguments with regard to the actual
12 constructions support Petitioner's position here. In the arguments that Patent
13 Owner made in the West Texas proceeding, again, this was the -- I believe
14 this was actually the Cirrus Logic case. Patent Owner said that all that
15 matters is that the concentration has a slope, it doesn't matter what the slope
16 is. And they use this to argue that the Claim was definite because the
17 defendant in that proceeding had made an argument that it's indefinite
18 because we don't know what the slope is while the Patent Owner said, okay,
19 as long as there is a slope, that's all you need.
20 And, of course, the West Texas Court, on Slide 69, the West Texas
21 Court used that argument to find the Claim definite. Patent Owner also
22 mischaracterizes an East Texas Claim construction order which found -- the
23 Defendants in that case had argued that to meet the Claim limitations, the
24 slope had to either be only increasing or only decreasing. You know, only
25 going in one direction. And the Court said no, that's not required. It just
26 needs to be a change, basically just needs to be changing in concentration. It

1 doesn't need to be only increasing or decreasing. So it doesn't support -- that
2 claim construction order does not support Patent Owner's position.
3 All right. So now I'll get to the argument that Your Honor asked
4 me to address. This was an argument that was raised for the first time in
5 Patent Owner's surreply. So we've moved to strike the argument and also
6 objected to the slides on this argument. But the point is, the electron has
7 been consistently defined as the minority carrier in the petition and all the
8 filings in all the prior art briefing. And up until the surreply, Patent Owner
9 agreed. Patent Owner changed its position in the surreply to try and argue
10 that the minority carrier is a whole.
11 And so what's going on here is that both Onoda and Kawagoe, the
12 relevant disclosures in Kawagoe be -- the material is p-type doped. And so
13 it's a fundamental definition of semiconductor physics that a p-type dope
14 material and minority carrier is an electron. So in both Kawagoe and Onoda,
15 that's the case. And that's the case from the surface layer on down to the
16 substrate as you can see on Slide 72 on the right.
17 JUDGE ULLAGADDI: So if you had an end type dopant
18 concentration, would the majority carrier then be -- sorry, a minority carrier
19 then be a whole?
20 MR. ESTHERHAY: Yes.
21 JUDGE ULLAGADDI: Okay. Thank you.
22 MR. ESTHERHAY: It's just definitional. I mean, that's what the
23 meaning of p-type is that the p stands for positive. So the majority is
24 positive or whole, so minority is electrons and vice versa for n-type. And
25 you can see on Slide 72, both Onoda and Kawagoe, the relevant disclosures
26 involve p-type. So the minority carrier is in fact an electron. What Patent

1 Owner has argued, if I'm able to even understand it, is that because in a
2 -- well, we'll just take Figure 16 with Kawagoe. The active region, so the
3 source and the drain in Kawagoe are n-dope, and that's how -- n-type dope.
4 And that's how the transistors are created is that it's what's called an NPN
5 transistor. So there's N as the source, there's p-type dope material in the
6 center and then n is the drain. And it's that difference which causes the
7 device to work at all.
8 And so within the p-type doped material, including between the
9 source and the drain, the minority carrier is always the electron. And it
10 doesn't appear to be a dispute that this is the case. Even Patent Owner
11 agrees that this is the case when the device is off because Patent Owner has
12 to admit that. Again, it's definitional that the minority carrier and p-type
13 dope is an electron. They appear to be arguing that when a device is turned
14 on and when electrons are flowing across the source to the drain, that the
15 fact there are electrons in the channel, which again, the channel is p-type
16 doped, the fact that there are electrons in the channel flowing would cause
17 the definition of the minority carrier to flip. And that's just nonsensical.
18 That's not -- nothing -- there's no literature or any kind of support
19 for the definition of the minority carrier flip flopping depending on whether
20 the device is on or off. And that can be seen from the claims of the Patents
21 themselves which refer to a static unidirectional electric drift field. As in,
22 the field is unchanging. It's created by the graded concentration of dopants.
23 So if Patent Owner's argument was correct, then there would have to be a
24 flip flop of the field, the direction of the field depending on whether the
25 device was on or off. And that's just nonsensical. The graded concentration
26 creates the same static field no matter whether the device is on or off. So the

1 minority carrier has to always, always be the electron.
2 Otherwise, they're -- Patent Owner is creating its own new
3 interpretation of definition that would require the definition of the minority
4 carrier to change depending on whether the device is on or off. So it's really
5 not a sensible interpretation that they've created. But, yes, the minority
6 carrier is always the electron. At least for the disclosures that are identified
7 in the petition. Obviously if it was n-type of the disclosures, then it would
8 be different. But the disclosures identified in the petition is p-type. If there
9 is no other questions on that, I'll move on to the next argument.
10 JUDGE ULLAGADDI: Any questions? Okay.
11 MR. ESTHERHAY: So the other argument that Patent Owner has
12 newly raised in its surreply that we've also moved to strike and rejected the
13 slides on this issue is that Onoda, and this is specific to Onoda only, that
14 there's this little flat region of the slope at the beginning of the downward
15 ramp in Onoda and that the surface layer should be arbitrarily limited to
16 what -- or what Patent Owner has eyeballed, on Slide 73, eyeballed as the
17 flat -- what it thinks is a flat region of the slope at the beginning of the
18 downward gradient.
19 First of all, it's not apparent that there even is a flat portion of that
20 slope. I mean, it's not obvious. But in any event, there's no limitation in the
21 claims that the surface layer should be arbitrarily limited to whatever
22 minimal width that Patent Owners think it should be to get that flat area. It's
23 just, there's nothing required. And, in fact, and you'll see this in Patent
24 Owner's slides, Patent Owner's expert himself said that he would expect the
25 surface layer to extend to .5 of .6 microns which is clearly, by the time you
26 hit .5 or .6 microns on this Figure on Slide 73 for Onoda, the slope has

1 already started to go downward.
2 So the -- this also, the whole argument is sort of nonsensical
3 because there is one material where there is a varying level of slope in the
4 grade as you go from top to bottom. Again, that's what the East Texas
5 Claim instruction order was talking about, that it doesn't need to be some
6 kind of uniform slope going down as long as there, it is a graded slope in the
7 material. So even if there were some flat portion or a little bit, that would
8 not change the fact that the static unidirectional electric drift field is created
9 that cause the carriers to move downward throughout the material. But
10 under even Patent Owner's own assessment, their expert said that the surface
11 layer should extend to .5 or .6 microns. And on that diagram for Onoda on
12 Slide 73, you can see that clearly the slope has already started to descend
13 there.
14 JUDGE ULLAGADDI: Point five or .6, not five or six, correct?
15 MR. ESTHERHAY: Point five or .6.
16 JUDGE ULLAGADDI: Okay.
17 MR. ESTHERHAY: So if you'll see in the diagram on Slide 73,
18 and the Patent Owner will show an image that where they've arbitrarily
19 limited this to -- they limit the surface layer to, it's about .2 or .3 microns to
20 try and argue that it's a flat slope in that initial portion. It doesn't seem to me
21 that it is. And maybe they're seeing something that my eyes can't see. But
22 in any event, their expert said it should be .5 or .6 which is clearly
23 downward sloping at that point. There's no question about that.
24 Just real briefly, Patent Owner has identified its RPX license, a
25 supposed evidence of commercial success but the Federal Circuit and PTAB
26 have both been clear that it needs to be nexus and that mitigated generated

1 licenses are typically disregarded. And if you turn to Slide 76, the PTAB
2 ruling that Patent Owner relies on primarily was actually vacated, the Fox
3 Factory ruling specifically on the nexus issue. And on remand, the PTAB
4 found that there was a weak nexus, if any. So it found all the challenge
5 claims unpatentable.
6 And the same is true here. And, again, this is an argument that was
7 explicitly argued, rejected in the final written decisions that have occurred
8 thus far. But the RPX license is in fact a litigation motivated license. The
9 purpose of RPX is to spread the cost and reducing patent litigation across a
10 large network of participating companies. It's a cost-effective reduction --
11 JUDGE TORNQUIST: Counsel, this is Judge Tornquist. I just
12 have a quick question.
13 MR. ESTHERHAY: Sure.
14 JUDGE TORNQUIST: Patent Owner has put forth a number of
15 further licensing revenue. Is there any evidence that that number is
16 consistent with litigation costs or expected litigation costs?
17 MR. ESTHERHAY: I would think so because it seems to me that
18 -- and I believe the number they put forth is something like $5 million per
19 settling party and that's certainly consistent with the cost to litigate a matter
20 in district court.
21 JUDGE TORNQUIST: Okay. If Patent Owner was to make out
22 its case of nexus, what do you believe that they needed to do in this case?
23 MR. ESTHERHAY: Well, they would need to show that the
24 benefits of the license was tied to the technology at issue in the claims. And
25 so there's been no attempt to do that whatsoever.
26 JUDGE TORNQUIST: Okay. I have one last question. This is

1 bringing you back to the majority carrier piece. There is a statement in the
2 Patent that column one line about 43 that in MOS devices, the majority
3 carrier devices -- the majority carrier -- I'll just read it out loud. "In contrast
4 to BJTs, MOS devices are majority carrier devices for conduction." What
5 does that mean to you?
6 MR. ESTHERHAY: MOS devices are majority carrier devices or
7 conduction -- well, first of all, that's the BJT device. It's not a CMOS
8 device. So I'm not sure how relevant that is to the claims that are actually
9 made in the Patents. But, again, the point is --
10 JUDGE ULLAGADDI: You have about four minutes left,
11 Counsel.
12 MR. ESTHERHAY: Thank you, Your Honor. The point is that
13 the minority carrier is defined by how the materials doped. That is how it is
14 always defined. It's definitional. So there isn't -- there cannot be a change
15 by the fact that a device is turned on and electrons are flowing across the
16 channel, and all of a sudden the electron switches to the definition of
17 minority carrier. Because that would cause a situation where there's a
18 different definition in the channel versus the rest of the material, and only
19 for the time that the device is turned on. So in other words, for this brief
20 time in this small region, the definition is flipped. Whereas everywhere else
21 the minority carrier is still the electron. And when the device is off, the
22 minority carrier is still the electron. And that's just not how the case -- that's
23 just not the case for, there's no support that any person of skill would look at
24 it that way, because the minority carrier is so defined by the way the
25 materials state.
26 JUDGE TORNQUIST: Okay.

