

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIZLINK TECHNOLOGY, INC.,
Petitioner,

v.

ANDERSON POWER PRODUCTS, INC.,
Patent Owner.

IPR2024-00687
Patent 8,808,017 B2

Record of Oral Hearing
Held: August 13, 2025

Before JAMESON LEE, SCOTT A. DANIELS, and LISA L. TSANG,
Administrative Patent Judges.

IPR2024-00687
Patent 8,808,017 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JEFFREY D. SMYTH, ESQUIRE
MING-TAO YANG, ESQUIRE
FINNEGAN, HENDERSON, FARABOW, GARRETT, & DUNNER
LLP
Stanford Research Park
3300 Hillview Avenue, 2nd Floor
Palo Alto, CA 94304
(650) 849-6600
jeffrey.smyth@finnegan.com
ming.yang@finnegan.com

ON BEHALF OF THE PATENT OWNER:

JAMES J. LUKAS, JR. ESQUIRE
BENJAMIN GILFORD, ESQUIRE
GREENBERG TRAURIG, LLP
360 N. Green Street, Suite 1300
Chicago, IL 60607
(312) 456-8400
LukasJ@gtlaw.com
gilfordb@gtlaw.com

The above-entitled matter came on for hearing on August 13, 2025,
commencing at 1:00 p.m., at the U.S. Patent and Trademark Office,
600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

- - - - -

JUDGE TSANG: Good afternoon. We're convened for oral arguments in IPR2024-00687, BizLink Technology, Inc. v. Anderson Power Products, Inc., which challenges claims in Patent number 8,808,017.

I'm Judge Tsang. To my left is Judge Lee in the hearing room, and Judge Daniels is appearing remotely. Let's start with appearances for both parties. So, please introduce who's going to be arguing today, and introduce anyone else attending.

MR. SMYTH: Thank you, Your Honor. My name is Jeff Smyth. I will be arguing today on behalf of the Petitioner, BizLink, and with me today, attending in person is Ming Yang.

JUDGE TSANG: Okay.

MR. LUKAS: Good afternoon, Your Honor. James Lukas on behalf of the Patent Owner. With me is Ben Gilford.

JUDGE TSANG: And, Mr. Lukas, are you presenting the arguments today?

MR. LUKAS: I will be, yes.

JUDGE TSANG: Okay. So, following the hearing, if you haven't already done so, please let the court reporter know how to spell your names for the transcript.

And welcome, everyone. So, we've given each side 60 minutes, total, for arguments. Petitioner, how much do you want to save for rebuttal?

MR. SMYTH: Fifteen minutes, Your Honor.

JUDGE TSANG: Fifteen?

1 MR. SMYTH: Yeah.

2 JUDGE TSANG: Okay. So, we'll do a 45/15. And then, Patent
3 Owner, how much?

4 MR. LUKAS: Ten, Your Honor.

5 JUDGE TSANG: Okay. So, we'll do 50 and 10 for you. Okay.
6 So, just some instructions. The Court reporter will provide a transcript,
7 which will become part of the record in the proceeding. To make sure it's
8 clear, we ask that you speak directly into the microphone and identify slide
9 numbers. This will also help Judge Daniels follow along with any
10 demonstrations, because we do have those in front of us, as well as the entire
11 case.

12 Please note that this proceeding is being streamed to the public. I
13 don't think there is any confidential information here, but if anything comes
14 up, please do let us know before saying anything that might be confidential.

15 Please remember that your arguments should be limited to those
16 previously presented in your briefs, and we ask that the parties hold any
17 objections until it's your time to speak. Don't interrupt the other side.

18 I have a timer here that I'm going to set, and it shows up there. It's
19 going to count down your time. I'm not sure how the lights work so don't
20 pay any attention to that. And I'll also keep a watch, and I'll try to let you
21 know when you're coming up on the end of your time.

22 So, Petitioner, you'll go first because you have the burden of
23 establishing unpatentability. Let me set the timer, and then we'll be able to
24 begin whenever you're ready.

25 MR. SMYTH: Very good.

26 JUDGE TSANG: Go ahead.

1 MR. SMYTH: All right. Thank you, Your Honor. Good
2 afternoon, Your Honor. On behalf of Petitioner, we're going to present
3 argument today on why the challenged claims of the '017 Patent are
4 anticipated and obvious over the prior art.

5 I'm going to start with a little bit of context and background on the
6 technology that we're dealing with here. So, electrical connectors are not
7 new. They've been around since the invention of electricity, decades ago,
8 and electrical arcing is also not a new problem, it is based on the physics of
9 electricity. And so, that is also something that is well-known, it's a problem
10 that has been dealt with. And it has long been understood that electrical
11 arcing is an issue and can be a hazard when it comes to electrical connectors.

12 And so, what we're dealing here with today is technology that
13 relates to electrical connectors, that is relatively straightforward. You can
14 see, from the pictures, the structure of the technology, both the prior art and
15 what is described in the patent, and all that is -- everything that is claimed
16 structurally in the challenged claims is something that was already known
17 and established in the prior art.

18 So, on Slide 2, the prior art -- the patent itself -- includes prior art
19 figures that show what electrical connectors -- what was already understood.
20 And many of the features that are recited in the claim limitations were
21 already part of those figures, already understood in the prior art.

22 Looking at Slide 3, the alleged novelty of the '017 Patent relates to
23 what is referred to as the insulating barrier. So, this is what the Patentee
24 described as the difference between the prior art and what they're claiming
25 as a novel invention.

26 Now, insulating barriers themselves are not new, either. The

1 alleged inventors of the '017 Patent weren't the first ones to come up with an
2 insulating barrier. They're not even the first ones at Anderson to come up
3 with an insulating barrier. Insulating barriers were known and described in
4 the prior art, including in with relation to the Winkler Patent, Anderson
5 Patent that was from 1958.

6 So, all of the structure that is at issue with the claims of the '017
7 Patent, all the same structure was already disclosed and provided in Winkler
8 and also in other prior art references. Kataoka is the other reference that
9 we'll be talking about today, in which the insulating barriers, again, were
10 already well-known and established long before the patent was filed.

11 And in the petition, we have gone through and supported with the
12 declaration of Dr. Eldering, mapped through each of the limitations of the
13 challenged claims, and mapped them to the structural disclosures of Winkler
14 and the Kataoka reference. And in doing so, have established that each of
15 the structural limitations that are at issue for the challenged claims of the
16 '017 Patent were already known and established in the prior art. In doing so,
17 we have been true to the patent and true also to the Patent Owner's own
18 positions and related proceedings.

19 The Patent Owner, in attempting to rebut the clear invalidity of the
20 claims of the '017 Patent, have taken positions that are contradictory to the
21 arguments that's taken elsewhere. They're interpreting the claims differently
22 here in this proceeding than they have in other places.

23 In the related litigation, they have -- in claim construction they
24 argued, the insulating barriers need not be in physical contact. And at no
25 point, did Plaintiff assert that the claims preclude a gap between the
26 insulating barriers. Here, essential argument, why the prior art doesn't teach

1 the insulating barriers is because there are, quote, "appreciable gaps." This
2 is depicted in Winkler, for example, or that there are slow -- that Kataoka
3 would have understood that there were gaps. So, this is shown that -- Patent
4 Owner's positions are shown -- I'm on Slide 7 here -- taken positions in this
5 proceeding that are contradictory to the positions it's taken elsewhere.

6 Another example of that on Slide 8, is related to the contact
7 surface. And when mapping out their claims in the complaint, they point to
8 the contact, including the curved edge, as being part of the first electrical
9 contact. Here, they say the round convex portion cannot be the connecting
10 surface. That's not what was covered.

11 And so, what we see in this proceeding is a situation where we
12 have laid a clear case of invalidity based on Winkler and Kataoka, and
13 Anderson's own prior art patents. And in order to try to avoid a clear finding
14 of invalidity, the Patent Owner is taking positions that are completely
15 contradicted by positions they've taken elsewhere.

16 JUDGE DANIELS: Counsel?

17 MR. SMYTH: With that introduction -- yes.

18 JUDGE DANIELS: I have a question. Does the '017 Patent ever
19 show a width-wise view, or a different cross section so that we know how
20 wide the insulating barriers are?

21 MR. SMYTH: Yeah, sure. I'm going to go -- on Slide number 4
22 -- I'm going to put it up on the screen here. So, the only width-wise view
23 that you can see is this top view that is basically -- you can't see the insides
24 of it. All you can see is the external depiction. All the figures that show the
25 internal components and what the actual width of the insulating barriers are,
26 are only the side views that are shown at the bottom, in the bottom figure

1 that's shown on Slide number 4.

2 JUDGE DANIELS: So, there could be gaps on the sides of the
3 '017? That's -- I just -- I seem to remember an argument from --

4 MR. SMYTH: Sure, yeah. So, the '017 Patent is -- yeah, silent as
5 to whether it goes to length-wise, and that's one of the arguments that they
6 have tried to argue in explaining why they believe Winkler and Kataoka are
7 different from the '017 Patent. The '017 Patent itself doesn't speak or
8 provide any depiction of whether or not the barriers go the full length or
9 what that structure looks like.

10 JUDGE DANIELS: Thank you.

11 MR. SMYTH: Sure. And so, with that -- so, touching just on the
12 trial today, the scope of what we're covering. So, in the institution decision
13 -- so, the petition covered invalidity of anticipation and obviousness, both
14 with regard to Winkler and also with regard to Kataoka. The institution
15 decision found that Winkler Claim 1 is likely anticipated by the Winkler
16 reference, and we maintain that the Board's decision that was correct, and as
17 we'll discuss more today, the record has only confirmed that Winkler does
18 anticipate every limitation in Claim number 1.

19 The institution decision found that, with regard to Kataoka, that an
20 element was missing related to the insulated housing, and that was a direct
21 result of the Board's adoption of a preliminary claim construction position of
22 electrically insulating. I'll talk more about that later.

23 But one of the issues that has come up, incidentally, through the
24 later briefing is, that Kataoka itself does teach that the cylindrical body 36 is
25 a housing formed of a non-conductive resin. So, even under the claim
26 construction issue, I believe the Board should not adopt this decision from

1 the initial institution decision --

2 JUDGE LEE: Counsel, this is Judge Lee. I understand that you
3 disagree with the Patent Owner's construction of the term, 'within,' but you
4 don't tell us what you think the term should mean. Can you explain why you
5 don't tell us what you think it is, and what do you actually think it is?

6 MR. SMYTH: Sure, Your Honor. So, I think with regard to the
7 claim limitation of 'within,' we don't think that any construction is needed at
8 all for the term, 'within'. I think 'within' has its plain and ordinary meaning.
9 I think attempting to reconstrue the term, 'within,' that there's no disavowal
10 or no lexicography in the specification. I've put up on the screen, Slide
11 number 21, and so this addresses the 'within' issue.

12 I think one of the problems here is, under the *Phillips* standard, you
13 have to give the words the full scope of their plain and ordinary meaning, as
14 the panel knows, unless there is some sort of disavowal or lexicography.
15 And in this case, 'within' only appears in the claim. There's nothing within
16 the specification that explains what 'within' means or deviates at all. And so,
17 to look at the figures and try to read limitations into the meaning of 'within,'
18 we don't think is a correct approach in this case.

19 And so, we think that, regardless of -- and regardless of whether or
20 not you adopt, under their meaning of 'within,' -- well, really, even the plain
21 and ordinary meaning of 'within,' the prior art references ultimately disclose
22 that the insulating barrier is within the claimed housing, regardless of
23 whether you adopt their claim construction position or not on the 'within'
24 term.

25 JUDGE LEE: Let me ask you about the argument you made in the
26 reply about 'within'.

1 MR. SMYTH: Sure.

2 JUDGE LEE: You made the argument that if Element 20 in the
3 patent is 'within,' then so is a relevant portion of the receiving pocket in
4 Winkler. And you said, more or less, the same thing about the structure 202
5 in the patent. If that's 'within,' then so would the relevant portion of the
6 receiving pocket in Winkler. I don't understand that argument. Can you
7 explain it? Because I don't see the correspondence. In the patent, there's
8 still Element 106, a part of the housing, that's further out from those
9 elements, but in Winkler, there's no such, even further exterior elements, so I
10 don't see the correspondence.

