

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VALVE CORPORATION
Petitioner,

v.

IMMERSION CORPORATION,
Patent Owner

IPR2024-00557
Patent 10,665,067 B2

Record of Oral Hearing
Held: May 9, 2025

BEFORE: MICHAEL R. ZECHER, CHRISTOPHER L. OGDEN, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

IPR2024-00557
Patent 10,665,067 B2

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The above-entitled matter came on for hearing on May 9, 2025,
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P R O C E E D I N G S

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JUDGE OGDEN: Hello. Welcome to the Patent Trial and Appeal Board. This is the hearing for IPR2024-00557 relating to patentability challenges of claims in US Patent number 10,665,067. I am Judge Ogden and panel also includes Judge Zecher and Judge McNeill. Let's get started with appearances for both parties including those who will be arguing and then anybody else who is attending remotely including your clients, if you could identify them as well.

And then following the hearing, I'd like to ask you to stick around and if there are any questions in terms of spelling of anybody's names or any other matters, you can – the court reporter can ask questions about that. So let's start with appearances for Petitioner. Who is appearing for Petitioner?

MR. GIUNTA: Good afternoon, Your Honors. I'm Rich Giunta from Wolf Greenfield for the Petitioner Valve Corporation. I am joined today by my colleagues Nathan Speed and Mike Parsons, also from Wolf Greenfield. And Mr. Parsons and I are going to split the argument today.

MR. SCHUMANN: Good morning, Your Honor. This is David Schumann for Patent Owner Immersion. I'm here with my colleagues Stefan Szpajda and Cliff Win. And Mr. Szpajda will be doing the argument for Immersion today.

JUDGE OGDEN: Okay. Thanks, both of you. And welcome to everybody who is here participating or viewing. The purpose of this hearing is to allow the parties to present their previously made arguments in a form where we can ask questions as a panel. And we've reviewed the parties'

1 filings and the evidence and so we're familiar with the record. And we also
2 have access to the record and the briefs on our computers so we may follow
3 along with those during the argument.

4 And before we begin, I want to go over a few housekeeping issues.
5 First of all, a recording of any PTAB hearing is prohibited. And the court
6 reporter will be providing a transcript of the hearing at a later time. And that
7 will become part of the record. So to make the record clear, I'd like to ask
8 everybody to identify anything that you refer to during your arguments
9 including slide numbers, exhibit numbers, pages and so forth. And if you
10 could please mute yourself while you're not speaking, that would help
11 considerably.

12 If you happen to encounter any technical difficulties, please let us
13 know immediately and we'll try to – if we need to, we could always pause
14 the hearing and fix any technical issues that might occur. And keep in mind
15 that this is a public hearing, so there may be others in attendance live or
16 listening on the public line.

17 There are a couple of pending issues in the case that may affect the
18 hearing. First of all, with our permission, Petitioner submitted a paper
19 identifying material in Patent Owner's Sur-reply that it alleges is untimely.
20 And that's Paper 25. And then Patent Owners filed a response to that which
21 is Paper 27. This was not a motion but we will consider these papers and if it
22 turns out that we agree with Petitioner that anything in the Sur-reply was
23 untimely, we will address that later in the final written decision.

24 So in the meantime, we're not going to prohibit Patent Owner from
25 raising any of these issues during the hearing. And also, there are objections
26 on both sides to some of the demonstratives on the ground that some of the

1 matter in the demonstratives make untimely arguments or refer to material
2 that hasn't been raised previously in the briefs. Because the demonstratives
3 are not considered to be evidence, these are not evidentiary objections, so
4 we're not going to rule on them before the hearing. But we may eventually
5 end up, you know, we may disregard anything that we consider to be a new
6 argument that hasn't previously been made in the briefs.

7 So the parties' objections are on the record and there's no need
8 today for either party to remake those objections. We have them. If the party
9 does, you know, if either party does want to make any new objections to
10 something that's said today, I'd ask you to please hold those objections until
11 your time to speak rather than interrupting the flow of the opposing party's
12 arguments.

13 Per the hearing order, Paper 23, each party will have 60 minutes of
14 total time to argue their cases. Petitioner will open the argument and can
15 reserve rebuttal time which shouldn't exceed more than half of Petitioner's
16 total argument time. And then Patent Owner will have an opportunity to
17 respond to Petitioner's arguments and may reserve surrebuttal time which
18 also shouldn't exceed more than half of Patent Owner's total argument time.

19 So, Petitioner, do you wish to reserve any rebuttal time?

20 MR. GIUNTA: Yes, we do, Your Honors. We'd like to reserve 10
21 minutes. And just if I may, our plan is I've promised Mr. Parsons I'm going
22 to give him 10 minutes on Ground 3. So I will be targeting trying to finish
23 up my part 40 minutes in.

24 JUDGE OGDEN: Okay. And you said 50 minutes for your initial
25 time?

1 MR. GIUNTA: Yes, sir. We would like to reserve 10 minutes for
2 rebuttal.

3 JUDGE OGDEN: Ten minutes? Okay. So 10 minutes – or 50
4 minutes for your initial time and then you’d like to reserve 10 minutes for
5 rebuttal. Okay. Thank you. Okay. Very well, Mr. Giunta, you can begin
6 when you’re ready.

7 MR. GIUNTA: Thank you, Your Honors. I’m going to start on
8 Slide 2. So there are three grounds in this trial and they all challenge the
9 same claims. I plan to cover Grounds 1 and 2 today and Mr. Parsons is going
10 to cover Ground 3. The POR only advanced a handful of arguments for each
11 ground and only challenged the petition showing against the independent
12 claims.

13 We plan to spend our time today explaining why Immersion’s POR
14 arguments fail. We also plan to address the new arguments that Immersion’s
15 Sur-reply advanced against Ground 2 to both explain why they should not be
16 considered and why they fail on the merits if Your Honors do consider them.

17 So as shown on Slide 4, the ‘067 patent is directed to integrating
18 haptics into an augmented reality system. An augmented reality system
19 presents the user with an environment that’s partly real and partly virtual.
20 This can be achieved by allowing the user to see aspects of the real-world
21 environment and superimposing virtual effects onto that real world
22 environment.

23 As shown on Slide 5, Claim 1 here is directed to a system with
24 four components. Proxy object comprising one or more haptic output
25 devices, a displayed output of visual effect onto the proxy object, a sensor to
26 track the position of the proxy object, and then a processor that controls the

1 visual and haptic effects. The other independent claims substantively track
2 Claim 1 and Immersion presents the same arguments against every
3 independent claim.

4 So turning to Ground 1, starting on Slide 7. Ground 1 demonstrates
5 that the claims are anticipated by or obvious over Banerjee. Banerjee
6 discloses a system for simulating a surgical procedure. An augmented reality
7 embodiment is shown in Figure 1 and a virtual reality embodiment is shown
8 in Figure 4. Both embodiments have a device that's labeled 22 that we've
9 highlighted on Slide 7.

10 Banerjee calls this a haptic device 22 and discloses that the haptic
11 device includes a stylus 27. A user holds the stylus while performing a
12 simulated surgical procedure. The system superimposes visual effects onto
13 the stylus to make it appear to be a particular surgical instrument. And an
14 example of that is shown in Figure 19 that we have here on Slide 7. The
15 haptic device 22 imparts haptic effects. So the stylus feels to the user like a
16 surgical instrument engaged in a surgical procedure.

17 Turning to Slide 9, Immersion's POR advanced an explicit claim
18 construction for the term "proxy object". Immersion's Sur-reply in several of
19 their slides alleged that we do not dispute that Banerjee fails to have a proxy
20 object under their construction. That's not true, Your Honors. While the
21 reply explained why Immersion's construction is wrong, as shown on Slide
22 8, we also explained that Your Honors do not need to resolve that claim
23 construction dispute because Banerjee meets even Immersion's narrow
24 construction.

25 So in our discussion of Ground 1 today, we're going to
26 demonstrate to you that Banerjee discloses a proxy object even under

1 Immersion's construction. Because Banerjee's haptic device 22 meets the
2 claimed proxy object and it has haptic output devices contained inside as
3 required by their construction.

4 Turning to Slide 9, the Petitioner mapped the proxy object to
5 Banerjee in two alternative ways. We mapped it to the haptic device 22
6 including its stylus 27, or alternatively to just the stylus 27 alone. At
7 institution, Your Honors were persuaded by our reliance on the haptic device
8 22 including its stylus but you were skeptical about our reliance on the stylus
9 alone. As we did in the Reply, we're going to focus today on our argument
10 that maps the proxy object to the haptic device 22 including its stylus.

11 As shown on Slide 9, the petition explained that Banerjee's haptic
12 device 22 meets limitation 1A's proxy object because the haptic device 22
13 acts as a proxy for a surgical instrument. As the petition explained, the
14 haptic device includes the stylus 27 that the user holds as well as actuators
15 that impart haptic effects so the user feels like they're performing a
16 simulated surgical procedure.

17 At institution, Your Honors agreed that Banerjee describes the
18 stylus as part of the haptic device 22. And on the bottom paragraph of the
19 institution excerpt that we have on Slide 9, Your Honors noted that
20 Immersion's claim construction arguments do not matter because haptic
21 device 22 has haptic devices contained inside which meets Immersion's
22 construction.

23 Your Honors were right on both of those accounts. As we will
24 discuss, Immersion gives you no reason to reach a different conclusion in the
25 final written decision. Slide 10 shows Immersion's POR arguments against
26 Ground 1. Immersion notes three claimed requirements relating to the proxy

1 object that argues that neither the stylus alone, nor the haptic device 22
2 considered without the stylus meets all three requirements.

3 These arguments fail because they ignore Banerjee's teaching that
4 the haptic device includes the stylus. Your Honors again find that to be true,
5 that's fatal to all the POR's arguments against Ground 1. As shown on Slide
6 11, the evidence is overwhelming that Banerjee's stylus is part of the haptic
7 device 22. Banerjee says this explicitly in multiple paragraphs shown on
8 Slide 11. And as Your Honors noted in the institution decision, Banerjee
9 even expressly claims this in Banerjee's Claim 1. As shown on Slide 12,
10 Immersion alleges that the haptic device 22 can't be the claimed proxy
11 object because no image is superimposed onto it.

12 That argument fails if Your Honors find that the stylus is part of
13 the haptic device because Banerjee indisputably superimposes a visual effect
14 of a surgical tool onto the stylus as shown, for example, in Banerjee Figure
15 19 that we looked at on Slide 7. The claim does not require that the visual
16 effect cover the entire surface of the proxy object. Limitation 1B simply
17 requires a display configured output of visual effect onto a surface of the
18 proxy object.

19 By superimposing an image of a virtual tool onto the stylus,
20 Banerjee outputs a visual effect onto a surface of the proxy object as claimed
21 because the haptic device is the proxy object and the stylus is part of the
22 haptic device 22. So the surface of the stylus with the virtual tool effect
23 imposed on it is the surface of the proxy. Leaving no doubt, as shown on
24 Slide 12, the petition cited Banerjee paragraph 34 where Banerjee
25 characterizes the surgical tool visual effect as being, quote, "collocated with

1 the haptic device 22", end quote, and as being superimposed, quoted again,
2 "over the first haptic device 22."

3 So Immersion's POR argument that Banerjee does not
4 superimpose an image onto the haptic device 22 is expressly refuted by
5 Banerjee paragraph 34. Going to Slide 13 –

6 JUDGE OGDEN: Mr. Giunta?

7 MR. GIUNTA: Yes, Your Honor?

8 JUDGE OGDEN: I understand it's your position that Banerjee
9 discloses that stylus 27 is part of the haptic device 22. But I don't
10 understand, though, or it's not my understanding, though, that Banerjee
11 explicitly addresses or says that any particular thing is a proxy object. And I
12 think that there could be a difference there. Right? Because the proxy object
13 is the term used in the claim. And is it possible that even though Banerjee
14 discloses that haptic device 22 includes stylus 27 that maybe they both might
15 not be the – part of the proxy object?

16 MR. GIUNTA: I guess I would – I'm uncertain as to how the
17 haptic device 22 could not be a proxy object, Your Honor. That entire
18 device, what it does, is it acts as a proxy for a surgical instrument. What the
19 user does is they hold the stylus to perform a simulated surgical procedure,
20 but the way it acts as a proxy for the surgical instrument is because the entire
21 haptic device provides haptic effects that the user feels through the stylus so
22 that they feel as if they are performing a surgical operation. Does that
23 answer Your Honor's question?

24 JUDGE OGDEN: Could you view the proxy object as just the
25 stylus 27? Because that's the thing that actually is held by the user and that
26 has an augmented reality overlay put on it?

1 MR. GIUNTA: No, because if I take the question to be that we
2 should deconstruct this device that Banerjee describes as a single device, we
3 should deconstruct it and just consider the proxy object to be some
4 component of it. Say, some piece of – I’m not sure what material this is
5 formed of – let’s say plastic that the user holds, right?