1 MR. ESTHERHAY: And just to end real quickly, this is slide 79.
2 Petitioner's expert Dr. Kimble is more reliable than cotton owner's expert
3 Dr. Glew Petitioner. This Petitioner's expert Dr. Campbell has only
4 provided expert opinion in one other litigation and his line of expertise is
5 exactly this area. So he's not -- he's not a hired mercenary who goes around
6 providing expert opinion on all these issues all the time. It's this really is his
7 field. And he's not out to present some kind of litigation generated position.
8 On the other hand, Dr. Glew has worked in countless litigations
9 and many, many, many, many IPR proceedings for Greenthread. And he
10 speaks he repeatedly took positions that contradict the prior arts plain
11 wording. And this is in line with Patent Owner itself taking positions,
12 contradicting its statements and prosecution and during claim construction
13 and other matters. And he filibustered. He was evasive. He refused to
14 answer simple questions. He simply was not credible based on his approach
15 to the litigation. And with that, I will reserve the rest of my time unless
16 Your honors have any further questions.
17 JUDGE ULLAGADDI: No questions here. You're at about 59
18 minutes, so, you'll have 31 remaining. Patent Owners counsel, would you
19 like to reserve any time for surrebuttal?
20 MR. WHITEHURST: Yes, Your Honor I'll do the same as
21 Petitioner did. And reserve 30 minutes.
22 MR. WHITEHURST: And would you like the timer up there, or
23 is my phone okay?
24 MR. WHITEHURST: Your phone's fine. It was easier for you.
25 JUDGE ULLAGADDI: Okay. Okay. When you are ready, you
26 may begin.

1 MR. WHITEHURST: We're going to need just a second to plug
2 in a laptop. And may it please Your Honors. I'm going to start with the
3 privity issue, because it's not as simple as Monolithic's Council made it
4 sound this morning. A s we explained during the May 8th conference call,
5 none are sufficiently raised the issue, and Petitioner never met its burden that
6 it's not time barred. And because of that, the panel should terminate all
7 seven proceedings like the panel did in Worlds after the removed from the
8 Federal Circuit.
9 But as you know, the panel issued a discovery order sua sponte and
10 effectively gave Monolithic another chance to meet its burden. And I'm
11 going to show why they still came up short. As I will explain, Monolithic
12 did not follow the panel's discovery order. And to do that, I want to show
13 you what is Paper 71 from the '468 proceeding. And there will be a similar
14 discovery order in each of the proceedings. I'm going to use 71, which is the
15 redacted version of the discovery order. And if we go to Page 6.
16 JUDGE ULLAGADDI: For the record, Paper 69 is the sealed
17 version.
18 MR. WHITEHURST: That's correct, Your Honor. Paper 69 was
19 the confidential discovery order and paper 71 is the redacted. And if we go
20 to the bottom of Page 6, you'll see a Section A, and then if we go to the next
21 page, maybe we can enlarge it a little bit more. You'll see a Section B, and I
22 want to direct the Panel's attention to Section B, because if you look at the
23 first part of Section B, you'll see that it refers back to Section A. But then
24 Section B has three additional subparts. And you can see if we look at
25 Section B for each of these subparts, Monolithic was supposed to either
26 produce documents or a declaration for the subpart.

1 Now I want to talk about specifically subpart two. And you can
2 see when you look at subpart two. Monolithic was supposed to present
3 actual evidence. And I'm quoting here whether Petitioner was the supplier
4 of any product or component of a product accused of infringement in the
5 Intel litigation. Well, Monolithic never did this. Instead, Monolithic crafted
6 a carefully worded declaration that looks similar, but it's very different from
7 what the panel told it to do. And in order to see what I'm talking about, I
8 want to put up next to the discovery order of Ms. Summer's declaration.
9 And hopefully you can see on the left we have the language, from subpart
10 two of the discovery order.
11 And on the right hand side, we have Ms. Summer's declaration in,
12 more specifically, paragraph eight from her declaration. Now, you can see
13 that Monolithic did two things. First, Monolithic hid behind its definition of
14 Intel accused products. And Ms. Summers just searched for Intel's
15 processors. She never investigated any of the chips that are in those
16 processors or processor systems that Intel sells, and that were accused in the
17 Intel litigation and then next, Monolithic rewrote the discovery order to
18 insert the words to Intel.
19 And if you go back and look at the transcript from this morning,
20 you'll see that Monolithic council every time they answered questions from
21 the bench or addressed this issue, they were always very careful to use the
22 words "to Intel". And this is important because when Ms. Summers
23 searched for documents, she only searched for what she considered to be
24 direct sales to Intel, and she never investigated any what you may refer to as
25 indirect sales Intel. When you look at the discovery order, Monolithic was
26 supposed to produce documents about any chips that are in Intel's processors

1 or processor systems, whether they were supplied directly or indirectly to
2 Intel.
3 JUDGE ULLAGADDI: Counsel, I have a question about that. If
4 indeed there was a chip that was indirectly supplied to Intel, what case law
5 do we have that would show that that would be sufficient to establish a
6 privity relationship?
7 MR. WHITEHURST: Well, first of all, there is no case that says
8 an indirect sale cannot be privity. If there was, I'm sure we would have seen
9 it in the briefs. But the issue that came up during Ms. Summers deposition
10 was that she never searched for any of Monolithic's affiliates, subsidiaries,
11 and as you're going to see in my presentation this morning, when you go
12 back and look at Monolithic's surreply or I'm sorry, preliminary reply, when
13 you look at Monolithic's preliminary reply -- and this is their words, not
14 mine. They actually said we sell our chips to Intel and they mention another
15 company that's relevant but on the confidential record. So when you look at
16 their own briefs in this proceeding, you'll see that they said themselves that
17 they sell chips to Intel. So it's very surprising.
18 JUDGE ULLAGADDI: Can you point that out for us? Where?
19 MR. WHITEHURST: Absolutely will. I can show you Slide 8,
20 and I certainly hope that you'll ask Monolithic's Counsel about this during
21 their rebuttal that you'll see that if you look on the left, they said in this
22 proceeding that they're, Monolithic, if you look at the top is a component
23 supplier for companies like Intel. You can see that and you'll see that, , if
24 you look further there, that these ships were purchased by Intel. And if you
25 look on the right hand side from pages five through seven of Monolithic's
26 preliminary reply, you'll see that they said Monolithic sells what they called

1 commodity chips to company and Intel.
2 JUDGE ULLAGADDI: But our order was limited to information
3 regarding the Intel accused, products and components thereof. Is there any
4 evidence that these commodity chips are components thereof?
5 MR. WHITEHURST: Well, I'm going to show you the extent of
6 the partnership between Monolithic and Intel. The actual evidence that
7 Patent Owner produced in this proceeding to sufficiently put this issue in
8 dispute. Now, I understand your concern. You know, how do we know for
9 sure whether these power chips and I'm going to show you evidence
10 showing strongly suggesting that they are used in Intel's processors. You're
11 asking, how do we know for sure? But that is not our burden. It's
12 Monolithic's to produce documents or actual evidence to show that they are
13 not providing these chips to Intel in order to use in their processors.
14 When you look at Worlds on remand, and I encourage you to look
15 at Paper 64 from IPR 2015-01264. And you'll see that after remand from the
16 Federal Circuit, Petitioner made very similar arguments that this was
17 speculation whether certain things were met. But that is not our burden to
18 show that these chips are not used in Intel's processors. When you when you
19 go back and you look at the discovery order, they were supposed to produce
20 documents about any chips that are in the Intel processors that were accused,
21 whether they were supplying directly or indirectly to Intel. It doesn't say sell
22 to Intel. It just -- if we can look at the exact language, if we can go back to
23 --
24 JUDGE ULLAGADDI: A quick question, I think you may have
25 mentioned one of the parties that was subject to the protective order.
26 MR. WHITEHURST: I was careful not to say the name -- is that

1 -- if so.
2 JUDGE ULLAGADDI: Okay. All right. If you're certain, then.
3 MR. WHITEHURST: Yeah, I'll continue to be careful.
4 JUDGE ULLAGADDI: Okay.
5 MR. WHITEHURST: And I am going to address them because
6 there's still an issue in this proceeding while discovery was ordered through
7 a sua sponte specific to Intel, Monolithic still hasn't met its burden that it's
8 time barred based on the second company at issue in the privity dispute. So
9 when you look at the discovery order, there's. It was written to get to what
10 chips is Monolithic supplying to Intel to be used in its processors. And we
11 heard this morning a new argument that's not in the briefs. It's not supported
12 by the record that somehow chips can't be in chips. But this is a new
13 argument. It's not supported by the record. And it's never been raised in any
14 of the briefs before. And we're going to show you data sheets that are in
15 evidence that shows the pin layouts of how Monolithic chips are used with,
16 um, other chips in the Intel processors or process.
17 JUDGE OBERMANN: May I ask a question? These Intel
18 products that were accused in the litigation, you've had access to them for
19 years, so you know what's inside them, right?
20 MR. WHITEHURST: We don't know for sure. Um, we asked Ms.
21 Summers about that.
22 JUDGE OBERMANN: Well, Ms. Summers is not with Intel, and
23 she's a 30(b)(6) witness for a different company. I'm asking you, have you
24 investigated what chips are inside those Intel accused products?
25 MR. WHITEHURST: We had -- the district court litigation was
26 stayed, and when we did an exhaustive search, we were not able to find it

1 publicly available. Now there is --
2 JUDGE OBERMANN: So you're claiming ignorance on the
3 behalf of your client as to what chips are in those accused products?
4 MR. WHITEHURST: No, I'm not claiming ignorance Your
5 Honor, and in the record. Monolithic referred to the fact that they are
6 identified by Intel as a supplier of chips.
7 JUDGE OBERMANN: Of chips. We're talking about the accused
8 products that you've had access to for years.
9 MR. WHITEHURST: That's correct, Your honor, and I'm going to
10 get to --
11 JUDGE OBERMANN: I want to know what evidence you have
12 that there is any control over this litigation.
13 MR. WHITEHURST: Yes. So looking at slide nine, first of all,
14 Exhibit 2017, excuse me, you'll see there on the screen evidence that we've
15 produced that Intel uses Monolithic power chips in its processors. So to be
16 clear, Your Honor, we're not pleading ignorance.
17 JUDGE OBERMANN: Excuse me, counsel, but what are we
18 looking at here? What documents are demonstrating that the chips that were
19 produced by MPS ended up in any accused Intel products?
20 MR. WHITEHURST: Yes. Your honor, I will get to the evidence.
21 And as you know, the test in Worlds is there some evidence. And I'm going
22 to show you more than some evidence.
23 JUDGE OBERMANN: What evidence are we looking at here?
24 What's Exhibit 2017?
25 MR. WHITEHURST: That's correct, Your Honor.
26 JUDGE OBERMANN: What is that?