11 MR. SMYTH: Thank you, Your Honor, for the question. So, I've
12 put on the screen Slide number 23, and this has the images I think that you're
13 referring to in your question, in terms of the position in the reply.

14 JUDGE LEE: Can you move your microphone closer because I
15 have a little hard time hearing?

16 MR. SMYTH: Sure. So, I've put up on the screen Slide number
17 23, which has images I think you were referring to about what is in our reply
18 brief. And the point of the 'within limitation' in the reply brief argument is
19 that, they are taking a position of what -- they are construing 'within' based
20 on what is shown in the figure -- what's depicted in the Figure 2A.

21 And in the Figure 2A, this is another -- on Slide 22, this is the
22 images from their paper that shows the full structure, but it's not annotated.
23 So, they're reading into the 'within' term, a limitation that requires an extra
24 piece of housing that is an extra structural element that isn't recited
25 anywhere in the claims. And so, they are narrowing the scope by reading
26 into the meaning of 'within' a structural limitation.

1 But even with the extra piece of housing, you can see that the
2 insulating barrier, which is depicted on the screen in yellow and green, those
3 are the two insulating barriers, they go to the full end of the housing. They
4 are flush with the end of the piece of the housing.

5 And so, if that piece, that is now shown here on Slide 23 with the
6 red marking, is understood within their construction to mean 'within,' then
7 the same piece -- the corresponding piece on Winkler, shown in the bottom
8 part of Figure 2, is also then within the housing.

9 And so, the argument, basically, is if they are going to use the
10 figure to construe the term, 'within,' to mean something, because Winkler
11 discloses the same structure where the insulating barrier, which is just that
12 little piece off the end then -- they can't have it both ways. So, if that's what
13 'within' means, then Winkler still nevertheless teaches that that's what --

14 JUDGE LEE: Well, I still don't understand, because there's still
15 that one piece of the housing 106 that's on the exterior of what they consider
16 is 'within'.

17 MR. SMYTH: Right, yeah.

18 JUDGE LEE: There's no corresponding housing element 106 in
19 Winkler.

20 MR. SMYTH: Right. And so, but by corresponding housing
21 element, I think is -- so, that is-- that is -- the corresponding housing element
22 in 106 is a structural limitation that -- it hasn't been recited, I don't think. I
23 don't think there's anything in the cite that recites that the housing has to
24 have that extra element 106. And so, I think -- so, that's where I think the
25 distinction is here is. I don't think that that's a limitation here that is -- that
26 shows that -- it is not that Winkler doesn't still show that the housing --

1 JUDGE LEE: Why does it matter that the housing element isn't
2 recited in the claim? They're referring to the -- you're referring to the spec in
3 the figure and say, if that is 'within' in that spec and in that figure, then it
4 would be the same in Winkler. So, it seems not to matter --

5 MR. SMYTH: Sure. Let me see if I can --

6 JUDGE LEE: -- whether 106 is claimed.

7 MR. SMYTH: Yeah. Thank you, Your Honor. Let me see if I
8 can explain. So, I think the difference here is that that piece -- as you can
9 see on the screen with Figure number 23, the one insulating barrier is just
10 that -- it's the end little piece is the piece that interferes or blocks between
11 the two electrical contacts, right? The insulating barrier is not the whole
12 structure that's shown in Winkler. And so, regardless of whether or not
13 Winkler has an extra housing piece, nevertheless the --

14 JUDGE LEE: The spec has the housing.

15 MR. SMYTH: Yeah. So -- right. So, the spec of the '017 Patent
16 has an extra housing piece, but the key element, the insulating barrier, is just
17 this narrow part of 200 that is 'within,' and it interferes in between the two
18 electrical contacts. Winkler has that same interfering piece that is within the
19 bounds of the housing, it's within the -- it's on the lower part, underneath the
20 receiving pocket, which is Number 42, it's sort of an L-shape. So, the top
21 part of the L is an exterior part. The insulating barrier structure is only the
22 bottom part of the L that's hanging down. And so, that is within the housing
23 -- (INDISCERNIBLE - TECHNICAL DIFFICULTY), interfering piece
24 that's within the bounds of the housing.

25 JUDGE LEE: But in Winkler, if you pulled the two apart, the
26 piece wouldn't be within anything.

1 MR. SMYTH: You're saying that that -- well, but the top piece
2 -- if you pull the Winkler apart, the top piece would be exposed, but the
3 insulating barrier, the piece in red, is still within the housing.

4 JUDGE LEE: Well, there's no housing outside of the red piece if
5 you pull them apart.

6 MR. SMYTH: And so -- so I think --

7 JUDGE DANIELS: I have a question --

8 MR. SMYTH: Yeah.

9 JUDGE DANIELS: -- just to -- is 106 -- in your figure, 106 -- I'm
10 getting confused. 106 is part of the other side of the housing that it connects
11 into, correct?

12 MR. SMYTH: That's right, 106 in the top figure is part of the
13 second connector.

14 JUDGE DANIELS: And so, when you pull that apart, when you
15 pull that off, then you pull it off, and then you have -- the only thing that -- if
16 I'm understanding what the issue is here, it's that in Winkler there is no
17 additional piece. It's not shown in your figure, in your 20 -- in your Slide
18 23.

19 MR. SMYTH: I'll switch to Slide 22. This is a different figure
20 from the patent, right.

21 JUDGE DANIELS: Right. So, red -- the two red ones, as I
22 understand it, the argument here is that the insulator -- their argument is, that
23 the insulator is within the two red portions, whereas in Winkler there is no
24 additional red portion, right?

25 MR. SMYTH: Right, Your Honor. I understand their argument to
26 be that there has to be an extra piece, an extra red portion. The top red

1 portion has to be present, and that has to be separate and apart from the
2 yellow portion, which is the insulating barrier.

3 And so, in Winkler, again, here looking at Slide number 23, there
4 isn't a second extra piece on top there. But I think, still, when you're looking
5 at Winkler, the insulating barrier is really just the tip of -- it's the tip of that
6 housing piece there. And so, I don't -- so, I think it is still within the
7 housing. If that top piece is the housing, and the tip is the insulating barrier,
8 the insulating barrier is still within the housing even -- under either
9 construction.

10 JUDGE LEE: Got it, okay.

11 JUDGE DANIELS: Thank you.

12 MR. SMYTH: So, I will switch back to --

13 JUDGE TSANG: Mr. Smyth?

14 MR. SMYTH: Yes.

15 JUDGE TSANG: Actually, because --

16 MR. SMYTH: Go ahead.

17 JUDGE TSANG: -- you jumped around a little bit --

18 MR. SMYTH: Sure.

19 JUDGE TSANG: -- I did want to hear your arguments for
20 Limitation 1[i], so could we fast-forward to those, and if we have time, we
21 can come back to these others?

22 MR. SMYTH: Yes, Your Honor. So, 1[i], so -- and in the
23 demonstratives -- I'm on Slide 29 here, we dealt with the 1[i] Limitation
24 -- both references at the same time. And so, we can start with looking at
25 Winkler.

26 And so, the issue on Limitation 1[i] is whether or not the barrier

1 -- there's a barrier that substantially blocks the interaction here. As I talked
2 about at the outset, all of the structure -- this is a very -- it's a structural
3 claim, and all of the structural elements are disclosed in Winkler, everything
4 is there. You can see on the picture in the top where you have the pieces.
5 You have the housings, you have the contacts, and you have the two pieces
6 that are the receiving pockets that we've identified as the insulating barrier.
7 The bottom figure, again looking at Slide number 30 here, shows what
8 happens when you disconnect the connectors.

9 And so, again, this technology -- you've got two connectors, they
10 push in, push out. The figure of Winkler shows the fully-connected state,
11 and it shows other figures as well. We have included here what happens
12 when you separate the connectors? And the pictures -- the diagrams are
13 -- that's how one of ordinary skill in the art would understand the disclosure
14 of Winkler, and that's what Dr. Eldering established in his declaration.

15 JUDGE TSANG: So, am I correct in thinking, that for Limitation
16 1[i] in the petition, you rely exclusively on this -- Dr. Eldering's diagram of
17 that limitation?

18 MR. SMYTH: Well, I think that -- so, I mean, the diagram itself,
19 which is Figure 2, pieces all the elements together. I would say, we rely on
20 the lower diagram, just as Dr. Eldering's understanding of what happens.
21 But I would say that any person reading the Winkler figure would
22 understand when you disconnect them, this is sort of what happens. It's not
23 like -- we haven't added or subtracted anything from the figures, this is just a
24 figure that's re-created showing how the structural elements look at an
25 intermediate period.

26 JUDGE TSANG: So, Patent Owner had made the argument that if

1 you look at some of the other figures of Winkler, I think it's Figures 3 and 4

2 --

3 MR. SMYTH: Mm-hmm.

4 JUDGE TSANG: -- you can see there's sort of a gap between the
5 ends of the receiving pocket and through the exterior of the housing. They
6 also point to a portion of Winkler that discusses arcing.

7 I mean, in view of those two points that Patent Owner made, it
8 seems like maybe, at the very least, this diagram isn't entirely accurate, and
9 there should be at least some sort of gap between the receiving pockets at the
10 ends.

11 MR. SMYTH: Yeah. I mean, we haven't seen a diagram from
12 Patent Owner on what they contend it would look like, or what those gaps
13 are, or what they contend how much of a space there would be there. I
14 would say that, nevertheless, even if there was a slight gap in there, it still
15 would still be blocking substantially all through-air arcing. And this is -- as
16 they have -- the same position they've taken in the litigation, they've said that
17 it doesn't preclude all gaps. They don't have to be firmly pressed together in
18 order for this limitation to be taught.

19 And so, in view of that, I think this is a fair representation of what
20 it would look like, but even if there was a small tolerance, or something, I
21 think it would still substantially block and still teach the limitation.

22 JUDGE TSANG: So, but Winkler does talk about arcing, right?

23 MR. SMYTH: Mm-hmm.

24 JUDGE TSANG: So, Patent Owner had pointed to column 1, lines
25 54 to 61, as well as a portion of column 3 that talks about arcing during
26 disengagement and preventing pitting of the contacts. So, isn't that an

1 implication that there is at least some arcing that occurs in Winkler?

2 MR. SMYTH: Yeah. My understanding of those portions of
3 Winkler that are talking about arcing, are when you reach a point where the
4 two -- there is a point when you're connecting them, in which the insulating
5 barriers pass each other, but the contacts are not necessarily in contact yet,
6 right? As you can imagine, that you've got two sides of the connector, as
7 you're moving towards each other, there is a point when you have the two
8 barriers pass themselves, and the contacts are no longer in contact.

9 JUDGE TSANG: Right. But Winkler refers to arcing at the
10 extreme ends thereof during disengagement, not during --

11 MR. SMYTH: Well, right. So, disengagement, or -- so,
12 disengagement would be pulling it apart, engagement would be pushing it
13 together. And I think, when it's talking about the extreme ends, it's talking
14 about the extreme ends of those convex portions.

15 And so, I think what it's talking about is, when you pull the
16 connectors apart during disengagement, there is a period where there is a
17 -- the connectors are no longer -- the two electrical contacts are no longer in
18 contact, but the barriers are not yet in place, blocking the through-air arcing
19 paths.

20 And the same would be true, if you look -- looking back at the
21 figures of the patents themselves. If you look -- I put up Slide 3 again.
22 Looking at the figures, the same thing happens. If you look at the edge of
23 200, when you push -- when you're disengaging, there is a period of time in
24 which the 200 and 202 are no longer -- there is no longer blocking the direct
25 path between the electrical contacts and nevertheless -- and so, through-air
26 arcing would occur during that short period of time until electrical contacts.

1 And so, they're trying to draw a distinction with Winkler in this
2 regard on this limitation, but it is -- I think the arcing that Winkler is talking
3 about is not -- they categorize it as pervasive arcing. I don't think there is
4 pervasive arcing in Winkler. I think what Winkler is talking about in those
5 sections is, arcing limited to the -- on the extreme ends during engagement,
6 and also how it can then clean and not impact the contacts as when they're
7 fully engaged, because the part where the arcing is occurring doesn't impact
8 the contact portions.