6 That piece of plastic, if you deconstruct it from the rest of the
7 device is not a proxy for a surgical instrument. It would just be a piece of
8 plastic that someone could hold. And there would be no haptic effects
9 imparted to it. It would not feel to the user like they are performing a
10 surgical operation if it was not part and parcel of the entire device.

11 JUDGE OGDEN: Okay. Thank you.

12 MR. GIUNTA: If we could turn to Slide 13. So Immersion’s POR
13 alleges that Your Honors got it wrong in finding that Banerjee’s stylus is
14 part of the haptic device. But Immersion never refuted any of the disclosure
15 in Banerjee that Your Honors cited. Immersion also never refutes any of the
16 disclosure that we looked at on Slide 11 or Banerjee’s disclosure in
17 paragraph 34 that we looked at on Slide 12.

18 Instead, Immersion alleges that Banerjee Figure 4 shows that the
19 stylus 27 is not part of the haptic device. But Figure 4 doesn’t show that.
20 Figure 4 is entirely consistent with Banerjee’s written description and claims
21 which expressly state that the stylus is part of the haptic device 22. If you
22 take a look at Slide 14, Immersion’s POR also alleges that Banerjee
23 paragraph 37 describes an interface between the stylus and haptic device
24 which confirms that they’re separate components.

25 We have reproduced Banerjee paragraph 37 on Slide 14 and Your
26 Honors can see it does not say that. The interface Banerjee describes is

1 provided by a software library. So it is a software interface that the system
2 has with the haptic device 22. Banerjee never describes an interface between
3 the stylus and the haptic device, nor could it, because the stylus is part of the
4 haptic device. There is no haptic device 22 without the stylus.

5 In fact, Banerjee paragraph 37 confirms that the stylus is part of
6 the haptic device 22 because it characterizes the stylus as a, quote, "haptic
7 stylus." And this goes to Judge Ogden to your question before. It is a haptic
8 stylus because it is part and parcel of the haptic device 22. So that's all I
9 have on the POR. We've just covered everything in Banerjee that the POR
10 cites to support its assertion that the stylus is not part of the haptic device.
11 None of what Immersion pointed to refused Banerjee's express disclosure
12 that the stylus is part of the haptic device. And that's fatal to all the
13 arguments against Ground 1 in the POR.

14 So I'd like to turn to the – Immersion's Sur-reply starting on Slide
15 15. So their Sur-reply alleges that our mapping of Banerjee to the proxy
16 object fails because it inverts the claim requirement that the proxy object
17 comprise one or more haptic output devices. But as Your Honors can see
18 from what we've underlined on Slide 15, that argument is only directed to
19 our alternative mapping of the proxy object onto the stylus alone.

20 Their inversion argument does not help immersion against the
21 petition's mapping of the proxy object onto the haptic device 22. When the
22 stylus is properly understood to be part of the haptic device 22, our mapping
23 of the proxy object onto Banerjee's haptic device does not invert any claim
24 requirement because the haptic device 22 is the claimed proxy object and it
25 comprises one or more haptic output devices precisely as limitation 1A
26 requires.

1 Looking at Slide 16, Immersion's Sur-reply also has claim charts
2 that purport to show that on mapping –

3 JUDGE OGDEN: Mr. Giunta?

4 MR. GIUNTA: Yes, Your Honor?

5 JUDGE OGDEN: Sorry, can I interrupt you for a second? We're
6 having a technical issue with Judge McNeill. We need to get him
7 reconnected. So I'll just pause the timer for a minute. Sorry about that.

8 USHER: Can you hear us?

9 JUDGE MCNEILL: Yes, I'm back.

10 JUDGE OGDEN: Okay, great. Looks like we're back up and
11 running then. You can resume, Mr. Giunta, when you're ready.

12 MR. GIUNTA: Thank you, Your Honor. So we were looking at
13 Slide 16 where Immersion's Sur-reply has claim charts that purport to show
14 that our mapping of Banerjee to Claim 1 relies on an implicit claim
15 construction based on inconsistent reading of the claim. Immersion
16 mischaracterized our mapping. So we've corrected their claim chart with our
17 red annotations on Slide 16. Slide 16 also reproduces portions of the petition
18 showing what our mapping actually is.

19 As Your Honors can see, the petition mapped the proxy object to
20 Banerjee's haptic device 22 and noticed that the haptic device includes a
21 stylus. The red boxes shown lower right on Slide 16 are in the petition and
22 they were used to identify the proxy object. Those red boxes were drawn to
23 include reference character 27 because the haptic device includes the stylus
24 27. So Immersion's claim chart alleges that our mapping implicitly reads
25 part of into limitation 1C to meet the requirement of the sensor tracking a
26 position of the proxy object. That's not true.

1 As shown on Slide 16, in mapping the proxy object onto the haptic
2 device, the petition explained that the tracked position or orientation of the
3 stylus is a position of the haptic device 22 of which it's a part. As shown
4 lower left on Slide 16, the petition quoted Banerjee paragraph 42 which
5 expressly characterizes the position and orientation of the stylus as a position
6 and orientation of the haptic device 22. Immersion entirely ignores the
7 petition showing that the position of the stylus is a position of the haptic
8 device.

9 Immersion mischaracterizes both what we argued and what Your
10 Honors found in institution. You can see this on Slide 17 where Immersion
11 alleges that Your Honors recognized at institution that Banerjee does not
12 track the position of the haptic device 22. That's wrong and Immersion
13 doesn't provide any citation to the institution decision. As highlighted
14 bottom left on Slide 17, Your Honors specifically found that, quote, "The
15 tracked position of the haptic stylus 27 is one of the positions of the haptic
16 device 22 as a whole," end quote.

17 Among other evidence, Your Honors cited Banerjee paragraph 42
18 that we just discussed on Slide 16. And as shown on the right side of Slide
19 17, Your Honors also noted that Banerjee incorporates by reference another
20 patent that describes a commercial PHANTOM haptic device as the
21 preferred way to implement the haptic device 22. You also noted that other
22 exhibits explain how that haptic device works. I'm going to talk about the
23 import of that in a second.

24 But first, I just wanted to address Immersion's assertion that we
25 allegedly do not dispute that Banerjee does not teach that the position of the
26 haptic device 22 is tracked by a sensor. Immersion alleges this in their Sur-

1 reply, shown upper left on Slide 18 and they have it on their slides for today,
2 Slides 62 and 63. Immersion is not correct about this. As shown on Slide 18,
3 what they're citing is our Reply's Footnote 2.

4 That footnote only says that Your Honors do not need to address
5 our alternative mapping of the proxy object onto the stylus alone. As shown
6 upper right on Slide 18, the petitioner expressly argued that the tracked
7 position of the stylus is a position of the haptic device 22 and the petition
8 quoted Banerjee paragraph 42 which says this explicitly. Additionally, as
9 shown lower right on Slide 18, petition also cited Exhibits 1017 and 1018
10 which describe that PHANTOM haptic device that Your Honors noted in the
11 institution decision. The petition explained that the way the PHANTOM
12 haptic device determines the position of the stylus is by using sensors like
13 optical encoders in every one of the articulating joints of the haptic device.

14 So the PHANTOM haptic device determines the position of the
15 stylus by determining the angular and rotational position of every joint of the
16 haptic device 22. As shown on Slide 18, the petition explained that a
17 POSITA would have understood that this is how Banerjee implements the
18 haptic device 22 or that that would have been an obvious way to have done
19 so, which Immersion never disputes. So the sensors in the articulating joints
20 of the haptic device 22 indisputably track the position of the haptic device.
21 Immersion ignored this evidence.

22 JUDGE MCNEILL: I'm sorry –

23 MR. GIUNTA: Yes, Your Honor?

24 JUDGE MCNEILL: Counselor, are there any embodiments in the
25 '067 patent that show the proxy object, the position of the proxy object

1 being tracked where only a portion of the position – portion of the proxy
2 object is being tracked?

3 MR. GIUNTA: I don't know, Your Honors. But if I may push back
4 on – the implication sounds like from the question that you believe that
5 Banerjee only tracks a position of a portion of the proxy object. And,
6 respectfully, that's not true. The haptic device 22 is the proxy object. As I
7 just said, this PHANTOM device that Banerjee describes has a sensor in
8 every one of the joints of the haptic device 22. So all of the various positions
9 of that entire device are tracked by sensors. It's not just the stylus.

10 JUDGE MCNEILL: Thank you, Counselor.

11 MR. GIUNTA: Okay. So –

12 JUDGE OGDEN: Just so that I understand, you're saying – your
13 position is that when Claim 1 and the other claims talk about a position of
14 the proxy object, you're saying that that doesn't necessarily mean one single
15 position of the proxy object as a whole? You're saying that it means a
16 position of at least some part of the proxy object or something – some
17 position relating to the proxy object or maybe you can explain it? You can
18 tell me how you would kind of articulate that.

19 MR. GIUNTA: Sure, Your Honor. So if you imagine that this
20 haptic device has all these joints much like the human body. Right? If when
21 the user moves the stylus, the haptic device moves with it and assumes all
22 kinds of different positions. So the same way that if I'm standing here with
23 my arms on my side, my body is not in the same position as if I raise my
24 right arm. So not in the same position as if I put my arm out in front of me.
25 So the position of the proxy object includes all the different variations.

1 What Immersion seems to be suggesting is that you should treat
2 position of the proxy object as if you are finding some dead center position
3 on this object and you're talking about its XYZ coordinates and saying that
4 it has to move. Right? They make this argument about the base of the device
5 22. Right? But the – if the proxy object is a three-dimensional object, you
6 can't just pick one point on it and say that that point has to move. If the
7 object is rotated, turned in three-dimensional space, the object is in a
8 different position. The only way the object is in the same position is if every
9 point on the proxy object does not change.

10 And so what Banerjee is doing with all of its sensors is
11 determining all the various different positions and orientations of the haptic
12 device and that is tracking a position of the haptic device which is the proxy
13 object. Did I answer your question, Your Honor?

14 JUDGE OGDEN: Yes, thank you.

15 MR. GIUNTA: Okay.

16 JUDGE ZECHER: Counsel, I do have a question before you move
17 onto the next ground.

18 MR. GIUNTA: Yes, Your Honor?

19 JUDGE ZECHER: I know you're arguing or taking the position
20 that you – your reliance on Banerjee still accounts for this limitation
21 requiring the proxy object and the corresponding haptic output devices. Let
22 me just make sure I get the language correct. A proxy object comprising one
23 or more haptic output devices. It does appear that at least in the Patent
24 Owner Response, the Patent Owner is saying that a POSITA would have
25 understood that the proxy object that is mechanically coupled to or appended
26 or connected to haptic output devices is outside the scope of the claim.

1 And they're pointing us to the prosecution history here to basically
2 say that there were certain amendments that were proposed. Some weren't
3 entered, others were. And therefore, it somehow excludes reading the proxy
4 object in this way regarding mechanically coupled. And, of course, as you
5 know, with Banerjee we have the haptic device 22 that appears to be
6 mechanically coupled to the stylus 27. So can you just elaborate a little more
7 on that for me? Because I found that argument to be pretty interesting.

8 MR. GIUNTA: Yeah. So that argument, I think that argument
9 works for them potentially if you credited it or our argument that only
10 pointed to the stylus itself as the proxy object. That argument does not help
11 them for our argument that maps the proxy object to the entire haptic device
12 22. Because the haptic device 22 has the actuators in it. So if you read the
13 proxy object onto the haptic device, it meets their construction which
14 requires that the haptic output devices be contained within the proxy object.

15 The other thing I would say, Your Honor referenced the
16 prosecution history. What happened in the prosecution history is they
17 distinguished over prior art where haptic devices were inside a glove that the
18 user had to wear. And so they amended their claims to get around an
19 embodiment where there's a glove. So their claims cover a system where the
20 user doesn't have to wear a glove. They can hold the proxy object and feel
21 the haptic effect. That is absolutely true with respect to Banerjee. There's no
22 glove because the haptic actuators are inside the proxy object itself which is
23 the haptic device 22.

24 JUDGE ZECHER: Maybe verify my understanding of the
25 prosecution history. At one point, did the Patent Owner propose an
26 amendment where it said the haptic output device within the proxy object,

1 which my understanding was entered after final, the examiner did not enter
2 that amendment and then later after filing an RCE, they currently amended
3 the claim to what we see the language now which is the comprising aspect of
4 it. Is that correct? Is that your understanding?

5 MR. GIUNTA: That is correct, Your Honor. They offered an
6 amendment that said within, the examiner rejected it, so they changed. And
7 what they have argued is that you should somehow credit that and suggest
8 that you should now read this limitation into the claim. Respectfully, we
9 think it's exactly the opposite. We cited a number of Federal Circuit cases.
10 They gave up on that. They are the Patent Owner. They had complete
11 control over these claims. If they wanted to claim the actuators inside the
12 proxy object, they knew how to do that. They gave up on that. They got
13 broader claims.