1 MR. WHITEHURST: And you can see that it is a presentation
2 about the Monolithic first server core power solution.
3 JUDGE OBERMANN: Who generated this presentation?
4 MR. WHITEHURST: I believe it was a Monolithic presentation,
5 Your Honor.
6 JUDGE OBERMANN: Where was it presented? And when?
7 MR. WHITEHURST: I will have to check on that.
8 JUDGE OBERMANN: Well, you're presenting us evidence here
9 that's supposed to establish that they had control over litigation. I would like
10 you to explore what this evidence is with us right now.
11 MR. WHITEHURST: Well, I'm sorry, Your Honor, we're not
12 disputing whether Monolithic had control. Are you asking me whether
13 Monolithic control representation in the Intel litigation? Is that the question
14 you're asking me?
15 JUDGE OBERMANN: That's certainly.
16 MR. WHITEHURST: We're not disputing that, Your Honor.
17 They've submitted a declaration to that point.
18 JUDGE OBERMANN: So if they were not, you're saying that if
19 they weren't able to control the litigation, and I hear you to admit that they
20 were not in a position to control the litigation, that even if one of their chips
21 went through some third party and ended up in an Intel processor, that
22 there's privity?
23 MR. WHITEHURST: Yes, Your Honor, and I'm not doing this
24 without support because this same issue came up in Worlds. Our arguments
25 are solidly founded in the world's Federal Circuit decision and the paper that
26 I mentioned to you, Paper 64, in the '264 --

1 JUDGE OBERMANN: My understanding of the of the of the law
2 is that the reason that we prevent a Petitioner from being heard here is if they
3 had a full and fair opportunity to control the litigation, that would time bar
4 them. Do you dispute that?
5 MR. WHITEHURST: Was addressed in the World's decision that
6 I just mentioned to you, and they determined that control of the litigation
7 was not required for privity. So there have been decisions from the board
8 that say control of the litigation is not required.
9 JUDGE OBERMANN: Can you please name for me the cases that
10 you're relying on were control was admittedly not present, and chips or any
11 product was admittedly not sold directly to the defendant in the prior
12 litigation. And yet, the board or the Federal Circuit determined that there
13 was a privity relationship for purposes of an IPR time bar.
14 MR. WHITEHURST: Well, I am identifying now, Paper 64, from
15 the IPR 2015-01264 where in a situation like this, where the Patent Owner
16 had put the issue of privity at issue and the Petitioner did not present actual
17 evidence, the board in this decision determined that it was not necessary for
18 the Petitioner to control the litigation. And so, in the precedent that we've
19 cited to in our briefs Worlds, which has been front and center of this
20 argument from the very beginning, said exactly that.
21 JUDGE OBERMANN: What kind of evidence did the Patent
22 Owner come forward with in Worlds?
23 MR. WHITEHURST: In Worlds, there was a supply development
24 agreement for the software that was at issue in the Activision litigation.
25 JUDGE OBERMANN: And you don't have anything like that
26 here, do you?

1 MR. WHITEHURST: Well, we don't have the supply agreement
2 between. Yes, Your Honor, we don't have a supply agreement. But that's
3 why there was a discovery order for the agreement.
4 JUDGE OBERMANN: And you now -- we now have evidence in
5 front of us that there is no supply agreement.
6 MR. WHITEHURST: That's what we're saying, Your Honor.
7 Because if you look at what Monolithic has said in its briefs, it does sell
8 chips to Intel. But what it does is it does it through contract manufacturers
9 or somebody, and they rely on them to act as their proxy or agent to send
10 them to Intel.
11 JUDGE OBERMANN: How do you know that that's happening?
12 We don't have any proof that that's happening.
13 MR. WHITEHURST: Okay. We do, Your Honor. If you look at
14 Monolithic's statements in this proceeding --
15 JUDGE OBERMANN: It doesn't say anything about supplying to
16 the Intel products --
17 MR. WHITEHURST: Well --
18 JUDGE OBERMANN: -- that were at issue.
19 MR. WHITEHURST: So --
20 JUDGE OBERMANN: You need to -- don't we need to have
21 evidence in front of us that some of these processors, at minimum, ended up
22 in the accused products? And don't we have evidence now in the record
23 with a 30(b)(6) witness saying none of them were there. We didn't do it.
24 MR. WHITEHURST: That is where the issue is. And if I -- and I
25 want to show you her deposition testimony on this point, because when I
26 show you the evidence that appears on our slides, that's part of the record.

1 JUDGE OBERMANN: I'd love to do that. Let's walk through
2 your evidence, because I've always wondered, what is this evidence that --
3 MR. WHITEHURST: Okay.
4 JUDGE OBERMANN: -- persuaded the director that we should
5 reinvestigate this privity relationship?
6 MR. WHITEHURST: Okay. And --
7 JUDGE OBERMANN: What is your evidence?
8 MR. WHITEHURST: I certainly want to be as helpful as I can,
9 and present this in a way that will be helpful. If we look at Slide 9, we see
10 here a presentation about Monolithic power chips being used by Intel. And
11 if we go to Slide 10 --
12 JUDGE OBERMANN: Before we go to Slide 10, I just want to
13 know because you're directing us to evidence. What are we looking at on
14 Slide 9? What is that evidence? You said that it was a presentation that was
15 prepared by the Petitioner?
16 MR. WHITEHURST: It was a presentation that was publicly
17 available talking about Monolithic's power chips being --
18 JUDGE OBERMANN: How did you get it? You know, what do
19 we have in the record that demonstrates what this is and when it was
20 available?
21 MR. WHITEHURST: And yes, and this was in our POPR, it was
22 in our POR --
23 JUDGE OBERMANN: I'm talking about evidence. What
24 evidence do we have that establishes what this is? Who generated it when it
25 was generated?
26 MR. WHITEHURST: Well, Your Honor, Petitioner has never

1 challenged the authenticity or challenged the presentation.
2 JUDGE OBERMANN: I'd like to know what it is. Can you
3 describe to me what this is and why it's important?
4 MR. WHITEHURST: If you'd pull up Exhibit 2017, please. You
5 can see that this is a we can go back to the first page, please. You can see
6 that this was a Monolithic presentation from its Investor Analyst Day. And
7 if we go --
8 JUDGE OBERMANN: 2018?
9 MR. WHITEHURST: That's correct, Your Honor.
10 JUDGE OBERMANN: And when did the litigation -- tell me the
11 dates of the litigation of, you know, the Intel litigation that's at issue here?
12 MR. WHITEHURST: Intel litigation was filed, um, in the 2022
13 timeframe. I can get you the --
14 JUDGE OBERMANN: Okay, but it was well, after 2018.
15 MR. WHITEHURST: Well, it was four years, Your Honor.
16 JUDGE OBERMANN: Okay. Okay. Please proceed,
17 MR. WHITEHURST: Yes, Your Honor.
18 JUDGE OBERMANN: Tell us what we're looking at here.
19 MR. WHITEHURST: So if you look -- and it's not like this is
20 obsolete information. I mean, Monolithic has admitted in its briefs that it
21 sells the same power chips that we're pointing to in Exhibit 2017. And they
22 said in their briefs that they sell power chips to Intel. So I don't believe that
23 this is anything that Monolithic has ever denied until now. The declaration
24 that we're going to look at in the deposition testimony of Ms. Summers, that
25 she only investigated, the sale of the products that were listed in Exhibit
26 2005 directly to Intel. And she did not investigate any chips, such as the

1 power chips that we see here in Exhibit 2017.
2 JUDGE OBERMANN: Okay, so just so I understand, we're
3 looking at Exhibit 2017 here, 2018.
4 MR. WHITEHURST: That's correct. If we go to page five, you'll
5 see the reference here to the first server core power solution successfully
6 powered, and it's the Intel Grantley platform. They've had a long standing
7 relationship with Intel. It's a major part of their business, and that's why --
8 JUDGE OBERMANN: What is the Intel Grantley platform? Is
9 that anything that was involved in the litigation?
10 MR. WHITEHURST: It -- there are a number of platforms, and all
11 of these platforms are going to use some type of power chip. And we know
12 that Intel was selling power chips as of.
13 JUDGE OBERMANN: Yes, we understand that. But my question
14 is how do you relate this to the litigation?
15 MR. WHITEHURST: That's it, Your Honor, when we have raised
16 this issue that based on Monolithic's own representations that they supply
17 power chips for the Intel processors, when we have presented that evidence,
18 what have they done in response? They've hidden behind --
19 JUDGE OBERMANN: I know, I know. I understand you, I think
20 I understand your point, but what I want to know is, you know, I have if we
21 have to write this decision, how do we relate the Grantley platform to
22 anything that is in the litigation?
23 MR. WHITEHURST: So when you look at, we can go, Your
24 Honor, or if we go back to, we can look at this in, in more detail, Pages 9
25 and 18, show how the power chips are integrated and made to be compatible
26 with the processors.

