

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC., LG ELECTRONICS, INC., and
LG ELECTRONICS U.S.A., INC.,¹
Petitioner,

v.

MULTIMEDIA TECHNOLOGIES PTE. LTD.,
Patent Owner

IPR2024-00723
Patent 9,578,384 B2

Record of Oral Hearing
Held: September 3, 2025

Before: ST. JOHN COURTENAY III, ROBERT L. KINDER and
SHARON FENICK, Administrative Patent Judges.

¹ LG Electronics, Inc. and LG Electronics U.S.A., Inc., which filed a petition in IPR2025-00300, have been joined as a petitioner in this proceeding.

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The above-entitled matter came on for hearing on September 3, 2025, commencing at 10:00AM Eastern time, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE COURTENAY: We'd like to welcome you to PTAB. We have another APJ that's remote that's going to introduce the case. Just a moment, so standby.

JUDGE FENICK: We're convened here for oral arguments in IPR2024-00723 relating to claims of U.S. Patent 9,578,384. I'm Judge Fenick. And my colleagues who are appearing in person are Judges Kinder and Courtenay.

The hearing order in this proceeding, which is Paper 30, provided that each party has 60 minutes total time to argue their case. Petitioner has the ultimate burden of establishing unpatentability.

Petitioner will therefore open the hearing by presenting the case as presented in its petition regarding the alleged unpatentability of the challenged claims. The Petitioner may reserve rebuttal time, but no more than half of the argument time. Thereafter, the Patent Owner will respond to the Petitioner's arguments. The Patent Owner may also reserve surrebuttal time, no more than half of its total argument time, to respond to the Petitioner's rebuttal.

Otherwise, the parties may use their allotted time to discuss the case as they choose. We ask, however, that you make it clear which challenges and claims you're addressing. And if you are referring to parts of the record or the demonstratives, you refer to them so that when we look back over our transcript, we will understand what you were presenting or referring to. Each of us has in front of them both the demonstratives and all

1 of the papers and exhibits in the proceeding.

2 In order to ensure the clarity of the record after the hearing, if
3 you'll please wait to allow the court reporter a chance to ask for any
4 spellings or other clarifications. There's a public line in this hearing. And
5 we have not received notice from anyone, either party, that business
6 confidential information will be discussed or disclosed. If you plan to
7 discuss or disclose anything that's business confidential, you need to inform
8 the panel so that we can act appropriately.

9 Lastly, we ask parties to hold any objection regarding a party's
10 arguments until it is their time at the podium. We don't take objections
11 during another party's argument. And you must wait until your time at the
12 podium to note any objections.

13 I will maintain a clock, and I'll try and inform you when you have
14 five minutes left. But I think we have a clock, and Judge Courtenay has
15 agreed to try and run the clock. So hopefully, it's obvious to you what the
16 time is.

17 I think that there is a bit of a delay in my connection. I should be
18 able to hear everything, see Counsel at the podium, and see anything that
19 you're presenting. I apologize in advance if the delay leads to me speaking
20 over someone. And I will try and make sure that it doesn't to the best of my
21 ability.

22 So we can now get started with appearances from both sides,
23 starting with the Petitioner.

24 MR. HWANG: Good afternoon. My name is Rex Hwang, on
25 behalf of Petitioner Vizio.

26 JUDGE FENICK: Thank you, Mr. Hwang. And for Patent

1 Owner?

2 MR. YANG: Good afternoon, Your Honors. This is Minghui
3 Yang on behalf of Patent Owner Multimedia.

4 JUDGE FENICK: Thank you, Mr. Yang. Petitioner, if you'd like
5 to take the dais and let me know if you want to reserve any rebuttal time.

6 MR. HWANG: Sure, I'll reserve -- maybe I will reserve
7 approximately half my time for rebuttal. I'm hoping to get through my
8 initial presentation in about 30 minutes.

9 JUDGE FENICK: Thank you. You can begin when you're ready
10 and when Judge Courtenay has put 30 minutes on your clock.

11 MR. HWANG: Okay. Thank you for the opportunity to be heard.
12 I think I just want to start today by kind of going broad, starting broad, some
13 general comments about this particular proceeding that I have.

14 One, obviously, we are arguing that the '384 Patent is obvious in
15 view of the prior art. To me, it's one of the most compelling cases I've seen
16 for obviousness. I think one fact that leads to that conclusion is the fact that
17 we are -- or Vizio is being accused of infringement based on its use of
18 Netflix. And as the panel is aware, many of the references are
19 demonstrations of Netflix that was used before the patent was filed. Netflix,
20 as that time -- at that time was already a huge company. It was fully
21 operational. You could watch videos just like you watch today. And as
22 you've seen in the petition, many of the views that are used today lead back
23 to what was used in the past or is a variant of what was used in the past, as
24 we'll go over.

25 The second thing is the attack or the response from the Patent
26 Owner about why the claims are not obvious relies almost exclusively on

1 claim construction positions. But as I'll go over today, those claim
2 construction positions, they're generally all invalid and should be rejected.
3 The cardinal sin that's used over and over, that's, you know, committed over
4 and over again is that there's limitations that are being imported into the
5 claims through the proposed claim constructions by the Patent Owner.

6 And this is a unique case where the Patent Owner will present a
7 claim construction, but then they'll either abandon it and not use it in their
8 substantive arguments, or they'll present something very broad. But when
9 you really kind of dig deep into their arguments, you'll find out that their
10 claim constructions have implied embedded -- more limiting limitations kind
11 of embedded in those constructions and those express constructions, which
12 are problematic. And then in order to differentiate the prior art, they rely on
13 those very specific limitations that they're kind of trying to sneak in through
14 the back door, if you will.

15 And so with that being said, I'll start the presentation here. I'm
16 going to start, and I hope everyone can see. I'm just going to use the
17 demonstratives that been -- that have been filed. I'm on page 3. And we
18 have one remote Judge, so I just want to make sure that everyone can see it.

19 JUDGE FENICK: Yes. Mr. Wang, I can see your presentation.

20 MR. HWANG: Great. And I'm going to assume that everyone can
21 see it from now on unless I hear otherwise. So on page 3, I just include a
22 broad -- or not a broad, but I include a copy of the claim. Claim 1 is what
23 I'm going to be discussing first. Claim 1 is a fairly long claim; it has a lot of
24 words. But if you really take a look at what claim is being directed to, it can
25 primarily be understood by looking at Figure 17 of the '384 Patent. And it
26 tracks Figure 17 fairly well, if not exactly.

1 So if you look at Figure 17, which is shown on the bottom right of
2 page 3 of the demonstratives, you'll see kind of a four-level hierarchy for
3 eventually getting to some piece of content that you want to view using
4 some kind of application like Netflix. At the top level, in the patent, they
5 call it a master view. It's a generic term. And for this proceeding, it's -- you
6 know, the issues surrounding the master view aren't really relevant, but the
7 top view is fairly generic.

8 The second view, the collection view, the second level, now you
9 have a collection of movies and TV shows that you could potentially pick
10 from. And that's where the word collection view comes from, in the context
11 of the '384 Patent.

12 From there, depending on what you select in the collection view,
13 you'll be presented with either a digest view or a detail view. The idea here
14 is really simple. If you want to watch Game of Thrones, you click on Game
15 of Thrones. And you'll be given information, in this case, a digest view
16 concerning Game of Thrones. If you want to watch a movie, like Sherlock
17 Holmes, you can select that. And then the next screen that will be presented
18 is a screen that's more appropriate for a standalone movie, like Sherlock
19 Holmes, and that will be presented in a detail view.

20 And then after that, obviously, the end goal of any service, like
21 Netflix or the invention at the heart of the '384 Patent, at least in these
22 claims, is to watch the movie or to watch the TV show. And so you'll be
23 presented with a player view, which is basically a view that actually allows
24 you to watch the video.

25 I think I want to highlight here just the fact that it's not just the
26 Petitioner that's saying that Figure 17 is relevant to the claims of the '384

1 Patent. If you look at the expert declaration of Dr. Surati, which is the
2 Patent Owner's expert, he too relies on Figure 17 to describe, you know, the
3 invention.

4 And I've moved on to Slide 4, just very briefly. But at his
5 deposition, he confirmed that Figure 17 would be relevant to a POSITA, a
6 person of ordinary skill in the art, in understanding what was claimed by
7 Claim 1. And I would maintain that there's nothing in the Patent Owner's
8 papers, including the sur-reply, that really disputes the relevance of Figure
9 17. And really, they can't because, you know, their own expert used it to
10 describe the invention.

11 Just for purposes of this hearing, I'm going to skip ahead to Slide
12 -- or page 7 of the demonstratives. And I've been talking a lot about Figure
13 17. And I just want to show this slide because in the sur-reply, it was either
14 expressly argued or implied that certain figures in the '384 Patent fall outside
15 the scope of Claim 1. And we dispute that. And, you know, the argument is
16 based on just logic and common sense.

17 So if you look at Figure 17, it shows you an example, kind of like
18 the background template of a digest view and a detail view on the right
19 -- I'm sorry, on the left. And then on the right, it shows you what that would
20 look like on an actual TV. So the digest view and detail views, in its fully
21 implemented form, are kind of shown on the right.

22 If you go to Figure 18, the template view of the digest view is
23 exactly the same as what was used in Figure 17 and the detail view as well.
24 It just doesn't include the additional images on the right, as Figure 17
25 included. But it's the same thing, it's the same embodiment that runs
26 throughout. The problem, if you want to call it that with these figures, is

1 that they're pretty small. They kind of -- they wanted to convey a lot of
2 information, so they're small. So what the Patentee did was they included
3 figures, like Figure 34 and 35, to fully explain what these views, what this
4 embodiment of the invention would include.

5 So if you look at Figure 34, it's the same thing as what's shown in
6 Figure 17, both in the template form and the realized form. Basically, it's
7 showing a box at the left; you can include a picture. And for purposes of
8 this proceeding, on the right, you can see there's rows where it will have
9 information about different episodes of a TV show.

10 And the examples that are used in the patent are -- they relate to
11 Game of Thrones. So if you go to Figure 35, you will see an example of
12 what the preferred embodiment in the '384 Patent would look like for the
13 Game of Thrones. And then, you know, for purposes of this proceeding, you
14 can clearly see that it has rows for different episodes. And those episodes
15 can be selected. And each of those episodes will have a little bit of
16 information about each episode.

17 So that's basically what's disclosed by the '384 Patent in terms of
18 what's relevant to what we're going to talk today. And all of those figures
19 relate to the same idea. They all kind of -- they're all interrelated. And it's
20 not like one is geared toward a completely different embodiment, as either
21 expressly argued or implied by a Patent Owner.