14 JUDGE ZECHER: So wouldn't this effectively kind of undermine
15 their proposed construction because they didn't actually amend it to say
16 within?

17 MR. GIUNTA: It absolutely does, Your Honor. It – I think
18 respectfully it destroys their claim construction. Again, the reason we're not
19 focusing on it today because it does not matter for the way they map it to
20 Banerjee. And Banerjee, they only made this argument about the proxy
21 object contained inside in connection with Ground 1. And it doesn't help
22 them for our mapping to the haptic device 22 which is why we didn't plan
23 on spending any time on their claim construction today.

24 JUDGE ZECHER: Okay. Thank you.

25 MR. GIUNTA: All right. Thank you, Your Honors. If it's okay, I'd
26 like to turn to Ground 2. And I'm going to start on Slide 20. So Ground 2

1 demonstrates that the challenged claims are anticipated or obvious over
2 Meglan. So Meglan is an augmented reality system that's used by a trainee
3 to learn how to control a hemorrhage. In the embodiments that are shown on
4 Slide 20, Meglan's system has a surrogate 20 which is a mannequin that
5 represents a patient.

6 A computer-generated video simulating a wound can be overlaid
7 onto the patient. A wound 140 and blood 150 that's hemorrhaging from it
8 are shown in Figures 2 and 3 and highlighted blue on our Slide 20. So an
9 augmented reality image is provided to the trainee. So the trainee sees their
10 hands and the surrogate along with the visual effects representing the
11 wound. In Figure 1, the augmented reality image is provided by a display
12 screen and camera that are mounted away from the user, whereas in Figures
13 5 and 8, they're on head-mounted display.

14 The disputed issues in this case, those differences in terms of
15 where the camera and the display, are don't matter. So Ground 2 relies on
16 the embodiment that uses the substrate 2000 which is shown in Figure 8.
17 Substrate 2000 is positioned between the trainees hands and the surrogate.
18 Substrate is flexible and conforms to the shape of the surrogate. Haptic
19 output devices are provided in the substrate 2000 to provide haptic feedback
20 to the trainee which simulates the wound and the way the wound is reacting
21 to the trainee's treatment.

22 As shown on Slide 21, petition demonstrated that the claim proxy
23 object could be met – and can be met in Meglan in three different alternative
24 ways: by the surrogate 20 alone, the substrate 2000 alone or both together as
25 a unit. Given the way the disputed issues have unfolded in this trial, we plan

1 to focus today on the petition's argument that the substrate 2000 alone meets
2 the claim proxy object.

3 And we're doing that because it's really simple to see how and
4 why all of Immersion's contrary arguments fail, including the new
5 arguments that they make in their Sur-reply. So as shown on Slide 21, the
6 petition explained that the substrate 2000 is a proxy object for two reasons.
7 First, substrate has the feel of the human skin and acts as a proxy for the
8 region of the patient's body that's being treated. Second, the substrate also
9 acts as a proxy for the wound being treated because it provides haptic
10 feedback to the trainee that simulates the feel of the wound and how it
11 responds to treatment.

12 The claims have three system requirements relating to the proxy
13 object. As shown on Slide 22, petition demonstrated that all three are met
14 when the proxy object is matched to the substrate – excuse me, mapped to
15 the substrate alone. Substrate 2000 meets limitation 1A because it's a proxy
16 object with a patient and the wound as we just discussed. And because it
17 comprises haptic output devices to provide haptic feedback. Substrate 2000
18 meets limitation 1B because the system has a display that outputs a visual
19 effect onto a surface of the substrate.

20 And substrate 2000 meets limitation 1C because a system has a
21 sensor, a camera that tracks the position of the substrate. So I'd like to first
22 address the arguments that the POR advanced and starting on Slide 23. So
23 the POR's table of contents has a heading for section that appears like it
24 would have argued and Meglan does not disclose a proxy object at all. But
25 as shown on Slide 23, an error was generated because the POR has no

1 subsection and it makes no such argument. I'm going to return to that in a
2 minute when I get to their Sur-reply and the improper new arguments.

3 But first I wanted to address the single argument that the POR did
4 actually make which was that Meglan's haptic effects allegedly are not
5 determined based on the position of the proxy object. Turning to Slide 24, as
6 shown lower left, the POR alleges that the petition only argued that
7 Meglan's haptic effects are based on the location of the trainee's hands and
8 fingers, not based on the location of the substrate.

9 POR cites to the petition at Page 49, but that's the section
10 explaining why Meglan has a proxy object meeting limitation 1A. The POR
11 ignores the petition showing of how Meglan meets limitation 1C which is
12 the limitation that requires a sensor for tracking the position of the proxy
13 object. As seen on Slide 24, the petition's showing for limitation 1C explains
14 that Meglan's camera system has a sensor that detects the position of the
15 substrate 2000. The petition cites Meglan paragraph 113 which is also
16 shown on Slide 24 is explicit that the camera sensor is used to determine,
17 quote, "the precise location of the substrate 2000," end quote.

18 So turning to Slide 25, Meglan paragraph 113 also explains that the
19 camera sensor is used to determine even more specifically the precise
20 location of the substrate's load sensors and haptic pulse and heat generators.
21 Meglan paragraph 116 then explains that using the substrate enables the
22 system to accurately and precisely detect the interaction between the trainee
23 and the substrate based on the load sensors and to precisely and accurately
24 provide haptic feedback to the trainee via haptic pulse and heat generators.

25 So Meglan explains that the system determines the position of the
26 substrate 2000 as well as where its sensors and haptic devices are located

1 relative to the surrogate in the trainee's hands, and it does so so that it can
2 precisely detect the way the trainee is interacting with the surrogate and so
3 that it can provide precise and accurate haptic feedback. We relied on these
4 Meglan disclosures to meet limitation 1C's requirement of a sensor for
5 tracking the position of the proxy object which again the petition mapped to
6 the substrate 2000.

7 As shown on Slide 26, to purportedly support its assertion that the
8 petition relied on haptic effects generated based only on the position of the
9 trainee's hands and fingers, rather than on the position of the proxy object,
10 Immersion cited the petition at pages 57 and 58. Now, that section of the
11 petition addresses limitation 1D2, which requires that the processor
12 determine a haptic effect in response to data from the sensor. With that
13 limitation, the petition cited Meglan paragraphs 89 and 90 because those
14 paragraphs describe specific examples of processor generated haptic effects.

15 Those paragraphs describe Meglan's embodiment that uses a glove
16 with haptic output devices that the trainee wears rather than the substrate.
17 But that's why the petition also cited Meglan paragraph 107, which as
18 shown in the upper right on Slide 26 says the gloves can be replaced by the
19 substrate 2000. So much like we just did, our Reply demonstrated that the
20 POR's assertion that the petition relied only on tracking the position of the
21 trainee's hands and fingers rather than the position of the proxy object is
22 wrong.

23 As shown at the bottom of Slide 27, Immersion's Sur-reply now
24 admits that, quote, "the position of the substrate is tracked to determine
25 haptics," end quote. Your Honors, respectfully, that should end the matter
26 for Ground 2. Immersion has now admitted that the only argument the POR

1 advanced against the petition's reliance on the substrate to meet the claimed
2 proxy object was wrong.

3 So I want to next address the new Sur-reply arguments. On Slide
4 28, we have once again produced the Sur-reply – sorry. Slide 28 shows that
5 the only argument the POR advanced against Ground 2 was that Meglan
6 does not have a sensor that tracks the position of the proxy object as required
7 by limitation 1C or that it doesn't use sensor data to determine a haptic
8 effect as required by limitation 1D2. Now, if we go to Slide 28, we've
9 reproduced a Sur-reply's table of contents. Your Honors can see it advances
10 no argument about those limitations 1C and 1D2 that the POR challenged as
11 not that by Ground 2.

12 Instead, Sur-reply advances a host of new arguments. As shown on
13 Slide 29, we identified those in our Paper 25 that Judge Ogden referenced at
14 the beginning of the hearing. The new arguments include assertions that
15 Meglan's substrate is not a proxy object as required by limitation 1A
16 because it does not have visual effects overlayed on it as required by
17 limitation 1B. These arguments were not in the POR. So they're waived
18 pursuant to the scheduling order. As shown on Slide 30, Your Honors
19 authorized Immersion to file a paper of limited to identify in where the
20 challenged arguments were previously made. If those arguments were in the
21 POR, Immersion should have been able to provide Your Honors with
22 pinpoint citations to them. That is not what Immersion did.

23 Instead, as shown on Slide 30, Immersion provided three block
24 sites to the POR that in total covered 19 pages. As shown on Slide 30, we
25 believe Immersion has essentially conceded that the POR never made these
26 arguments because they alleged that our Reply forced Immersion to make

1 new arguments in the Sur-reply. According to Immersion's Paper 27, what
2 the Reply did to force them to make new arguments in the Sur-reply was to
3 point out that the surrogate, the substrate, or the two together meet the
4 claimed proxy object which has its position tracked.

5 But these were not new arguments in the Reply and immersion
6 never alleges otherwise. These arguments were all in the petition. So Your
7 Honors should find these Sur-reply arguments against Ground 2 waived. But
8 the last thing I'd like to do is explain why these arguments against the
9 substrate meeting the proxy object fail even if you consider them. So turning
10 to Slide 31, this shows that the Sur-reply's only argument directed to our
11 alliance on Meglan's substrate 2000 to meet the claimed proxy object is
12 right here. Immersion alleges that Meglan does not provide visual overlays
13 on the substrate. And they allege that we didn't even contend that it does.
14 Both of those assertions are wrong, Your Honors.

15 As you can see on Slide 31, the petition explained that Meglan's
16 simulated virtual trauma is overlaid onto the surface of the substrate 2000.
17 We turn to Slide 32, we talked about this earlier. Meglan's system displays a
18 virtual wound to the trainee before treatment begins as shown in Figure 2.
19 Then the trainee treats the virtual wound by putting the trainee's hands over
20 the wound as shown in Figure 3. The embodiment that uses the substrate
21 2000 rather than gloves, the trainee's hands are placed directly onto the
22 substrate as shown in Figure 8.

23 So that confirms that the wound is visually overlaid on the
24 substrate. In fact, the Figure 8 insert that zooms in on the trainee's hands
25 confirms this because it shows that the blood 150 flowing from the wound,
26 which we've highlighted blue on Slide 52, is under the user's hands. So this

1 all supports the petition's explanation that the wound and blood flow are
2 visually overlaid on the substrate and it directly refutes the Sur-reply's
3 assertion. To the contrary. Turning to Slide 33, what Immersion says is that
4 these Meglan disclosures that we cited about the visual overlay of the wound
5 do not apply to Meglan's embodiment that uses a substrate.

6 The basis for that assertion is Meglan's disclosure in paragraph
7 112 which says that video filtering can be applied to filter the substrate out
8 of the image that's displayed to the trainee. Your Honors, that argument's
9 wrong for two reasons. First, we just talked about the insert of Figure 8
10 shown on Slide 32 makes clear that even if you were to make the substrate
11 invisible so that the trainee couldn't see it, that doesn't change the fact that
12 the wound has to be overlaid on the substrate because the substrate is where
13 the user's going to put their hands. The user would not know where the
14 wound is if the wound was not put on top of the substrate where the user's
15 hands are to be put.

16 Second, if we go back to Slide 33, Meglan's paragraph 112 that
17 Immersion relies on explains that the way Meglan filters out the substrate is
18 by coloring portions of the substrate so that it blends in with the background
19 to make it invisible. Your Honors, that right there meets limitation 1B. The
20 limitation only requires a display configured to output a visual effect onto a
21 surface of the proxy object. So Meglan's display outputting a color onto the
22 substrate to make it blend into the background so that the trainee doesn't see
23 it, that outputs the visual effect onto the surface of the substrate. Without a
24 visual effect output onto its surface, substrate would be visible to the trainee.
25 So Immersion's new Sur-reply argument that Meglan does not meet

1 limitation 1B's requirement of outputting a visual effect onto the substrate is
2 wrong and it's refuted by the very evidence that Immersion cites.

3 As shown on Slide 34, that erroneous visual overlay argument,
4 that's the only argument the Sur-reply makes against the substrate meeting
5 the claimed proxy object. So given that all of Immersion's arguments, both
6 in the POR and the Sur-reply against Ground 2 fail, we ask that Your Honors
7 find the claims unpatentable over Ground 2. And unless Your Honors have
8 questions, I'll turn it over to Mr. Parsons to address Ground 3.

9 MR. PARSONS: Good afternoon, Your Honors. I'll be discussing
10 Ground 3 from the petition based on Rogers starting with Slide 36. On Slide
11 36, as shown here in Rogers Figure 1, Rogers discloses a virtual reality
12 gaming system that includes a head-mounted display 102 that the user
13 receives visual and audio input through while holding a directional interface
14 object 104 that's tracked by a camera and inertial sensors in the directional
15 interface object in order to produce various visual and haptic effects to the
16 user while the user is interacting with the virtual environment.