9 JUDGE TSANG: Okay.

10 JUDGE DANIELS: Counsel, I'd like to follow up on this 'within'
11 thing, because, hypothetically, if we were to agree with Petitioner, our final
12 written decision would have to say, well, we think 'within' means this. Well,
13 we wouldn't know what to say because you didn't tell us what to say. We
14 couldn't possibly say, well, if according to the specification of that is and
15 this is, that doesn't sound satisfying. And if the housing in the spec 106 is
16 only on one connector and not on the other, such that when you pull it apart,
17 only one barrier is within that housing 106, but the other would not be, right,
18 because the other one would be exposed, there's no 106 on the other
19 connector, and yet the claim requires a first barrier within the first connector
20 and a second barrier within the second connector.

21 MR. SMYTH: So, I'll address both those points. So, first on the
22 claim construction issue, I think the way the claim construction would be,
23 'within' has its plain -- it has the full scope of its plain and ordinary meaning
24 of the word 'within'. The word 'within' doesn't need -- very often, when
25 courts are applying the *Phillips* standard, judges very regularly say, plain
26 and ordinary meaning. It has the full scope of the terms. They're not giving

1 it a special (CROSSTALK) --

2 JUDGE LEE: Right. But we still need to know what the plain and
3 ordinary meaning is. Conceivably, it could mean -- are you telling us it
4 should mean -- as long as it is a part of the connector, it is within the
5 connector. Are you saying that? Because I can imagine some parties
6 saying, no, it's plain and ordinary. If it's a part of it, it's within that
7 connector. But the briefs don't come out to say that. And if we were to
8 adopt that, we might get reversed for coming up with a new construction at
9 this late stage, and the Patent Owner would say, well, we never briefed the
10 issue.

11 MR. SMYTH: So, I think, in terms of what it means, and I think
12 -- I don't think it's necessary to go down lots of hypotheticals of what it does
13 mean or what it doesn't mean. I think the thing that the Board needs to
14 address is whether or not, in Winkler, as depicted here and as shown again
15 on Slide 23, whether the insulating barrier, shown with the red outlining
16 there in the bottom figure, is within the housing? And I think that's the
17 question --

18 JUDGE LEE: Only one, you can't have it in both, right?
19 Assuming you're right, the 106 is only on one but not on the other, then how
20 is the other one? Do you want us to hold that 'within' simply requires the
21 barrier to be a part of the connector, or do you not -- are you not urging that?

22 MR. SMYTH: Yeah. So, I think -- I mean -- and looking again, I
23 put up the figure that shows -- this is their annotated figure, I think, 'within,'
24 there's -- in this figure, there are -- the insulating barriers are -- I don't think
25 it needs to be a separate -- I don't think it -- I don't know that it needs to be a
26 separate piece. I think, in the context of Winkler, I think 'within' just means

1 that it is part of -- that it is within the bounds of the housing.

2 JUDGE LEE: But if there's no exterior housing on the outside of
3 it, then it's not 'within'.

4 MR. SMYTH: Right. Well, and I think that's the problem with
5 this being -- I think that's the problem with the issue that they've raised here,
6 in terms of 'within' is, it just needs to be within -- I mean, I think it needs to
7 be -- 'within' just means that it's in the bounds of the housing, and I think in
8 Winkler it is within the bounds of the housing.

9 JUDGE LEE: Only on one piece.

10 MR. SMYTH: Right.

11 JUDGE LEE: 106 is the exterior housing. It's on the outside of
12 one barrier. But when you pull the two connectors apart, one of the barriers
13 is not within the bounds of any exterior housing. It protrudes. It's out in the
14 open.

15 MR. SMYTH: Yeah. So, if I'm understanding -- so, I think that
16 it's out in the open. So, in the figure in the patent it has -- so, 106 is the blue
17 piece. There's -- on both connectors here, again, looking at Slide 22, both
18 connectors in this figure show extra -- there's the red housing pieces that the
19 yellow one is within, and there's the blue housing pieces that the green one is
20 within. And so -- and when you pull them apart, because it's flush with the
21 end of the housing, the barrier comes all the way out to the end of the
22 housing, and you can look at it, and it's flush with the end of the housing
23 piece, and that's the same as what is shown in the Winkler figure. When
24 these pieces are together, it is clearly within the structure. When you pull it
25 out, the insulated barrier is still -- it's flush with the far end of the housing.

26 JUDGE LEE: Well, maybe they don't have written description for

1 what they claim, you know? If that's the case, then your argument would
2 fail. You can't just say that if it's illustrated like that, and Winkler has it like
3 that, so Winkler shows it. You're not allowed to raise written description, so
4 I don't know if we can assume they have written description for what they
5 claim. So, at the end of the day, if we were to side with you, we got to put
6 down what 'within' means, and what shall we say, according to you?

7 MR. SMYTH: Yeah. I would say that 'within' means it's on the
8 inner side of the housing.

9 JUDGE LEE: So, then it looks like you wouldn't win on that,
10 right, because on one piece, there is no exterior housing?

11 MR. SMYTH: Well, on Winkler, there is -- I mean, that's what the
12 L shape, the top part of it would be the housing, and the part hanging down,
13 the insulating barrier is on the --

14 JUDGE LEE: Is there a numeral that you can point to --

15 MR. SMYTH: Yeah, so it's --

16 JUDGE LEE: -- housing of pieces?

17 MR. SMYTH: So, in that, it would be that the housing -- let me
18 find a better picture to look at.

19 JUDGE LEE: Like, if you looked at Figure 2 --

20 MR. SMYTH: Yeah.

21 JUDGE LEE: -- your Slide 23, right? I see that little red thing.

22 MR. SMYTH: That's right.

23 JUDGE LEE: There's the thing -- if you pull it apart, there's
24 nothing on the outside of that red piece.

25 MR. SMYTH: Well, the red piece is connected to a horizontal
26 piece --

1 JUDGE LEE: Mm-hmm.

2 MR. SMYTH: -- right? The way the structure of Winkler, the
3 receiving pocket has -- it's basically like an L shape you can see here, so the
4 red piece is dangling down from a horizontal piece.

5 JUDGE LEE: Right.

6 MR. SMYTH: So, the horizontal piece would be the housing, and
7 the red piece dangling down would be within the housing.

8 JUDGE LEE: Oh, I see. So, you'd treat the horizontal piece as the
9 housing?

10 MR. SMYTH: Right.

11 JUDGE LEE: And because the red piece hangs down from it --

12 MR. SMYTH: It's within the housing.

13 JUDGE LEE: -- it's 'within'? Okay, thank you.

14 MR. SMYTH: Thank you, Your Honor. Continuing to jump
15 around, are there any other issues that anybody wants me to touch on in
16 particular?

17 JUDGE TSANG: No, go ahead.

18 MR. SMYTH: Okay. I'll go back to the connecting surface
19 limitation. And this is one that has also been subject to some disagreement
20 about what was in the petition and what wasn't in the petition.

21 So, in the petition, we established that the connecting surface
22 includes the flat portion and the convex portion. Looking at Slide Number
23 14, the picture on the top, shows in pink highlighting what the connecting
24 surface is. And this is a figure that I don't think Patent Owner has -- I don't
25 think they put in any of their papers -- they don't acknowledge that it exists,
26 but that shows what a connecting surface is.

1 In addition, on page 26 of the petition, there was another picture
2 showing the way they've construed the connecting surface in their limitation
3 in the complaint. And so, with regard to this, it's clear the connecting
4 surface is not just limited to the flat portion as they've tried to argue in their
5 Patent Owner response. And, in fact, even the institution decision
6 acknowledged, at page 20, that the connecting surface (INDISCERNIBLE -
7 TECHNICAL DIFFICULTY) and the curved section.

8 We believe that the figure clearly depicts and shows contact
9 between the flat portion and the curved first portion. But even assuming that
10 it is limited, there is no dispute that because of the convex portion covers
11 -- if the convex portion is included in the connecting surface that this
12 limitation is clearly taught, because they admit themselves that there's
13 contact between the convex portions.

14 And the other issue I wanted to address relates to the other claim
15 construction issue related to the electrically insulating. And so, this is
16 another issue in which there's a claim construction dispute about whether the
17 insulating housing has to be an electrically-insulated housing.

18 And one of the things I want to make clear, and as we explain in
19 the reply, there's really two different ways that insulating is being used in the
20 claims and used in the specification. There's an insulating housing, which is
21 recited on the first five elements, and there's an insulating barrier.

22 And so, what they argued in the petition -- or what they argued in
23 the Patent Owner response -- preliminary response is, that you have to
24 construe the word, 'insulating' the same in every aspect, and that ignores that
25 when you're talking about the electrically-insulating barrier -- there are
26 certainly portions of the spec that talk about the barrier and how it has to be

1 electrically insulating. Every discussion --

2 JUDGE TSANG: Mr. Smyth, what about Patent Owner's
3 argument that any housing sort of protects -- it serves a protecting function?

4 MR. SMYTH: Yeah.

5 JUDGE TSANG: How would you respond to that?

6 MR. SMYTH: Yeah. So, I think -- I mean -- so, the argument
7 there is that we're basically trying to read out a limitation -- that we're
8 reading with insulating out, and I disagree with that. I think housings can
9 serve a lot of functions. And in the specification, it talks about the insulating
10 function, but it doesn't necessarily have to be -- it doesn't have to serve an
11 insulating function, it can serve lots of different types of functions. And so,
12 I do think that -- I don't think we're reading the limitation all the way out by
13 focusing on protecting. What we're doing is, we are relying on specifically
14 what the specification talks about with the housings, and the feature that the
15 housing does, as contrasted with the features of the insulating barrier.

16 And one of the arguments they've made, they've cited case that
17 says you have to treat the same word the same everywhere. And they cite
18 the second -- the second-half of that sentence, but I think when you look at it
19 -- when you read the whole sentence, what's happening on that case is, you
20 have the term, 'array,' and you had two different uses of 'array' in the claim.

21 You had -- and so, what they'd said, and actually the first half of
22 the sentence says, that when you are construing a term, it has to encompass
23 both meanings. They can't construe a term in a way that only encompasses
24 one of the meanings. So, I think the case they've cited for that, it's actually
25 on Slide 6 of their demonstratives, actually shows why the claim
26 construction position they're advancing on this one is incorrect, that when

1 you have the terms being used in two different ways, the construction needs
2 to encompass both manners that the patent as used, so a narrowing
3 construction to electrically insulating would be improper.

4 And again, regardless of this, whether or not the -- whether it's a
5 claim construction issue, it has been established that Kataoka does teach that
6 the cylindrical body is electrically insulating. It is a non-conductive resin,
7 and their expert, Mr. Locati, acknowledged, in his deposition testimony, that
8 it's -- in view of the disclosure, but being a non-conducted resin, that that
9 would be an insulating material.

10 They point also out -- in their sur-reply they point to the -- on the
11 screen here, this is Slide number 28, they reference the aluminum cylindrical
12 shield body 41 and say that somehow negates the fact that the body itself is
13 conducted (sic) of a resin. That piece -- that shield body is just a small
14 component on the inside of the housing. It doesn't change the fact that the
15 cylindrical body, the housing is formed of non-conductive resin. So, even
16 with their claim construction, Kataoka does teach that the resin is the non-
17 conductive resin for the second housing.

18 If there are no more questions on the independent claim, there are a
19 few dependent claim arguments that I'd be happy to be -- if there's any
20 questions about dependent claims, I'd like to address those.

21 JUDGE TSANG: I did have another question as it relates to
22 Limitation 1[i].

23 MR. SMYTH: Sure.

24 JUDGE TSANG: I'm trying to find where in the reply -- okay, so
25 it's page 15 of your reply. And again, this is discussing the figure in
26 Winkler, Dr. Eldering's diagram. And the reply says, preparing a side-by-

1 side comparison is what a POSITA would do in order to create that diagram
2 of Winkler. There's no citation in the record, so can you point me to where
3 Dr. Eldering does that side-by-side comparison?