22 If we can go to page 5 of the demonstratives. And here, I just
23 wanted to point out the fact that -- and this is why this is such a compelling
24 case -- I included Claim 1 again. And I highlighted in green everything
25 that's not in dispute. So if it's highlighted in green, that means Patent Owner
26 does not dispute that those limitations were found in the prior art as

1 presented in the petition. And as you can see, that's the vast majority of
2 Claim 1.

3 The only part with respect to Claim 1 that's really being argued by
4 Patent Owner pertains to the language providing either a detail view or
5 digest view of VOD content. And that, if you look at Figure 17, relates to
6 when a person selects either, you know, Sherlock Holmes or Game of
7 Thrones, it's providing either one of the next views, whether it's providing a
8 view more relevant to a TV series or providing a view more relevant to a
9 movie. And that's all that's in dispute in this proceeding with respect to
10 Claim 1.

11 JUDGE FENICK: Mr. Hwang, this is Judge Fenick.

12 MR. HWANG: Yes.

13 JUDGE FENICK: I think that one thing that's in dispute is
14 whether the 'or' of, in the claim limitation that you have not highlighted on
15 your Slide 5, requires that the detail view and the digest view be exclusive of
16 each other. In other words, that a detail view can't be a digest view, and a
17 digest view can't be a detail view. And I'm just wondering, what is the
18 Patent -- the Petitioner's position with respect to that contention?

19 MR. HWANG: With respect to that, I think we can go to page 6 of
20 the demonstratives. And I think the patent itself tells you what's intended
21 with that language. So if you look at the specification, the specification in
22 talking about the invention, it uses the words -- and the keywords are either a
23 detail view or -- so it uses the word 'or', a digest view or a detail view. So it
24 includes the claim language in the specification and then it points to Figure
25 17, which is why I spent time talking about Figure 17. Because Figure 17
26 will show a person of ordinary skill in the art what they really meant by this

1 language in the patent when they wrote it.

2 And what the Patentee meant when they wrote the language is
3 clearly that you can have a detail view, which is geared towards some kind
4 of movie content -- it's standalone content -- and that you would have a
5 slightly different view which the patent calls a digest view. And the
6 embodiment is consistent with this. It doesn't mean that they can't have
7 overlapping features.

8 The specification teaches that they do have overlapping features.
9 They both present information about the underlying content. They both
10 provide, you know, images of the content. So there is overlapping features
11 between a digest view and a detail view. But I think the patent is clear in its
12 teachings through its figure. And its only embodiment that's actually shown
13 that a digest view all it needs to be is distinguishable from a detail view in
14 the sense that it'll present information about the series.

15 And so I think the mutually exclusive argument that's raised is a
16 little bit deceptive because that implies that there can be no overlap. But
17 there's nothing in the patent claim that talks about overlap and how it's
18 mutually exclusive, so it's not claimed. So importing that limitation into the
19 claim that's not there would be improper. And two, the specification also
20 informs a POSITA, which their expert, Dr. Surati, agreed with, would
21 inform a POSITA about how Claim 1 should be interpreted. And that's the
22 --

23 JUDGE COURTENAY: So Mr. Hwang, so just to be clear, it's
24 your position that the detail view and the digest view are -- because they
25 overlap, they're not mutually exclusive. That's what I hear you saying; is
26 that correct?

1 MR. HWANG: They don't have to be mutually exclusive in the
2 sense that they can both share same types of information. And that can be
3 seen in Figure 17. For example, mutually exclusive suggests that a detail
4 view would include a picture of the movie and then the digest view then
5 couldn't because they're both mutually exclusive. But that's not the case,
6 they do have overlapping features.

7 JUDGE COURTENAY: Well, I mean, as a Petitioner, generally,
8 if you have alternative language, you, as Petitioner, just need to show A or B
9 in the reference.

10 MR. HWANG: Yes. And that's exactly what's shown in the prior
11 art. And that's another thing that I want to make clear. This is not a
12 situation where we relied on the same view satisfying A and B. We're not
13 saying that this same view satisfies Claim Language A and Claim Language
14 B. For us, we're saying that a view that pops up when you select a movie
15 satisfies A, which is detail view, and a different view, which -- and the
16 difference is, just like the specification teaches, it would include information
17 and boxes that would include episode information.

18 That's a key distinction that the patent teaches between a detail
19 view and a digest view. And that's what we do in our case as well, where we
20 are pointing to different types of results when different types of content is
21 selected.

22 JUDGE COURTENAY: Thank you.

23 JUDGE KINDER: Mr. Hwang, this is Judge Kinder. It sounds
24 like you somewhat agree that with the position that the limitation really
25 presents the third selection as a binary choice, where you have the third
26 selection is a series or the third selection is a movie or it's a TV show; is that

1 right? You kind of agree with what that selection can have?

2 MR. HWANG: I'll say it this way. And I apologize if I'm not fully
3 understanding the question. But as the patent teaches, you can either select a
4 movie - and this is just a use example. I'm at home, I'm in front of my TV
5 and I can select a movie, or I can select a TV show. That's exactly how the
6 accused functionality works.

7 But that's also exactly in turn how Netflix worked back in the day,
8 where you could -- I want to watch Game of Thrones or I want to watch
9 Sherlock Holmes the movie. And as a use example, that's just how it
10 functions. And that's exactly what's disclosed in the patent and what's
11 claimed.

12 JUDGE KINDER: So it does sound like you somewhat agree with
13 that aspect of your patent, where we seem to diverge is how much they can
14 overlap. They're essentially saying no overlap, and you're saying that the
15 overlap is a lot.

16 MR. HWANG: I think that's correct.

17 JUDGE KINDER: Okay.

18 MR. HWANG: Yeah. Again, mutually -- and this is a part of the
19 problem with the argument that's being made by Patent Owner. It's a little
20 vague exactly what they mean by mutually exclusive. And this is something
21 that would have to be parsed out in, I guess, the claim construction that
22 wasn't, you know, provided. The proposed construction that was provided is
23 how much overlap can there be? Obviously, there's going to be shared
24 features between the types of views. But again, the claim doesn't say that
25 that's not allowed. So to kind of provide this strict dividing line when there
26 can be no shared features would be improper because you're importing

1 limitations into the claims.

2 But two, the specification gives you an express example of what is
3 meant. And there are clearly some shared features, like pictures and words,
4 you know. At some level, everything's going to be shared to a certain
5 extent. But they are going to be different in the sense that one presents
6 episodes, and one presents information that's more appropriate for a
7 standalone movie.

8 JUDGE KINDER: Okay. Thank you. You just pointed to those
9 examples, what's your strongest examples then of that overlap in the
10 specification?

11 MR. HWANG: Of the overlap of the --

12 JUDGE KINDER: Yeah.

13 MR. HWANG: I mean, examples of overlap would be just
14 pictures, the use of pictures.

15 JUDGE KINDER: No. I mean in the specification of the --

16 MR. HWANG: Right.

17 JUDGE KINDER: In the challenged patent.

18 MR. HWANG: Right. So if you look at Figure 17, there's two
19 examples that are provided. One example is a digest view, and one example
20 is a detail view. And they both include, on the left, a kind of big image,
21 right? That image represents the content that's being viewed. And so they're
22 not mutually exclusive in the sense that only a detail view would include a
23 big image and a digest view would not include a big image, you know.
24 There's descriptions about the content.

25 So in the detail view, there will be description about the movie.
26 And in the digest view, there'll be a description about the content. But the

1 digest view differs in the sense in the spec -- and I'm talking about the
2 example in Figure 17, there'll be descriptions. So there's a little bit of
3 overlap there. But then those descriptions in the digest view are related to
4 each episode or it can be related to the entire series. But there's generally, at
5 a high-level, descriptions.

6 So again, the specification teaches that you can have overlap of
7 what I would call really generic concepts. I mean, at some -- at the highest
8 level, the use of words and pictures, right? And then you can kind of go
9 down from there. But what the patent teaches and what's claimed is that
10 basically you need to have one thing that satisfies A. And you need to have
11 another thing, a different thing that we would agree with that. You need to
12 point to a different view that's presented that satisfies claim element B, just
13 as if the claim said a first and a second widget or something. I wouldn't
14 point to the same widget as satisfying both of those types of limitations. But
15 if I point to one widget that satisfies the first widget limitation and another
16 widget that satisfies the second limitation for the second widget, I think that
17 would be appropriate and satisfy claim language.

18 JUDGE KINDER: Thank you.

19 MR. HWANG: And I'll move a little bit quicker here. So I'm
20 going to go to page 9. So this is an example of -- again, the Patent Owner
21 seems to be relying on a claim construction position to advance its argument.
22 But there's problems with this. One, what they're really doing is they're
23 really construing the terms detail view and digest view. And this was
24 confirmed by their expert at the deposition. They're not trying to clarify
25 what providing either means. They're not really in their proposed
26 construction, they're not really clarifying what the word or means. They're

1 just trying to construe the terms detail view and digest view in a different
2 way.

3 There's a couple of problems here. One, they're importing
4 limitations in their proposed construction. A clear example would be for the
5 construction of digest view, they're saying that it's without information only
6 about a single episode, there at the end, the language at the end. That's a
7 negative limitation that they're trying to import into the claim language.
8 There's no support in the specification for that limitation. The Patent Owner
9 doesn't argue that there's any clear disavowal of claim scope to allow
10 importing limitations into the claim. And so right from the get-go, just from
11 basic claim construction principles, Patent Owner's proposed construction
12 should be rejected.

13 And there's kind of another bigger issue, and it's kind of more
14 common sense. And it really -- I think it caught the Patent Owner's expert
15 by surprise. But if you adopt the Patent Owner's proposed construction, it
16 kills their underlying argument. Based on the Patent Owner's proposed
17 construction, if it's adopted, then a digest view that's relied on in the petition
18 would never, even according to Patent Owner's arguments, qualify as a
19 detail view. Because the key term in the detail view construction here is it
20 has to be without information that is associated with the series. Every
21 example of a digest view that's included in the petition obviously has
22 information that's associated with the series. So all of those examples would
23 be excluded as being a detail view under the Patent Owner's argument.

24 And so you would never have a situation where a view under their
25 argument satisfies both limitations, which goes directly against what they're
26 trying to argue. And we brought this up during the expert's deposition, and

1 he agreed. I think the next slide -- there is a slide in here. But at a high
2 level, the expert agreed that if you adopt Patent Owner's construction, then
3 the digest views that were relied upon in the petition, they don't show, they
4 don't qualify as detail views, which gets rid of their argument.

5 JUDGE COURTENAY: Mr. Hwang, would you agree that the
6 detail view and the digest view are defined completely in Limitation 1.6, or
7 is there more to it than that? We have these two "wherein" clauses. And
8 they seem to define in the claim, without resorting to importing anything
9 from the specification. It broadly defines them in 1.6. Would you agree
10 with that or not?