17 For simplicity's sake, I'm just going to refer to the directional
18 interface object as a gun because it's less syllables. In Rogers system, as I
19 stated, the location and orientation of the gun is tracked using the camera
20 and the inertial sensors. And depending on how the user moves or interacts
21 with the gun, various visual, audio, and haptic effects are output by the
22 gaming system and applied to either the head-mounted display or the gun.
23 Now, for our purposes, there's no dispute that the gun is a proxy object
24 according to the claims. Now, turning to Slide 37, in the petition we mapped
25 the sensor limitation in 1C to – separately to the camera, the inertial sensors,

1 and a combination of both. One C recites the sensor for tracking the position
2 of the proxy object.

3 We did this because in Rogers paragraph 44 shown here on Slide
4 37, it states that the camera is configured to take images of a light that is
5 tracked on the gun and the images from the – from tracking the light as well
6 as the inertial sensor data is used to determine its – the gun’s location and
7 orientation. Now, in this last sentence on paragraph 44, Rogers uses the
8 and/or, you know, combination between the lights that can be tracked in the
9 inertial sensors. This is an indication that the camera, the inertial sensors, or
10 a combination of both are used in Rogers to determine the location and
11 orientation of the gun.

12 But to simplify things for our purposes, I will just focus on the
13 camera, as the party’s dispute is narrow with regards to the camera’s
14 involvement in Rogers. Now, turning to Slide 41, the Patent Owner’s
15 Response doesn’t dispute that the camera is a sensor that tracks a proxy
16 object. Rather, Immersion’s argument is that the camera isn’t used during
17 the reload action described in paragraph 105, that the petition mapped the
18 determining haptic effect limitation to in limitation 1B2.

19 According to Immersion, the reload action only uses orientation
20 data from inertial sensors to determine whether the user points the gun
21 upwards and not positional data from the camera. This argument is
22 incompatible with Rogers and in our Reply we responded to this by referring
23 to Rogers paragraph 105 and 106, also shown here on Slide 41. In the top
24 portion, paragraph 105 in Rogers says that the gun includes a movable
25 weight that is caused to move when the user fires the virtual weapon.

1 And in another case, when the user points the directional interface
2 object upward, the movable weight may be caused to move to mimic the
3 sensation of weapon reloading mechanics. Now, because of the reload
4 option, when the user points the weapon upwards, that triggers the haptic
5 effect for the user to feel as if they're experiencing the gun reloading. Now,
6 paragraph 106 goes on to describe how Rogers system determines whether
7 or not the gun is – or to determine the gun's pointing direction.

8 The last sentence in 106 also here in Slide 41 states that a
9 combination of visual tracking of the trackable object, which is the data from
10 the camera, and data from the inertial sensors can be utilized as inputs to
11 determine the pointing direction of the virtual weapon in the VR
12 environment. So, again, in Rogers, the shooting, aiming, and reloading
13 effects are all determined based on the pointing direction of the gun which is
14 determined based on inputs from both the camera and the inertial sensors.

15 Now, moving on to Slide 43, Immersion's Sur-reply argument
16 responds by painting Rogers 105 –

17 JUDGE OGDEN: Mr. Parsons, just –

18 MR. PARSONS: Yes?

19 JUDGE OGDEN: Sorry, before we move on to that, I just want to
20 make clear that your position here requires both the camera and the
21 directional accelerometer-based directional interface in the gun?

22 MR. PARSONS: Our papers mapped all three individually. But for
23 purposes of today, I'll be discussing the camera and will rest on whether the
24 inertial sensor meets the limitation based on our papers. But I will point out
25 that limitation 12D just says that the determining haptic effect is determined
26 in part. So it's not reliant solely upon one sensor or another. It just says that

1 it is based in part on data from the sensor that's tracking the proxy object.
2 Whether it's the camera, the inertial sensors, or a combination, all three of
3 those track the position of the – are sensors to track the position of a proxy
4 object.

5 JUDGE OGDEN: You're focusing on the combination rather than
6 –

7 MR. PARSONS: I would say that it makes no difference whether
8 we focus on the combination or the camera individually.

9 JUDGE OGDEN: Do you think that including the combination is
10 your best argument?

11 MR. PARSONS: I don't know if it matters one way or the other.
12 Because Rogers indicates that both are used. It is – either way, the camera is
13 used in determining the pointing direction of the gun in Rogers. And the
14 camera undisputedly provides positional data which is what Immersion is
15 arguing is missing in Rogers 105. So whether it's the camera, the inertial
16 sensors, or a combination, it makes no difference. Rogers teaches using
17 tracking data to produce a haptic effect.

18 JUDGE OGDEN: Okay. Thank you.

19 MR. PARSONS: You're welcome. Continuing with Slide 43, now
20 in the Sur-reply, Immersion kind of takes an unreasonable position here with
21 Rogers. It first states that the shooting and aiming uses the camera and the
22 inertial sensors to determine the gun's pointing direction but doesn't produce
23 a haptic effect. Which, this is completely incorrect because Rogers 105
24 specifically states that shooting does produce a haptic effect similar to a
25 kickback sensation. Now, Immersion also goes on to state that the reloading

1 doesn't use the camera because only inertial sensors are used to determine
2 whether the gun points upwards.

3 Again, as we just discussed, this is factually incorrect with
4 paragraph 106. It clearly says that the camera is used to determine the gun's
5 pointing direction, at least in part, and there's no other way that Rogers
6 describes it doing this. This also makes no sense because for Rogers to use
7 the camera for determining pointing direction whether shooting or aiming
8 but not for reloading, there's no reason why Rogers system would use any
9 other method besides the one provided to determine the pointing direction of
10 the gun, whether the user is aiming, shooting, or reloading.

11 Now, turning to Slide 45, to the extent that Immersion is trying to
12 argue that there is some difference between the embodiments with shooting
13 or reloading, they aren't. There's no difference between them. They're not
14 two separate embodiments that are non-combinable. And we know this
15 because in Rogers paragraph 47 shown here on Slide 45, this describes how
16 Rogers system generally works. It takes inputs from the camera and the
17 inertial sensors that are input into the gaming system. The gaming system
18 then outputs haptic feedback data as well as visual audio data.

19 In paragraph 47, it says that the haptic feedback data is provided to
20 the directional interface object, and the audio video data is provided to the
21 head-mounted display. These outputs are based on the inputs coming into
22 the system. The descriptions of the reload and the shooting actions in Rogers
23 105 and 106 are just examples of that process.

24 A user is moving a gun around a physical space that is being
25 tracked based on the camera and the inertial sensors. Those are input into the
26 game system and the game system provides output which are visual effects

1 to the head-mounted display and the haptic effect going to the gun. Rogers is
2 clear, whether you're shooting, aiming or reloading, the pointing direction of
3 the gun is only determined based in part on data from the camera and the
4 inertial sensors. And that's all the plans require. So unless there are any
5 further questions, I'll reserve our remaining time for rebuttal.

6 JUDGE OGDEN: Okay. Thank you. I don't think we have any
7 further questions at this time. You've got about 12 minutes left of rebuttal
8 time when we come back. So let's move to Patent Owner now. Mr. Szpajda,
9 you'll be arguing on behalf of Patent Owner?

10 MR. SZPAJDA: Yes, Your Honor. Good morning, everyone. My
11 name is Stefan Szpajda and I'm very happy to be here on behalf of
12 Immersion Corporation today.

13 JUDGE OGDEN: Would you like to reserve rebuttal – surrebuttal
14 time?

15 MR. SZPAJDA: Yes, please. I'd like to reserve 15 minutes.

16 JUDGE OGDEN: Okay. Thank you. You can begin when you're
17 ready. And the total time shown on the clock, I think you can see the clock. I
18 should have made clear before. This will be the total time for each side has.
19 So you can begin when you're ready.

20 MR. SZPAJDA: Thank you, Your Honor. I'd like to jump right in
21 by turning to Slide 23 of Patent Owner's demonstrative exhibits. Slide 23 I
22 think will be important for some level setting. It lays out the plain meaning
23 of proxy object and what the claim itself demands a proxy object include.
24 We focused on three elements here. The first one is that the proxy object
25 must comprise. In other words, it must contain or otherwise include a haptic
26 output device. It must have a position tracked by a sensor. And third, proxy

1 object must include a visual overlay. Those are not subject to any proposed
2 construction. That is simply the plain meaning of the claim as taken from the
3 conditions imposed by the claim itself.

4 And the reason I want to start by spending some time on this is that
5 especially as to Banerjee and Meglan, Valve's argument really relies on
6 muddying the water as to what constitutes a proxy object. And at every
7 stage, whether it was in the petition, in its Reply, or today during the
8 hearing, we've seen a lot of pivoting back and forth between what the proxy
9 object is. And tracing back to the original petition, that's really a function of
10 the phrasing used throughout which is this whole idea that it can be either,
11 you know, in Banerjee's case it can be the haptic device 22 and the stylus
12 27, or both individually.

13 And we see a similar construction in Meglan where they say it
14 could be the substrate or the surrogate or some combination thereof. And
15 there's a real lack of clarity on which one they're pointing to at any given
16 time. And so for that reason I'd like to just sort of go back to basics, walk
17 through the plain meaning of proxy object and then I'll take each reference
18 in turn.

19 So once again, the plain meaning of proxy object is established by
20 the claim itself. And under binding Federal Circuit authority, any reference
21 that does not meet this criteria cannot be an anticipating reference. Now, it's
22 important to note here that in this first requirement that the proxy object
23 comprise one more haptic output devices. Again, this is not an optional read
24 in by any party. This is something the claim demands. And what comprising
25 here means is that the proxy object must contain the haptic output device.
26 That means that whatever you're pointing to as the proxy object have to

1 have inside of it a haptic output device. Now, that can dovetail with
2 Immersion's proposed construction, but it's not limited to Immersion's
3 proposed construction because it is in fact something that is established by
4 plain meaning. And –

5 JUDGE ZECHER: Mr. Szpajda, this is Judge Zecher. I have a
6 question about that.

7 MR. SZPAJDA: Yes.

8 JUDGE ZECHER: I think I asked your opposing Counsel about
9 the prosecution history here. I heard you say that the haptic – let me just
10 make sure I have the language correct. The haptic output devices need to be
11 contained within the proxy object, inside of it. So when we look at the
12 prosecution history and we see that there's some language there that was
13 proposed that wasn't entered that said within, and then after the RCE was
14 filed you then added this comprising language. Doesn't that kind of cut
15 against you to say that these haptic output devices need to be inside the
16 proxy object?

17 MR. SZPAJDA: Respectfully, Your Honor, no. And the reason for
18 that is that there is sort of a complex prosecution history here that there was
19 an amendment made that ultimately wasn't entered. But the language we
20 settled on, you know, it's addressed at Slide 16 of our demonstrative
21 exhibits. It uses comprising language. And that was not meant to blow the
22 claim up again to allow anything to come in from the outside. It still has to
23 be within the proxy object. And we distinguish Gonzalez not under the – and
24 this is at Slide 16 again. I'm sorry. We distinguish Gonzalez in connection
25 with amending the claim to comprising. Not the previous amendment that
26 was not entered.

1 And the reason that matters is Gonzalez had – was asserted as prior
2 art and it had this glove that was outside of the proxy object. And we
3 distinguished Gonzalez on the basis that it was not – that the proxy object
4 did not comprise the glove in this case. And so, you know, in the course of
5 its arguments, Valve kind of kept talking about the stylus 27 and how it's a
6 part of the haptic device 22. They never established anywhere in the record
7 how that stylus 27 is different from the glove in Gonzalez that we were
8 distinguishing.

9 And, again, this is within the amendment that was ultimately
10 entered. So even if we just focus on the claim language as it exists in the
11 patent, we overcame a very similar reference where there was this external
12 second piece that somebody was trying to read as one cohesive unit by
13 drawing a box around it, just as Valve was trying to draw a box around the
14 stylus 27 and the haptic device 22. In the case of Banerjee or the surrogate
15 and the substrate in the case of Meglan, that same exercise was conducted in
16 the prosecution history and Immersion ultimately overcame it. And that,
17 again, that's under the comprising language.

18 So our view is that comprising, as it is used in the claim, means
19 essentially inside. It's slightly different framing, perhaps it's slightly broader
20 than the amendment that was not entered. But it doesn't extend so broadly as
21 to allow an external device to be part of the proxy object in this way. And so
22 I want to –

23 JUDGE ZECHER: So can you point to something in the
24 prosecution history that indicated you meant to – that comprising meant to
25 mean inside? Because I think comprising is language that's commonly used
26 in patent nomenclature, and I don't understand it to necessarily mean that.

1 Include would kind of be a synonym. But inside is slightly different because
2 the language you initially proposed but was not entered was within. That
3 seems to more jive with what you're arguing now that comprised is limited
4 to inside. So I guess I'm just struggling to understand how it's limited in that
5 way.