4 MR. SMYTH: So, this is -- the side-by-side comparison is -- so, I
5 think all -- the side-by-side comparison is just viewing the -- it's just
6 showing that that's what -- doing the analysis of Winkler, where you take the
7 pieces apart, is sort of what he considered the way that you would look at
8 this. And his paragraphs on that from his declaration -- just a second -- so,
9 his discussion of this in his analysis on this is in his declaration, and it's
10 paragraphs 79 through 84. And I don't recall if he specifically says the side-
11 by-side comparison part, but that's what his analysis was doing in those
12 paragraphs, is he was taking a look at Winkler, and he was showing what a
13 person of ordinary skill in the art would have understood from the disclosure
14 of Winkler based on -- by pulling the two connectors apart.

15 JUDGE TSANG: Okay, so. But he doesn't explicitly, in his
16 declaration, say that he performs the side-by-side comparison? There's no --

17 MR. SMYTH: I don't -- yeah, I don't recall that he says that -- if
18 it's present in the declaration, Your Honor.

19 I just want to touch real briefly on some of the dependent claim
20 limitations, and if there's any questions, I'm happy to address any of them in
21 particular.

22 With regard to the barrier tensioning mechanism limitations of
23 Claim number 4, Dr. Eldering explained in his declaration, why you would,
24 for Winkler, understood that the barrier tensioning mechanism, this pink
25 piece, is sort of forced in the two pieces together during the active engaging
26 the two pieces of the connector together.

1 In response -- Patent Owner's response on the barrier tensioning
2 mechanism with regard to Winkler, is focused exclusively on the pictures
3 that come from the fully-compact, the fully-connected state. And so, I'm
4 looking here on the barrier tensioning mechanism on Slide number 39. So,
5 this is Dr. Eldering's testimony about the barrier tensioning mechanism.
6 And what Patent Owner has presented and their expert has responded, hasn't
7 really addressed the crux of the question, which is, when you're in the state
8 of being partially disconnected, are those barrier tensioning mechanisms
9 forcing things together? And so that's -- that's really -- I think, that based on
10 what is in the petition, and what has been provided by Dr. Eldering, that
11 barrier tensioning mechanism element has been disclosed in the Winkler
12 reference.

13 With regard to the soldering issue, there was a question about
14 whether or not the soldering would be consistent with Winkler because of
15 the limitations Mr. Locati said about the freedom of movement. The
16 specification of Winkler itself mentions soldering is an option, specifically
17 on page 2, lines 4 through 10. And so, I think Mr. Locati's opinions on that
18 don't overcome the fact that Dr. Eldering's testimony, establishing the
19 soldering, was something that could be done with the invention in Winkler,
20 and Winkler itself acknowledging the soldering was something that was
21 available.

22 And then, I see I just have a few minutes left. I just wanted to
23 finally touch on -- there's a lot of discussion about the experts of whether or
24 not -- the credible testimony here. We have Dr. Eldering, who's provided his
25 opinions, we have Mr. Locati, who's provided his opinion in support of the
26 Patent Owner. And I think one of the key issues here with the testimony

1 from Mr. Locati is that he hasn't been provided full context for a lot of his
2 opinions. And a lot of his opinions, particularly with related to the claim
3 construction on the electrically insulating, he didn't know -- wasn't aware
4 that his opinions were basically lifted straight from the claim construction
5 brief the Plaintiffs submitted.

6 And so, we have here a situation where Dr. Eldering has provided
7 credible, strong, relevant expert testimony relating to each of the limitations
8 of the patent, establishing the anticipation by Winkler and Kataoka. And we
9 have the expert testimony from Mr. Locati that largely just reiterates the
10 Patent Owner's response without really sort of any explanation and just sort
11 of turning the attorney argument into an expert declaration.

12 And so, I think, ultimately, when you look at -- in considering the
13 credibility of the experts, the Board should look at the petition, look for the
14 grounds, the credible testimony of Dr. Eldering, and find all of the claims
15 -- the challenged patent claims are invalid. And if there are no further
16 questions, I'll sit down.

17 JUDGE TSANG: It looks like you still have more than a minute
18 left, so we'll just add that on to your rebuttal time.

19 MR. SMYTH: Thank you, Your Honor.

20 MR. LUKAS: Good afternoon, Your Honors. James Lukas, on
21 behalf of Patent Owner, Anderson Power Products, Incorporated. Patent
22 Owner requests, respectfully, that the Board confirm the patentability of all
23 the claims that have been challenged by the Petitioner.

24 As we go through the grounds, I think it will become clear the
25 Petitioner has not met its burden. I'm going to get into some themes that are
26 covered by all of -- that are covered by the grounds. And I think one of

1 them is that anticipation is a strict, exacting standard. Every limitation must
2 be in the prior art, must be disclosed. I think you're going to see that
3 Petitioner has shifted its case strategy and its theories on invalidity, which I
4 take it is a concession that it did not meet its burden in the petition.

5 We'll also see that -- through the briefing, and as I get into it, that
6 Petitioner desperately flips the burden back on the Patent Owner to say what
7 the figures should be, or what Winkler should disclose, stuff like that.
8 Petitioner relies on made-up diagrams that the Patent Owner has shown are
9 not accurate or are inconsistent with the actual prior art's disclosures.

10 Another big theme you'll see is that the Petitioner avoids the
11 claims. There's a lot of discussion of figures -- other items that have nothing
12 to do with the actual claims. And we think this is a very -- what's really
13 important here is the claims, and the claim language, and what they say.
14 And I think they have to meet -- it's their burden to show that the prior art
15 meets every single limitation of those claims. And that really is all that
16 matters.

17 And then, finally, like the thing that just came up, I think that kind
18 of puts the, I guess, icing on the cake is, new theories, new arguments that
19 were raised just here in oral argument that were never raised in any of the
20 briefing, and just attorney argument. Not only are they new arguments,
21 they're arguments not supported by any evidence of a positive. And so I
22 think all of that combined really shows that the Petitioner has not met its
23 burden, and that the Board should confirm the patentability of all of the
24 challenged claims.

25 I'm going to get -- let me show you -- all right, we're good. We're
26 going to go through the different issues that came up in the briefing and then

1 again earlier. This is just -- Slide 17 just repeats the grounds.

2 The big disputes -- I think we focused mostly on Limitations [g]
3 and [h] and Winkler in Limitation [i]. I'm going to quickly touch on
4 Limitation[f], but then get into those, and let's go to that. That was touched
5 on very lightly. But I think it does kind of set the stage for all the other
6 arguments of the Petitioner. Because what you have here is, Limitation 1[f]
7 talking about the second electrical contact -- this is Slide 20, being
8 configured to laterally engage with the connecting surface of the first
9 electrical contact when the first connector is mated. That's important.

10 And then you saw, at Slide 21, what we're showing here is, look,
11 this is what the petition said. It was very clear. There was reference to this
12 one figure where they highlighted -- they went a little further on the
13 connecting surface, but the bottom line here is, it's overwhelming that they
14 said the connecting surface is the elongated flat portion 32, okay? What
15 happened was, then we showed that that can't meet the claim, and then they
16 changed it and said, oh, it could be multiple things. But you can see this
17 here in 21.

18 JUDGE TSANG: Mr. Lukas, what about the figure that Petitioner
19 annotated on page 23 of the petition, which they showed in, I forget which
20 slide, but that sort of underlines --

21 MR. LUKAS: Yeah. So, I think that's, at best, ambiguous because
22 it's inconsistent. I'm actually at the petition, paper 1 page 23. I know
23 exactly what you're talking about. And they glammed onto that. But right
24 below it, it says, the elongated flat portion 32 is a connecting surface as
25 claimed. It goes on further at 23, therefore -- I'm at 24 now of the petition,
26 flat elongated portion 32 of contact member 22 is a connecting surface as

1 claimed. And then, when they talk about the other part of the claim, the
2 parallel part, they're only talking about the elongated flat portion is parallel
3 with the longitudinal axis. That's at page 24. Then again at 25, their expert
4 says the same thing.

5 JUDGE TSANG: Well, on page 25 --

6 MR. LUKAS: Yes.

7 JUDGE TSANG: -- again, they point to that convex end portion
8 34 as being -- as meeting that "terminates in a leading end of the first
9 electrical contact." And if we go back to the claim, isn't that, 'terminating
10 leading end', isn't that a part of the connecting surface?

11 MR. LUKAS: No, I disagree. Because I think they're very -- say
12 -- well, excuse me, the elongated portion, they call that the connective
13 surface, and then they say the elongated portion ends. If you see at 25, they
14 say it ends at the convex end portion. So, I think that argument that, oh, no,
15 we were saying it's both, just fails. Again at 25 they say, it terminates. So,
16 they're very clear. Their expert's very clear. Again, there's no even positive
17 testimony from them saying, oh, no, it can also be the convex portion, okay?
18 So, I think that's -- I mean, if you'd look, I think it's numerous times between
19 23 and 25 where they're very clear on their mapping, look, it's the elongated
20 flat portion, okay?

21 The Board agreed. I think they even -- they even brought this up,
22 their own expert, in his dep -- I'm at Exhibit 2002, pages 39, line 8 -- excuse
23 me, line 21 through 40. He says, the connecting surfaces, described by
24 Winkler, as the elongated flat portion as much as through the connecting
25 surface indicated at least an elongated flat portion. He goes on to say that
26 later on too in his deposition.

1 So, it's pretty confirmed that that was their position in the petition,
2 okay? And now, as the Board knows, they've changed that. They say it's
3 multiple things. So, that just goes to show you what we're dealing with from
4 the Petitioner and the weakness of their arguments.

5 I mentioned the Board -- the Board confirmed this in its institution
6 decision, paper 7 at 23, this is what Petitioner's arguing. It's arguing that
7 Winkler's elongated flat portion 32 meets the recited connecting surface.

8 And then, what you have here, is there's no engagement between
9 Winkler's second contact and the elongated flat portion of the first contact.
10 That's confirmed by Mr. Locati. He says it very clearly in his testimony, and
11 he shows that this figure was incorrect, the one that was used by the
12 Petitioner, because of the incorrect cutoff on line 44.

13 So that -- you use Mr. Locati's testimony in combination with the
14 fact that the cross section was incorrect, Mr. Locati Exhibit 1003, 74 and 75
15 paragraphs, there's no engagement. We show that -- the Patent Owner also
16 shows that in its response on paper 12, 27 through 32.

17 In the reply, as we say, that there's a shifting sands approach here,
18 and now they say it's both, and that contradicts everything they said before,
19 as I went through. And then, our position on the new theory is it should be
20 stricken because it's inconsistent with the position, and that's at Slide 25.
21 But if you consider it, it still fails, because -- it fails, because now you have
22 to go back through -- I don't think they -- the Petitioner didn't think this out,
23 because now you have to go back and look at Limitation 1[c], and this is
24 where the claim language actually does matter. And it goes -- it says, the
25 connecting surface that is substantially parallel with a longitudinal axis of
26 the insulated housing. And that's not -- it's no longer accurate now if you

1 include the convex portion, and we have Mr. Locati's testimony confirming
2 that.

3 JUDGE DANIELS: Counsel, I appreciate your argument on this
4 point, as far as what the petition had in it.

5 MR. LUKAS: Right.

6 JUDGE DANIELS: But I was just looking at Winkler, and
7 Winkler describes the elongated flat portion 32 and the convex end portion
8 34 as the contacting end of each terminal. Do you have any thoughts on
9 that? I mean, I guess when I read Winkler, I'm kind of like, look, that's the
10 contacting end of the terminal, both of those elements, 34 and 32, are part of
11 it.

12 MR. LUKAS: If you're asking -- I mean, are both the elements
13 part of the contact terminal? I agree with that, yes. And I think that that's
14 not -- I don't -- but they make very clear here that it's the elongated portion
15 that actually -- that deals with the contacting, I believe. Yep. Right.
16 Because a contact member from a mating connector establishes an electrical
17 connection with the elongated flat portion -- I'm at 23 of their petition, so
18 they do say that, but I generally agree.

19 But I think, the point about the argument is, if you start -- the
20 reason they did it in the first place is, they knew about the substantially
21 parallel part and the fact that it -- that you had -- with the longitudinal axis,
22 and also that you had to have the lateral engagement. And by adding -- by
23 now making it the convex and the flat portion, they no longer have
24 substantially parallel with the longitudinal axis, and they no longer have
25 lateral engagement. And, I mean, that's confirmed, if you look at page 29 of
26 the petition, paper 1.