11 MR. HWANG: I would agree that there's no need for an express
12 construction and that the claim language itself will inform a POSITA about
13 how those two views are different. And so to that extent, I would agree that
14 the claim language itself -- and this is the conclusion that was reached in the
15 institution decision, that there's no need for an express construction, that the
16 claim language itself can be relied upon to see if these --

17 JUDGE COURTENAY: Well, looking at the detail view,
18 "wherein the detail view presents information about a selected item of the
19 VOD content." Is that a definition in the claim? To me, it appears
20 -- speaking for myself, it appears to be a definition that's actually in the
21 claim. It may be broad.

22 MR. HWANG: I think it's a way of describing a detail view, but I
23 don't know if it's a limiting. So what I'm trying to say is --

24 JUDGE COURTENAY: The claims limit the boundary of
25 inventive subject matter so --

26 MR. HWANG: Right. I don't think that one phrase is intended to

1 limit all aspects of a detail view, if you will. I think it is a feature that must
2 be satisfied by any view, if you want to count that as a detail view, so I
3 would agree with that. I just don't know what I'm agreeing to in terms of,
4 like, the whole boundary of --

5 JUDGE COURTENAY: I see. But as Petitioner, it would seem
6 like a broader construction would benefit you --

7 MR. HWANG: No --

8 JUDGE COURTENAY: -- as far as reading on a broader
9 landscape of the available prior art.

10 MR. HWANG: Well, I think I would put it this way, the views
11 that we include in the petition, they are detail views. And I say that in the
12 sense there's no dispute from the Patent Owner that they are detail views. So
13 regardless of how you construe detail view, both sides agree that the prior art
14 includes detail views. So it's one of those things that you can try to get a
15 precise definition. But when the Patent Owner is also agreeing that the prior
16 art included detail views and we presented detail views at some point, you've
17 got to question what we're kind of getting at here.

18 And then the same goes with digest views. This is a strange
19 situation where the Patent Owner is actually agreeing that the petition
20 includes several design alternatives for different digest views that could have
21 been used and were used in the prior art. There's no dispute about that.

22 And I was going to get to it later in this presentation. But in this
23 case, one thing I just want to make abundantly clear is that there's no dispute
24 that the prior art included those key views. And that's really, I think, unique
25 in this case, where you have that kind of admission from the other side and
26 where they're leaning into that.

1 JUDGE COURTENAY: Why is this so hard? I mean, I'm looking
2 at 1.6, "wherein the digest view presents information about a set of the VOD
3 content that are associated with a series." So that would be the rows of the
4 episodes, right?

5 MR. HWANG: Sure.

6 JUDGE COURTENAY: And then the detail view is one movie or
7 one episode of something.

8 MR. HWANG: Right.

9 JUDGE COURTENAY: So, I mean, what's more complicated
10 about this? I'm just reading the finish --

11 MR. HWANG: Yeah.

12 JUDGE COURTENAY: I see a definition for both terms in 1.6.

13 MR. HWANG: I personally --

14 JUDGE COURTENAY: Speaking for myself, not the panel, but.

15 MR. HWANG: Oh, sorry to interrupt. I don't think it is
16 complicated. I think they're accusing something of infringing. That's very
17 basic, that those same features were found in the same product before their
18 patent. And again, I don't think it's complicated. I think it was exactly what
19 was being done by Netflix 12-plus years ago. And so I do think by trying to
20 obtain an express construction here, it's unnecessary because the claim
21 language, it says what it says. And it can be relied on, on its own. And it's
22 in a deliberate attempt to muddy the waters. This is a very straightforward
23 concept that's being claimed by Claim 1, as shown in Figure 17 and the other
24 figures. I think that would be like my best way of answering that question.

25 JUDGE COURTENAY: But --

26 MR. HWANG: But in many ways, I'm agreeing with you. It is

1 simple.

2 JUDGE COURTENAY: All right. That's helpful to me. Thank
3 you. We've got about, I guess, four minutes or so in your principal
4 argument. You said you wanted 30 minutes reserved.

5 MR. HWANG: I may go over maybe 10 more minutes.

6 JUDGE COURTENAY: Okay. That's at your discretion, of
7 course.

8 MR. HWANG: Yes. And again, this is one of those situations
9 where they propose a construction and then abandon it. So I'm not even sure
10 and their papers don't really clarify how they're going forward in this case. I
11 think what they're doing -- and this is what the expert said in his deposition,
12 he's using what he called the Board's prior construction for the arguments as
13 opposed to their own proposed claim construction. And so if that's the case,
14 that's another reason, it's just unnecessary to construe anything here because
15 they're not even relying on their own proposed construction.

16 And I'll skip to page 21 real quick. And I'll cover this very quickly
17 because I've already said this. But on page 21, again, there's no dispute that
18 the prior art includes design alternatives that would qualify as digest views.
19 The Patent Owner flat out says it does, you know. And there's different
20 ways that Netflix was even doing it. If you look at the ways that they were
21 -- the kinds of screens that they had, the one screen on the bottom right, on
22 page 21 of the demonstrative, that was for an Apple device. So they were
23 able to change their design and adapt it.

24 And that's clearly a view that's designed for a series. Parks and
25 Recreation, the whole layout, the setup, it's entirely different from what you
26 would see for a movie because it has those rows, among other things, with

1 those episodes. And there, you know, you can scroll down and up. That
2 satisfies the limitation for a digest view. And there's no dispute about that.

3 And then going to page 22 of the demonstratives. It's the same
4 issue. The petition included examples of detail views. There's no dispute
5 that those qualify as detail views. Those detail views would be different
6 from the digest views that I just showed you because they don't have rows of
7 episodes. And so you would have both limitations satisfied by the views
8 that were present in the prior art.

9 In the interest of time, I'll go to page 25 of the presentation. And
10 here, again, I point to the figures in the patent because they are instructive.
11 They're exactly what a person of ordinary skill in the art would have looked
12 at when he's reading -- he or she is reading the claim language about either a
13 digest view or a detail view. The specification says that Figure 17 is
14 instructive. That's the figure that the specification specifically points to in
15 terms of what that language might mean.

16 And then if you look at claim -- or Figure 17 and you look at
17 Figure 35, which shows the same idea, it's the same thing. It's just Figure 35
18 you can see it a little bit more clearly. But that's the preferred embodiment
19 of the invention that's relied upon in the '384 Patent. And it's the only
20 preferred embodiment that's actually shown. And then if you use that as the
21 preferred embodiment, the arguments that are being made by the Patent
22 Owner, it would read that one embodiment out of the claims, which is
23 improper. And that's another reason that demonstrates why the Patent
24 Owner's position is improper and should be rejected.

25 And then quickly, before I move on to the other claims. And
26 again, I alluded to this at the beginning. But on page 28 of the

1 demonstratives, the accused functionality in the underlying litigation is
2 Netflix. And the prior art that we were able to find was Netflix. It was just
3 they were doing this many, many years ago, many years before these patents
4 were filed.

5 Again, if you look at those diagrams, those are not early concepts.
6 Those are pretty fully evolved. And the things that they're pointing to for
7 infringement in the litigation case would lead to invalidity. They can't have
8 their cake and eat it too.

9 Now, in the sur-reply, they make an argument about why those two
10 views on page 28 would be different. But that's not the relevant inquiry. It's
11 not about whether there was some minor change that was made between the
12 views from today and, you know, 15 years ago or so. What's key is that
13 does it present information about a selected item of VOD content? That's
14 the key inquiry for their argument, that the Patent Owner is presenting. And
15 under that argument, both the old and the new figures, they both include
16 information about a selected item of VOD content. So you can't reconcile
17 their positions.

18 And I'm trying to get back to page 28. Give me one second, sorry
19 about that. And so the argument that was made in the sur-reply -- and this is
20 one of the reasons we wanted to come in and have an oral argument -- is
21 they're deceptive. They're pointing you to, oh, these two views are -- they're
22 slightly different. But for what we care about in this case, they're not. The
23 episodes that are shown in the prior art, they do include information about
24 each episode, it's episode one, two, three; it includes a run time. For the
25 features that we care about, all the features are the same.

26 And so they're trying to run away from the prior art using

1 arguments that would also run away from infringement. And that just -- in
2 the context of this proceeding, it just shows that their positions are deeply
3 flawed and not how they interpreted the claims to begin with before the
4 petition was filed.

5 With that, if there's no other questions, I was going to move on to
6 Claims 2 and 5.

7 JUDGE COURTENAY: Proceed.

8 MR. HWANG: Okay. And I'll go pretty quickly here. And I'll
9 actually start with Slide 31. So this is another situation where there's really
10 no dispute about what was in the prior art and what the petition showed.
11 The petition clearly showed how the fourth and fifth selections would have
12 been satisfied. And those Dependent Claims are fairly simple. One covers a
13 situation where someone has elected to, you know, watch a TV show, and
14 the other one covers a situation where the user has elected to watch a movie,
15 right?

16 And so the concepts -- and again, going back to the is this kind of
17 overcomplicating it? It is. It's in one situation someone wanted to watch the
18 TV show. And in another situation, they want to watch a movie. Because of
19 that fact the Patent Owner has presented this claim construction argument
20 saying that the claims must be interpreted in order. If you read it on its face,
21 that means that a TV show -- a user must watch a TV show before the user
22 watches a movie.

23 Now, the petition doesn't say expressly, you know, a watcher must
24 watch a TV show before they watch a movie. But that's A, not required by
25 the claims. We would argue that the claim language, especially if you go
26 back to Claim 1, which Claims 4 and 5 depend on, it tells you that you have

1 this divergent -- it's like a fork in the road, as I used in the papers. The user
2 is free to select a movie or a TV show. It's, if you want, select this, this is
3 what happens. If you select the other type of content, this is what happens.
4 And then the petition showed how to get to those -- both of those views
5 using different selections. So --

6 JUDGE FENICK: Mr. Hwang?

7 MR. HWANG: Go ahead. I'm sorry.

8 JUDGE FENICK: Sorry. I mean, Claim 2 is different from
9 Claims -- Claim 1 and Claims 3, 4, and 5. Claim 2 is independent of those
10 claims. And are you saying that Claim 2 does not require both of -- kind of
11 the Claim 4 and the Claim 5 actions to occur?

12 MR. HWANG: No. I think I would phrase my answer differently.
13 Claim 2, if you look at it, is a -- I believe, a system claim. And so if you're
14 really looking at Claim 2 as a system claim, it's kind of weird to make
15 arguments about methods of performing things because it is a system claim.

16 So that's kind of I think a fairly important distinction between
17 Claim 1 and Claim 2. I would say both Claims 1 -- both Claim 1 and Claim
18 2 have similar limitations, where the user would select a movie and it covers
19 a situation where the user would select a TV show. So that's common
20 between the claims, but I'm not going to say that they're exactly the same.