1 JUDGE OBERMANN: Wait. Processors that were accused in the
2 litigation?
3 MR. WHITEHURST: So what we have presented evidence of is
4 that the Intel processors that were accused would have had a Monolithic
5 power chip, at least some of them based on Monolithic's own representation
6 in its papers. It's never denied this. It has touted to investors, presented data
7 sheets showing that it's power chips work with the Intel processors. And
8 when given the opportunity to deny or rebut whether they have never sold a
9 power --
10 JUDGE OBERMANN: I understand. But you're relying on a
11 burden shift here. And I would like to -- I would like to just establish, you
12 know, on the record that, um, you are relying on a burden shift. And we
13 actually have no evidence that the Intel Grantley platform was any was
14 accused in the Intel litigation.
15 MR. WHITEHURST: So the processors and the processor systems
16 --
17 JUDGE OBERMANN: Is that a yes?
18 MR. WHITEHURST: We cannot show definitively based on Ms.
19 Summers lack of investigation. When you look at what she was supposed to
20 do --
21 JUDGE OBERMANN: She wasn't supposed to go to Intel and
22 figure out, you know, and look at all these accused products. You've had
23 access to those products for years.
24 MR. WHITEHURST: So Ms. Summers did have access to the
25 engineers and sales department at Monolithic that work with Intel on a daily
26 basis, and she testified under oath that she never asked any of Monolithic's

1 engineers or sales departments what chips are sold to Intel and whether they
2 are used in the processors that were accused in the litigation. She simply did
3 not do that.
4 JUDGE OBERMANN: Okay.
5 MR. WHITEHURST: She had the opportunity to, she had the
6 requirement. This board ordered her Monolithic to investigate this very
7 issue. And I've never seen how under Worlds a Petitioner can bury its head
8 in the sand, not do what the Board ordered it to do, and simply not ask its
9 own engineers, its own salespeople who would have had this information,
10 which chips are sold to the processors and systems that were accused in the
11 Intel litigation, simply because they've taken the discovery order and put in
12 the word to Intel.
13 And if you look at Paragraph 8, you can see why they're playing a
14 word games here. It says in the next parentheses, call it guilty conscience,
15 whatever you want to call it. But they knew they had an issue because they
16 had already admitted in the briefs that they sell these power chips to Intel.
17 And then in Paragraph 8, there's a parenthesis by way of background.
18 Petitioner's principal customers are contract manufacturers located in Asia
19 rather than downstream branded companies such as Intel.
20 JUDGE OBERMANN: Counsel, I think you're actually adding
21 language to our discovery order that would require something more than
22 what we required. And if you had wanted all of the how chips that Intel is
23 receiving from Monolithic Power -- or indirectly from Monolithic Power
24 Systems, why did you not craft your own discovery order?
25 MR. WHITEHURST: We did. We did craft a discovery. It was
26 denied by this panel sua sponte this board um issued discovery. If you're

1 going to reopen discovery like the panel did. There's no reason to the limit it
2 just to direct sales. When we know from the briefs itself that Monolithic
3 relies on its agents, its proxies, its contract making.
4 JUDGE OBERMANN: I have a problem with this because you're
5 demanding a burden shift on an issue that you had every opportunity we
6 asked you, do you want discovery? And you said no. So we were left to
7 draft a discovery order based on the director's decision in prior cases. And
8 now you're saying that it wasn't broad enough?
9 MR. WHITEHURST: Well, there is a discovery order that covers,
10 if you look at subpart two, any chips components that are supplied. It
11 doesn't even say supply to Intel. It says supply for the products that were
12 accused in the Intel.
13 JUDGE OBERMANN: Okay. I think I understand your position.
14 So you're saying that that did demand that they that they do this third party
15 investigation. And I think your friend is going to have something to say
16 about that.
17 MR. WHITEHURST: I'm not saying there was a requirement to
18 do a third party investigation, but there was an obligation to ask your
19 engineers and your sales department that interact with Intel on a regular
20 basis.
21 JUDGE OBERMANN: How do you know that? How do you
22 know they interact with Intel on a regular basis?
23 MR. WHITEHURST: We have information from, or in Slide 10,
24 looking at exhibit 2018, on Slide 11, exhibit 2019 as a data sheet for one of
25 Monolithic's chips. And it's a custom built chip for Intel's processors. And
26 if you look at pages two and three, you can even see the pin layouts that are

1 specifically designed for Intel. So we're not just talking about just any chips.
2 We're talking about chips that were specifically designed to work with
3 Intel's, in the Intel's processors.
4 JUDGE OBERMANN: Do we know that these would absolutely
5 work with the Intel microprocessors that were accused of infringement in the
6 litigation?
7 MR. WHITEHURST: Yes. There's no evidence otherwise. It is
8 an important customer that they talk about it, and --
9 JUDGE OBERMANN: Well, I can't do that in a decision. I need
10 to have evidence that these microprocessors ended up in one of the accused
11 systems. Do we have that?
12 MR. WHITEHURST: So we have presented evidence that the
13 power chips work with the processor.
14 JUDGE OBERMANN: You did. Where's that?
15 MR. WHITEHURST: Well, right here exhibit.
16 JUDGE OBERMANN: Intel microprocessors. That doesn't tell us
17 which ones and whether they were in the litigation.
18 MR. WHITEHURST: There's no evidence that -- we had an
19 obligation to produce some evidence. We have done that where the burden
20 is not on us to show that that there -- or a company like Monolithic, who's
21 one of their biggest customers, Intel, they custom build chips. It's
22 implausible that there are no agreements --
23 JUDGE OBERMANN: Let's take this from another angle. I think
24 what you're arguing is that there is enough record and enough record
25 evidence for you to establish at the director review stage that Petitioner was
26 in a position to -- well, you have already admitted that they weren't in a

1 position to control, but you're going on this idea that there's enough evidence
2 in the record to demonstrate that their chips ended up in the accused
3 products in that litigation; is that correct?
4 MR. WHITEHURST: Yes, Your Honor.
5 JUDGE OBERMANN: Okay. And so you're basically saying you
6 win on the evidence that went up to the director?
7 MR. WHITEHURST: Yes, Your Honor.
8 JUDGE OBERMANN: But the director remanded.
9 MR. WHITEHURST: The director remanded. And she was very
10 specific in her decision to, I am remaining this for useful information. Well,
11 we have a discovery order that was issued to sua sponte by the panel. And I
12 just want to make it clear that in Worlds which went up to the Federal
13 Circuit and was remanded, much like this case, and then at the remand stage,
14 and to be clear, the Federal Circuit remanded for additional discovery.
15 The Patent Owner said that no additional discovery was needed.
16 There was no additional discovery, and even in a situation where it was
17 remanded for additional discovery, much like here, the proceedings were
18 terminated because Petitioner had not met its burden. Now, in the decision,
19 Petitioner argued that it was speculation by the Patent Owner. Much like
20 you're going to hear Counsel say today.
21 But speculation is not a reason to not terminate the proceedings as
22 long as Patent Owner has produced some evidence, which we have. So
23 when you look at the fact pattern, it's no different from here. When you
24 remand for additional discovery, it doesn't mean you have to do the
25 discovery. That's exactly what happened in Worlds. The panel looked at the
26 evidence that was presented by Patent Owner. Here we presented evidence

1 and determined that Petitioner had not produced actual evidence to meet its
2 burden. So now we look -- jump forward to the current proceedings. This
3 has been remanded by Director Stewart for additional discovery. And she
4 said in her decision that I'm remanding this for a useful information on the
5 privity issue.
6 Well, unfortunately, what Monolithic did was take this board's
7 discovery order, rewrite it to purposely hide the useful information that Ms.
8 Stewart was --Director Stewart was referring to in her decision. They used
9 two Intel to hide the flow, the agreements, the sales agreements, the
10 indemnification agreements, the other relevant information that would be
11 useful on this point and they hid behind the words to Intel.
12 And I urge the panel, because I'm not going to have enough time
13 today to go through it all to look at the deposition testimony of Ms.
14 Summers. She had every opportunity to go and investigate the flow of the
15 chips to Intel, but instead, somebody made a conscious decision. We're not
16 going to go investigate and get useful information. I think it's incredibly
17 disrespectful to the panel that they rewrote what you told them to do,
18 inserted the words to Intel and then hid behind that to say, well, because we
19 use contract manufacturers to get the chips to Intel, we don't have to give
20 you any of that information. And that's where we run afoul. It was that
21 deliberate decision by Monolithic to not comply with the discovery order,
22 rewrite it and then hide the relevant information.
23 And in a situation like this, you don't punish the Patent Owner for
24 not having the evidence that Petitioner had in its custody and control, but
25 chose to not investigate and deprive Patent Owner of it. You would be
26 rewarding them for rewriting the discovery order, to use the word to Intel, to

1 then not provide any discovery on what they've already admitted in their
2 preliminary reply that they sell chips to Intel.
3 JUDGE OBERMANN: Okay, I think we understand and I really
4 appreciate your explaining it. I just want to make sure that we have in front
5 of us the entire universe of information that you're relying on as generating
6 this burden shift. So I've looked at your Slide 9, 10, and is it 11?
7 MR. WHITEHURST: Yes, Your Honor. So in my original
8 presentation, I intended to go through the evidence that appears on Slides 9,
9 10, 11, 12 and actually has to do with another company that is a separate,
10 complete separate grounds determining these for Petitioner not meeting its
11 burden. But if you look at Slide 13, you see additional information that goes
12 to the custody and control where they actually talk about their application
13 engineers who work directly with customer engineers.
14 And then when we get to Slide 14, this is additional evidence on
15 the privity issue. And then you even have on Slide 15, Ms. Summers
16 herself, their witness admitting that in instances they include indemnity
17 clauses. Now, it is implausible that they sell chips that are custom built and
18 specifically designed for Intel. But yet there are no sales agreements, no
19 indemnification agreements, or any other information about these chips that
20 they specifically designed and custom built for the processors that were
21 accused in the Intel litigation. They hid that evidence from us by using the
22 words to Intel.
23 And that's the problem that we see here. We've done our part.
24 We've produced more than some evidence, and then they've submitted a
25 declaration that, on its face, looks like it puts this issue to rest when it
26 doesn't. When they were faced with this evidence, Monolithic cannot just