6 MR. SZPAJDA: Thank you, Your Honor. And I want to make an
7 important clarification here. So there's essentially two avenues we can go
8 down here. One of them is Immersion's proposed construction which does
9 have that express contains inside language. And the second one is a plain
10 meaning of the term as it's used in the claim. And I think this is relevant to
11 both but I don't want to conflate them. So I'll answer Your Honor's question
12 under the construction first. And then I'll pivot to the plain meaning.

13 So within the prosecution history as I pointed out at Slide 16, we
14 distinguished Gonzalez on this basis that it was – that the – this was two
15 separate units and that they were not – one was not contained within the
16 other. Now, that's not expressly stated, this idea of contained inside, but
17 that's really the only inference that can be drawn from what we were able to
18 overcome there. It's because the glove was separate. It wasn't part of the
19 same device. Just as the stylus 27 is separate from the haptic device 22 and
20 just as the substrate and the surrogate are separate from each other in
21 Meglan.

22 So that same logic infused the prosecution history here and
23 allowed Immersion to get this claim issued with that comprising language in
24 it. And then onto the plain meaning, Your Honor, I think it – you're correct
25 that comprising is broad, but it's not as broad as Valve would have it. And
26 so at Slide 25, we cite Willis Electric Company versus Polygroup Macau.

1 This comprising was found by the Federal Circuit there to be synonymous
2 with containing. And so perhaps containing is a little bit broader than within.
3 But it is not so broad as to allow the kind of read that Valve was arguing for
4 here.

5 So we don't need to accept the precise construction that Immersion
6 advanced where we said contains inside. If Your Honor finds that too
7 narrow, we can simply go with what the Federal Circuit said that comprising
8 means which is containing. I think there's also a distinction to be drawn here
9 between, you know, comprising as it is used in a preamble and as it is used
10 in the claim itself. Slide 26 speaks to this that, you know, when it's used in a
11 preamble, comprising is open ended. It can mean additional elements and
12 that's established in this Federal Circuit decision cited there, MagSil
13 Corporation versus Hitachi.

14 But when it's used within an actual claim, it is actually speaking to
15 a structural relationship. And that's at Slide 27, Your Honor, under the plain
16 meaning. That's Smith & Nephew versus Arthrex. And this case directly
17 dealt with a very similar set of facts here. This was a Federal Circuit case
18 from 2011 in which there was a relationship, you know, where A comprised
19 B and the Defendant argued that A comprising B means that B can comprise
20 A. And that there's no difference. This is a distinction without a difference.
21 The Federal Circuit rejected that argument and I did not hear my colleague
22 on the other side address this case or even this logic. And I think that's
23 because they know they can't prevail under this authority.

24 Because what they are arguing in Rogers – I'm sorry, in Banerjee
25 is that the haptic device contains a proxy object. They're saying the haptic
26 device 22 contains the proxy object stylus 27. And that would be exactly

1 what *Smith & Nephew* was saying is not proper. Because this comprising
2 language is dictating a structural relationship that we simply do not see in
3 the prior arch. And for that reason, you know, I think the comprising
4 language that was ultimately entered in the amendment as reflected in the
5 prosecution history and the issued claim gets us as far as we need to go in
6 terms of the structural relationship between these various components and
7 what has to be contained in what.

8 So we don't need to adopt Immersion's proposed construction if
9 Your Honor has trouble with that in light of the prosecution history, we can
10 simply apply the plain meaning of the claim as it is dictated in these
11 requirements as well as we see in kind of the Federal Circuit's history of
12 interpreting the word comprising in this context. And so I think that's a very
13 important baseline to move from as we get into these references.

14 If Your Honors have any other questions about that, I'm happy to
15 answer them. Otherwise, I may move on.

16 JUDGE OGDEN: Mr. Szpajda, I'd just like to make this maybe a
17 little bit more concrete. If you could look at Dependent Claim 3 which
18 depends from Claim 1, it says that the proxy object comprises one or more
19 of and that lists some things including an article of clothing. So say if a
20 proxy article includes an article of clothing, where in your position would
21 the haptic object need to be? Could it be on the surface of the clothing?
22 Would it have to be inside of a pocket of the clothing or something else?

23 MR. SZPAJDA: Your Honor, I think that's a great question. I
24 think in the case of, you know, answering where does the haptic device have
25 to go, then we're limited I think to the intrinsic evidence is the best place to
26 look to answer that. And Valve actually made an attempt to answer that.

1 They pointed to the haptic tape embodiment. And that, you know, you could
2 argue haptic tape would be something that could be attached to clothing and
3 perhaps it could go on the outside.

4 But what the patent actually says about the haptic tape, and I
5 believe I'll just point Your Honor to the slide here, this is Slides 31 and 32.
6 What the patent discusses as this haptic tape embodiment, it's actually
7 embedded. So it goes underneath. It's a layer of adhesive that is holding it
8 within the proxy object. And there is actually no evidence in the intrinsic
9 evidence of an actuator that's on the outside. So I think even in the case
10 where you have clothing, I mean the natural place to put those haptics is
11 inside. And, you know, this isn't in the record but just, you know, the way
12 that haptics are delivered, you need to have some sort of rigid body that it's,
13 the vibration is moving through. Otherwise, you're not going to feel a
14 vibration. So it has to be inside or at least, you know, embedded within the
15 structure. Otherwise, you're not going to feel anything.

16 And so I think Valve took the shot –

17 JUDGE OGDEN: If it's clothing, though, if it's an article of
18 clothing, though, and you have something and you're wearing it and you
19 have something on the outside of the clothing, you'd probably feel that,
20 right, still?

21 MR. SZPAJDA: There would have to be some rigid body that is
22 integrated into the clothing. So then you could have kind of a metaphysical
23 argument is it on the inside, is it on the outside? Bottom line is it's integrated
24 into it. It's embedded into it. and I think there's really no other way to do it.
25 And the patent doesn't identify any other way. Again, the only possible
26 example that Valve pointed to was this haptic tape. And it actually says

1 precisely the opposite of what Valve portrayed it as saying which is that the
2 actuator ends up being embedded in that case within the device.

3 And so that's another reason we think there's simply no intrinsic
4 evidence to suggest you can have this external actuator and still satisfy the
5 claims and what they mean by a proxy object that comprises a haptic device.
6 And, in fact, Your Honor, if I could point you to Slide 13 of our slides,
7 there's a reference and we actually cite the relevant part of the specification
8 here. In the last sentence there at the bottom, the excerpt, this is citing
9 Exhibit 1001. It's column 4, lines 37 through 38. It actually describes the
10 haptic output device as being integrated into the user's clothing or a
11 wearable device. Even there, I mean, the specification is pretty explicit that
12 it's into – it's integrated into the clothing.

13 JUDGE OGDEN: It's hard to know what that means, though.
14 Because maybe integrated into could just mean that it's a patch on the
15 clothing or, you know, that it somehow on the clothing in some way. I don't
16 necessarily read that to say that it has to be somehow underneath or in some
17 sort of an enclosed part of the clothing.

18 MR. SZPAJDA: And respectfully, Your Honor, that's okay. I think
19 it's fine to read it that way. But it still needs to be integrated into and that's
20 the express language. And what made it into the claim was comprising and
21 then we revert back to what the Federal Circuit said. So I think there is some
22 potential for variation here. But there is an outer limit. Right? And the
23 prosecution history provides a clue as to that outer limit which is, you know,
24 Gonzalez wasn't enough because it was external.

25 And comprising also provides an important set of guidelines here
26 because it has to mean what the Federal Circuit says it means under the

1 circumstances. And so anything that's external, it starts to go outside of both
2 of those – both of that guidance, both the – what the prosecution history
3 shows and what the plain meaning of comprising is when it's used within the
4 claim to describe a structural relationship between components. If there are
5 no other questions on the plain meaning of proxy object, I can move on to
6 the Banerjee reference if that's okay.

7 JUDGE OGDEN: Sure, go ahead.

8 MR. SZPAJDA: Okay. Thank you. So the primary thing I want to
9 start by saying regarding Banerjee is that it really – Valve's argument really
10 depends on a lack of clarity around what the proxy object is. What we saw in
11 the petition and most of the briefing was that they're talking about the haptic
12 device 22 and the stylus 27 together. What we saw in the slides that we
13 objected to in the presentation today is that there's now something of a pivot
14 to what we're talking about the haptic device 22 primarily on its own and the
15 stylus 27, you know, may or may not be included as part of that. And they
16 pivoted back and forth even throughout the hearing.

17 So I'll just note, I know we don't need to continue to make
18 objections but we have objected to this new argument that haptic device 22
19 is on its own a proxy object. We don't think the record reflects Valve to be
20 saying that. We think at all times they've been pretty clear that it needs to be
21 the haptic device 22 and its stylus 27. So I think that's the – I'll try to limit
22 my repetition of objections to that. But I think it's important again to have
23 clarity on what is it that we're talking about when we're talking about the
24 proxy object.

25 There's also, you know, along the lines of that lack of clarity,
26 Valve goes back and forth and sometimes it says that things that the stylus

1 27 are doing can be attributed to the haptic device 22 and other times it sort
2 of tries to attribute just to haptic device 22 features that actually only the
3 stylus 27 is doing. And I think that again contributes to this confusion
4 around what is it exactly that they're talking about.

5 So, you know, going to our slides now, beginning at Slide 56, this
6 is where I think we show the inconsistent mapping that results from Valve's
7 kind of pivoting back and forth between these two structures. And I think
8 what this illustrates here at Slide 56 is that if you take the proxy object to be
9 both the haptic device 22 and the stylus 27 as they've argued, then how this
10 claim reads is, the haptic device 22 plus stylus 27 comprising haptic device
11 22.

12 And then now in limitation 1C, then you – then proxy object
13 becomes stylus 27. Because only stylus 27's position is being tracked. Now,
14 I know today they've said haptic device 22's position is being tracked. But,
15 again, that's where we see that pivoting. Are they saying it's the device itself
16 or are they relying on the stylus 27 there? The briefing consistently shows
17 them relying on stylus 27.

18 And then what this results in on Slide 57 is this implicit
19 construction that Valve is asking the board to adopt which is that implicitly,
20 what the claim means is that you need the whole proxy object in limitation
21 1A but you only need part of the proxy object in limitation 1C. And we think
22 that's improper. If we cite some Federal Circuit authority here on Slide 58,
23 you know, there are sometimes implicit constructions that the Federal
24 Circuit has found have been applied. And if those implicit constructions are
25 incorrect, that can be an error.

1 And in this case, we also cite Rexnord which is a Federal Circuit
2 decision on Slide 58 that talks about the need to construe claims
3 consistently. So if we go back to Slide 57 and we see this term proxy object
4 being used both in 1A and 1C, the claim construction principle would
5 require consistent application of what that means. So are we talking about
6 the haptic device 22 plus the stylus 27 or are we just talking about one of
7 them? And so really there –

8 JUDGE OGDEN: Counsel, limitation 1C says tracking a position
9 of the proxy object. So couldn't that just mean some position that's
10 associated with the proxy object, you know, with some part of the proxy
11 object? In other words, it says a position. It's not saying that there's
12 necessarily one single position of the proxy object. It could – maybe a proxy
13 object could have multiple positions like in the case where where you have a
14 robotic arm and there's multiple positions associated with that. Instead of
15 saying that you're just tracking a part of the proxy object, couldn't you just
16 say that you're tracking one of the positions of the proxy object?

17 MR. SZPAJDA: Your Honor, even if we were to accept that, and I
18 don't think that's in the claim and I think the claim's clear that it's the proxy
19 object. But even if we were to accept Your Honor's proposition there, I think
20 this is where we run into this problem of, well, what is the proxy object?
21 Right? And this is where that lack of clarity has really fatal to Valve's
22 argument. Because if the proxy object is just the stylus 27 and that's what's
23 being tracked, then it doesn't meet all the elements because it doesn't have
24 an actuator. It doesn't comprise an actuator.

25 If the proxy object is the haptic device 22, then it doesn't meet all
26 the elements because it doesn't have a visual overlay. And so that's where

1 this becomes very slippery. And this is why Valve I think has demonstrated
2 this kind of utter lack of clarity throughout on what it's actually pointing to
3 and it continues to pivot, because when you really sit down and look at what
4 the claims require in light of the specification and what the goals of this
5 patent work, the goals of this patent are to have a proxy object.

6 It is a single object that you can look at and believe it to be
7 something else. And within it, there's an actuator. And that's where it
8 becomes very important to be clear about what a proxy object is. And
9 whether you get there through our proposed construction or the plain
10 meaning, as I stated earlier, you need to have an object and it has to
11 comprise an actuator. And Valve simply doesn't have that in Banerjee. And
12 so that's why there's this dancing back and forth.