21 And for purposes of Patent Owner's argument, there's probably a
22 compelling reason why Claim 2 is even further removed from what they're
23 arguing. Because it is a system claim and not, you know, it doesn't cover,
24 like, a method of performing steps in any particular order. If that answers
25 the question.

26 JUDGE COURTENAY: Judge Fenick, I think you're muted.

1 JUDGE FENICK: Thank you. Sorry. Is that argument about the
2 system versus method claim in the papers anywhere?

3 MR. HWANG: I'd have to look. But, you know, that was my just
4 response to the question about whether they're the same or different. That's
5 the primary difference between Claim 2 and Claim 5, that I would say is
6 one's a system claim and one's a method claim. I'm not sure if the paper is
7 specifically saying anything about that particular difference, but I was just
8 answering the question, right?

9 JUDGE FENICK: Yeah. Thank you. I'm just trying to find -- you
10 kind of earlier said, well, it's really not in the petition, the argument that you
11 could watch a TV show and then a movie -- or a movie and then a TV show.
12 I apologize, I can't remember what order you have to do them in if they are
13 in order. And now, you're talking about the fact that Claim 2 is a system
14 claim. I'm just wondering what the arguments that you've made in the
15 papers are --

16 MR. HWANG: Well --

17 JUDGE FENICK: -- with respect to this, the last, the fourth and
18 fifth selection in Claim 2.

19 MR. HWANG: Sure. So just to clarify, I don't want to be
20 misunderstood here. The petition does talk about how both selections can be
21 made from the collection view. So the petition definitely covers that, and it
22 would cover that for both Claims 2 and Claim 5. The issue that's raised
23 -- and again, just to be very precise, does the petition specifically have a line
24 about how a user must first view a TV show before he or she watches a
25 movie?

26 I don't believe that precise language is in the petition. But that was

1 addressed by the Petitioner in the reply directly rebutting the argument and
2 the claim construction position made by the Patent Owner where it's two
3 level. One, we don't believe that this limitation should be imported into the
4 claims. And two, even if it was, it would be obvious for a user of Netflix to
5 watch a TV show before watching a movie, or vice versa.

6 JUDGE COURTENAY: Mr. Hwang, just a brief comment about
7 Claims 1 and 2. Claim 1 is a method.

8 MR. HWANG: Yes.

9 JUDGE COURTENAY: And it appears that the processor is
10 performing the steps of the method, and the selections are done by an
11 unclaimed user implicitly. Would you agree with that? We have, for
12 example, receive at point 1.1, "receiving by a processor of the intelligent
13 television a first selection for a VOD content." So when the processor is
14 performing the step of receiving, step 1.1 of Claim 1 and the selection has to
15 be done by some entity, and that appears to be an unclaimed user. Would
16 you agree with that?

17 MR. HWANG: I think I generally agree --

18 JUDGE COURTENAY: Implicitly, we have a user that's doing
19 the selections both in Claim 1 and also Independent Claim 2. Independent
20 Claim 2, as you pointed out, is a system claim, okay, which is not a method
21 claim. But it appears to be we have the processor operable to execute a user
22 interface application that's further operable to perform, in this case,
23 functions, like the function of receiving. And receiving what? A first
24 selection. So we also have a user implicitly doing the selections in both
25 Independent Claims 1 and 2. Would you agree with that?

26 MR. HWANG: I think I would agree with that.

1 JUDGE COURTENAY: Okay. Fine. Just to clarify that point.
2 Thank you very much.

3 MR. HWANG: Just at a high level, going back to -- this is really
4 simple stuff. A user is watching TV -- I mean, I don't know, I've been using
5 Netflix forever. I don't know if your kids do. It's you just watch content and
6 then you make selections to eventually watch that TV show or movie. This
7 is not a patent that's -- you know, it's not rocket science, as you might say.
8 So these are very simple concepts that we're talking about here. And I don't
9 want to overcomplicate things because I don't think it should be
10 overcomplicated.

11 I think our basic position is that the petition clearly showed how
12 you would get to these two views. So that would cover both Claims 4 and 5,
13 so both of them. Not just one, but the petition did cover both. And then the
14 reply kind of verified or confirmed, rebutted the argument about the specific
15 order, if it in fact that limitation is adopted by the Board, that that order
16 would be obvious, that the patent isn't trying to claim a method of users
17 watching TV shows before movies. I mean, it's kind of silly when I say it
18 out loud. That's not what the patent is about. It's just about presenting these
19 different views when different, you know, selections are made by the user in
20 Netflix, as confirmed by their own expert.

21 Now, I'm on Slide 33 or page 33 of the demonstratives. He was
22 asked about what Netflix did. And he was very forthcoming. I mean,
23 Netflix -- and as we all know as users probably of these services, you can go
24 back and forth. After you watch a movie, the service doesn't quit. It allows
25 you to watch something else. And then you go back and watch something
26 else that you want to watch. I mean, again, this is not -- it's not rocket

1 science. It's not complicated.

2 And Netflix was designed that way. And the prior art videos that
3 we submitted show kind of like users using Netflix back in the day, where
4 they go back and forth between these menus because they're just testing it.
5 They're saying, oh, look how you can see a movie. And then they go back,
6 like, let's try something else. So they're going through all these motions.
7 And that's something that I wanted to highlight here is all of this was in the
8 prior art. It was in the petition. And to the extent any additional explanation
9 is needed, that was provided in the reply in specific response to the
10 arguments made by the Patent Owner.

11 Since I am running low on time and -- I think the point to be made
12 here, we made these arguments in the reply, the sur-reply, it doesn't dispute
13 that any of this was obvious. It never says, no, it wasn't obvious. So it kind
14 of implicitly concedes that these are just obvious things that Netflix did do.
15 They don't argue that Netflix wasn't capable of doing these things that we
16 talked about. It doesn't argue that you couldn't watch a movie and then an
17 episode from the collection view or vice versa. It doesn't say that that's
18 novel.

19 There's many things that the Patent Owner could have said here to
20 distinguish the prior art from the claims, but they didn't. All they said is,
21 well, you raised new arguments. But as I've said here before, A, they're not
22 new arguments, we're just rebutting what was raised by the Patent Owner.
23 And then B, if you look closely at the sur-reply about the new argument
24 objection, it's not specific to any argument. So I have no idea what new
25 argument they're objecting to. And I think you have to be specific when you
26 object to some things, like, you know, new arguments being presented in the

1 reply. And that's another reason why I think Patent Owner's objection here
2 should be dismissed.

3 And then the final thing I will say about this is this whole claim
4 order limitation that they're trying to -- the claim construction that they're
5 advancing, it's kind of a cover. It's a cover for a bunch of other arguments
6 that they're trying to make to distinguish the prior art from the claim. And
7 I'm looking at page 37. I'll probably stop here. But I asked the expert -- and
8 the testimony, the relevant testimony is actually on page 36 of the
9 demonstratives. But I asked the expert, what exactly are you arguing?
10 Because it's not even clear to me what you're arguing. Can you just kind of
11 let us know what you're arguing?

12 And then during the deposition, they made it clear that they view
13 Claims 4 and 5 as requiring this user interface device that does all these
14 special things. But the claim doesn't talk about the user device doing special
15 things. And the patent specification just says a user interface device is a
16 button. The expert, Dr. Surati, also confirmed that in their view, Claims 4
17 and 5 are only satisfied when you go directly when you're watching, like, an
18 episode of The Office; and then you go directly and watch, let's say, Top
19 Gun, using some special interface that's used in the player view when you're
20 watching The Office, the episode of The Office. None of that is claimed.
21 It's not in the specification.

22 I asked Dr. Surati, how it would even work in the real world? I
23 watch movies and stuff all the time, I can't just -- I don't even know how to
24 tell the TV what content to play next without going back to a menu and
25 selecting something that I actually wanted to play. And they're saying that
26 Claims 4 and 5 require this direct transition from -- in this slide on page 37,

1 a direct transition from The Office to, let's say, Apollo 13 directly from that
2 screen.

3 And again, it's just importing limitations into the claims that's not
4 there. It's hiding implied claim construction positions within this broader
5 construction that seems pretty innocent, that things should be in the order
6 that they're claimed. These are all things that they rely on to try and
7 distinguish the prior art.

8 And that's why, you know, I wanted to make an argument about
9 how -- we have to be a little bit careful about what it is they're proposing. It
10 sounds simple. But then when you dig deep, there's a lot of limitations that
11 they're trying to import into the claims. And obviously, none of this would
12 fly in the underlying litigation. But again, they're trying to, like, have it both
13 ways where they can get one thing here and another result there. So I think
14 with that, I will reserve the rest of my time.

15 JUDGE COURTENAY: Thank you, Mr. Hwang. You've gone
16 about 46 minutes in your principal argument, so we're going to reserve 14
17 minutes for your rebuttal time. Thank you very much.

18 JUDGE FENICK: Thank you. Mr. Yang, would you like to
19 reserve time for a surrebuttal?

20 MR. YANG: Yes, Your Honor. I like to reserve 30 minutes for
21 surrebuttal as well.

22 JUDGE FENICK: Thank you. We have your demonstratives, or
23 you can -- I don't know if you're planning to show any. But if not, you can
24 begin when you're ready. Thank you.

25 MR. YANG: Thank you, Your Honor. I'd like to start by
26 addressing what Petitioner said about Netflix. It is true that an accused

1 product is the current version of Netflix. The pictures have deduced
2 references that show the operation of Netflix. But I want to make clear, the
3 prior art and the accused product are not the same.

4 First, because IPRs are limited to patents of printed publications.
5 The Petitioner is using Netflix as the prior art, as my colleague seemed to do
6 in his oral argument, rather than what was taught by the references in the
7 grounds. That is not something that is available in IPR. If Petitioner is
8 arguing that Netflix is the prior art, you have to dismiss this IPR
9 immediately because Netflix is simply not available in this proceeding.

10 Second, the accused product is the current version of Netflix. And
11 I'm sure you've seen the district court infringement contentions filed in this
12 case. The current version of Netflix looks very different than the version of
13 Netflix that's in the references. Obviously, Netflix has changed significantly
14 between the current version accused of infringement and the version in the
15 references. So you can't conclude from the infringement contentions against
16 the current version that the version of Netflix in the references also weighed
17 on the patent in the same way. In fact, Petitioner has made no effort to show
18 that there hasn't been any changes made between Netflix, the current
19 version, and what's in the references that I raised in this IPR.