1 rely on attorney argument and have a witness rubber stamp what it appears
2 the attorneys wrote.
3 JUDGE TORNQUIST: Counsel, this is Judge Tornquist. I'm
4 looking at the declaration, though. She didn't say just to Intel in her
5 Paragraph 6 and 7. She said we have no sales agreements at all, so no
6 agreements at all with Intel.
7 MR. WHITEHURST: So that -- so there apparently she was asked
8 about this. She apparently went and searched and it's unclear from the
9 deposition. It initially during the deposition, she made it sound like what she
10 did was look at Exhibit 2005, see the processor names, and then only search
11 for sales agreements for those processors. Later during the deposition and
12 again, it was very murky testimony, lots of I don't knows and maybes, she
13 made it sound like well, I did search for agreements for any agreements with
14 Intel, but initially she made it very clear that referring back to Section A that
15 she just searched for what was listed in Exhibit 2005.
16 Now, that's problematic because what they're doing is they're
17 saying, here's a processor name. We didn't sell the processor to Intel. Well,
18 of course that's true. Monolithic is not in the business of selling processors.
19 They are in the business of selling chips components for those processors.
20 But it was unclear during her or deposition, whether she actually ever
21 investigated sales of the chips to Intel. Now they've got to explain why they
22 said in their brief, in their preliminary reply, that they sell chips to Intel, but
23 yet there are no agreements for it. It's unclear from the deposition, but when
24 she was asked, did you look to see whether affiliates have agreements with
25 Intel? She couldn't answer it. When subsidiaries have agreements with
26 Intel, she couldn't answer it. Do you have a sales agreement for your

1 contract manufacturers? She said, I don't know.
2 So the chips don't just miraculously appear at Intel. They have to
3 get from Monolithic to Intel, but they have shrouded in secrecy, whatever
4 that path is and whatever the sales agreements, by apparently hiding behind
5 one of two things, either relying on their definition of Intel accused products
6 do not include any chips or components, or by saying we just do direct sales,
7 or I'm sorry, we don't do direct sales, which is contradictory to what they
8 said in their briefs. We just do indirect, and we're going to rewrite the
9 declaration to say to Intel and not give you discovery on the indirect.
10 So when you look at our testimony and I hope you'll really take a
11 look at how unprepared this witness was. When you read the deposition
12 testimony that we have presented in detail in our demonstratives, you'll see
13 what the game plan was. The game plan was we're going to either say we
14 don't sell processors or we don't sell whatever it is directly to Intel. And
15 when she was asked about anything else, she said, I don't know, maybe, I'm
16 not sure. And when she was asked whether she ever talked to the people
17 there at Monolithic that would have this information, she admitted that she
18 had never spoken with them. As best we can tell, and this is on Slide 21, the
19 only investigation that she did was to take Exhibit 2005, and she said she
20 spent about 20 to 30 minutes reading the processors that are listed on Pages
21 4, 5, and 6.
22 And then she went and it's unclear from that testimony, it sounded
23 like she just went and searched to see whether Monolithic sells Intel
24 processors. Well, we know that's not the case, but apparently that's what she
25 did. And she said she spent about an hour and a half on that. And then she
26 spent roughly an hour and a half investigating Monolithic's knowledge of the

1 lawsuit. But you can see when you look at the deposition testimony that
2 there was a deliberate plan by Petitioner to put all this in secrecy in a black
3 box and prevent Patent Owner from getting to it, because she never
4 investigated whether Monolithic was a supplier of any components of the
5 process or what was supplied for the Intel accused products. It doesn't say to
6 Intel. You could certainly go through an affiliate, a subsidiary, a contract
7 manufacturer. And it's still confusing how we know from the preliminary
8 reply and other briefs that they've already admitted to selling things to Intel,
9 but yet we've got no agreements, no information, nothing on those sales
10 which according to them, whether they were indirect or direct in their own
11 words, they said went to Intel.
12 JUDGE TORNQUIST: Okay, so let me ask you just a quick
13 question. If a subsidiary or an affiliate had a sales agreement or
14 indemnification agreement, would those have been potentially sufficient to
15 show privity?
16 MR. WHITEHURST: It would have been -- yes, Your Honor, it
17 would have been additional evidence on top of the evidence that we've
18 already shown to show the privity between Petitioner and a time barred party
19 whether it's Intel or the other company, it's not one, but two companies that
20 they sell products to where there's we presented some evidence that there
21 was privity, and they've chosen not to rebut it, not to produce any actual
22 evidence. The only thing we have is Paragraph 8 where she in the
23 parentheses, talks about the contract manufacturers, then put in the words to
24 Intel, which did not appear in the discovery order.
25 And when you read the deposition testimony, which is so
26 important to this situation, you can see that they use to Intel to hide all the

1 relevant information. And really, they're just putting a carefully crafted
2 declaration that makes it look like they complied with the discovery order
3 when they didn't. And it's hiding the information. And in most situations
4 when you have a, you know, something like this and somebody chooses not
5 to produce that information, there's a negative inference. I mean,
6 presumably these documents were bad or else we would have had them
7 produced. And we don't have -- when you look at the discovery order for,
8 subpart two of B, your panel, the panel's order said either produce
9 documents or declare that none exists and there's no declaration from
10 Monolithic, saying that there are no agreements, whether there are sales
11 agreements, identification agreements or other information or chips that are
12 supplied for the Intel accused products, whether it's directly or indirectly.
13 That does not appear anywhere in the declaration.
14 And that is the point that I so strongly wanted to convey this
15 morning. I know it took me a while to get there, but that's why when you go
16 back and read Monolithic's Counsel's arguments this morning, he was very
17 careful to put to Intel. We saw it in Ms. Summer's declaration, we saw it
18 during our deposition. But when you look at what Monolithic has already
19 said in this proceeding, they're the ones that are flip flopping. They said
20 very early on in their preliminary reply that they sell chips to Intel, but yet
21 we've never gotten any documents anything for that. And they still be
22 -- appear to be hiding it by using the prepositional phrase to Intel.
23 Just to highlight, you know, as we discuss on Slide 25, why Intel is
24 so problematic, because when you go to Slide 26, you can see Ms. Summers
25 could not answer whether Monolithic sells chips indirectly to Intel. Now,
26 that's very surprising when Monolithic's own preliminary reply said we do.

1 and she could not answer whether Intel uses any of Monolithic's chips in its
2 processors. She did not say no. Instead, she said maybe, She knew how to
3 say no. She knew how to say, I don't know. But when she was asked
4 whether Intel uses any of Monolithic's chips, she said maybe. Now, if you
5 go to Slide 27, you'll see that she admitted she never investigated whether
6 Monolithic's chips are used in Intel processors, even though this was what
7 the discovery order asked Monolithic to do. And when you go to Slide 28 --
8 JUDGE OBERMANN: Just one hypothetical question. I'm
9 looking at your slide here. What are we on 27? Let's suppose,
10 hypothetically, that there were customer agreements between the contract
11 manufacturers and our Petitioner here. If they didn't mention Intel, are you
12 arguing that they if the chips ended up in Intel products, that somehow the
13 Petitioner still has a privity relationship, even though they have no
14 knowledge of where their chips ended up?
15 MR. WHITEHURST: It is a very difficult question to ask the
16 hypothetical without additional --
17 JUDGE OBERMANN: I know, but the reason I'm asking it, sir, is
18 because she has no knowledge that the products were used in any Intel
19 system. So let's assume for a minute that she is a 30(b)(6) witness, and that
20 that binds the company and that the company had no knowledge. I
21 understand that you have their brief saying that they supplied chips. So
22 that's a piece of evidence we can consider. I know that, but I'd like to, if I
23 accept her, her 30(b)(6) statement that the company has no knowledge that
24 their products are used in the Intel systems that were accused.
25 And let's imagine for a moment that I do accept your presumption
26 that, you know, because there's no evidence that they weren't in the accused

1 products. We should, you know, tip that in Patent Owners favor and say,
2 okay, let's suppose for a minute that some of these chips did end up in the
3 accused products. But we also are going to accept -- and I know this is a
4 complicated hypothetical, but it's not really hypothetical because I think this
5 is what the evidence is pointing to. We don't have hard evidence that these
6 chips ended up in any accused product. You're saying that that tips the
7 burden here and that we should presume for the purposes of this record, that
8 some of them may have ended up there. So then I have to look at, well,
9 what do we have in the record that demonstrates that the Petitioner actually
10 had knowledge that some of their chips ended up in the accused Intel
11 devices.
12 We have a generic statement in their brief saying that they sold
13 products to Intel. Doesn't say that they sold them for these products. And
14 then we have a 30(b)(6) witness saying that she doesn't have any knowledge
15 that any NPS products are used in Intel Systems. If there are these
16 hypothetical contract manufacturer agreements that we don't have in the
17 record, would they have to name Intel for us to establish that there's some
18 kind of a privity here with the with the accused property? I think my real
19 problem is -- strike my hypothetical. I'm having --
20 MR. WHITEHURST: I took good notes.
21 JUDGE U OBERMANN: But what I'm really having trouble with
22 is all these generic statements about selling to Intel or selling to contract
23 manufacturers that supply Intel, when I really need a thread to the Intel
24 accused products. And that's what was in our order.
25 MR. WHITEHURST: Right. And I know why it can be
26 frustrating. But again, the law is the law. And that is what was at issue in

1 our onsemi director review. First of all we have the estoppel. I mean
2 Monolithic said it's -- that it sells these power chips.
3 JUDGE OBERMANN: What do you mean by estoppel?
4 MR. WHITEHURST: Well they've already said that we sell power
5 chips to Intel.
6 JUDGE OBERMANN: And that's very general because we have
7 to thread that to accused products in 2022.
8 MR. WHITEHURST: And that's correct Your Honor. But silence
9 speaks volumes. Monolithic had the opportunity in its declaration to remove
10 those words to Intel, remove the parentheses that it tacked on the end of
11 paragraph.
12 JUDGE OBERMANN: There's a problem with that. And this is
13 my problem. They are a 30(b)(6) witness. They don't know. They can't
14 know what some third parties are doing all the time for four years.
15 MR. WHITEHURST: So faced with that, they could have said we
16 -- well, first of all, you're rewarding Ms. Summers for never doing anything
17 more than reading 20 to 30 minutes of the list and then spending an hour and
18 a half looking.
19 JUDGE OBERMANN: No, I don't think I am because she's a
20 30(b)(6) witness, and that is something that binds their company and that,
21 you know, requires an inquiry within the company.
22 MR. WHITEHURST: And we asked Ms. Summers about that.
23 Did you talk to the engineers that work with Intel? No. Did you talk --
24 JUDGE OBERMANN: Where is this? Because does she admit
25 that they have engineers that work directly for Intel?
26 MR. WHITEHURST: So when you look at Slide 29, she admitted