1 And remember, when we're talking about lateral engagement,
2 we're talking about mating. And if you look in their petition, they actually
3 talk about this. The two spring-pressed contact members 22 slightly engage
4 with one another, and as the connectors approach full engagement, the
5 springs affect upper movement in the terminals in their pockets to present
6 the curved portions in hooked or interlocked relation to each other. Well,
7 the point is, when you're fully engaged and mated, as the claim requires,
8 1[f], you're in hooked or interlocked, and that's no longer lateral
9 engagement, so they don't meet that claim limitation.

10 I'm going to move on here to the 'within', 1[g] and 1[h], and we're
11 talking about Winkler. I'm at Slide 27. Again, 'within' the first connector
12 and 'within' the second connector, the relevant portions of those claim
13 limitations. And I just want to get -- there was some discussion about
14 'within'. And it's Patent Owner's position, look, it has to mean something, it
15 has to mean what Patent Owner says. That's the only thing on the record
16 about the meaning.

17 I heard, over and over again, Petitioner refusing to even define it.
18 It's a new argument. Even if there is a definition there, it's waived. It still
19 doesn't prove they've met their burden on these two limitations. I think it
20 was -- it kind of sounded like that -- basically, that 'within' -- that the
21 housing -- that the insulating barrier is the housing. That's kind of what I got
22 from the definition. But the point is, I think that really shows -- the struggle
23 really shows that there's -- they have not met this limitation.

24 Again, no construction of 'within' at Slide 13. One of the things
25 that I -- it was good that it was pointed out, but they tried, and I think this is
26 misleading. They knew they had a problem, and they tried to show you, in

1 their briefing, a partial diagram, and we showed you the full one to make
2 very clear that it's not -- when we're talking about the patent, those insulating
3 barriers are within the housing, okay? But that just goes to show that there's
4 a lot of concern there from Petitioner with an inability to meet this limitation
5 in here.

6 JUDGE TSANG: Mr. Lukas?

7 MR. LUKAS: Yes.

8 JUDGE TSANG: Given the limited number of, I guess, cross-
9 sectional or full figures we have in the '017 Patent, how do we know that the
10 housing in the '017 Patent extends all the way around the barrier?

11 MR. LUKAS: Well, I mean, I think that's clear from the -- I think
12 that that -- and you're saying in the '017?

13 JUDGE TSANG: In the '017.

14 MR. LUKAS: Yeah. I mean, I think that's clear from the figure. I
15 don't understand this, like, essentially the -- it does, I mean, and the barriers
16 are within it. That's just the way -- yeah -- so, I mean, I guess, the best way
17 to describe it is Figure 4A of Exhibit 1001, that kind of like -- I think that's a
18 full-connected state.

19 JUDGE TSANG: Right. But how do we know what sort of going
20 into the page looks like, or even the opposite side of Figure 4A, right?
21 Because you're distinguishing Winkler -- Winkler's receiving pocket as
22 being exterior to, or outside the connector, right? How do we know there
23 aren't any cutouts in your housing that would have the barrier exposed, or,
24 you know?

25 MR. LUKAS: Yeah. So, I'm going to try to answer your question.
26 I think they're -- what they're saying really is, that it's a -- that the insulating

1 barrier is essentially a part of the housing. So, what we're saying is, it has to
2 be within the housing, and I think that's the distinction. And this shows that
3 when you go to Winkler, it's clearly -- and let me -- I know I have it, so,
4 here, I'm at Slide 29, I think this is Winkler. And that red is what they're
5 calling the insulating barrier, and that's part -- at best, part of the housing.
6 It's the exterior part of the housing. It can't be within the housing. And I
7 think that's the distinction, and that's why our construction's correct, and they
8 don't meet that. Does that answer your question?

9 JUDGE LEE: Counsel, looking at your Slide 29, I think.

10 MR. LUKAS: Excuse me?

11 JUDGE LEE: Twenty-nine. The number is on the upper right,
12 right? So, I want to make sure I'm referring to the right --

13 MR. LUKAS: It should be the bottom right. I did mix the -- just
14 to be clear, I've rearranged the order, so -- so, but, yeah.

15 JUDGE LEE: Well, anyway, what's marked in red is the receiving
16 pocket 42?

17 MR. LUKAS: Right, what they're calling --

18 JUDGE LEE: As the --

19 MR. LUKAS: Yes (CROSSTALK) --

20 JUDGE LEE: -- (CROSSTALK) barrier?

21 MR. LUKAS: Which has to be within the housing.

22 JUDGE LEE: And is it your view, that's not within connector
23 because it's just -- when you look at it, it's just exposed?

24 MR. LUKAS: Yes. I mean, it's part of that -- it's really -- I think it
25 is the housing, or part of the housing. And so, yes, it's exterior. It's not -- it's
26 not within the housing, on the inside of the housing, correct.

1 JUDGE LEE: Why is it -- are you admitting it's a part of the
2 housing? I mean, it seems like it's just something protruding from the
3 housing. The housing is 14 on one side and 16 on the other, and the pockets
4 are just something that it's protruding from.

5 MR. LUKAS: I mean, I guess you could say that. But the point is,
6 the claim language is clear. It says, it has to be within --

7 JUDGE LEE: I get it.

8 MR. LUKAS: -- within the connector.

9 JUDGE LEE: If it's a part of the housing, it's not within the
10 housing?

11 MR. LUKAS: Yes. Right. Within the first connector, yes. So,
12 that's the point. So, I mean --

13 JUDGE DANIELS: For the record, I want to say that the record
14 isn't clear what 'within' means. I'm still struggling with this term. Because I
15 don't see anything in the specification of this patent that explains anything
16 about what 'within' means. And you're asking us to give it a definition, apart
17 from its plain and ordinary meaning, where it's just floating around in this
18 claim, and you all seem to have latched onto it. I'm still struggling to
19 understand why, as part of the housing, part of that end is not within the
20 housing.

21 MR. LUKAS: Well, I think we've provided support for why it
22 should be construed as on the inside, in our response. Let me direct you to
23 that really quickly. And I also think it's consistent -- there's a supported
24 'within' limitation, and I think it's consistent with the way that they've read
25 that. And I think it's telling, that they refused to define it, and we're the only
26 party that's defined it. I think it probably is an -- I think it's an *02 Micro*

1 issue, because we've raised a dispute as to it, and they refused to define it.

2 And I think -- so, on the record, I think the only construction, the
3 only proper construction is on the inside. As we pointed out to -- as we've
4 shown is supported by the spec -- supported by the extrinsic evidence,
5 supported by the use of 'within' in the other claim limitations. So, I -- Patent
6 Owner's position is, that the construction should be on the inside, and using
7 that construction, they cannot meet Limitation 1[g] and 1[h]. And it's not in
8 the briefing, and it definitely wasn't here today in oral argument. They
9 couldn't just describe why they couldn't meet the Limitation 1[g] and 1[h].

10 JUDGE TSANG: We did make a finding in our decision to
11 institute, it's pages 25 of paper 7, that Figure 1 of Winkler shows that the
12 receiving pocket of the second connector is depicted as being inside the
13 second connector. Because it's shown as being within the outer periphery,
14 right, of the connector? So, do you dispute that?

15 MR. LUKAS: What page are you at, because I was --

16 JUDGE TSANG: This is page 25 of the decision to institute, it's
17 paper 7.

18 MR. LUKAS: Yeah, I mean, we do dispute that finding because
19 we think we've shown that it's not within the first connector nor is it within
20 the second --

21 JUDGE TSANG: It's inside the outer periphery though, the
22 housing, isn't it? You know, if you look at the thickness of the housing
23 versus the thickness of the --

24 MR. LUKAS: No, I think it is it -- I would say, it is the outside
25 periphery of the housing, so it can't be inside it. That would be my response
26 to that. And to be clear, we're talking about the red not the green -- excuse

1 me, the blue.

2 JUDGE TSANG: That's right, yeah.

3 MR. LUKAS: The outside of the blue. Yeah. I think it is -- it's
4 the outside. I mean, I think --

5 JUDGE TSANG: I mean, it's exterior, but it's within the outer
6 -- the outermost confines.

7 MR. LUKAS: But I go back to the claim limitations and it says,
8 within the first connector within the second connector, and I just can't -- that
9 is not within the first connector and within the second connector. It's not on
10 the inside, it's -- I agree with you, it's the exterior of the connector, at most
11 -- at best.

12 JUDGE TSANG: Yeah. So, I'm looking at -- it's the other
13 connector in Figure 1, which shows a slightly different view. You know, I'm
14 kind of with Judge Daniels on this one. I'm struggling to understand exactly
15 what 'within' means, and how this is necessarily different from what is
16 shown in the '017 Patent. Again, because we don't have a full view of the
17 housing of the '017 Patent.

18 MR. LUKAS: So, what figure are you at?

19 JUDGE TSANG: Figure 1 of Winkler.

20 MR. LUKAS: Okay.

21 JUDGE TSANG: But I'm looking at the other connector, which
22 shows sort of the other side of the receiving pocket.

23 MR. LUKAS: Yeah, I mean, I -- my position is, that that's still not
24 'within'. Yeah. You're talking about 44?

25 JUDGE TSANG: So, the receiving pocket 42.

26 MR. LUKAS: Forty-two?

1 JUDGE TSANG: Yeah.

2 MR. LUKAS: Yeah. I mean, I still don't think that's within the
3 connector on the inside of the connector.

4 JUDGE TSANG: But it's inside -- again, the outermost periphery,
5 it's inside the thickness.

6 MR. LUKAS: No. I would say, it is the outermost periphery.
7 Remember, because there's these two connectors meeting, and I think we
8 have to talk about -- because we're talking about each -- 'the within' applies
9 to both connectors, and so it has to be within the first connector and within
10 the second connector.

11 And if you look at -- if you look at our patent, you understand why
12 because that's where you're putting these insulating barriers, inside the
13 connectors. So, I -- I would say, that's not within, that's not on the inside of
14 the connector. But that's supported by Mr. Locati, and I do not believe
15 there's any testimony from Petitioner's expert on this, especially under the
16 construction -- excuse me, on the inside. Does that answer --

17 JUDGE LEE: This is Judge Lee, I'd like to ask, what is your view
18 on -- what if the petition did not say anything about how 'within' is met?
19 Would that preclude them from coming back in the reply to say -- to explain
20 how 'within' is met?

21 MR. LUKAS: I think there's Fed Circuit law saying, if the Patent
22 Owner brings it up, they -- I think they are permitted, if they didn't try to
23 construe it previously, so I think they're not precluded, but I don't think they
24 did. I don't think they provided any construction, so I think it's waived. And
25 they've offered no construction. On 'within' you're saying? Yeah.

26 JUDGE LEE: Right. So, you're okay with Petitioner not

1 addressing an element in the petition?

2 MR. LUKAS: Well, I mean, it used to be that -- I think for -- it
3 used to be, hey, we have to stick to the guidelines, but I think the Fed Circuit
4 has kind of broadened those in the more recent years, where they've kind of
5 said, well, look, if you brought up a construction in your response, they
6 should be allowed to address it. I think there is law on that, I'm not --

7 JUDGE LEE: Yeah, that's true, but I'm talking about a scenario
8 where they completely didn't say anything. I mean, the last time I looked at
9 the petition, I saw the limitations -- the two clauses --

10 MR. LUKAS: Yeah.

11 JUDGE LEE: -- the barrier, it has to be within, right? But within
12 the paragraphs (INDISCERNIBLE - TECHNICAL DIFFICULTY) petition
13 accounting for that?

14 MR. LUKAS: Okay. So, you're actually -- no, you're raising
15 another point that I -- I mean, we thought they didn't even actually argue it,
16 like, in their petition. Like, they didn't -- they definitely didn't offer a
17 construction, but they didn't even map it to the actual language of the claim,
18 which you usually do. So, I agree with that. And I think that's -- I think
19 that's definitely waived. So, it's not just no construction, I don't even think
20 they mapped it to use the words of the claim. Do you know what I'm talking
21 about? So, I think you're right.