20 And finally, even if the current version is the same as the version
21 in the references, which we strongly disagree with, and they have not met
22 their burden of showing, Petitioner bears the burden of showing that Netflix
23 reads on the '384 Patent in its petition. If they omit a claim element from
24 their petition or, say, get a claim construction wrong and don't present the
25 evidence for a claim element, then even if the prior art is the accused
26 product, you are cabined by the evidence that is presented in the petition.

1 The Federal Circuit and the Supreme Court has been very clear
2 about this. IPRs are limited to the arguments made in the petition, and the
3 PTO is not free to institute a different proceeding of its own design.

4 And so with that out of the way, I'd like to start with the order of
5 steps of Claim 2 and also Claims 4 and 5. The difference is that Claim 2
6 recites the sequence of steps in one claim. It's in a system claim, whereas
7 Claim 5 depends on Claim 4, which depends on Claim 1, which is a method
8 claim. But all of these Claims 2, 4, and 5 are different than Claim 1. Claim
9 1 doesn't require the additional 4th and 5th selections that are in Claims 2, 4,
10 and 5. So for clarity for this argument, I'll refer to the elements of Claim 2.
11 But the same argument applies to Claims 4 and 5.

12 So I believe you saw earlier from Petitioner's Slide 30 of what their
13 interpretation for Claim 2 is. Their interpretation is, you make a first
14 selection to bring up the master view. Then you make a second selection to
15 bring up the collection view. Then you make a third selection. And based
16 on what the third selection is, you bring up either a digest view or a detail
17 view. But according to Petitioner's Slide 30, if you were looking at it, you
18 either make a fourth selection in the digest view or you make a fifth
19 selection in the detail view, and either the fourth or fifth selection brings up
20 the player.

21 The issue with their interpretation is that's not what Claims 2, 4,
22 and 5 say. Claim 2 doesn't have any 'if' requirement on whether the fourth
23 selection is made based on what the third selection is. It doesn't have an 'if'
24 requirement on whether the fifth selection is made based on the third
25 selection. So, reading the plain language of Claim 2, Claim 2 clearly
26 requires that you make the third selection, then you make the fourth

1 selection, then you make the fifth selection. There's no language anywhere
2 in Claim 2 that says the fourth selection is optional depending on what
3 happened to the third selection. And there's no language in Claim 2 that
4 says the fifth selection is optional depending on what happens to the third
5 selection.

6 The language of Claim 2 is very explicit. You have to make the
7 third selection, then you make the fourth selection, then you make the fifth
8 selection. It doesn't permit you to skip the fifth selection, if you made a
9 difference based on what the third selection is. And it doesn't permit you to
10 skip the fourth selection based on what the third selection is.

11 So because of the way that Petitioners have interpreted Claim 2,
12 the petition addresses performing either the fourth selection or the fifth
13 selection. But the petition doesn't address performing both the fourth
14 selection and the fifth selection. And as I just explained, the issue with their
15 proposed interpretation of Claim 2 is that it isn't what the claims say. And
16 this is also addressed by the sur-reply starting at 1. And because the petition
17 didn't argue that the 4th and 5th selection are performed in order, Petitioners
18 now want you to consider their new argument, which I saw on their Slide 32
19 and in their reply.

20 But there's multiple procedural defects with Petitioner's approach.
21 First, this argument is not in the petition. I'm sure you've heard my
22 colleague tell you that the petition doesn't say you do both the fourth and
23 fifth selection, that's been admitted. And if it's not in the petition, the
24 Supreme Court and the Federal Circuit have been very consistent about this.
25 This proceeding is cabined by what's in the arguments made in the petition.
26 If it's not in the petition, then the Board can't institute a different IPR of its

1 own design.

2 Petitioner conveys new arguments in their reply. And they can
3 point to different parts of references that were never discussed before. But
4 these are all new arguments that are just unsupported by what's in their
5 petition. The petition never says it would be obvious to do a fourth selection
6 and then a fifth selection. That doesn't appear anywhere in the petition. So
7 this is a new argument that's not been raised in the petition and has to be
8 excluded from this IPR.

9 And second, even if you were to consider this argument, this
10 argument is entirely conclusory. If you look at Petitioner Slide 32, Slide 32
11 doesn't cite any evidence for its conclusory allegation that all -- any of this
12 would be obvious. There's no evidence that you would make a fourth
13 selection after a fifth selection. All Petitioner asked is that based on your
14 understanding of a current version of Netflix, you adduced that knowledge
15 the priority. But that's entirely inappropriate. Petitioner had an opportunity
16 to submit a supplemental declaration to support these points; they didn't,
17 they chose not to. So there's no expert testimony, and there's no evidence
18 whatsoever of what is missing in the petition is shown by the reply.

19 And third, even if they had submitted a supplemental declaration,
20 this would still be a new argument that wasn't in the petition. At a
21 minimum, the Administrative Procedure Act gives Patent Owners a due
22 process right to respond to a new argument. And so if there was a new -- if
23 there was a supplemental declaration, procedurally, we would be able to
24 submit an expert declaration to respond to it. But there wasn't, so we did not
25 submit an expert declaration. And because there wasn't a supplemental
26 expert declaration on these points, as I said, the reply argument is entirely

1 unsupported by evidence.

2 JUDGE FENICK: So Mr. Yang, I guess there's two arguments
3 there. One of them is whether you had an opportunity to respond, which you
4 would have in your sur-reply if this was a new argument. And the other one
5 is with the question of whether you could have submitted new evidence. But
6 there was never a request to submit any new evidence with the sur-reply. So
7 I guess my question is: you're saying that there would be an Administrative
8 Procedure Act violation, I agree with you, that it would be when you did not
9 have a chance to respond. But here, you had a sur-reply, right?

10 MR. YANG: I may have phrased my wording a little poorly. I
11 apologize, Your Honor. What my point was is that because they didn't
12 submit expert testimony in the reply, their reply is not supported by
13 evidence. They have attorney argument in their reply but no evidence. If
14 they were to have submitted expert testimony or other evidence, then under
15 the Administrative Procedure Act, we would have been -- we should have
16 been given an opportunity to respond to it.

17 But we didn't need to because they didn't submit evidence in their
18 -- in support of the reply argument. The reply just came with a reply. There
19 was no supplemental expert declaration which they could have submitted.
20 And because they didn't submit a supplemental expert declaration and
21 because there's no -- they didn't point to any other evidence in the reply, the
22 reply is making arguments of obviousness that's just unsupported by
23 evidence in the record. They're appealing to your use of Netflix, the current
24 version of it, but that is not evidence that can be used in this IPR. Does that
25 answer your question?

26 JUDGE FENICK: You answered my question. Thank you.

1 MR. YANG: Thank you.

2 JUDGE COURTENAY: But Counselor, why would -- I'm looking
3 at -- this is Petitioner Slide, I believe, 32, why is it not a predictable result if
4 a user, you know, the implicit user in these claims, watches an episode and
5 then watches a movie. Isn't that a predictable result? Doesn't that kind of
6 thing happen all the time with streaming today? It could be that order or
7 vice versa?

8 MR. YANG: Your Honor, you can certainly say, but my point is
9 that all of this is procedurally improper. If they said in their petition, this is
10 our predictable result, here's the claim construction, it had to be done in
11 order, this would be a predictable result, then I wouldn't be making this
12 argument.

13 The reason I'm making this argument is because they kept it out of
14 the petition, even though this was a predictable interpretation of Claim 2. If
15 you read Claim 2, nothing in Claim 2 says that you do either the fourth
16 selection or the fifth selection. This is the only correct way to read Claim 2.
17 And given the only correct way to read Claim 2, they drafted a petition
18 where they're representing that you make either a fourth selection or a fifth
19 selection, which is completely different than what the claims say.

20 So given what the arguments made in the petition, those are the
21 arguments that this IPR is restricted to. So they haven't made the arguments
22 that are necessary to show Claim 2 is validated by any of the references
23 because that's not in the petition.

24 JUDGE COURTENAY: So if I understand your position correctly
25 regarding Claim 2, we have all these 'if' statements that are conditional, and
26 your position is that every selection has to be made?

1 MR. YANG: Well, I have Claim 2 in front of me. And if you look
2 at Claim 2, Claim 2 conditions, it says if the selection in the collection view
3 is for a series, provide the digest view. So providing the digest view is a
4 condition -- is conditioned on the third selection being for a series. That is
5 what's being conditioned. And then the next clause says, if the selection in
6 the collection view is for one of a movie or single show, provide a detail
7 view. So providing a detail view is also a condition on the third selection.
8 But if you read the rest of it, nothing here says that the fourth and fifth
9 selections are based -- it is if this third selection is either for a series or for a
10 movie or a single show. It just says, receiving a fourth selection of an
11 episode in the digest view. There's no 'if' statement in there anywhere. It
12 just says receiving a fourth selection of an episode in the digest view.

13 And once you have the fourth selection and in response to the
14 fourth selection, providing a player to present any -- the episode to the user.
15 So what happens, the providing of the fourth selection and providing of the
16 player, those are required by the claim language. There's no 'if' statement
17 there that says that any of this is optional based on the third selection.

18 JUDGE COURTENAY: So it's your position that all -- are there
19 five selections altogether in Claim 2, that they all must be performed by the
20 prior art -- in the prior art?

21 MR. YANG: Yes, Your Honor. My contention is that unless the
22 claim explicitly says that the selection -- this step is optional. For example,
23 if it says if the selection in the collection view is for a series, unless it has an
24 'if' clause there telling you it's optional, then all the steps have to be
25 performed as recited.

26 JUDGE COURTENAY: Okay. But they're not steps in Claim 2.

1 It's an apparatus claim, right?

2 MR. YANG: It is an apparatus --

3 JUDGE COURTENAY: System claim.

4 JUDGE KINDER: Correct.

5 MR. YANG: It is a system claim. But the system says you have
6 to do -- the claim says the system has to do these things. So if the system
7 has to do --

8 JUDGE COURTENAY: And they're functions, right? They're not
9 steps of a method, they're functions.

10 MR. YANG: True. They are functions, but the system has to do
11 all of these functions in the order recited.

12 JUDGE COURTENAY: Okay. Understood. Thank you.

13 MR. YANG: And so the other thing I want to clarify is if you saw
14 from Petitioner Slide 33 and 34, they seem to be making arguments that the
15 Patent Owner never made. They seem to be saying that there has to be a
16 direct transition from the fourth selection to the fifth selection. That was
17 never made in any of our papers. And to the extent our expert testified to
18 that, I believe that was because he misunderstood the question. Because it
19 was never made in the papers, what I want to emphasize is our position is
20 that all these steps have to be performed because Claim 2 doesn't include a
21 condition on any of the -- any of selections one -- the first through the fifth
22 selection. All the selections have to perform.