1 that she did not have knowledge of the subsidiaries or affiliates of the
2 contracts. When you look at Slide 30, Monolithic has admitted that it relies
3 on contract manufacturers, but she didn't look into those. And then, if you
4 go to -- and, Your Honor, there's a wealth of deposition testimony, and that's
5 why I'm having trouble covering it all. When you look at Slide --
6 JUDGE OBERMANN: Did you cite it in your in your brief?
7 MR. WHITEHURST: -- Slide 33.
8 JUDGE OBERMANN: Did you cite it all in your brief?
9 MR. WHITEHURST: All in our brief.
10 JUDGE OBERMANN: Okay.
11 MR. WHITEHURST: Yes. Your honor.
12 JUDGE ULLAGADDI: Five minutes. Counsel.
13 MR. WHITEHURST: I wish I had an additional time, because I've
14 only -- s when you look at slide 33, she said they never contacted Intel, but
15 that's not what I want to focus on. I want to look at -- she -- when you look
16 at the right hand side, are there engineers at Monolithic that communicate
17 with Intel? She said, I don't know, but we have all these statements by
18 Monolithic that they are custom building chips for Intel. Now it strains
19 credibility to say that your custom building specifically designed chips for
20 Intel, but you're never going to communicate with them.
21 And that's why we see this. I don't know, but when you look at
22 Slide 34 she was asked, did you contact anyone in sales or engineering at
23 Monolithic? Do we provide any components that are used in certain Intel
24 processors, such as the ones listed on pages five through seven of Exhibit
25 2005? She answered no. And then she went back to the prepositional
26 phrase that we see in the declaration we heard this morning and we saw

1 throughout our deposition, I confirm that Monolithic does not sell products
2 to Intel.
3 Now, you asked about the hypothetical situation. First of all, she
4 did not investigate any of this where that was -- they were required to look
5 into this under the discovery order, but for whatever reason, she never
6 contacted anyone in sales or engineering. That was something that you can't
7 reward Monolithic for not even asking your sales or engineering department.
8 At a minimum, as a 30(b)(6) witness, your corporate representative has a
9 duty to investigate people that are in their custody or control, such as the
10 sales or engineering, which she didn't do.
11 But you asked me about the hypothetical. We don't know because
12 they decided to use this prepositional phrase to Intel and not talk to the
13 people that would know what those agreements say. And under Worlds in a
14 situation like this where we presented some evidence, the burden shifts to
15 them to do something more than attorney argument in the submitted
16 declaration as to these agreements, which they didn't do. So under a Federal
17 Circuit and USPTO board precedent, there's only one potential outcome.
18 But to get back to your question, even if the agreements did not
19 specifically mention Intel, it's our position that based on indemnity clause or
20 other partnerships, such as what we heard during the investor presentations
21 and from their own corporate people, or the license agreement itself, that
22 that would be sufficient even if the agreement did not specifically mention
23 Intel. But the bigger point is how many do overs do we give Monolithic?
24 They had the opportunity to talk to their engineers and say we have no
25 agreements for any chips that end up at Intel. Period. But they chose
26 otherwise. And based on their decision, they have to live with their decision

1 that they have no actual evidence on this point. They don't even have a
2 declaration saying they don't exist, because presumably they couldn't say
3 that. And that's why they inserted the prepositional phrase to cover up this
4 black box that they didn't want Patent Owner to see. And under Worlds
5 there's only one outcome which is to terminate all of these IPR proceedings.
6 Because even after the do over and the additional discovery,
7 they've still come up short. And I certainly appreciate the additional time. I
8 don't know if you have any additional questions. I really wanted to get to
9 the minority carriers, because while it's an argument that we've covered --
10 JUDGE ULLAGADDI: Ten extra minutes. Is that okay with you?
11 MR. WHITEHURST: Not really, but I do want to hit on one key
12 point if it pleases the panel, I want to make it abundantly clear that when,
13 we've never changed our position, our minority carrier, it was true in the
14 district court litigation. It was true in our POPR when Dr. Glew submitted
15 the declaration. Paragraph 35, Footnote, 2 that for an NMOS transistor, the
16 minority carrier is a whole. That's been our position. And there's a reason
17 why that's been our position, because that's what the specification says. The
18 specification was talking about BJT, TS and MOSFETs. And when Dr. Rao
19 described MOSFETs, which would include in MOS, PMOS transistors, he
20 was very specific that they are what you call majority carrier devices. So
21 when you look at a MOSFET, it's the term majority carrier or minority
22 carrier is defined by what's going to carry the charge in the transistor.
23 Now I want to make it abundantly clear that once you know the
24 transistor and if you know it's a MOSFET, it's majority carrier, you know, at
25 that time, what's the majority and the minority carrier. And it does not
26 depend on whether it's on or off. That's going to be true in both situations,

1 because that's just how in MOS or PMOS transistors are designed to work.
2 And what Dr. Campbell did during his deposition, and this is in our slides,
3 he used some textbook. I can't remember what it was that talked about the
4 well, and when he was asked, did you look at the patent? He said he didn't
5 know what the patent said on this point. But then when he was asked about
6 the channel in an MOS what's going to be the majority carrier in the channel,
7 he said for an enormous it's going to be an electron because that's what's
8 going to be carrying the charge back and forth.
9 When you look at the patent, when you look at an enormous
10 transistor in a p-well, Dr. Rao was not concerned with getting electrons
11 away from the surface. And there's a very good reason for that, because
12 that's what's carrying the charge back and forth between the source and the
13 drain. When you look at an MOS transistor in a in MOS has to be in a p-
14 well he was concerned with getting the holes away from the surface because
15 those are what he called in his specification, the spurious minority carriers
16 that were interfering with the formation of the channel.
17 And when you look at both Onoda and Kawagoe, we have an
18 enormous transistor in a p-well and Petitioner is identifying moving an
19 electron away from the surface. But that is the opposite of what Dr. Rao's
20 intention was directed to. He wasn't trying to move an electron. He was
21 trying to move a hole that would have interfered with the MOS transistor.
22 So completely different.
23 And you'll see, as we discussed, we squarely used minority carrier,
24 um, as it was used in the patent. And we've certainly never changed our
25 position. I was hoping to address the point on the wheelchair with Onoda.
26 Certainly in their picture they've not drawn it to scale, but when you look at

1 the point five to point six microns, you'll see that in the region where the
2 active region, there certainly was no mention in Onoda of trying to get a
3 carrier away from the surface. In Kawagoe, they were trying to keep things
4 down in the substrate. But in any event, whatever Onoda and Kawagoe were
5 doing, they were not concerned about getting minority carrier or any carrier
6 for that matter, from the surface. They were trying to do something
7 different, whether it was preserving the integrity of the well or some other
8 goal. I certainly appreciate the additional time.
9 JUDGE OBERMANN: May I just ask one more thing, and I'm
10 sorry, this is on my time. I read the director's decision, and I now think that
11 probably the finding that she made the Petitioner was a supplier of a time
12 barred party. Intel relates directly to the Petitioner's admission and the briefs
13 that you've pointed out today.
14 MR. WHITEHURST: Well, that was from the -- oh, I'm sorry, go
15 ahead.
16 JUDGE OBERMANN: Is that right?
17 MR. WHITEHURST: Well, that was in the onsemi. But you're
18 going to find out on Friday --
19 JUDGE OBERMANN: Yeah, right. That's why I said, it applies
20 here.
21 MR. WHITEHURST: Here as well.
22 JUDGE OBERMANN: But, you know, we're keying off of what
23 we think the director required us to do. But when she when she said what
24 the discovery that we should allow should be narrowly tailored to things
25 such as indemnification agreements between Petitioner and Intel --
26 MR. WHITEHURST: Yes.

1 JUDGE OBERMANN: -- that's pretty direct. I mean, I don't see
2 her directing them to produce agreements between them and these contract
3 suppliers.
4 MR. WHITEHURST: Well, I -- we disagree. One --
5 JUDGE OBERMANN: You disagree that she did require that?
6 MR. WHITEHURST: We believe that it was open ended as when
7 she said such as it was not meant to be limiting it just to what she said we're
8 talking about to Intel. But if you look at the discovery order, you have
9 Section A which tracks what's in the discovery order, and then you have B,
10 which has the additional subparts, which, if you're going to remand this and
11 open it for discovery, which in Worlds they did not do. But if you're going
12 to open it up for discovery, you need to look for the useful information on
13 this point from the video.
14 JUDGE OBERMANN: It would really have helped us if you had
15 told us what you wanted, but instead you said you wanted nothing.
16 MR. WHITEHURST: Well, it was not our decision to reopen
17 discovery. And we, if you look back at our original motion for discovery, it
18 was.
19 JUDGE OBERMANN: Yeah, well, that included all these parties I
20 can't mention, but we specifically came to you after the director's decision,
21 and we said what discovery would be helpful. You said you don't want any.
22 So we were left to use the words that the director gave us in her decision,
23 which made it very clear that she wanted narrowly tailored discovery, such
24 as indemnification agreements between Petitioner and Intel. And now
25 you're saying that you're entitled to this burden shift, even though you didn't
26 come forward and say, we want these other things.