13 So I think the answer to Your Honor's question about, you know,
14 is it possible to track part of a proxy object, I suppose theoretically that
15 that's not expressly precluded by the claim if you look at the position part of
16 it, but you have to look at the whole limitation. And the limitation requires a
17 proxy object to be tracked. Not a part of it, not a separate structure that we're
18 going to draw a box around and say this is a proxy object. It is the proxy
19 object that is being tracked.

20 JUDGE OGDEN: That's not quite what I, you know, what I'm
21 saying here. I'm saying that you're tracking a position of the whole proxy
22 object. I'm asking you if you can – if we can interpret it this way if you're
23 still dealing with the whole proxy object so that it's consistent with
24 limitation 1A. But you're – there may be multiple positions. You know, it
25 uses the indefinite article 'a' position. So that sort of implies that there could
26 be multiple positions associated with the whole proxy object. So maybe

1 you're just tracking one of those multiple positions of the whole proxy
2 object.

3 MR. SZPAJDA: Respectfully, Your Honor, I would read a position
4 in this context to mean it's just recognizing that the proxy object can be in
5 multiple positions and you just, at any given time, you're taking one of
6 those. I think, you know, ultimately this goes back to what is the proxy
7 object. It always has to meet those three criteria. And so you need to know –
8 you need to track the position of the thing that has the haptic output device.
9 Right? And if it doesn't comprise the haptic output device and you're
10 tracking its position, then you're not tracking a position of the proxy object.
11 You're tracking the position of something else. And I think that that's
12 inescapable given the plain language of the claim.

13 JUDGE OGDEN: So why does the claimant say 'a' position rather
14 than 'the' position?

15 MR. SZPAJDA: That's simply acknowledging that there can be
16 more than one position, that the proxy object is movable in real space. And
17 so there could be more than one position but you need –at any given time
18 you're tracking a position of the proxy object. So there's a unitary proxy
19 object that can move around. And so at any given time, you're tracking that
20 position. But you can't track a position of something else and call that the
21 proxy object.

22 JUDGE OGDEN: So just so I understand, you're saying that there
23 could be multiple positions that the object would be in at a particular time
24 and that you're just tracking one of those positions? I'm not sure I
25 understand how that's consistent with the word "tracking" because tracking
26 sort of assumes that something is going to be moving around, and you are

1 tracking its position as it's – as it moves. And then if there are multiple such
2 positions, it seems like that would involve tracking the whole object in
3 different ways.

4 You know, for example, maybe there are multiple positions
5 associated with it when you're tracking each – multiple parts of the whole
6 object that you're tracking and you're tracking each of them separately. In
7 other words, let me just clarify just what it is you're saying that the – like
8 one position is. Is it a thing that's moving around or is it a thing that is one
9 place at one snapshot of time?

10 MR. SZPAJDA: So I think what the claim says is a position of the
11 proxy object. So there can be multiple possible positions of a thing that is
12 moving in real space. That's a kind of – it's recognizing that but it's tracking
13 a position of the proxy object. So it's not telling you you have to track a
14 particular position of that proxy object because it's moving in real space,
15 there can be more than one.

16 But there's only one proxy object, it's the proxy object. So I think
17 that's the – that's potentially the disconnect, Your Honor, here is that I'm
18 saying there's one proxy object that can have multiple positions but you
19 can't have multiple proxy objects or you can't track some separate thing and
20 satisfy the claim with it. It has to be the proxy object that is being tracked,
21 regardless of the number of possible positions.

22 JUDGE OGDEN: If you're tracking – if a position is the location
23 of one particular point of space at one particular time, how is it tracking
24 that? It seems like something static that doesn't need to be tracked. It seems
25 like the result of a tracking is that you determine that a position is at one
26 XYZ position at a particular time.

1 MR. SZPAJDA: I don't think that it's time limited in that sense,
2 Your Honor. I mean, it could track T1 and T2 and T3 and provide that
3 sensor data. But it has to be of the proxy object and I think that's
4 fundamental to the claim. That it's not about – it's agnostic. There's really
5 no argument that kind of depends on there being multiple positions. It –
6 what it depends on here, where the dispute is, can there be multiple objects.
7 And that's really the – that's what, you know, the proxy object answers. So
8 as you're taking a separate position read of a separate object that is not the
9 proxy object, that's simply outside the claim.

10 JUDGE OGDEN: Thank you.

11 JUDGE ZECHER: Mr. Szpajda, this is Judge Zecher. I think what
12 I understood you to argue, at least with Banerjee, is that it's not tracking a
13 proxy object, it's only tracking stylus 27; is that fair?

14 MR. SZPAJDA: I think that's part of it, Your Honor. I think as to
15 the position tracking piece of it, that that is what Valve has argued that it's
16 looking at the position of the stylus. Today they pivoted and they're trying to
17 argue that the position of stylus 27 can be attributed to haptic device 22. I
18 think that's what they're saying. It's a little unclear and it's a new argument
19 so we haven't had a chance to really brief it. But the – ultimately, if you look
20 at how this thing works in the real world and how it's described in the
21 patent, they're moving around the stylus and that's the relevant position.

22 The actual haptic device, it's not in the arms of the haptic device
23 22, it's a grounded actuator in a base of a fixed unit. So that thing's not
24 moving around. So, you know, they may try to argue that the stylus is
25 connected to the arm and the arm is moving but even if that's true, the arm
26 doesn't have an actuator in it. So the position that is being tracked does not

1 include – does not comprise a haptic output device. That thing is fixed, it's a
2 grounded unit that is attached to a workstation. In order to make –

3 JUDGE ZECHER: In essence, you're saying the stylus isn't a
4 proxy object because it doesn't include haptic output?

5 MR. SZPAJDA: Exactly, Your Honor. That's exactly right.

6 JUDGE ZECHER: Okay. All right. Thank you.

7 MR. SZPAJDA: Yep. And that's, you know, I don't want to eat up
8 all of my time on Banerjee, but that's essentially the argument under the
9 plain meaning of Banerjee that, you know, you really need to pay attention
10 to what a proxy object is and what they've pointed to. And for the reason
11 Your Honor just articulated, and I've agreed with, that is why under the
12 plain meaning of proxy object, Banerjee does not anticipate or render the
13 claims obvious. Today we also heard Valve argue that they're, you know,
14 they also – that Banerjee also meets Immersion's construction of proxy
15 object. That's not true.

16 There's no evidence whatsoever of that. The only way they get
17 there is if you take haptic device 22 to encompass stylus 27 and that's a
18 single proxy object. Again, this is that metaphysical game they're playing
19 where they're saying sometimes the stylus 27 is part of the thing, sometimes
20 it's not a part of the thing. It's hard to keep straight when they're saying
21 what. But the only – there's simply no actuator inside of a proxy object.
22 There's an external, grounded actuator that's attached to a workstation.
23 There's a series of arms and at the end of that arm is a proxy object or
24 there's a stylus I mean.

25 And that stylus gets a visual overlay on it. That thing moves
26 around. That's being tracked and way down the line you have an actuator

1 that's attached to a workstation. And there's simply nothing to suggest that
2 this would be anticipatory under our proposed construction because it
3 doesn't contain inside of a proxy object an actuator. So that is it for
4 Banerjee. Unless there are any further questions I will move on to Meglan.

5 Meglan, you know, rises and falls I think on a similar concept as
6 Banerjee that there's the same slipperiness around, you know, what's the
7 proxy object. Is it the substrate, is it the surrogate and – or is it some
8 combination of both? And so I think with that in mind, I'd like to turn to
9 some slides here beginning with Slide 74 of Patent Owner's demonstratives.
10 Slide 74 identifies the key components and there's an illustration here taken
11 from the petition. This is an annotated Figure 8 from Meglan. And it
12 identifies two separate components. There's surrogate 2000 and substrate 20.
13 And the surrogate is a stationary mannequin that represents the trauma
14 victim. The substrate is also stationary. And it detects the interaction
15 between the trainee and the surrogate.

16 And first of all, the surrogate is separate from the substrate. The
17 surrogate does not comprise the substrate. We cite paragraph 108 of Exhibit
18 1012, that's Meglan. They're talking about these devices being mounted to a
19 table and they're kind of placed next to each other but they're separate
20 structures. So just as Banerjee, even more so than Banerjee, the two pieces
21 that Valve has collectively pointed to as the proxy object are actually very
22 much separate.

23 Slide 76 I think summarizes really the dispute here. So the
24 surrogate alone cannot be a proxy object because it does not have a haptic
25 output device. There's no allegation that it does. And the substrate alone
26 cannot be a proxy object because it does not have a visual overlay. And so

1 because each of these things, Valve clearly recognized that no one of these
2 components could be a proxy object. They then included this language
3 saying it's the substrate and/or the surrogate.

4 Now, if we look at Slide 77, you know, this is where Valve
5 acknowledges petition page 51 that the surrogate does not have haptics. It
6 says that the surrogate meets the proxy object limitation because it
7 comprises the substrate. And so – or rather because it's connected to the
8 substrate that contacts its surface. And so really they're acknowledging there
9 that these things are not integrated. They're kind of touching on this table.
10 And so they've clearly relied on the substrate. So the surrogate alone cannot
11 be the proxy object.

12 Slide 79 cites Figures 2 and 3 for Meglan which Valve annotated at
13 page 56 of the petition. And here we see that the substrate does not have a
14 visual overlay. And what that is showing is a visual overlay on the surrogate,
15 not the substrate. So, again, here they're relying on that slipperiness again.
16 They're showing you a visual overlay on the surrogate and they're asking,
17 they're sort of waving their hands over and saying, well, that kind of applies
18 to substrate, too. But they're separate. They're separate components and the
19 substrate alone does not get that visual overlay. And it's again shown at
20 paragraph 112 of Meglan which, again, talks about the need to render the
21 substrate invisible. So they're taking it out of the image.

22 So looking at paragraph, I'm sorry, at Slide 82, you know, this is
23 really again a little bit of a replay of Banerjee that you have to kind of take
24 these two disparate components and read them together with the proxy
25 object if you want to kind of go down the path that Valve is urging you to.
26 And that results as shown in Slide 83 in this inconsistent mapping where you

1 have sometimes you're talking about the substrate and surrogate, sometimes
2 you're just talking about the substrate and there's a lack of clarity as to
3 which one they really mean. And, again, at Slide 84 we see the consequence
4 of that goes back to the same logic, you know, the whole proxy object or is it
5 part of the proxy object. And they're going back and forth depending on the
6 particular argument they're making at a given moment.

7 In the petition, as well as in the institution decision, we wanted to
8 point out, you know, at the beginning of Slide 85 here that both Valve and
9 the board looked at paragraph 90 of Meglan as well as claims. The Board
10 then looked at Claims 1 and 13 and paragraph 72 and 74 of Meglan to try to
11 substantiate this integration of the surrogate and the substrate as a single
12 proxy object. And I'll just quickly note going through Slides 86 through 90
13 that – I'm sorry, 94 that none of these references – none of these citations
14 support the idea that the substrate and the surrogate can be combined in this
15 way.

16 Again, you end up with a structure that is not a proxy object
17 because of the failings that we noted. There is no visual overlay on the
18 substrate and there is no haptics in the surrogate. You know, I'll briefly note
19 as well, you know, moving onto briefly addressing this idea that there was a
20 new argument introduced in the Sur-reply. I think if Your Honors look at
21 Slides 31 through 34 of Valve's slides, you know, that's really where the
22 new argument is. Now they've pivoted to this idea that the substrate alone is
23 a proxy object. And that – and this really hinges on this argument that
24 getting rid of a visual overlay is somehow equivalent with displaying a
25 visual overlay. So that begins at Slide 31 and runs through 34.

1 These are all brand new arguments and they also, you know, to be
2 blunt, they don't really make a lot of sense to me, and I don't really
3 understand the argument. The reference is explicit that you're removing
4 visuals because you don't want to interfere with what's being displayed on
5 the surrogate. And so this seems to be an implication that making something
6 invisible is the same as putting on a visual overlay. I mean, that's not true.
7 It's also a new argument that had this been introduced earlier, we may have
8 had some expert testimony on it.

9 But, again, I mean, it just – reading the claims and reading the
10 references I think should sort this out. You know, even if the – if Your
11 Honors accept this argument at this late stage, it simply is not true that
12 making something invisible is the same as putting a visual overlay on it. And
13 so that's all I had for Meglan. Again, I wanted to be conscious of my time
14 here. And so if there are no questions on Meglan, I'll move on to Rogers.

15 Okay. So I will move on to Rogers then. You know, for Rogers we
16 have a slightly different issue here. This really concerns not what a proxy
17 object is but, you know, what it means to have – what based in part on data
18 received from the sensor means. So really we're talking about position data
19 here. And so, you know, this is at the beginning of Slides 36 of Patent
20 Owner's slides, there's a discussion of the meaning of this limitation. Slide
21 37, you know, we look at the claim itself. It's pretty clear that the sensor
22 referenced in 1D2 relies on a sensor and 1C for its antecedent basis.