23 But there is no argument anywhere in Patent Owner's papers that
24 there can't be intervening steps. So they are the ones that are trying to
25 suggest that we're trying to read additional claim language -- I'm sorry,
26 additional requirements into the claims outside of what the claim language

1 allows. All I'm saying here is that the claim language itself, if you look at it,
2 it doesn't impose conditions on the fourth or fifth selections. Because it
3 doesn't impose conditions on the fourth or fifth selections, those two
4 selections have to be occur -- has to occur in that order as recited here.
5 That's all I'm saying. And going back to my --

6 JUDGE COURTENAY: May I interrupt you regarding order? So,
7 I mean, would you agree with method Claim 1 that generally a method claim
8 you don't -- it doesn't require a particular order of steps unless you have
9 something in the claim that actually requires it, like antecedent basis
10 restrictions. But what about order with our system Claim 2, can you change
11 the order?

12 MR. YANG: I --

13 JUDGE COURTENAY: Does the scope of your claim cover
14 different orders of performing these selection functions or not in your view?

15 MR. YANG: No, Your Honor. The claim require this specific
16 order. And this is explained in the Patent Owner response starting on page
17 26. And the reason is because each of the subsequent steps depend on the
18 previous step being performed. For example, if you look at Claim 2, it starts
19 with the first selection for a master view, and then making a second selection
20 for VOD content. If you're not in the master view, and then you can't make
21 a selection to reveal the content to bring up the collection.

22 So all of these claim steps, they have to be in the order recited
23 because the subsequent steps recite elements that require performing of the
24 previous steps to have occurred. You perform them out of --

25 JUDGE FENICK: Mr. Yang, sorry. I understand that with respect
26 to the first selection and in response to the second selection. And I feel like

1 we never kind of get down to the question of why the fourth selection or the
2 fifth selection -- in other words, the fourth selection is receiving a fourth
3 selection of an episode, and in response providing a player. So I understand
4 that those two steps would be performed in that order, or those two
5 operations of Claim 2. And then the fifth selection, and then -- you know, is
6 received. And then in response, you provide a player.

7 Again, those two appear to be set in some order with respect to
8 each other. But I don't see it with respect to the fourth selection, the
9 provision of a player in response to the fourth selection, necessarily in any
10 specific order with respect to the fifth selection and the provision of a player
11 to play a movie.

12 So how are those -- I mean, it feels like every time we hear about
13 the order of the steps, the focus is on the beginning, which I agree has more
14 kind of dependent language that requires certain orders for these operations
15 or functions or steps, depending on what you want to call them, for Claim 1
16 and Claim -- sorry, Claim 1, 3, and 5 and Claim 2. But how is the fourth
17 selection or the fifth selection ordered by necessity? What in the claim
18 language requires that? And again, where have you made those arguments?

19 MR. YANG: That is also discussed in the Patent Owner's
20 response, starting on page 26 in the section discussing the claimed order of
21 steps. I want to first start answering that by pointing out that the third -- I'm
22 sorry, the fourth selection is of an episode in the digest view. So I think we
23 all agree that that has to be made after the third selection to just show either
24 the digest view or the detail view.

25 And from that, the only -- then the next question is I believe you
26 asked the sequence of steps between the fourth and fifth selection. So we've

1 established at a minimum that the fourth and fifth selections have to occur
2 after the third selection. And the fourth selection -- the fourth and fifth
3 selection must occur.

4 So based on all of that already, we know it has to be either 1, 2, 3,
5 4, and 5, or 1, 2, 3, 5, and 4. And I want to point out, first of all, that if you
6 accept even that, the petition doesn't even establish that. The petition doesn't
7 say you perform 1, 2, 3, 4, 5 or 1 2, 3, 5, 4. The petition says you perform 1,
8 2, 3, and either 4 or 5. So regardless of whether the fourth selection or the
9 fifth selection has to be performed - regardless of whether the fourth
10 selection is performed before the fifth selection or the fifth selection is
11 performed before the fourth selection, that is still not established by the
12 petition. Because we all agree that these fourth and fifth selections have to
13 be performed by the -- after the third selection. But even -- I'm sorry.

14 JUDGE FENICK: So you agree that there could be intervening
15 steps. So there could be other selections or digest views or detail views
16 presented.

17 MR. YANG: There could be. But none of -- no intervening steps
18 are established by the petition. The petition doesn't say, here's the fourth
19 selection, here's some intervening steps, and here's the fifth selection. That's
20 also not in the petition.

21 And the other arguments I wanted to address with these order steps
22 is if you're reading Claim 2, all of the other steps are stated in the order.
23 And logically, they have to be performed in that order. So it is kind of
24 strange to me that there is this one step that you can perform out of order
25 when all the steps are numbered and all of the other steps require
26 performance of the preceding step. That alone, based on the fact that

1 everything else in -- as recited in this claim requires being performed in the
2 order, to me suggests that the -- these remaining two claim elements are also
3 in that order.

4 And finally, the other point I wanted to make is that what this
5 requires is that once you have a player in one of these two selections, either
6 the fourth selection or the fifth selection, you have to go back to either the
7 digest view or detail view, make the other selection, and then present a
8 different player. So that is the evidence that is missing from the petition.

9 JUDGE COURTENAY: Yes. But your claim just recites
10 providing a player in response to the fourth selection or the fifth selection.
11 We just broadly provide a player. And what's presented between the fourth
12 selection and the fifth selection is it's only a difference in content.

13 MR. YANG: That's not entirely true because --

14 JUDGE COURTENAY: Okay. Please explain so I can
15 understand.

16 MR. YANG: If you look at the clause before -- this would be
17 column 57, line 36, it says receiving a fourth selection of an episode in the
18 digest view. So you have to have a selection of an episode in the digest view
19 for the fourth selection. You have to have an episode in the digest view
20 before you present the player. And that's also true for the fifth selection.
21 The claim says, in response to the fifth selection, providing a player to
22 present the movie or single show to the user. So in order to do that, you
23 know, it has to -- you're looking at the alternative of the third selection,
24 where instead of the detail view, it's -- instead of the digest view, it's the
25 detail view.

26 JUDGE COURTENAY: Right. Thank you. Proceed.

1 MR. YANG: Sorry, I kind -- I apologize, Your Honor. I'm going
2 over my outlines to make sure that I --

3 JUDGE COURTENAY: It's fine.

4 MR. YANG: -- respect the Claims 2, 4, and 5.

5 JUDGE COURTENAY: Okay. That's fine. Just take your time.
6 That's fine.

7 MR. YANG: Sure. It appears that I have. So I'd like to move on
8 now to Claim 1. And the other issue I'd like to cover is the language of
9 providing either a detail view or a digest view in Claim 1. And our position
10 is that the claim language providing either/or requires providing either a
11 detail view or a digest view mutually exclusively. So if you provide a view
12 that is both a detail view and a digest view in response to the third selection,
13 then that defeats the purpose of the claim. The purpose of the claim is you
14 make a selection, then you -- and then if you select a movie or a single show
15 and you get one view. And if you select a series, you get a different view.

16 So if you get a view that qualifies as both a detail view and a digest
17 view, that completely defeats the point of the third selection. Why would
18 you have a third selection if you get the same view either way?

19 And then I believe you heard Petitioner say earlier that that's fine
20 because their petition shows two different views. The problem with that is
21 that doesn't distinguish what a detailed view and a digest view is. So if I put
22 a smiley face on one view and I omit a smiley face from another view, have
23 you presented a detail view and a digest view? To me, the answer is clearly
24 no. Because that defeats the purpose of the patent. Just simply adding an
25 additional element onto a view doesn't mean that you've presented a
26 completely different view.

1 So there has to be some exclusion, some overlap, between the
2 detail view and the digest view. I mean, there has to be some exclusion.
3 There can't be overlap between the detail view and the digest view. If there
4 was overlap, for example, if there was overlap permissible and you just put a
5 smiley face on it, then you've presented essentially the same view, but now
6 you're calling it two different views. That completely defeats the purpose of
7 this patent to provide two different views based on one selection.

8 JUDGE KINDER: This is Judge Kinder. Is there anything in the
9 spec that supports that, that there can be no overlap whatsoever?

10 MR. YANG: Well, Your Honor, let me rephrase that. I haven't
11 suggested there could be no overlap whatsoever. I'm saying there has to be
12 some exclusion. If there's no exclusion, if a detail view and a digest view
13 are purely the same thing, that would completely defeat the purpose of this
14 claim. The purpose of this claim is to be presented different views based on
15 what the third selection is. If you're presented by two views that are
16 essentially the same, that defeats the purpose of the claim.

17 So the question then becomes, what is the exclusion? I believe that
18 Claim 1 tells you what the exclusion is. If you look at Claim 1, it tells you
19 that it -- in column 56, line 54, it says, wherein the detail view presents
20 information about a selected item of the VOD content and wherein the digest
21 view presents information about a set of the VOD content that are associated
22 with the series. That's what Claim 1 says. So I believe Claim 1 tells you
23 what this exclusion is.

24 A digest view presents information about a set of the VOD content
25 that are associated with the series. So that's what is not miscible to be
26 presented by a detail view. And a detail view presents information about a

1 selected item of the VOD content. So that is what's not permissible to be
2 presented by a digest view.

3 JUDGE FENICK: Mr. Yang, why is that -- I mean, I -- if your
4 detail view includes this -- the claim language talks about what a detail view
5 does include and what a digest view does include. So how are you reading
6 that to require that a detail view not include the other stuff? As long as a
7 detail view includes information about a selected item of VOD content, then
8 why is that not enough for it to be a detail view, even if it could be that some
9 detail views also present information about a set of VOD content?

10 MR. YANG: Because Your Honor, that goes back to the either/or
11 language in the third -- on the selection. Because based on the either/or
12 language, if you present a view that is both a detail view and a digest view,
13 then the third selection is meaningless. If you get the same kind of content
14 regardless of what kind of selection you've made, then the third selection
15 would be -- the third selection is completely meaningless. You might as
16 well not make a third selection be directly presented with a view that is both
17 a detailed view and a digest view.

18 In order to give meaning to the third selection, the claim requires
19 that you make a third selection. In order to give meaning to the third
20 selection that you're making and so not to render this claim element
21 meaningless, what you're presented with after making the third selection has
22 to be distinct based on the third selection that you've made.

23 That's what the claim language explicitly requires, it says either/or,
24 and then a condition presenting the detail view or the digest view on what
25 the third selection is. The third selection makes a mutually exclusive
26 selection. You either select a series or you select a movie or single show.

1 And based on that mutually exclusive selection, you get mutually exclusive
2 results fields.

3 JUDGE COURTENAY: Counselor, what's a bit confusing to me,
4 in both Claim 1 and Claim 2, you have the transitional phrase "comprising,"
5 okay, which is, it covers really an open set the prior art has to meet. For
6 example, "wherein the detail view presents information about a selected item
7 of the VOD content," as recited in 1.6. But the prior art could have more.
8 And as long as it has "wherein the detail view presents information about a
9 selected item in the VOD content," then your claim reads on that prior art.
10 It's not the prior art reading on the claim, as you opened your statements
11 with. We always read the claim on the prior art, not the reverse.