1 MR. WHITEHURST: So, Your Honor, and I don't want to be
2 faulted when we said that we don't need additional discovery, it was not any
3 different from what the Patent Owner said in Worlds that we've already
4 produced some evidence. While, you know, we would have appreciated that
5 information being produced when we originally asked for it back during the
6 pre-institution stage, that never happened. But on the record, after we've
7 been litigating this for as long as we have, it's hard to fault Patent Owner
8 who's done its part to fault them for wanting to reopen something that
9 they've already won.
10 So we had already produced some evidence and we had gotten
11 over what is the low bar and any decision whether it was pre-institution
12 during the proceeding or even now in Paragraph 8, to hide that information
13 is not something that's used against us. Now on the conference call, I did
14 inform this panel, as I did during one of the onsemi hearings as well, that in
15 light of the fact that we've already overcome that low bar, we don't see any
16 need to reopen discovery. That was true in the onsemi. It was true in Cirrus.
17 It was true in Monolithic.
18 When the panel issued the sua sponte order, we were never given
19 the opportunity to say Patent Owner, we're going to reopen discovery. Can
20 you help us craft the language? If we have been given that opportunity, we
21 would have most likely use language very much like what is in some part
22 two. When you look at sub part two, it includes what Monolithic has
23 already admitted that it says to Intel, and then it talks about in that
24 preliminary reply that they use contract manufacturers. They've never shied
25 away from that.
26 So when you look at subpart two, which we were not asked to

1 weigh in on, but when we saw it, understood it to include the contract
2 manufacturers in the other issues that I've addressed this morning of
3 affiliates and subsidiaries, we -- while we don't believe discovery should
4 have been reopened, it was. The language that this panel opted to use in
5 subpart two would have gotten to this information, but it was Monolithic,
6 not us, not the panel that used the words to Intel to hide what goes to the
7 heart of this issue. So, I don't want the panel to think that it's somehow on
8 us that we didn't weigh in on what the discovery should be. If you look at
9 subpart two, it was written to get to what Monolithic is said about the
10 contract manufacturers, but they chose to rewrite it, to somehow exclude
11 what's really going on. Thank you, Your Honor.
12 JUDGE ULLAGADDI: All right. You're 109. We give you ten
13 extra minutes. You will have 30 minutes. I think at this time we'd like to
14 take a brief, short pause for ten minutes. We'll go off the record and, um,
15 convene here at 12:26.
16 (Whereupon, the above-entitled matter went off the record at 12:26
17 p.m. and resumed at 12:39 p.m.)
18 JUDGE ULLAGADDI: All right, Mr. Esterhay, you have 31
19 minutes for your rebuttal. Oh, right, 41 minutes.
20 MR. ESTHERHAY: Thank you, Your Honor. I will be briefer
21 than that. May I begin?
22 JUDGE ULLAGADDI: Yes.
23 MR. ESTHERHAY: Just as a threshold matter, we categorically
24 reject that we did not comply with any discovery order, that there's been any
25 hiding of evidence. I find it offensive that those kind of accusations have
26 been made, and that certainly isn't the case. The Petitioner complied exactly

1 towards discovery order, told Petitioner to do and did a thorough
2 investigation into those issues. And there are a number of false claims made
3 by Patent Owner in the previous argument Section, but I wanted to highlight
4 one in particular.
5 So Patent Owner said several times that Ms. Summers did not do
6 any investigation into Petitioner's subsidiaries or affiliates. That's
7 categorically false. As you can see in Exhibit 2087, Ms. Summers was
8 asked the question, did you do any investigation to determine whether any
9 NPS subsidiaries or affiliates sell products to Intel? And she responded,
10 "Yes. My inquiries included all records for any of the corporate entities
11 under our parent corporation, Monolithic Power Systems Incorporated."
12 And then the questioner goes on to say, "o when you did your search for
13 direct sales agreements between MPs and Intel, that would have
14 encompassed any direct sales agreements between MPS subsidiaries and
15 affiliates with Intel?" And she responded, "Yes." So that's on page 28 to 29
16 of her deposition transcript, Exhibit 2087.
17 But just taking a step back, Patent Owner, as you heard admits as a
18 must that not only did a Petitioner not control the Intel litigation, it could not
19 have controlled the Intel litigation. And so that should be dispositive of this
20 privity issue. If there's no ability to have any kind of control of the prior
21 litigation. It makes no sense to have a finding of privity that would preclude
22 Petitioner from bringing its own petitions. Worlds, which Patent Owner
23 repeatedly cites, does not support Patent Owners argument here. In Worlds,
24 the Patent Owner mentioned there was a supply agreement. That supply
25 agreement included an indemnity, an indemnity clause. And there was also
26 evidence in Worlds that the Petitioner did in fact control the prior litigation.

1 So it's a much, much different situation in Worlds than it is here
2 where evidence was put forward that there were indemnity, there was an
3 indemnity agreement that allowed such control, and such control did in fact
4 occur here. There's nothing there are no sales agreements. There are no
5 indemnity agreements. Ms. Summers is again senior corporate counsel at
6 Petitioner and responsible for negotiating sales and indemnity agreements.
7 She did a thorough investigation and determined there were no such
8 agreements with Intel.
9 Now, Patent Owner repeatedly criticized her investigation and her
10 testimony. It is worth noting that in her deposition, a Patent Owner declined
11 to ask her a single question about her investigation into sales agreements. A
12 single question about her investigation into indemnity agreements and did
13 not ask her anything about when Petitioner learned about the Intel litigation.
14 It was just all myopically focused on this one issue of whether MPs parts
15 somehow wind up in the telecom's products in an indirect manner.
16 So turning to Ms. Summers declaration on that point, which is
17 Exhibit 2086, she wrote, "As instructed by the board's order, I have reviewed
18 the list of Intel accused products on page 48 of IPR2024-00468, Exhibit
19 2005, which I understand are Intel products accused of practicing claims,
20 challenges and Patent Owner Greenthread LLC's prior litigation against
21 Intel." That's Paragraph 5 of Exhibit 2086. Then she has the two paragraphs
22 where she notes that there's no sales agreements or no indemnification
23 agreements with Intel. And then she goes on to say that Petitioner did not
24 sell to Intel or supply Intel with any of the Intel accused products. That is
25 exactly word for word what she was asked to do by the board's discovery
26 recorder. She looked at the accused, the Intel accused products determined

1 that they were not sold, or components of those products were supplied to
2 Intel and reported that in her declaration.
3 JUDGE ULLAGADDI: I have a question for you. What about the
4 statements that we have in the record that your client did supply chips to
5 Intel?
6 MR. ESTHERHAY: First of all, I'm sure it's possible that
7 Petitioner did supply some chips to Intel. That statement is attorney
8 argument. It's not evidence like Ms. Summers declaration of deposition, but
9 it's definitely possible the way Petitioner does business, that there were some
10 chips applied to Intel at some point in various times.
11 JUDGE ULLAGADDI: Why didn't that come up with the
12 investigation? Why didn't that come up when Ms. Summers did her
13 investigation if we have evidence in the record, you know, admitting that
14 that your client, supplied Intel with some chips?
15 MR. ESTHERHAY: Well, Ms. Summers focused her
16 investigation on the Intel of these products. We looked at that list and
17 specifically focused on those microprocessors that were accused in the Intel
18 litigation.
19 JUDGE ULLAGADDI: Okay.
20 MR. ESTHERHAY: And I'd actually like to take a look at that
21 list. That's Exhibit 2005. And this has a list of the Intel accused
22 Microprocessors and its a number of Intel Core processors that Intel refers to
23 with codenames like Alder Lake, Tiger Lake. I believe there's one other,
24 Comet Lake and this is page.
25 JUDGE DROESCH: What page are we on?
26 MR. ESTHERHAY: This is pages 4 to 5 of Exhibit 2005.

1 JUDGE DROESCH: Thank you.

2 MR. ESTHERHAY: The list of Intel accused products. Notably,
3 there's no Grantly I did a control F on the document. There's no Grantley
4 project in there. So it was these specific products that were investigated.
5 And the key thing to remember is that these are all Intel microprocessors.
6 And Patent Owner made the claim that it's somehow a new argument we've
7 made that Petitioner does not supply a chip to go into another chip. That
8 argument is in the last page of our supplemental response, our response on
9 the supplemental briefing on the privity issue so you can find it there.

10 It simply is nonsensical that a chip would go into another chip.
11 What Petitioner does is it designs chips to work with an Intel standard,
12 where Intel's own ship is the core microprocessor, and in doing so, a
13 Petitioner's product might wind up on the same board as an Intel processor
14 and power that processor, but it's not incorporated into the processor. It
15 doesn't go into it. And so it just doesn't make any sense that Petitioner
16 would have a product that goes into the Intel accused products as a
17 component of those products.

18 There was another statement Patent Owner made that's
19 illuminating that when asked why when an owner had these products for
20 years, these Intel accused products, they were unable to find any evidence
21 that an additional product was in one of these Intel accused products, which
22 again, not a shred of evidence has ever been presented by anyone that
23 Petitioner's products are in these Intel accused products.

24 Patent Owner claimed it was because the litigation was stayed, and
25 there was no publicly available information that would demonstrate that
26 Petitioner's products are in the Intel accused product. So it's not clear to me

1 what Petitioner could have done that would satisfy Patent Owner about
2 whether Petitioner's products wind up in the Intel accused products. If
3 there's no publicly available information, how is Petitioner supposed to even
4 find that out? Where does Petitioner go to find that information? So, the
5 mere fact that Patent Owner was unable to do it itself after years of having
6 these products, apparently years of trying shows how difficult it would even
7 be to obtain such information.
8 But the point is, there's no there's no evidence in the record
9 whatsoever that any of Petitioner's products are Intel products. I guess the
10 only other thing I'd like to add is with regard to the minority. If there's no
11 other questions on the privity side. Then the only other thing I'd like to add
12 is on the minority carrier's argument, Patent Owner had displayed its expert
13 declaration Exhibit 2057 on the screen. That's the exhibit that the
14 declaration of Dr. Glew submitted with Patent Owners response. And it's
15 notable that in doing so, the footnote that Patent Owner referred to
16 specifically said the p-layer has more holes making the minority carrier in
17 the p-layer the electron.
18 Now, Patent Owner made a statement that Dr. Rao somehow had
19 this subjective belief that when electrons are traveling in the channel, that
20 flips the definition of minority carrier to the holes, but there's no evidence of
21 that. That's not addressed anywhere in the patents themselves. There's no
22 testimony on that. It's simply turning an argument that somehow Dr. Rao
23 had this subjective belief. So even if that was true, that subjective belief
24 doesn't change the language of the patents which conform with the standard
25 understanding of a person of skill and physics, that the p-layer has more
26 holes, as Dr. Glew says. And the minority carrier is the electron. And I