23 And we also note at Slide 38 that there's this concept of an
24 adjectival modifier, which it takes me back to grade school I suppose and
25 learning about these things. The – in this context, for tracking a position of

1 the proxy object modifies the sensor. And, you know, this has come up in
2 other cases. We cite at Slide 40 Smith versus Honeywell.

3 There's a similar dispute over whether this kind of adjectival
4 modifier that's introduced in a claim can then be carried forward into other
5 descriptions of that underlying structural element and the answer is yes. You
6 know, in this case, the sensor is described as having a purpose and that
7 purpose, you know, tracks throughout the claim. The purpose is to track
8 position. I really didn't hear Valve disputing that today. Really what they
9 focused on was, you know, what does position mean. And even then, you
10 know, they didn't really go into a lot of detail on it, which is not surprising
11 given that we have unrebutted expert testimony on Immersion's side here
12 explaining that there's a difference between position and orientation. So
13 position at Slide 45 –

14 JUDGE ZECHER: Counsel, this is Judge Zecher. Can we talk
15 about the structure of this Claim 1 real quick before we dive into this? I
16 mean, when I'm looking at this claim, I see a sensor for tracking a position
17 of the proxy object. And I think you are kind of getting to the antecedent
18 basis of a sensor and then the sensor later on in the claim.

19 MR. SZPAJDA: Yes.

20 JUDGE ZECHER: But I think the key portion is it then says data
21 received from the sensor. So your argument seems to be predicated on the
22 notion that position as used in the claim and the data as used in the claim is
23 the same thing. So in other words, the position that you're tracking from the
24 sensor must include the position data received from the sensor. Is that your
25 position? Let me not use that word again because that invokes what we're
26 talking about. Is that your assertion?

1 MR. SZPAJDA: I believe I tracked Your Honor's question but let
2 me just restate it before I just blindly agree. And I think the answer is, yes, in
3 the sense that we believe that the sensor that is introduced at 1C is a sensor
4 for tracking a position of the proxy object. And it stands to reason on that
5 basis. And, again, Valve didn't dispute this today that the purpose of that
6 sensor is to collect position data. And so when the haptic effect is based in
7 part on data received from the sensor, it is based on that position data that
8 was received in 1C. Now, there's really nothing –

9 JUDGE ZECHER: Okay.

10 MR. SZPAJDA: – to suggest otherwise. And, again, Valve –

11 JUDGE ZECHER: Well, I guess the disconnect here is it doesn't
12 say a sensor for tracking a position or position data of the proxy object. And
13 later on it just says data. It doesn't even say "the data" to kind of refer that it
14 has antecedent basis back to anything else in the claim. So I think that may
15 be the disconnect. I mean, I see your position, I understand it. But, the way
16 that claim reads on its face doesn't necessarily imply that the data used later
17 on in the claim is actually the position that's being tracked by the sensor.

18 MR. SZPAJDA: Respectfully, Your Honor, I, you know, I just
19 don't think there's anything else in the claim or in the patent to suggest that
20 this is any other kind of data. There are dependent claims that talk about
21 other types of data but of course, you know, independent claims are
22 presumed to be narrower than the – I'm sorry, dependent claims are
23 presumed to be narrower than the independent claims from which they
24 depend. And so, you know, you can add additional data, but this is a
25 requirement here.

1 So at a minimum you have to have this position data and then you
2 can sort of add on other types of data in the dependent claims. Looking at
3 Claim 1, unless you're tracking that position data, there's really no other
4 way to do it. It's the whole purpose of the invention. If we go back to really
5 the field and the object here, they're trying to overlay visual representations
6 onto a proxy object that, you know, look and feel like a thing that's
7 representing. And so you need to know where that thing is so that you can
8 accurately represent the haptic effect and the visual overlay. Otherwise, the
9 system wouldn't work. So I think that's, you know, that's the right way to
10 read these limitations interacting with each other. And really I think I find
11 that – I'm sorry.

12 JUDGE ZECHER: I think I understand your position, but let's just
13 assume I agree with you. I'm not saying that I do. But let's assume that the
14 data received from the sensor has to be position data. I want to take this
15 question first now because I think this bears on your reading of, I believe,
16 it's Rogers, correct? Yes. Can you tell me the difference between tracking
17 the movement of an object and tracking its position?

18 What's the distinction that you can draw there for me? Because I
19 don't – I'm struggling with that, I'll be honest with you. I think tracking
20 movement and tracking position, they're kind of interchangeable terms.
21 They're inextricably linked. I don't – I can't really, in my mind, determine a
22 difference. For example, like if I move something on my desk, I've moved
23 its position. Right? But it seems to be that you're arguing in Rogers that if I
24 move the, we'll call it the – I think it's the object 104, the gun, that it's not
25 actually moving its position. So that's a point I'm interested in and I'd love
26 to hear your explanation on.

1 MR. SZPAJDA: Thank you, Your Honor, I'm glad you asked
2 because I really think that is where the dispute is. And fortunately for
3 Immersion, we have an un rebutted expert testimony on this point. So on
4 Immersion's side, we have an expert declaration that explains exactly the
5 answer to Your Honor's question. And on Valve's side, we have nothing.
6 We have attorney argument and that's it. We have a citation to a dictionary.
7 And I think this is a really important point. And so beginning at Slide 45, I'd
8 like to start by, you know, highlighting what we've included here which is
9 that if a physician refers to XYZ coordinates essentially, an orientation is a –
10 can just be the rotation within that XYZ coordinate.

11 And so there's a distinction here to be made between movement as
12 a genus and its species which are changes in orientation and changes in
13 position. So I would accept, Your Honor, that when you rotate, you are
14 moving. But you're not changing your position in terms of XYZ. And that's
15 the distinction that we discuss at Slide 46. And it carries forward through
16 Slide 47. This is in the claim construction section.

17 We move on specifically within Rogers and I'll get to that in a
18 moment. But, you know, the key point here is that movement is the genus.
19 And within that genus, there are differences between changes in position and
20 changes in orientation. And those are distinct concepts. And once again, this
21 is something that our expert, and you see this at Slide 46, he addressed there
22 is no rebuttal to that.

23 And so when we go to the actual Rogers slides, I –

24 JUDGE ZECHER: Can I ask you about the expert testimony?
25 Because I did take a look at that. And it – are we specifically focusing on

1 paragraph 98? Is that the only paragraph or is there another one you would
2 like us to look at?

3 MR. SZPAJDA: There are others, Your Honor. I'm just kind of –

4 JUDGE ZECHER: Okay. Because if you look at 98 by itself, I
5 mean, clearly you have a statement about what he thinks POSITA would
6 understand but we have no underlying data or facts to support that. So are
7 we just supposed to take that at face value? I mean, what do we do with that?

8 MR. SZPAJDA: Well, Your Honor, so I'd also like to point you to
9 beginning of Slide 107. We cite paragraph 94 and then at Slide 108, we cite
10 paragraph 96. Then we cite paragraph 98 at Slide 109, paragraph 100 and
11 Slide 110. And so each of these slides is talking about this concept and the
12 distinctions to be made between changes in position and changes in
13 orientation.

14 And, you know, if it were as simple as Your Honor's questions
15 seems to imply, you know, the easiest thing in the world for Valve to do
16 would have been to take its expert and say, hey, can you throw in a
17 paragraph on this and let's challenge that. They didn't do that. Because these
18 are kind of established principles that really shouldn't be in dispute. And
19 really they're not in dispute. We don't actually have a dispute here. And
20 when you have unrebutted expert testimony like this, you know, now I'm
21 going to try to flip to the correct slide here. We can say that it is – that you
22 should accept the experts testimony on that. And, of course, I'm not finding
23 the slide –

24 JUDGE ZECHER: Well, I guess it's, I struggle with this because
25 it's one thing for a party to tell me I have unrebutted expert testimony. But
26 then I look at that testimony and I need to understand whether or not it has

1 underlying facts or data to support the opinion. So there's kind of a
2 difference, wouldn't you agree? Like, it may be unrebutted but if I look at
3 the testimony and there's no facts or data to support the opinion, do I
4 actually have to credit it?

5 MR. SZPAJDA: Well, so, Your Honor, at Slide 46, we point to
6 this Federal Circuit case, the Google versus Lee. You know, the fact that it is
7 unrebutted on its own, I do think carries weight. And I think there is
8 underlying data in the sense that there's engagement with Rogers and there's
9 an explanation of the difference between changes in position and changes in
10 orientation. And if I could just illustrate, you know, one example, making it
11 a little bit more concrete for Your Honor. In the reload example that Valve
12 focuses on, all you have to do to get a haptic effect is move the gun up.
13 Right? You're not changing XYZ, you're just reorienting it. And that's how
14 it knows to trigger that haptic effect.

15 If you were to just walk forward or change your XYZ position
16 without doing that change in orientation, there would be no haptic effect. So
17 you could change your position until you're blue in the face but there would
18 be no haptic effect. It's only when you change that orientation that you get
19 the haptic effect. And this is again why they've been forced to kind of
20 conflate the disclosures at paragraphs 105 and 106 of Rogers to try to get to
21 that point where they have this single embodiment that's not actually
22 disclosed.

23 Because when you look at the disclosures around aiming and
24 firing, there is no position-based haptic effect. There's a trigger-based haptic
25 effect which they've raised for the first time today. But that haptic effect is
26 not based on position at all. It's just you're pulling the trigger. So, again, it's

1 not taking that position into account. The only disclosure of using that
2 inertial sensor for haptics is in the context of rotation. And there's really not
3 much more to say than what our expert has said. This is just a – kind of a
4 basic description of the physics of the situation. I mean, you're moving in
5 XYZ, you're changing your position. You're rotating in XYZ, that's a
6 change in orientation. They're both movement but only one of them is a
7 change in position.

8 And so again, the simplest thing in the world for Valve to have
9 done would have been to rebut that point. We could have moved on. But
10 they didn't. And really this isn't something where we could have had a
11 survey or anything like that. This is simply just, you know, explaining the
12 physics that are encompassed by these concepts. And so the best that Valve
13 could do is like an extrinsic evidence in the form of a dictionary definition
14 and that's simply not good enough under the circumstances.

15 Especially, you know, Rogers is very clear about when and why it
16 triggers these haptic effects. It does it when you rotate. It doesn't do it when
17 you change position. Although it does do it when you fire, again, that has no
18 position component disclosed with it and Valve hasn't pointed to one. And
19 so I think that distinction is well established in unrebutted expert testimony
20 and there's really not much more to say on that I believe, Your Honor.

21 JUDGE ZECHER: All right. Well, just letting you know, you're
22 eating into your sur-rebuttal time. So feel free to wrap up or save some time
23 for sur-rebuttal.

24 MR. SZPAJDA: Yes, if Your Honors don't have any other
25 questions, I will save the rest of my time for the sur-rebuttal.

1 JUDGE OGDEN: Okay. Thank you, Mr. Szpajda. Let's go back to
2 Petitioner then. You have about 12 minutes left in rebuttal time. You can
3 start when you're ready.

4 MR. GIUNTA: Thank you, Your Honors. I want to start with
5 Meglan. So there are a number of characterizations today about all of our
6 embodiments about slipperiness and confusion and all the rest of it. So what
7 we did in the petition was offer alternative theories and there is nothing
8 wrong with that. To the extent Counsel is suggesting he didn't understand
9 with respect to Meglan that we argued that the proxy object could be met by
10 the surrogate or the substrate or the two together, if you look at our Slide 23,
11 you see the POR in the bottom. It acknowledges that alternative argument.
12 So there was no question that they understood what we were arguing.

13 The only argument Counsel made today about the substrate was
14 that it didn't have a visual overlay on it. You heard no response to him –
15 from him to our pointing out earlier that that is not an argument that's in the
16 POR. If you look at our Slide 24, the only thing the POR said was that the
17 position of the proxy object is not tracked. If this argument about the visual
18 overlay was in the POR, I invite Counsel to point out to me where I'm
19 wrong and so he can give us all the cite to where that argument was made in
20 the POR.

21 He – excuse me, he objected to our Slides 31 and 32 and said that
22 these are new arguments. Your Honor, the only things on Slides 31 and 32
23 of ours are citations to the petition. Okay. We cannot make new arguments
24 in the petition. It is undeniable that the petition argued that there is a visual
25 overlay on the substrate. Counsel objected to what we said about paragraph

1 112 in Meglan. This is the paragraph that says that the substrate is made
2 invisible.

3 That paragraph was cited by them in the Sur-reply to make their
4 new Sur-reply argument that there's no visual overlay on the substrate. He
5 incredibly is objecting to our response to that improper new argument.
6 Obviously we didn't get a paper, so we don't have a paper responding to it.
7 Respectfully, it mischaracterized that paragraph. There is nothing wrong
8 with us explaining that to Your Honors. I'm not sure if Counsel understands
9 the technology, frankly.