12 MR. YANG: Respectfully, Your Honor, you're looking at that
13 clause in isolation without looking at the remainder of the claim link. The
14 remainder of the claim link language says --

15 JUDGE COURTENAY: Well, we do have to consider the claim
16 as a whole. You're correct about that, so.

17 MR. YANG: Right. So the remainder of the claim language says
18 in response to the third selection, provide either a detail view or a digest
19 view. That is the language that I'm saying precludes a detail view from
20 being a digest view. Otherwise, if you -- if every third selection gets you the
21 same view, then why make a third selection? That wouldn't -- that would be
22 extraneous from this claim language.

23 JUDGE COURTENAY: Well, my point is the detail view could
24 have additional information associated with it, and then the digest view
25 could have different additional information. And why would your claim in
26 which has the transitional phrase "comprising" in the preamble, why would

1 it not read on prior art under that hypothetical?

2 MR. YANG: As I gave you in my earlier hypothetical, that
3 additional information might be a smiley face in one view and no smiley
4 face in another view. If you were to say that a smiley face in one view and
5 no smiley face in another view meets these two views, that defeats the claim
6 language. Because you've gotten essentially the same view on both with
7 only trivial differences between them. And then you're saying that
8 presenting these two views with trivial differences is sufficient to meet the
9 third selection.

10 And my argument is that that's insufficient to meet the third
11 selection. Because the point of the third selection is to have two mutually
12 exclusive choices, binary choices. And then based on that binary choice,
13 you get one of two different views. They can't overlap in any meaningful
14 way, or else the views would be the same views.

15 JUDGE COURTENAY: Okay. That's sort of the crux of the
16 difference between you and Petitioner's view. You're saying that the detail
17 view and the digest view have to be mutually exclusive. And if I understood
18 Petitioner correctly, they can overlap in certain aspects. Is that a fair
19 statement, or am I missing something here? Can you expand on that?

20 MR. YANG: I'm sorry, Your Honor. What I'm saying is that the
21 claim language itself tells you what can't overlap. Because the claim
22 language tells you that a digest view presents information about a set of the
23 VOD content that are associated with the series, and a detail view presents
24 information about a set of items of the VOD content based on that claim
25 language. That claim language is telling you what in the detail view and the
26 digest view can't overlap after the third selection.

1 JUDGE COURTENAY: OK, thank you.

2 JUDGE KINDER: Could I ask kind of a hypothetical, say, for
3 example, you have a widget that shows your connectivity, whether or not
4 you're connected, like a landline, Wi-Fi, or some other means of connection
5 in both views, in both the detail view and the digest view, would that take it
6 outside the scope of potential infringement just because it has an extra
7 -- another widget in both views?

8 MR. YANG: Your Honor, I believe the answer to that question is
9 what I just discussed earlier. The claim language tells you what the
10 exclusion is. The claim language says, a digest view presents information
11 about a set of VOD content that are associated with the series. And that is
12 what is excluded from a detail view. And the claim language says, a detail
13 view presents information about a selected item of the VOD content. And
14 that is what's excluded from a digest view.

15 JUDGE KINDER: I think I understand your position. But I am
16 struggling to see how you're almost flipping the negative. So, yeah, go
17 ahead. Thank you.

18 MR. YANG: Well, Your Honor, if I may --

19 JUDGE FENICK: All right. I apologize. I have a question.
20 You're discussing a lot the 'or' -- that is the 'or' of, you know, presenting
21 either a detail view or a digest view. I think that that is based on whether the
22 selection in the third selection -- I guess, this is more clear in Claim 2.
23 Claim 2 talks about determining if the selection in the collection view is for
24 a series or one of a movie or a single show.

25 So my understanding is that the selection, the collection review,
26 will either be for a series or for one of a movie or a single show. And then

1 based on that, you provide a digest view or a detail view. But then when it
2 comes to the fourth selection, it says, in response to the fourth selection of
3 an episode in the digest view, that is -- which is from the series, you present
4 the player to present the episode to the user. In response to the fifth
5 selection, you play the movie or the single show.

6 So I'm not clear how the selection can be for a series. In other
7 words, you make a selection, either a series or a movie, but then you're
8 saying in the fourth -- after the fourth selection, you play an episode from
9 the series. After the fifth selection, you play the movie. So kind of if you're
10 saying you have to make a selection and you're either presented with a
11 detailed view or a digest view and they have to be exclusive, and I guess that
12 same argument makes me think about how is it not -- how is this claim not
13 addressing a number of -- kind of, you know, a number of sets of selections,
14 including one which will end in a series and one which will end in a movie?

15 MR. YANG: Well, Your Honor --

16 JUDGE FENICK: How do I read this claim consistent with that to
17 be -- to have only one selection in the collection view, but then that results in
18 both the playing of an episode and the playing of a movie.

19 MR. YANG: Well, Your Honor, first of all, I want to point out
20 that if you were to take that view, then that is not a construction that either
21 party -- that is not an argument either party made. And so it certainly isn't in
22 the petition. If that's your understanding of Claim 2, then that mapping is
23 certainly not in the petition. So you would have to find these claims valid
24 for that reason. That's certainly not in the petition.

25 But that also goes back to my earlier point, that all of these
26 selections, the first through the fifth selection, have to be performed. So

1 what this is supposed to do is that you make a third selection, then you have
2 -- and if that selection is for a series, you provide a digest view. And then
3 you make a fourth selection of an episode in the digest view, and then you
4 get a specific episode. Then after that, you get a fifth selection. So you
5 transition from an episode of a series to a movie or single show in the fifth
6 selection. So there's a transition there.

7 JUDGE FENICK: Okay. Thank you.

8 JUDGE COURTENAY: Counselor, you're at about 35 minutes
9 into your principal argument.

10 MR. YANG: I actually covered all the points that I'd like to cover.
11 So I'd like to reserve my remaining time for rebuttal.

12 JUDGE COURTENAY: Okay. So we're going to reserve for your
13 surrebuttal 25 minutes. And why don't we take about a five-minute break?
14 We've been doing this for about an hour and a half, and so we'll reconvene in
15 five minutes. Is that agreeable to the parties? Okay. Thank you very much.

16 (Whereupon, the above-entitled matter went off the record at 2:27
17 p.m. and resumed at 2:32 p.m.)

18 JUDGE COURTENAY: Okay. Welcome back. Petitioner, you
19 have 14 minutes in your rebuttal. And please try to address the Patent
20 Owner's arguments where you differ. Focus the argument for us. You can
21 begin any anytime you're ready. I'm going to reset the clock.

22 MR. HWANG: Thank you. I just want to address a few points
23 that I heard, very quickly. One, there was some suggestion that the prior art
24 that's being relied upon in this proceeding is not proper and that we are
25 somehow using, I think, the implication of system art as the prior art, which
26 is clearly not the case. You know, we are relying on the YouTube videos

1 and the patents that were presented in the petition. And further, there were
2 no objections made to any of the prior art references as to whether they
3 qualify as prior art in this proceeding. So again, I think this is a situation
4 where new arguments are being made for the first time in the
5 (INDISCERNIBLE).

6 Let's see here, another point that was made, there was something to
7 suggest that the new Netflix menu item digest view looks incredibly
8 different from the old digest view that was being relied on in the petition.
9 Another new argument that was never made in any of the papers about how,
10 you know, they look drastically different. I think there was an implication
11 that there is some difference. But again, the important thing is whether the
12 difference is meaningful for this proceeding.

13 And in the accused instrumentality, there's information related to,
14 you know, individual episodes that's included. And that is also shared with
15 the prior art digest view. Everything that would matter to this proceeding is
16 the same. Now, the look and feel, did it change slightly? Yeah, of course,
17 I've presented pictures. But again, we have to focus on what's important to
18 the proceeding, not just on trivial little differences between those two
19 different types of views.

20 There was another suggestion that the petition doesn't include a
21 scenario where both Claims 4 and 5 are satisfied and therefore Claim 2.
22 That is completely wrong. The petition does explain exactly how both of
23 those Claims 4 and 5 would be satisfied. Claim 4, including -- I believe it's
24 when you watch the TV show and you get to the player view for the TV
25 show, and then Claim 5 where you watch a movie and you get to the player
26 view for the movie, all that is in the petition. So I don't want there to be any

1 misunderstanding about how we just didn't cover a situation where you
2 could get to the player view if you are watching a movie versus a TV show.

3 Let me see here. And then also, one point raised, again, it's this
4 argument about how we're presenting new arguments. No. The petition
5 included arguments about how both Claims 4 and 5 would be satisfied, how
6 a player view for an episode and how a player view for a TV show would
7 have been presented to a user in the prior art. And it's very straightforward
8 and simple.

9 There's this argument about the order of things, whether the TV
10 show has to go first before the movie. To the extent that is a construction
11 adopted, and we're saying that it's an improper construction. But to the
12 extent it's adopted, you know, we included a reply to address that point and
13 the other minor points that were made by the Patent Owner regarding what is
14 in the petition. Those arguments were supported by evidence.

15 I think Patent Owner harped on the fact that we didn't submit a
16 new declaration from our expert, but we didn't need to. We're not relying on
17 new evidence to show what, you know, the prior art Netflix implementation
18 did. It's all there in the evidence. It's in the videos that were submitted as
19 the grounds for the Institute -- for the IPR. And they show that all these
20 different screens can be accessed using Netflix, where you go back and
21 forth.

22 And also, instead of using our expert, we used their expert. And I
23 know there's some suggestion here that the -- their expert's opinion should be
24 disregarded. Maybe -- you know, sometimes they should be considered and
25 sometimes not. I don't understand that. But their expert, when asked about
26 Netflix and how it operated in the prior art, the expert agreed, yeah, you can

1 go back to the view. And I have -- I'm looking at page 33 of the
2 demonstratives, and here's a portion of the deposition testimony that covers
3 that. We asked them what was Netflix, you know, capable of doing? And
4 you know, I used The Office here in this line of questioning. Could you go
5 back to the view? Could you go back to the collection view after you watch
6 a TV show? Yeah.

7 Page 39 of the petition, the viewer could then select another piece
8 of content that the user would want to watch, yeah, sure. I mean, these are
9 his responses. These are in evidence. This is coming from the Patent
10 Owner's own expert about the capabilities of the prior art and what the prior
11 art did.