22 JUDGE LEE: I was looking at what they said about how 'within' is
23 met. I couldn't find it.

24 MR. LUKAS: Yes. No, I agree. There's no language to that, so I
25 think that's been waived. Now, it's a little tougher for me to say definitively
26 on the construction-wise, but I think if you don't -- if you didn't raise the

1 argument, or you didn't even make the argument that meets the limitation, I
2 think that's been waived, yeah. You can't just come back later on --

3 JUDGE LEE: And then what -- I just wanted the Patent Owner's
4 view.

5 MR. LUKAS: That is, yeah. Do you understand that?

6 JUDGE LEE: (CROSSTALK) --

7 MR. LUKAS: So, if you didn't raise the argument, or didn't make
8 the position in the petition, you can't now raise it in the reply. Now, there is
9 a nuance on just, specifically, like a claim construction issue. Do you get
10 that? Did I answer your question?

11 JUDGE LEE: Well, I'm not sure I get it, but you can just go
12 wherever you want. I just want to --

13 MR. LUKAS: I definitely --

14 JUDGE LEE: -- (CROSSTALK) would object to their accounting
15 for 'within'?

16 MR. LUKAS: I do object, because I -- because I don't think
17 they've ever provided a construction. I don't think they provided
18 construction in the petition. I don't think they provided construction in the
19 reply. I think they're --

20 JUDGE LEE: It's not just construction-wise. I'm just saying,
21 construction or not? Saying, this is how 'within' is met. Here's 'within'.
22 Here's the (CROSSTALK) --

23 MR. LUKAS: I do object to that.

24 JUDGE LEE: -- it's 'within'.

25 MR. LUKAS: I mean, we did -- I will say, we raised that in the
26 preliminary response. We didn't think they met that limitation, so I agree

1 with you. Yes, I object to that, and.

2 JUDGE LEE: You agree with me. I did think of you. . .

3 MR. LUKAS: Okay.

4 JUDGE LEE: I didn't say whether they're barred from saying that

5 --

6 MR. LUKAS: No.

7 JUDGE LEE: -- or not, I just --

8 MR. LUKAS: No, no. So, I -- I didn't mean -- I do -- the Patent
9 Owner does object to that. Yes, I think that's improper.

10 JUDGE LEE: Guess what? I wanted your view on whether you
11 think they are allowed to account for a limitation that they didn't address?

12 MR. LUKAS: No, I don't think so. I think, procedurally, they
13 shouldn't be allowed to do that. I agree.

14 JUDGE LEE: If they didn't address it?

15 MR. LUKAS: Yes.

16 JUDGE LEE: I'm not sure.

17 MR. LUKAS: Yes. Yes. I mean, I'm just going to conclude. This
18 is what I was touching on, Slide 31, where they didn't provide the full figure,
19 and then we provided the -- you can see right there, they provided the partial
20 cross section, we provided the full cross section. It makes it very clear;
21 Winkler does support our construction.

22 So, I want to move on to 1[i]. And this is the -- this is the
23 limitation talking about partial disconnected state and the blocking
24 substantially all through-air arcing paths.

25 There was some discussion about this with the Petitioner's counsel.
26 And I just want to -- I'm going to get into the specifics of our argument on

1 this. I want to make very clear, Patent Owner took the position that the
2 figures were completely inaccurate because they didn't show gaps. That's
3 where it ended. Secondly, there was a question posed to Petitioner's
4 counsel, like, could you still meet the limitation if there are gaps? And I
5 think that's all -- that argument or position was never raised previously in
6 briefing, and there's definitely no support by someone of skill in the art on
7 that position. So, I would ask that the Board reject that, and it's all new
8 attorney argument. And that was one comment that I had on that as we get
9 into it.

10 So, here we go. With Limitation 1[i], we're talking about Winkler.
11 Very clear -- I think a couple important points, blocking substantially all
12 through-air arcing paths between the first and second electrical contacts.
13 And another big part of this limitation is partially disconnected state, and I
14 want to highlight that. And I'm going to go a little faster on this because it
15 was discussed.

16 But look, I mean, this is a made-up diagram we showed, it wasn't
17 accurate. They actually say, I think later on in their Claim 4 analysis, look,
18 they're pressing completely together. We showed -- we showed, look,
19 there's gaps. I'm at Slide 37. Here's all the gaps, they're highlighted in
20 yellow. All of this is supported by Patent Owner's expert. He's saying, look,
21 there's all these gaps, so clearly this figure is inaccurate. That's what we're
22 saying, and that's all they have. That really is all they have for this.

23 JUDGE DANIELS: Okay. And counsel --

24 MR. LUKAS: Yeah.

25 JUDGE DANIELS: -- let me -- I asked before about this issue.
26 How do I know there's no gaps around the outside of yours in the '017

1 Patent?

2 MR. LUKAS: Well, I mean -- I don't think -- gaps are not -- are
3 irrelevant.

4 JUDGE DANIELS: There shouldn't even --

5 MR. LUKAS: We're not --

6 JUDGE DANIELS: -- be an issue, right?

7 MR. LUKAS: No --

8 JUDGE DANIELS: Because the claim doesn't preclude that.

9 MR. LUKAS: Correct. And that's -- you see, that was a
10 misleading argument about gaps. We were doing it to show the Board -- we
11 were making the point about gaps to show that figure was inaccurate, that's
12 really all it was. Because they're saying, they're pressed together. And they
13 were -- I mean, let's be honest, they were using that -- they were saying
14 because it's pressed together it has to block substantially all air-arcing flow,
15 that's what they were doing. And we're saying, no, because, look, there are
16 gaps. And also, Winkler talks a lot about significant arcing, so clearly this
17 limitation cannot be met.

18 So, it was a two-pronged argument. It was like the -- their only
19 evidence is inaccurate so the Board can't rely on it to satisfy their burden
20 here. And then, if you actually look at the disclosure of Winkler, it talks
21 about significant arcing, that's it. So, you're correct, Your Honor, about that,
22 gaps are not involved. In the claim, it does talk about partially disconnected
23 state and blocking substantially all through-air arcing, that's what it talks
24 about. And so, Slide 37 is just talking about how the figure is incorrect.

25 And then, Slide 38, as I just mentioned, a lot of arcing involved in
26 Winkler, and our position is, with all that significant arcing, they can't meet

1 this limitation.

2 I'm going to go to Claim 4, and this is also Winkler. The big deal
3 here is the barrier tensioning mechanisms presses the first and second
4 insulating barriers against each other. And so, again, we showed they're not
5 pressed against each other. This is their only evidence. It's inaccurate. The
6 figure is inaccurate. That's at Slide 41. We also showed they don't press
7 against each other, and that's at Slide 42, so they can't meet their burden of
8 showing Claim 4 is anticipated by Winkler. And we have extensive
9 evidence from our experts, unrebutted. There's a lot of discussion here that
10 we didn't come up with figures, but that's a burden flip, and it just goes to
11 show Petitioner's weakness on making their burden.

12 Okay. I think that's -- I think that's good with Winkler. Let's get
13 into Kataoka. I probably -- we're going to focus on 1[d], second insulated
14 housing. We argued it was electrically insulating. The Board agreed. And
15 then, I think what's important here is, that -- because we were talking about
16 this issue with respect to claim construction, Petitioner actually also agreed
17 that -- in its petition, that insulating can be electrically insulating. And I
18 think that's it.

19 I thought that was at 75, but let me -- I think it's at 75. If you look
20 at 75, paper 1, petition -- insulating member 43 of insulator 8A -- this is
21 discussing 1[g], is an insulating barrier because it is formed of non-
22 conductive material.

23 So, I mean, they knew in their petition that the proper construction
24 of insulating was electrically insulating, not protective. It should be
25 interpreted consistently. The claim -- you know, the claim support, this
26 construction, the specification. The petition supports it, the Board agreed in

1 its institution, and then they change and say now it should be protective.
2 That construction is incorrect. We tell you why that construction is wrong,
3 and then their position, in the petition, was that housing 7 is an insulating
4 housing. I'm at Slide -- I think that's Slide 45, and I want to --

5 JUDGE TSANG: Mr. Lukas?

6 MR. LUKAS: Yes.

7 JUDGE TSANG: In your arguments against the new arguments in
8 the reply, and also the motion to strike --

9 MR. LUKAS: Yep.

10 JUDGE TSANG: -- it's implicit, or at least ancillary -- it seems
11 like you're making the argument, the one that you just mentioned, that
12 Petitioner knew or should have known about this insulated housing
13 construction as meaning electrically insulating. Are you aware of any case
14 law that precludes Petitioner from making a new argument in a reply, if they
15 knew or should have known about a claim construction?

16 MR. LUKAS: Yeah. No, I think it's the -- I think it's the case we
17 cited, actually. It makes the point that if you knew, or raised this
18 construction in your petition, then you can't come -- you can't bring it in later
19 in your reply.

20 JUDGE TSANG: But in the petition, right, the Petitioner said no
21 construction necessary?

22 MR. LUKAS: They did, in the claim construction section.

23 JUDGE TSANG: Right.

24 MR. LUKAS: But our point is, that later on they -- in other
25 sections, they were interpreting it as electrically insulated. So, we say -- so
26 our position -- Patent Owner's position would be, that's enough that you can't

1 now come up with a new construction in your reply.

2 JUDGE TSANG: Because they made an implicit --

3 MR. LUKAS: Yes.

4 JUDGE TSANG: -- construction?

5 MR. LUKAS: Yes. And I think -- I mean, I think -- I think
6 *Axonics v. Medtronic*, 75 F. 4th 1374 4th at 13E, Fed Circuit, I think that
7 says that. I mean, it says, if it's a new construction offered for the first time
8 in our response, but the point being, no, that construction was brought by the
9 Petitioner in the -- it was brought forth by the Petitioner in the petition.

10 JUDGE TSANG: You would agree that the reply would have been
11 Petitioner's first opportunity to respond to the claim construction that you
12 raised in your preliminary response?

13 MR. LUKAS: No. Because I think they should -- I think they
14 knew about -- they knew about the issue in the petition, so it should have
15 been addressed in the petition. They knew about the issue because they
16 brought it up and actually construed it as electrically insulating.

17 JUDGE TSANG: But again, they didn't make it explicit?

18 MR. LUKAS: Explicit, correct. But I don't -- I think that -- I don't
19 think that's a good -- I don't think that distinction changes anything, I really
20 don't. I think it -- like, it -- because I think if you read the case, I think it's
21 like, look, if you knew about it, you should have known about it, and even
22 raised it, you can't, like, lie in wait, essentially, and that's kind of what --

23 JUDGE TSANG: There is a footnote in *Axonics*, I think it's
24 footnote 10 if I recall correctly --

25 MR. LUKAS: Okay.

26 JUDGE TSANG: -- where one of the parties had made an

1 argument that the other one knew or should have known --

2 MR. LUKAS: Okay.

3 JUDGE TSANG: -- about the claim construction, and the Federal
4 Circuit said, that doesn't matter.

5 MR. LUKAS: Okay. I'm not aware of that. Right. I mean, I think
6 that's -- I think it might be because they could have asked -- they could have
7 asked for supplemental briefing after the preliminary response if they didn't
8 feel like they had already addressed it. But, I mean, it's a distinction.
9 Regardless, I think the construction is correct. The electrically-insulating
10 construction is correct, but I also think Petitioner agrees with it, as I pointed
11 out. So, Patent Owner's position is, electrical insulating is the correct
12 construction. It's consistent with all the intrinsic evidence in the institution
13 decision. I'm at 46.

14 And then, in the institution decision, the Board agreed. And what I
15 think's really important about Kataoka here though is, in the petition, they
16 made very clear they were talking about housing 7, okay? And now that we
17 -- after institution, now they're changing it and saying, oh, there's this
18 cylindrical body that might have some insulating properties, I guess, but
19 that's not in the petition. The citation that they bring up is not in the petition.
20 And it's very clear that they're only talking about the housing 7.

21 And then, again, even if -- the even if point -- this is just a part, and
22 that doesn't say the housing is electrically insulating. There's no -- you
23 know, there's no evidence that it is in the petition. And that's at Slide 47.