10 What he keeps saying is that the surrogate is made invisible so
11 there can't be an overlay on it. The way these systems work is there's a
12 video camera that takes a picture of the real-world environment. The real-
13 world environment has the surrogate in it and the user's hands are on it. That
14 substrate does not appear in the video image that is presented to the user. It
15 is filtered out. The way it is filtered out is by providing a visual overlay onto
16 the substrate so that it gets – so that it looks like whatever the background
17 image is so the user doesn't see it. So the argument about this is just wrong.

18 And the last point I would make is, he says there's no visual
19 overlay on the substrate. They cannot dispute that in Figure 8, Meglan has an
20 embodiment where the user puts their hands on the virtual wound to treat it.
21 I would like to hear an explanation from them about how the user knows
22 where the visual – where the wound is, if it is not overlaid on the substrate
23 where the user is going to put their hands.

24 They cannot dispute that the user puts their hands on top of the
25 substrate, and they cannot dispute that the user puts their hands on top of the

1 virtual wound. I don't understand how they allege that that could be true if
2 the virtual wound is not overlaid on top of the substrate.

3 Unless Your Honors have questions, I'll really just wrap it up on
4 Meglan. You know, the critical thing is, he didn't say anything about what
5 their POR argument was. He didn't defend it and their argument about no
6 visual overlay is just wrong.

7 With respect to Banerjee, again, what Counsel seems to
8 continually refer to the haptic device 22 as if it is separate and apart from the
9 stylus. Again, Your Honor, every one of their arguments falls apart. If you
10 simply understand that the stylus is part of the haptic device 22. So every
11 time we map a claim element to the haptic device 22, the thing we are
12 mapping it to includes the stylus. It's like he's saying there's a human body
13 and there's a separate arm that's connected to the human body. Right? There
14 is no human body without the arm. There is no haptic device 22 without the
15 stylus. They're part and parcel of the same thing.

16 A couple of things on claim construction just very quickly.
17 Counsel mentioned this Willis case where he said the Federal Circuit said
18 the word comprising means containing. Your Honors are well aware the
19 word comprising is ubiquitous. It's used in all kinds of context and does not
20 mean containing. That Willis case, if Your Honors look at the facts, the
21 claim recites a void. And so the claim recited a void and an element. So what
22 the Federal Circuit said is the only way the void could be comprised by that
23 element is if it was in the element. There's no void in this case. These facts
24 are nothing like that.

25 So one of the other points he had on I believe it's our Slide 49,
26 yeah, there's a section of the patent that says the haptic output device may be

1 integrated into the proxy object. And Counsel keeps saying this – their
2 argument is that it is integrated. The word "may" be integrated into that, the
3 proxy object, clearly means it's not required. So that disclosure in and of
4 itself suggests that it does not have to be integrated into the proxy object.

5 Again, their primary argument against Banerjee 22 was that there's
6 no visual overlay on it. I walked through it in detail, Your Honors, that what
7 the claim requires is a visual overlay on a surface of the proxy object. When
8 the haptic device 22 is properly understood as including the stylus and a
9 visual overlay onto number 27 is a visual overlay onto the haptic device 22.

10 Just very quickly, Your Honors, if you look at their Slide 53, that
11 what their argument is, is they say Banerjee discloses separate haptic device
12 22 and stylus 27. And you can see they've even done this incredible box
13 drawing where they've got Banerjee Figure 4 where Banerjee shows two of
14 its haptic devices side by side. They're both haptic devices 22 and they both
15 have styluses. What they've done is they've drawn a circle around one of the
16 styluses 27 and then they've drawn a different circle around the other
17 devices, haptic device 22. Each of these things, what they should have done
18 was draw one big circle around a 22 and that circle has to be big enough to
19 include the stylus 22 because it is not, as their cite alleges, a separate
20 component from the haptic device. It's part and parcel of the haptic device.
21 So unless Your Honors have any questions on Banerjee or Meglan, I'll let
22 Mr. Parsons address Rogers.

23 MR. PARSONS: I'll go ahead and –

24 JUDGE OGDEN: I've got some beeping –

25 MR. PARSONS: Oh, pardon me.

1 JUDGE OGDEN: I've got some beeping here. Hopefully – I'm not
2 sure but hopefully this is not too distracting if I turn off my microphone.

3 MR. PARSONS: As far as Rogers goes, there's a couple things
4 that I'd like to point out. One is that we did rebut their expert in the – in our
5 Reply by citing the dictionaries that we provided because their expert didn't
6 point to any facts about anything else and he's only relying on his own
7 opinion and not any external facts or anything else. We provided dictionaries
8 in order to rebut their expert's opinion about what movement means. Now,
9 in those dictionary definitions that we refer to on Slide 42, this – the
10 definition of movement and position is really no difference. It's a difference
11 without a distinction. Tracking movement is just tracking a change in
12 position. So movement by itself is in and of itself positional data.

13 The second thing also here on Slide 42 is that in the Reply we
14 addressed Claim 17 and pointed to that. If you look at the last sentence on
15 Claim 17 and Rogers, it says that the computing device is configured to
16 process the captured images and inertial data to determine a position of a
17 virtual object. In here, Rogers states that using both the camera and the
18 inertial sensor that those are used to determine a position which means that
19 the inertial sensor data is positional data that's used to determine the
20 position.

21 And the third thing I'd like to point out is that in Rogers the gun is
22 not, you know, some sort of pistol that only rotates in, you know, that only
23 rotates on one axis. You know, it's a rifle type device. So when the user's
24 pointing it up, the camera tracks the light that's on the tip of that directional
25 interface object. So the light tips up, the position of the light changes when
26 the gun is rotated. It's not just the inertial sensor data that's used to

1 determine if the gun is pointed up and where the gun's pointed up, it's the
2 camera that tracks the light that determines also what it is.

3 And just to confirm this, in paragraph 44 of Rogers, Rogers states
4 that the camera is used to track the location and movement of the directional
5 interface object. So to the extent that there's a distinction between location
6 and movement or location and orientation, Rogers states that the camera and
7 the inertial sensor both track both. So there's really no distinction in either of
8 them. And it further shows why Immersion's arguments about Rogers are
9 completely wrong and why their expert's testimony should carry no weight
10 because there is nothing to rely on besides their expert's opinion about how
11 he read Rogers which is clearly in contradiction with what Rogers actually
12 says. If there's no further questions, that's the end of my rebuttal.

13 MR. GIUNTA: I have just one quick point, Your Honor, that I'd
14 like to make about Banerjee I had noted. They alleged that our argument that
15 tracking the position of the stylus in Banerjee is a position of the haptic
16 device 22. He said that that was a new argument. Respectfully, if you look at
17 our Slides 16 and 17 which Counsel didn't respond to, Slide 16 shows this
18 argument was made in the petition and Slide 17 shows that Your Honor
19 credited that argument in the institution decision. It is not a new argument.
20 And that's all I have, Your Honors.

21 JUDGE OGDEN: Okay. Thank you. Counsel for Petitioner.

22 MR. SZPAJDA: Thank you, Your Honor. I'll take these slightly
23 out of order from how they were presented initially. I'll go Meglan,
24 Banerjee, Rogers. First, beginning with Meglan, there really is nothing in the
25 petition to say that the substrate has a visual overlay. And I'd like to point
26 specifically to, back to Slides 31 and 32 because I think this really illustrates

1 some of the concern here. If Your Honors look at Slide 31 of Petitioner's
2 slides, there's some highlighting here where they're citing the petition. And
3 you can see it says the simulated trauma overlaid on the surface of – and
4 then the highlighting stops. And it moves on to substrate 2000.

5 Well, what they haven't highlighted is surrogate 20. So here this
6 slide is being offered in support of the argument that it is the substrate itself
7 that has a visual overlay. And they say, look, we said in the petition. That is
8 only true if you ignore the part where they say surrogate 20, which is exactly
9 the problem. And this is how we got ourselves into the back and forth that is
10 encompassed within this request by Valve to strike portions of our Sur-reply.
11 They were so unclear about whether they're talking about the substrate or
12 the surrogate. All we did in our Sur-reply was level set.

13 We said here's what they haven't said. It's not that we were
14 making new arguments. We were simply pointing out inferences that
15 weren't necessarily implied by what was actually in the petition and then in
16 the Reply. So we were simply clarifying that they've never said that the
17 surrogate has – I'm sorry, that the substrate has a visual overlay. The
18 response to that is to say at Slide 31, no, no, no, look, we said it's just a
19 substrate. But that depends on highlighting just a section of the sentence.
20 They ignore the substrate part. That's also true in the – I'm sorry, they
21 ignore the surrogate. That's also true at Slide 32.

22 Counsel pointed to Slide 32 and said look, it's in there. It's just the
23 substrate that gets the visual overlay. Well, once again, all they've done is
24 highlight the word substrate. They've ignored the fact that surrogate appears
25 right next to it. So it's simply not reasonable to read this as part of the record
26 that the substrate gets the visual overlay. So I think that's a really important

1 point to highlight here. Because I think it kind of gets to the heart of the
2 matter and the slipperiness that I've described.

3 As for why we haven't addressed, you know, I guess Counsel sort
4 of challenged me on not having argued about the Papers 27 and, let's see,
5 what was it, 27 and 25. Your Honors instructed us not to have argument on
6 that at the outset of the hearing which is why we haven't done it. And so I
7 think at bottom I'll rest on what Paper 27 says. It traces out exactly how we
8 got here and I think we've just seen a demonstration of why that clarification
9 is necessary.

10 Moving on to Banerjee, you know –

11 JUDGE MCNEILL: Counselor?

12 MR. SZPAJDA: Yes?

13 JUDGE MCNEILL: Before you move on to Banerjee, there was a
14 statement by Petitioner in the rebuttal that Meglan Figure 8 on the slide you
15 were just citing, Slide 32 of Petitioner's demonstratives, clearly shows that
16 the user is putting their hands on the substrate on top of the surrogate and
17 that there is a visual overlay of the wound just underneath the user's hands,
18 and that visual overlay is necessarily on top of the substrate. Do you
19 disagree with that characterization?

20 MR. SZPAJDA: I do, Your Honor. I think that's showing the
21 surrogate. And had they believed it to be the substrate they would have said
22 so, but they said surrogate and substrate because these things are – they're
23 overlapping. They're on these separate structures and they're kind of
24 contacting each other on the table. I don't see – I mean, if – had it been in
25 the record, we may have had a chance to respond to it. But because it's not
26 in the record as a separate argument, we, you know, we're going by what

1 they put here and it says surrogate and substrate. I'm looking at the figure.
2 It's marked surrogate 20. I just don't see the substrate as having a visual
3 overlay here, nor have they argued. So I think there's a lack of any evidence
4 at that point.

5 JUDGE MCNEILL: You can continue.

6 MR. SZPAJDA: Thank you, Your Honor. Moving on to Banerjee,
7 I think again we heard – walked straight into this idea that the haptic device
8 22 comprises the stylus 27. We cited the Smith & Nephew case. That's not
9 good enough. You cannot have haptic device 22 having a stylus. You need a
10 proxy object that has a haptic output device. I challenged my colleague to
11 point something out that, you know, would show that A/B relationship and
12 show the B/A relationship again. He just repeated what he said before. He's
13 saying the haptic device 22 has a stylus. Okay. Haptic device 22 has a stylus.
14 That is not a proxy object as the claim requires. That's the Smith & Nephew
15 case we cited.

16 On Rogers, you know, the plain meaning discussion really, it's
17 important to clarify that it's not a plain meaning as like, you know, my
18 fourth grader would grab a dictionary and go look up the word position. It's
19 what does this term mean to an expert who is a person of ordinary skill in
20 the art who's reading this claim in light of the disclosures. Right? The
21 intrinsic evidence. And that's where this discussion between orientation and
22 position becomes really important. So I think that's an important
23 clarification. Dictionary citation is not a rebuttal of expert testimony. If it
24 was as simple as that, you know, they could have had their expert explain it
25 further and they didn't.

1 You know, the other point Counsel made is he pointed to some
2 disclosures in Rogers that do talk about position. The important distinction
3 there is those disclosures are talking about display, not haptics. And, again,
4 the claim very clearly requires the use of position data for the purpose of
5 providing haptics, not for the purpose of doing visual displays. You know,
6 along the same lines, there's no basis in the record that camera light tracking
7 affects haptics. That's about what's being displayed. It's a visual queue.
8 paragraph 44 doesn't say otherwise. And I, you know, unless Your Honors
9 have any other questions, those are really the main points I want to hit on
10 rebuttal. But I did want to save some time for questions if Your Honors had
11 any.

12 JUDGE OGDEN: I don't think we have any further questions. Is
13 there anything you wanted to say in wrapping up?

14 MR. SZPAJDA: I just wanted to thank you for your time. This is
15 my first time getting to argue before the PTAB and it's been great.

16 JUDGE OGDEN: Okay. Thank you. And thank you both parties
17 for appearing today and for answering our questions. We'll take the case
18 under advisement and issue a decision in due course. We are adjourned and
19 we'll go off the record.

20 (Whereupon, the above-entitled matter went off the record at 3:08
21 p.m.)

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