12 And you don't even have to believe him. The videos, if you watch
13 the demonstrations, you know, in the -- especially the one with the Apple
14 TV device, he goes back and forth and kind of tests what Netflix is capable
15 of doing. And so this suggestion, that we needed to present new evidence
16 and a new declaration to actually going back to a point that was raised, you
17 know, support a very simple idea. A user can watch a TV show or movie in
18 any order they want. And to the extent that's an issue, and that's the issue
19 that Claims 2 and 5 survive or don't survive on, that was obvious.

20 And I think this was a point raised. We made that argument, we
21 pointed to the evidence, we pointed to citations in the video like you're
22 seeing on page 33 of the demonstratives. The sur-reply was silent on all of
23 this. The sur-reply, they had an opportunity to say no, that's not obvious; no,
24 a person of ordinary skill in the art wouldn't have considered that; no, this
25 expert -- his testimony should be disregarded because he misunderstood the
26 question or there was something flawed about the way that he was

1 answering the questions about how Netflix used to work; no, the prior art, if
2 you go look at the videos, they didn't show examples of where the user could
3 go back and forth between the player view and then go back to the previous
4 menus and watch something else.

5 They had an opportunity in the sur-reply to respond to all of those
6 points, any of those points. But they didn't. So that's key. And they didn't
7 because they know the answer and it was verified by their own expert.
8 Netflix was capable of doing all this. And again, it's kind of taking a huge
9 step back. This is simple stuff. It's not rocket science.

10 You're watching a TV show and then watching a movie. If that's
11 what we're arguing about here to save this patent, then it kind of gets a little
12 bit silly. And all of that was already in the record. And no extra declaration
13 from an expert saying, yes, you could watch a video before, I mean an
14 episode before watching a movie. We didn't need an extra declaration from
15 an expert saying that, when their own expert verified that during his
16 deposition.

17 Again, I think I just mentioned it, but there's some suggestion that
18 the testimony from their own expert should be disregarded, especially about
19 what claim construction -- what the Patent Owner's claim construction
20 implicates and the requirements that would be needed for the -- for there to
21 be a direct link between the player views. Again, it's a slippery slope when
22 you say, we're relying on the Patent Owner's expert to tell you how this
23 technology works. But then also arguing at the same time, no, no, no, you
24 should disregard what he's saying about the technology. I think that's a little
25 unfair to be able to do that.

26 And then there's also a suggestion that maybe the order of things is

1 not so important when it comes to the fourth and fifth steps. Again, it's a
2 little confusing. Overall, the petition did include specific examples of how
3 you would show player views for a movie and how you would show a player
4 view for a TV show, which matches up with Claims 4 and 5. And the reply
5 filled in any blanks that were, you know, raised, any cracks that were raised
6 by the Patent Owner in their documents which were unrebutted in the sur-
7 reply.

8 And so quite clearly, I think it would be obvious to present player
9 views after watching a movie and also present a player view after watching a
10 TV show. And all of those things were in the petition. All five steps being
11 satisfied were in the petition. And that would have been obvious. And to
12 the extent that, you know, more arguments were needed, they are included in
13 the reply and unrebutted. So those are the only additional comments I have
14 about Claims 2 and 5, kind of responding to what was said earlier.

15 Regarding Claim 1, there's this kind of hypothetical open-ended
16 question about if the views are the same, why even do any of this? Honestly
17 -- and there's some suggestion that it would be meaningless if the views are
18 the same, if you -- like, on a TV show or movie, which to me is, again, you
19 got to take a step back and just use some common sense. The petition
20 showed that two different things were presented. It wasn't meaningless.
21 When you selected a movie, you got a presentation that was specifically
22 geared to present information about a movie. And one of the main
23 differences is that it didn't have all these rows and, you know, inputs where
24 it would include information about episodes.

25 Going to the other side, when you clicked on The Office,
26 depending on what, you know, device you were on, the view changed. It

1 was meaningful. The most stark example is the Apple TV one where it
2 -- you know, on the right-hand side, that whole right side is devoted to just
3 showing episodes. So the entire look and feel of the presentation and, you
4 know, the interface that's presented to the user, it changed, it was
5 meaningful. And that's all the invention is about.

6 I mean, we're kind of getting bogged down, I think intentionally
7 by, you know, trying to cause some confusion here. But as a whole, what
8 the invention is about is you present something that's more geared to a series
9 when you select a series, and you present something that's more geared to a
10 movie. And that's exactly what we have in the petition. And we have many
11 examples. It's not just that we have one example. We have many design
12 alternatives that could have been used that would satisfy the claim language.

13 If you don't like this example, just go to the other one. We have
14 probably five examples of digest views. The Patent Owner admits they're all
15 digest views. So there's not even a dispute about that. There's at least two
16 detail views, you know. This was beyond obvious in terms of what was
17 being performed in the prior art before this patent was filed. Not just
18 Netflix, but, you know, we cited to other references as well. But Netflix hits
19 home the best because that's what's being accused. And so there -- you
20 know, the accusations kind of overlap with the features included in the prior
21 art.

22 I did hear some new arguments about how on column 56, line 54,
23 the claim language includes additional limitations that would distinguish
24 detail views from digest views. That's not a construction that was raised by
25 the Patent Owner. I mean, at this point, I've started watching football again.
26 And I think we're presenting some Hail Mary's right now about ways to

1 distinguish, you know, the claims from the prior art, especially Netflix.
2 None of that was argued before, and that explains why it wasn't addressed.
3 And again, sometimes the easiest answer is the best answer.

4 Here, the Figure 17 looks pretty much like the prior art. Any
5 POSITA looking at the specification at Figure 17 would know what that
6 language meant. And that language, the either/or language, was specifically
7 linked to Figure 17th -- 17. So to the extent that there's any wiggle room
8 about what a POSITA would have understood the invention to be, it's right
9 there in the specification. And I keep pointing to the specification for
10 support.

11 And if you listen carefully, Patent Owner never talks about any
12 support for their claim construction positions or their arguments in the
13 specification. Because the specification completely supports the argument
14 that this invention, this particular claimed invention, whether it's Claim 1, 2,
15 5, whatever, was covered by the prior art that's relied on in the petition. And
16 the ground is not Netflix. But obviously, it showed how Netflix worked.
17 And that's kind of the linchpin between a lot of the references that were
18 relied upon in the petition. Because they all kind of showed different
19 aspects.

20 I couldn't get one good video that showed -- that demonstrated
21 everything, just because I'm going back in time trying to figure out -- you
22 know, trying to piece together what happened back then. So I had to rely on
23 a couple of different videos. But it clearly shows how Netflix was designed
24 and the features that matter to this in -- to this IPR. And those features are
25 clearly, you know -- and those would invalidate the claims as obvious that
26 are at issue in this IPR. And I think, with that, I'm out of time or close to it.

1 JUDGE COURTENAY: Thank you very much, Mr. Hwang.

2 MR. HWANG: Okay.

3 JUDGE COURTENAY: And Counselor for Patent Owner, you
4 have 25 minutes remaining for your surrebuttal. And if you can, please
5 focus your arguments on where you have direct disagreements with what
6 Petitioner just argued, so that is helpful to inform the panel.

7 MR. YANG: Sure, Your Honor. I'd like to directly respond to
8 what Petitioner just said, starting with clarifying my point earlier about
9 Netflix. The petition obviously relied on publications and videos. But the
10 petition did not show how Claim 2 performs with both the fourth and fifth
11 selections. And as you heard, my opposing counsel said, he said that he
12 couldn't find a good video that shows how Netflix operates in its totality.
13 And that is the critical issue here, is that in order to invalidate the patent, you
14 can't look at the Netflix system. That's beyond the screen scope of this IPR.

15 You have to look at whatever references that were submitted in the
16 ground. And if there's not a good video of the references in the ground
17 showing the operation of Netflix that maps onto all of these claim elements,
18 then that means that you can't find the claims invalid based on the references
19 that were provided, regardless of how the Netflix system operates. The
20 Netflix system itself is beyond the scope of this IPR.

21 And the reason I raised that is because my opposing counsel
22 alluded to this hearing -- at this hearing multiple times, that it would have
23 been obvious based on how Netflix works. And he never clarified whether
24 it's the Netflix system or whether it was the videos. And in fact -- and to the
25 extent that he's arguing that the claims are obvious based on the Netflix
26 system, that is improper. If they're arguing in real -- if they're relying on

1 obviousness, based on the system version of Netflix, not the publications and
2 the videos in the ground, then that can't be considered in this IPR. And as I
3 heard -- I think I've heard him repeatedly do that, referred to the Netflix
4 system rather than the specific videos and publications that were referenced
5 in the ground.

6 And the same is true of my opposing counsel's attack against
7 Patent Owner's expert. If you look at the transcript of the deposition, I think
8 it's clear again that he conflates Netflix, the Netflix system, with the art in
9 the ground. If he asked a question about Netflix, the system itself, and how
10 to currently operate or how it operates 10 years ago, that's an improper use
11 of a system that can't be considered in the IPR.

12 They had an opportunity to question Patent Owner's experts about
13 the videos. He could have shown the videos during the deposition. And I
14 was there. He never -- he didn't show a single one of the videos that were
15 raised in the grounds themselves. Instead he asked hypotheticals about how
16 Netflix operates. All of that, that is the part that I'm saying should -- of the
17 expert testimony that I'm saying should be disregarded because that's all
18 procedurally improper. You cannot consider system art in an IPR.

19 If Patent Owner's expert is being asked about the Netflix system,
20 how it operates today, how it operates yesterday, how it operates at the time
21 of invention, that's all procedurally improper because it's system art that's
22 beyond the scope of this IPR. The only art that's -- the only thing that can be
23 considered in this IPR is the publications and videos that are used in the
24 ground. But none of the questions in Petitioner's deposition were directed
25 specifically to the videos. The videos were never shown. I was there.

26 And the other thing I wanted to address was Petitioner's argument

1 directed to Claim 1. I believe that Petitioner said that it was a new claim
2 construction argument. So I disagree. And I'd like to direct you to the
3 Patent Owner response at 14. In the claim construction section, we
4 explicitly set out how the detail view or the digest view is mutually
5 exclusive based on what the claim language itself says, it's a detail view and
6 a digest view.

7 The claim language itself says that a digest view presents
8 information about a set of the VOD content that are associated with the
9 series. And the claim language itself says a detailed view presents
10 information about a selected item of the VOD content. So all of this is
11 informed by the claim language itself. And as I said, if you put different
12 images on a view, that's still the same view. That doesn't meet the
13 exclusionary requirements of the claims themselves. And I think I've
14 addressed everything I wanted to address. Unless Your Honors have any
15 further questions.

16 JUDGE COURTENAY: Any further questions from members of
17 the panel? Okay. Thank you very much. A very interesting case. And the
18 case is submitted. Have a great day.

19 (Whereupon, the above-entitled matter went off the record at 2:51
20 p.m.)

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