24 Forty-eight talks about the striking. Forty-nine talks about the
25 -- how I just said it, it's a failed argument, because -- another point, at Slide
26 50 we talk about, there's also evidence that inside the cylindrical body there's

1 metal, which is obviously not electrically insulating, it's conductive.

2 If we go to Kataoka, and I think a lot of the argument on Kataoka,
3 on 1[i], this is at Slide 52. Again, we're talking about the partially
4 disconnected state blocking substantially all through-air arcing paths.

5 Here, at 53, we're showing, look, this is what they relied on,
6 exclusively, to show this limitation is met. And at Slide 54, it's undisputed
7 that that's not accurate, that what we really showed is, like in -- they used
8 -- they used a diagram that was not -- that was fully connected, where the
9 screw was all the way down. We proved that up in Slide 54, and therefore
10 their diagram is not accurate, and it can't show that they meet this limitation.

11 At Slide 55, our expert goes through Kataoka and makes the point,
12 look, we've got a lot of -- we've got a lot of air-arcing paths, so they can't
13 have met their burden in the partially disconnected state.

14 And I think, on 1[i], I want to, like -- I think what's really
15 important is -- because I went back and I looked back at their reply, and
16 that's at -- that's paper 15. I think this is kind of a telling note. At pages 14
17 through 19, we're talking about 1[i]. We're talking about Winkler and we're
18 talking about Kataoka, and they never discuss the words, partially
19 disconnected, never, never in the entire reply. And that is -- that's consistent
20 with this, let's just avoid the claims because we can't show that they're
21 anticipated. And that's a very important part of Claim Limitation 1[i].

22 I'm going to wrap up here. This is -- Kataoka Claims 2 and 3, I
23 think this is pretty simple. We've got the contact tensioning mechanism, it
24 has to press the second electrical contact against the engaging surface of the
25 first and then, obviously, Claim 3 just relies on -- is dependent on Claim 2.
26 This is what they say. They say, the connecting members, the contact

1 tensioning mechanism, okay?

2 And you can -- and then they also say, if you look clearly, they say
3 the blue is the first connecting and the orange is the second connecting,
4 okay? You see that? And again, it has to press the second against the first,
5 and here you're pressing the first against the second. So, right there,
6 undisputed. They can't meet Claims 2 and 3 by Kataoka. Because, again, at
7 Slide 59, they're actually asserting the opposite of what the claims say.

8 All right, Claim 4. So, this says, the barrier tension -- and I'm at
9 Slide 61. The barrier tensioning mechanism presses the first and second
10 insulating barriers against each other when the first and second connectors
11 are partially disconnected. Again, made-up diagram. Based on a diagram in
12 the full-connected state, we show that it's not accurate. And again, they can't
13 meet this limitation because contact number 9 presses only when the
14 connectors are fully connected, and this requires partially disconnected.

15 Any further questions?

16 JUDGE LEE: Yes, I do. This is Judge Lee. In the decision on
17 institution, we discussed 'within' somewhat. And if at final we were to say,
18 'within' just means a part of, would there have to be additional briefing on it?
19 Because the Federal Circuit has said we can't spring new constructions on
20 parties. The parties must have an opportunity to discuss. But this situation
21 is difficult to determine. We kind of suggested that at DI, right? I'm looking
22 at page 25 of the DI where we said, Winkler's Figure 1 shows, without need
23 for further explanation, the receiving pockets, quote, "within the housing
24 section of the first connector and the same for the second connector." That
25 kind of means a part of is it --

26 MR. LUKAS: Am I supposed to respond to that?

1 JUDGE LEE: So, I mean, do we need additional briefing on the
2 subject is the question?

3 MR. LUKAS: Yeah. My initial reaction is, no. I think we've -- I
4 disagree that it should be a part of. It says, 'within the,' and 'within the', and
5 I think that's a completely different term with a completely different
6 meaning. And my initial reaction is, no, we've laid out what the proper
7 construction of that term is, supported by the intrinsic evidence, supported
8 by a POSITA. They didn't respond. They didn't respond, so why should
9 they get another chance? They couldn't even respond today. They couldn't
10 respond today so why should they get another chance? They didn't do it in
11 their petition. They didn't do it in their reply. They didn't do it in their oral
12 argument. And so, I think that it would be highly prejudicial to the Patent
13 Owner. They didn't meet their burden. I think it can't keep continuing, like
14 this doesn't -- it hasn't to end. They didn't (CROSSTALK) --

15 JUDGE LEE: Right. Right. Right. Just don't misunderstand me.
16 I'm not saying I'm leaning --

17 MR. LUKAS: Okay.

18 JUDGE LEE: -- that way, but I want to preserve all flexibility for
19 the Board.

20 MR. LUKAS: Sure.

21 JUDGE LEE: I don't know which way we're going.

22 MR. LUKAS: Right.

23 JUDGE LEE: So, it's a theoretical possibility that we could come
24 out and say, no, 'within' just means a part of, right? But before we actually
25 do that, I want to know, are you going to say we need additional briefing on
26 that, because the Court says we can't surprise parties with constructions that

1 they never anticipated. But I'm looking at the DI, and it seems to suggest
2 you wouldn't be surprised.

3 MR. LUKAS: Right. But we offered a construction, and we -- so
4 we -- and it's not even our burden. And so, I think -- I mean, you're asking
5 me to, like, argue against myself. I think our construction is correct, and I
6 think -- I guess if you came out that way, we wouldn't want it. I think we've
7 already put our position, but I mean, I guess, but I just think it's improper.

8 JUDGE LEE: So, it's a tough question.

9 MR. LUKAS: Yeah.

10 JUDGE LEE: You don't want them to have further say, but you
11 also want to say something if we were to actually go that way. I mean, that's
12 why it's a tough question. I don't want to say something, in a final, and then
13 the Patent Owner says, oh, we need further briefing.

14 MR. LUKAS: No. I mean, honestly, I actually -- I mean, I don't
15 think it's going to change. I mean, I think our construction is correct. So, I
16 mean, yes, I'm -- clearly, they don't have a -- their construction was, it
17 should be the same thing. So, I guess I would say that, but I also believe, I
18 think the proper course of action is that, look, they're done. They had their
19 chances. It's their burden. Procedurally, they're done. They didn't raise it. I
20 mean, they couldn't. And so, like, why would you -- the only thing
21 supported by the record is our construction. Why would you give them
22 another chance? That would be my gut reaction.

23 JUDGE LEE: Thank you.

24 MR. LUKAS: Okay, thank you. So, to conclude, I would ask that
25 the Board confirm the patentability of all the claims. Thank you.

26 JUDGE TSANG: Thank you. You ran over a little bit, but we'll

1 let you keep your minutes. And, Petitioner, you're getting 17 minutes for
2 your rebuttal.

3 MR. SMYTH: Thank you, Your Honor. So, I have several points
4 I'd like to address based on what my counterpart here argued. But if there's
5 anything in particular where the Board would like me to start, I'd be happy
6 to do that, but if not -- okay. So, I'll start with where he started on the
7 convex portion, whether or not we're changing positions. He said, this is a
8 shifting sands approach that the petition didn't include the convex portion.
9 And he pointed towards the petition, paper 1, at particularly pages 23, 24
10 -- he was talking about that.

11 And I think, first off, we showed the figure in which -- let me see if
12 my slides are -- okay. There we go. The slides are going. First off -- so,
13 there's a couple points I wanted to make on that. First, the figure itself, we
14 showed it covers both the flat portion and the convex portion. He also
15 though ignored that page 26 of the petition specifically showed -- and I'm on
16 Slide number 15 here, specifically included the second part.

17 So, on the pages 23, 24, 25 that's talking about the flat portion. It
18 says, that is 'a' connecting surface. But the Petitioner also said, on page 26,
19 paper number 1, that based on their -- on the language we said specifically in
20 the paragraph page 26 is, the (INDISCERNIBLE - TECHNICAL
21 DIFFICULTY) Owner rounded convex portion can constitute the connecting
22 surface, therefore Winkler's convex portion 34 of contact member 22,
23 constitute substantially the same structure as the Patent Owner has alleged to
24 meet this limitation.

25 And so, that was clearly addressed in the petition, and indeed the
26 institution decision acknowledged that as well, if you look at page 20 of the

1 institution decision, where the Board summarized the petition's arguments
2 on Limitation 1[c]. The first part of that paragraph, again on page 20, talks
3 about the flat section, but the second paragraph says -- or the second portion
4 of it says, moreover, Petitioner contends that the convex end portion of
5 Winkler's contact number is substantially the same as the type and structure
6 the Patent Owner asserts in the related District Court litigation, may be
7 recited connecting surface. So, it was acknowledged, both in the petition
8 and in the institution decision, that both elements of the connecting surface,
9 both the flat portion and the convex portion are part of the connecting
10 surface.

11 And as we talked about earlier, these are all part of -- in Winkler,
12 this is all part of the same element. It's the same contact. So, the flat portion
13 and the curved portion are made out of the same material. Winkler's talking
14 about them as being the same thing. And so, this is not a situation where we
15 are taking some new position, or something that wasn't already in the
16 petition -- it was in the petition, it was in the institution decision. They were
17 aware of the position in the institution decision on 1[c]. They haven't
18 disputed that 1[c] is met, and so, we think that this clearly covers, both the
19 flat portion and the curved portion.

20 I also wanted to touch briefly on the 1[i] Limitation. And what I
21 understood from the petition that was just discussed, as we talked about
22 -- the position that they have raised with -- the concern with the drawings
23 that we're looking at here, and I put up Slide 30 from the slides.

24 So, I understood previously that they're concerned with the
25 drawings. The only issues they raised is that it doesn't depict the gaps, that
26 they're inaccurate because Winkler describes gaps that aren't depicted here.

1 But a moment ago, I heard that the gaps don't matter, and they're not really
2 relevant to this analysis either. And so, if -- I don't see how the situation -- if
3 the gaps are not depicted or the figures would allegedly be inaccurate for not
4 including gaps, and that's the only flaw they raised with them, but the gaps
5 are immaterial to the claim, that it doesn't seem as though they really are
6 disputing anything with regard to how the figure of Winkler actually interact
7 in the parts that are relevant with the claim limitations, specifically, whether
8 or not the contacts are connecting and whether the inner -- the barriers, the
9 insulating barriers are substantially blocking.

10 JUDGE TSANG: Well, if the figure is inaccurate, isn't it then
11 improper to rely on it to show disclosure of 1[i]?

12 MR. LUKAS: Well, if the only inaccuracy that they've flagged
13 -- the only way that they've said this is inaccurate is based on gaps. And so,
14 if the only inaccuracy they've flagged is something that is immaterial to the
15 claims, but they don't dispute the other regards -- if they, for example, they
16 said, oh, the barrier -- you've extended the barrier, you made it too long,
17 you've redrawn the drawing, that would be a different situation. My
18 understanding from them, and from their expert, they disagree with the gaps,
19 and they think that it's not accurate in that regard, but if that is not material
20 to the claim, and whether or not you're blocking substantially all through-air
21 arcing paths, then I don't think there's anything wrong with relying on the
22 figure in that regard.

23 JUDGE TSANG: So, where is Petitioner's argument that even if
24 there are gaps in Winkler, it still meets the substantially all limitation.

25 MR. SMYTH: So, I mean, I think that it comes back to the claim
26 language. We have argued, in the petition, or outlined, including with this

1 figure, that the understanding of Winkler is that it would block substantially
2 all. Their response to that has been the pointing to gaps, but they have
3 argued that the gaps -- again, if you're looking at the claim language, it is
4 only substantially all, it doesn't require blocking all through-air arcing paths.

5 And so, in the petition, Winkler shows -- it demonstrates that the
6 way you understand the figure, it is blocking substantially all through-air
7 arcing paths when you understand the figure of Winkler. Does that answer
8 your question, Your Honor?

9 JUDGE TSANG: Somewhat. I'm just looking through your reply
10 again, pages 17 to 19, where you address the --

11 MR. SMYTH: Sure.

12 JUDGE TSANG: -- arcing. And I see where you make the
13 argument that the claim doesn't require eliminating all instances of arcing
14 and it doesn't preclude gaps. But I don't see where you make the additional
15 argument or showing that Winkler, even if it has those gaps, even if it has
16 some arcing, it's still blocking substantially all.