1 have nothing further unless Your Honors have any questions.
2 JUDGE ULLAGADDI: Nothing for me. Thank you.
3 JUDGE DROESCH: Nothing for me.
4 JUDGE ULLAGADDI: Thank you, Counsel. Mr. Whitehurst,
5 you will have 31 minutes.
6 MR. WHITEHURST: May I please the panel. I'll keep my
7 argument short, unless there are questions from the panel. But I do want to
8 address some of the points that were just raised. I first want to start with
9 Petitioner Counsel's argument that it doesn't make sense for Monolithic's
10 chips to be in Intel's products. A couple things. One, when we filed our
11 opening brief on this issue, we described at length why the Monolithic chips
12 are used in Intel's products. Why the chips are used in the processors.
13 And when we got Petitioner's response brief, they never made this
14 argument anywhere in their brief. This is the first time we're ever hearing
15 that it doesn't make sense for Monolithic's chips to be used in the accused
16 products. They had an obligation to make that argument in their response
17 during the argument just now. I was looking through it. It's a relatively
18 short brief, 15 pages. I've gone through it. I've never -- I did not see that
19 argument anywhere in the breeze. If we had, we certainly would have
20 addressed it in our reply. This is a new argument. It's purely attorney
21 argument is not backed up by the record, and it's not anywhere in their
22 response brief which they filed in these proceedings.
23 Now, on the point about Monolithic's chips being used in the
24 products, the Intel products that were accused in the litigation, as we covered
25 this morning, we produced evidence on this point. As Worlds talks about
26 some evidence, we produced data sheets. We produced, I mean, some of the

1 most compelling evidence is Petitioner's own preliminary reply when they
2 talk about power chips. These are the same power chips that Intel uses in its
3 processors. And when counsel was asked about it today, we heard that it's
4 very likely that these chips are used in Intel products.
5 JUDGE ULLAGADDI: Can you address the argument that they're
6 not actually used in the processors that they may be in, you know, a
7 component that's separate from?
8 MR. WHITEHURST: As we, as I mentioned earlier, when you
9 have a processor, you have multiple chips that are packaged together, and
10 we see that in the data sheets that, Pages 2 and 3 that I mentioned earlier
11 today on our demonstratives. So when Intel sells a processor, as we
12 explained, it will include the Monolithic power chip. And we said that in
13 our opening brief and we never heard anything to the contrary. Certainly
14 nothing in the record to suggest otherwise.
15 I've been told myself numerous times now it better be in the record
16 somewhere, you can't just stand up and make an attorney argument. But in
17 our opening brief, we talk about the components of the Intel accused
18 products and talk about Monolithic's chips and Monolithic never wants, and
19 its opposition said that it would be physically impossible for that to be
20 included in Intel's processors. But on the point when asked, you know, is it
21 possible that these chips were used in the Intel products? Of course, the
22 answer is going to be, it's very possible. Because, I mean, we -- it is
23 undisputed that, um, Monolithic said itself in its preliminary reply that they
24 sell chips to Intel. So it should go without selling, saying that Intel's
25 purchasing these chips to use in the processors that it's making.
26 Now on this point about the discovery into the case, we were

1 limited to what was publicly available, and we endeavored to produce some
2 evidence when we did. We did not have access to the engineers, the
3 salespeople at Monolithic, that work with Intel. If we had had access, we
4 certainly would have asked them this very question. But that burden was on
5 Monolithic to have Ms. Summers speak with him, to, , to investigate and
6 look into exactly what subpart two of Paragraph B said. Now, I don't know
7 if it's possible to pull up the response brief that I was just referring to. We
8 heard about the subsidiaries and affiliates.
9 The point I was trying to make was Ms. Summers never
10 investigated how these ships, if they weren't sold directly to Intel, which it
11 appears to be at odds with Monolithic's own statements how they get to
12 Intel. But when she was asked about the subsidiaries and affiliates, she
13 could not explain how the supply chain between Monolithic and Intel works.
14 Now, in the last parenthetical sentence in Paragraph 8, and we've seen
15 similar statements in the briefs, Monolithic's refer to the contract
16 manufacturers. But when we asked Ms. Summers about the contract
17 manufacturers, she couldn't provide any additional information on what
18 agreements may or may not exist between Monolithic in the contract
19 manufacturers or the contract manufacturers in Intel.
20 If you go to Page 5, if we could get the entire page on the screen,
21 please. If you go to 4, you'll see that here is quoted the language from the
22 discovery order. And if you go back down to Page 5, you'll see a statement
23 in the middle of the page that says, "As ordered, Petitioner investigated and
24 provided a sworn declaration from its senior corporate counsel, Ms. Carly
25 Summers, on all five topics. The declaration explained in pertinent part."
26 Well, here's the rub. If you look, I don't know if it's possible to highlight it,

1 whether Petitioner -- yes, and then then up in subpart two, whether Petitioner
2 was the supplier of any product or component of a product, accused of
3 infringement in the Intel language when purporting to comply with this part
4 of the discovery order, you can see down at the bottom of the page a snippet
5 from Paragraph 8, and it says Petitioner was not the supplier to Intel of any
6 product or component or product.
7 But again, you can see how important it was to them to insert the
8 word to Intel. In order to say that they complied with subpart two, they had
9 to insert this language, which did not appear in the discovery order. And it's
10 not by happenstance. If you go to Page 10, there's a paragraph in the middle
11 of the page talking about the legal relationship, and it talks about Petitioner
12 does not have any indemnity or sales agreements with Intel and is not the
13 supplier. You'll see that they were very careful. If you look in the
14 paragraph that begins the legal relationship in the third line to say the words
15 to Intel, they knew they had a problem. And this is why they were very
16 careful to every time they make a statement to this effect, to insert those
17 words to Intel.
18 And when they quote from Ms. Summers, you'll see they were
19 very careful to say Petitioner and Intel. And then if you go to the sentence
20 that begins, Ms. Summers further confirmed, you'll see that when she
21 testified, if you go up to the sentence before that, you'll see that she was very
22 careful whenever she talked about supplying. She always put the words to
23 Intel in there, even though those words never appeared in the discovery
24 order. And you'll see this throughout their brief. It's when you understand
25 the situation how Monolithic relies on contract manufacturers or other sales
26 channels, they couldn't say that they didn't supply chips or components for

1 the Intel accused products without putting the prepositional phrase to Intel
2 there.
3 In terms of controlling the litigation, I want to now turn to a legal
4 issue. And I'm reading from Paper 64 from IPR2015-01264. This was a
5 decision Bungie incorporated versus Worlds Incorporated. And I'm reading
6 from the termination decision vacating institutions in this meeting,
7 dismissing proceedings on remand. And this is what we were urging the
8 panel to do on the conference call on May 8th. Exactly what the panel did in
9 Bungie versus World when the Federal Circuit remanded the case back to
10 the board. The parties had the opportunity to do additional discovery, and
11 they agreed that it wasn't necessary.
12 And based on the record as it currently stood, the IPRs, there were
13 three of them, were terminated, vacating institution and dismissing
14 proceedings on remand. And we believe that's appropriate here. But I want
15 to highlight for the panel a paragraph that begins here in 35. You heard
16 from Monolithic's counsel that there's no evidence that Monolithic knew or
17 was involved in the Intel litigation. But when you look at paragraph 35,
18 there was some language in the indemnification agreement language that we
19 unfortunately don't have access to whatever sales were made of the chips
20 that ultimately ended at -- ended up at Intel. We don't have the benefit of
21 that.
22 But when looking at the documents that were available, that were
23 in the record in the proceeding on remand, the Petitioner argued that they
24 didn't control the previous litigation. And the board found that this lack of
25 evidence, that they controlled the other litigation does not mean that they've
26 met their burden, that they're not time barred. And the same is true here.

1 While some cases have certainly looked at whether a Petitioner has
2 controlled aspects of a previous litigation, it's not required. That is not a
3 condition precedent or some -- it is not an absolute requirement. The board
4 has found that Petitioners like Monolithic have not met their burden of
5 proving that they weren't in privity with a time barred entity without the
6 Petitioner controlling the previous litigation. And, the same should be true
7 here.
8 JUDGE DROESCH: So, this is Judge Droesch. To clarify, your
9 privity argument is based on an opportunity to control; is that correct?
10 MR. WHITEHURST: Well, we believe that we have produced
11 some evidence that the chips that Monolithic custom builds and as
12 specifically adapts for Intel, were made pursuant to a partnership with Intel,
13 and they were supplying to Intel for use in the accused products. Ms.
14 Summers testified that they do have indemnity clauses in their agreements,
15 but when asked specifically about these chips or these products, she couldn't
16 provide any additional information. So in an instance like this, where we've
17 been deprived of any agreement, whether it's sales or indemnification, on the
18 basis that it wasn't directly to Intel, we've been deprived of the opportunity
19 to go into the specifics of that indemnification clause.
20 But she did not deny during her deposition that their agreements in
21 certain instances, she couldn't say with specificity because she didn't
22 investigate them. I do, in fact, have an indemnification clause. But again, in
23 this situation where we produce some evidence to get over the low bar in
24 World, it was incumbent upon the Petitioner to investigate the agreements,
25 whether it went to the contract manufacturer, whoever, to investigate. And
26 if the case be, show that there was not an identification clause. But in a

1 situation like this where they've hidden that evidence, it certainly shouldn't
2 be used against us that -- unless there are no further questions, I will rest.
3 Thank you, Your Honors.
4 JUDGE ULLAGADDI: Any further questions? Hearing no
5 further questions. We thank you for this opportunity to investigate the
6 record with you and your attentiveness to our questions. I do you have one
7 housekeeping matter. I believe Patent Owner filed objections to evidence in
8 Paper 43 and IPR 2024-00468. Was there corresponding motion to strike
9 filed with that after that?
10 MR. WHITEHURST: I don't know if you want to hear argument
11 or our position, but --
12 JUDGE ULLAGADDI: No, just if there was one.
13 MR. WHITEHURST: We've not filed a motion.
14 JUDGE ULLAGADDI: Okay. Thank you. In that case, we invite
15 you to remain for the court reporter. And with that, we are adjourned.
16 Thank you.
17 MR. WHITEHURST: Thank you very much.
18 (Whereupon, the above-entitled matter went off the record at 12:57
19 p.m.)

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