17 MR. SMYTH: Yeah. And I think that comes, just from looking at
18 -- I think that comes from looking at the figure itself, looking at the diagram.
19 It shows --

20 JUDGE TSANG: Again, the diagram -- Patent Owner's position is
21 that the diagram is inaccurate.

22 MR. SMYTH: Correct.

23 JUDGE TSANG: Okay.

24 MR. SMYTH: Yeah. Right. And we disagree and note that the
25 only inaccuracies they have raised with it don't really go to the core question
26 here, which is whether or not Winkler teaches a device that has the

1 insulating barriers.

2 JUDGE TSANG: Okay, thank you.

3 MR. SMYTH: On the issue of whether or not the -- on the
4 electrically insulating issue, I understood from counsel's argument, that they
5 are taking the position that we -- they acknowledged that we didn't take a
6 claim construction position, and I think it's very clear in the petition that we
7 said that no claim construction is necessary. My understanding of their
8 argument is that, they say that we have implicitly taken the claim
9 construction position, or implicitly argued that it requires it to be electrically
10 insulating by the arguments in the petition.

11 And I just wanted to note, putting up on Slide 26, this section is
12 talking about the housing. Electrically insulating -- a form of non-
13 conductive resin is one piece that we put in it, but there are several other
14 pieces of evidence showing that the housing is protective, showing that it's
15 meeting the other things. So, I don't think it's fair to say that we took a
16 position in the petition that the electrically insulating is the only way to show
17 that this limitation is met.

18 We provided a number of ways, one of which is electrically
19 insulating, and that's consistent with the position we've taken on the claim
20 construction issue, which is, there is no basis for limiting the housing
21 limitation to an electrically-insulating housing. The housing certainly can be
22 electrically insulating, that's part of it, but it's not that narrow, and it would
23 be improper to narrow the construction of the housing limit to require that it
24 only be electrically insulating, and to say that's the only feature that matters
25 when it comes to that.

26 I would also say that, on the issue, and sort of follows on from that,

1 I think the law is clear that when a new claim construction position has been
2 articulated in a Patent Owner response, that the Petitioner is then offered an
3 opportunity to respond to construction and also to provide additional
4 evidence. The (INDISCERNIBLE) is pretty clear on that.

5 This case falls squarely within that because we did not take any
6 position during claim construction, and everything that we are including here
7 is merely a proper response to new arguments that the Patent Owner raised
8 in their Patent Owner response, and so there's no basis for striking or
9 excluding any of these additional arguments, or the additional evidence of
10 Kataoka, which clearly, there was another distinction they tried to make
11 saying, well, what you pointed out in the position was 7, not 36. But 7 -- so,
12 number 7 of Figure Kataoka -- I'm looking here at Slide 27, our Slide 27,
13 Kataoka identifies the housing as 7, and 36 is a piece of the housing. And
14 that's pretty clear, looking at our Slide 28 that it explains, that the cylindrical
15 body 36 is a part of the housing. And so, that establishes that the evidence
16 of Kataoka shows that this limitation is met, even under their construction,
17 and their expert testimony in his cross-examination to this effect.

18 Finally, addressing the 'within' limitation. On this one, I'd like to
19 look -- so, they have taken a position on the meaning in 'within,' and they
20 offered a new claim construction on this in their Patent Owner response.
21 This is an issue that came up previously. And as I think we sort of
22 recognized today, there is nothing really in the patent. There's not a lot of
23 description of what 'within' or what 'within' means in the context of this
24 patent. It's a very scant disclosure. There's a few pictures, and there's the
25 claim language, but there's nothing that really articulates to the limit that
26 they're trying to impose here in this proceeding, and they're asking the panel

1 to construe and require 'within' to have a specific meaning here that is not
2 -- there's no lexicography. There's no clear disavowal.

3 And I think the basis for their construction, if you look at their
4 Slide -- it's their demonstrative number 15, and it has the definitions of
5 'within'. And so, they rely -- one of those definitions is on the inside of or on
6 the inner side of. And so -- and there's a number of other definitions in there
7 too. There's no sort of justification or explanation for why they've picked on
8 the inside of, or how that construction -- how that is necessarily required by
9 the claim limitations on the 'within' point.

10 And so, I think that the issue is -- it's an issue that they've raised
11 that they've sort of created on this 'within' feature, that I think as was sort of
12 acknowledged to some extent in the institution decision, but it was never
13 really an issue when we were looking at Winkler and whether the receiving
14 pocket was -- (INDISCERNIBLE) the limitations. So, I think that's a new
15 issue that's coming up, that's raising here, that -- and I maintain our position
16 that, regardless of the way that it's construed, Winkler, and Kataoka both
17 teach that limitation, regardless of whether or not (INDISCERNIBLE).

18 Finally, just the last point that he mentioned, touching on the last
19 thing on the dependent claims, he was talking about the connecting member
20 number 9. They have taken the position -- Patent Owner has taken the
21 position that connecting number 9 is only tightened when the connectors are
22 fully engaged. I think we made clear in our reply response that there's
23 nothing -- the parts of Kataoka that they talk about and that they cite for that
24 proposition don't support that. There's no support in Kataoka that it only is
25 engaged at that point when it's finally connecting.

26 JUDGE TSANG: Well, doesn't -- so, I'm looking at Kataoka

1 column 14, lines 49 to 51 describing Figure 3. I mean, it describes Figure 3
2 as showing the connecting member sort of tightened, and doesn't Figure 3
3 clearly show the connector is joined?

4 MR. SMYTH: I think Figure 3 shows them joined, and it talks
5 about it. So, the question is, is it tightened during when it was fully joined?
6 I think we agree on that. But I don't -- I think the dispute is, whether or not
7 it's only tightened at the point when it's -- if that's the only time when the
8 connecting member is tightened.

9 I think from Kataoka, when they're looking at it, they're reading to
10 say, at all other times it's not tightened or it's completely untightened. And I
11 don't think in the Kataoka that (CROSSTALK) --

12 JUDGE TSANG: Well, how would you be able to -- seeing as the
13 insulators are pressed together when that connecting member is tightened,
14 how would it -- how would you be able to pull the connectors apart without
15 it being loosened?

16 MR. SMYTH: Yeah. So, I think you would loosen it. But I think
17 it would be loosened when you're connecting, but it's still silent -- they
18 basically have taken the position, or the interpretation of, it has no impact at
19 all when it's being connected or disconnected. And I think that it's only
20 tightened, at all other times, it's not at all involving, or impacting the plates,
21 and I don't think that's supported by the Kataoka description.

22 JUDGE TSANG: Okay, thank you.

23 MR. SMYTH: I don't have anything further. So, if there's any
24 further questions. If not -- well, thank you. And I'll just reiterate that we
25 think that all challenge claims of the patent should be found invalid in the
26 prior art. Thank you for your time.

1 JUDGE TSANG: Thank you. Then, Mr. Lukas, you'll get ten
2 minutes.

3 MR. LUKAS: Oh, thank you. I'd like to talk -- start with 1[i],
4 there were some questions about that. Look, I went back to the petition. I
5 mean, Petitioner has no evidence on the partial disconnected state and what
6 would happen, except for that inaccurate figure. There's no argument, and
7 there's no testimony from its expert on that limitation other than the
8 inaccurate figure. Everything else we heard was just attorney argument
9 unsupported by the record. They've taken the position that because it
10 presses against -- because there's a pressing against, that you have the
11 blocking of substantially all of through-air arcing paths. And I think that's
12 pointed out. I mean, I could -- petition page -- paper 1, 32 to 33, when they
13 get -- the actually say at the top of 33, showing connectors 10 and 12
14 partially disconnected. That's the first time they're actually showing partial
15 disconnection, right? And that's that made-up figure that we've shown is
16 inaccurate, that's it.

17 And I think the point I was making earlier is, Claim 4 -- their
18 analysis in Claim 4, that's where they -- they just come out and really they
19 say it at 36, paper 1. Such, that the first and second insulating barriers are
20 pressed together when the connectors are partially disconnected, and they
21 show that figure right there again, okay? They have not met their burden to
22 show Limitation 1[i] is met. There's nothing in the record showing that
23 limitation is met. There was some discussion about, like -- we only picked
24 out, like, one thing that was inaccurate. That's not true. There was -- I
25 noticed they completely avoided the discussion of Winkler, about the
26 significant arcing in Winkler, completely avoided it. But I think the

1 inaccurate figure and all that arcing, you can't meet that limitation, okay?

2 End of story for 1[i].

3 I wanted to talk a little bit about 1[f]. Just to make clear the issue
4 with the changing of the theories. We had just the elongated portion being
5 the connecting surface, now it's the elongated and the convex routed
6 portions. But what I think is really important, and I don't think it came out
7 is, in the fully mated state, the only thing that's engaging -- the only
8 engagement is the at the convex rounded portions, okay? And because of
9 that, you don't have a connecting surface that's substantially parallel with a
10 longitudinal axis in 1[c], okay? They can't meet that if they relied on the
11 convex rounded portion, okay?

12 JUDGE TSANG: But 32 would still be substantially parallel,
13 right? I mean, the claim doesn't require an entirety of the connecting surface
14 to be substantially parallel?

15 MR. LUKAS: It says, the connecting surface that's substantially
16 parallel with a longitudinal axis. And I think -- but the key is, you got to go
17 -- but then you got to go back, and you've got to look at the lateral
18 engagement part, okay, of 1[f], all right? That's what I'm talking about. The
19 lateral engage with the connecting surface in the mated state, okay? And
20 you can't meet both of those limitations. Because, remember, the
21 engagement is only -- they kind of admitted it, the engagement in the fully
22 mated state is only at the convex portion, and that convex portion is not
23 substantially parallel.

24 There was some discussion -- finally, I just wanted to, like
25 -- because it came up a couple times about this complaint figure. And I
26 think they're trying to make some type of bad estoppel argument. It shows

1 the weakness of their arguments, but that was from a preliminary complaint.
2 We just wanted to point -- this is, again, on 1[f] in our actual -- in the
3 litigation, the actual stuff that matters in the infringement contentions, and
4 this is Anderson Exhibit 2005 at page 19 and 20, you can see that the
5 insulating barriers correspond exactly to the positions that we've been taking
6 here, so that's a red herring.

7 And then, finally, I mean, I -- there was a lot of discussion about
8 the 'within'. I just don't -- I went back, and I looked at the claim, and I
9 wanted to -- I just wanted to mention this, I think our construction is correct
10 on the inside. And then if you look -- if you look at where 'within' shows up
11 again, it shows up a couple more times in Claim 1, a second electrical
12 context supported within the second insulated housing, okay?

13 I believe, and I think it's clear, that the Petitioner is reading that
14 consistent with our construction when it talks about that limitation and the
15 other supported 'within' Limitation, okay, on the inside. It's definitely not
16 reading it as 'part of' because it wouldn't make sense. A second electrical
17 contact supported as part of the second insulated housing. It just wouldn't
18 make sense. So, I think that's a point I wanted to raise, and I think our
19 construction is the correct construction. And I think that is it. Are there any
20 questions?

21 JUDGE TSANG: No, no questions.

22 MR. LUKAS: Okay. Patent Owner would ask that the Board
23 confirm that patentability. I think it's abundantly clear that the Petitioner has
24 not met its burden to show anticipation and obviousness of the challenged
25 claims. Thank you.

26 JUDGE TSANG: Thank you. We're adjourned.

IPR2024-00687

Patent 8,808,017 B2

1 (Whereupon, the above-entitled matter went off the record at 3:03
2 p.m.)

IPR2024-00687
Patent 8,808,017 B2

PETITIONER:

Ming-Tao Yang
Joshua Goldberg
Kai Rajan
ming.yang@finnegan.com
joshua.goldberg@finnegan.com
kai.rajan@finnegan.com

PATENT OWNER:

James Lukas
Gary Jarosik
Benjamin Gilford
Patrick Owens
lukasj@gtlaw.com
jarosikg@gtlaw.com
gilfordb@gtlaw.com
patrick.owens@gtlaw.com