

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS AMERICA, INC.
Petitioner

v.

MAXELL LTD.
Patent Owner.

IPR2024-00735 (Patent 11,017,815 B2)
IPR2024-00777 (Patent 11,017,815 B2)

Record of Oral Hearing
Held: September 24, 2025

Before JAMESON LEE, TERRENCE W. McMILLIN, and KEVIN C.
TROCK, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matters came on for hearing Wednesday, September 24, 2025, commencing at 1:00 p.m. ET, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P-R-O-C-E-E-D-I-N-G-S

1:00 p.m.

JUDGE LEE: Good afternoon. Welcome to the Board. I'm Judge Jameson Lee. My colleagues on the panel, who are attending remotely, are Judge Kevin Trock and Judge Terrence McMillin.

This is a consolidated oral hearing for IPR2024-00735 and IPR 2024-00777. The Petitioner is Samsung Electronics Company, Ltd. and Samsung Electronics America, Inc. The Patent Owner is Maxell LTD.

Would counsel for each side please introduce themselves and let us know who will be presenting arguments today starting with Petitioner.

MR. HEINTZ: Good afternoon, Your Honor. James Heintz with DLA Piper. I'll be presenting the oral arguments today. With me at table is Gianni Minutoli, also at DLA Piper, who is listed as back-up counsel. We also have Mr. Matthew Bathon with us from Samsung. He's in-house.

JUDGE LEE: Thank you very much. Patent Owner?

MR. BAKEWELL: Good afternoon, Your Honors. My name is Clark Bakewell with Mayer Brown on behalf of Patent Owner, Maxell. With me is Tar Javed, Rob Pluta and Saqib Siddiq, all from Mayer Brown. I will be handling all the anticipated arguments today. Should any arguments come up related to some of the more recent motions, my colleague, Mr. Pluta, will be handling those.

JUDGE TROCK: Counsel, this is Judge Trock. I'm appearing remotely. When you speak in the courtroom, you need to speak into the microphone, otherwise I cannot hear what you're saying.

MR. BAKEWELL: Understood, Your Honor.

1 JUDGE TROCK: So could you—

2 MR. BAKEWELL: Is this better?

3 JUDGE TROCK: Yes, that's much better. Could you go back over
4 and just repeat what you said? Thank you.

5 MR. BAKEWELL: Do you mind if I sit?

6 JUDGE LEE: You're fine. The microphone is low so you can speak
7 while seated please.

8 MR. BAKEWELL: Okay.

9 JUDGE LEE: I think Judge Trock wants you to repeat what you just
10 said.

11 MR. BAKEWELL: I will repeat the whole thing. Good afternoon,
12 Your Honors. My name is Clark Bakewell from Mayer Brown, here on
13 behalf of Patent Owner, Maxell. With me are my colleagues, Tar Javed,
14 Rob Pluta, Saqib Siddiq. I will be handling all anticipated arguments today,
15 but should the Board wish to discuss any of the more recent motions, I may
16 turn to my colleague, Mr. Pluta to handle any discussions surrounding those.

17 JUDGE LEE: Thank you. Let me say, we have the same problem
18 when counsel speaks from the podium. The microphone doesn't extend very
19 far, so unless you speak loudly and lean in so you're closer to the
20 microphone, it's almost like there's no microphone. I understand it's
21 exhausting to be leaning in towards the microphone but otherwise we really
22 have trouble hearing.

23 With that, thank you. This hearing is open to the public and there is
24 the public access line. Can you confirm that there has been no motion to

1 seal in these proceedings and that nothing in the record of these proceedings
2 needs to be kept confidential in this hearing?

3 MR. HEINTZ: Your Honor, James Heintz for the Petitioner. Given
4 some of the recent pleadings that have taken place, there are some exhibits
5 that are confidential and that were submitted pursuant to the request for
6 entry of a protective order in this case.

7 JUDGE LEE: There is a motion to seal?

8 MR. HEINTZ: Yes, Your Honor, there are. We submitted certain
9 documents for Board and parties only and request that they be kept
10 unmentioned.

11 JUDGE LEE: I see, but this is a public hearing, so are you okay with
12 not mentioning any confidential material in this hearing?

13 MR. HEINTZ: I am, Your Honor.

14 JUDGE LEE: Okay.

15 MR. PLUTA: Your Honor, Rob Pluta for Maxell. We agree with Mr.
16 Heintz.

17 JUDGE TROCK: Mr. Pluta, you have to turn on your microphone.

18 JUDGE LEE: Just speak closer, lean in closer to the microphone.

19 MR. PLUTA: Is it on?

20 JUDGE LEE: It seems to be off. It was okay a minute ago, now it
21 seems to be off. We'll have the technician check it.

22 MR. PLUTA: Is it on now?

23 TECHNICIAN: Yes.

1 MR. PLUTA: Thank you. We don't disagree with Mr. Heintz.
2 There's been a motion for a protective order and there are some items that
3 are parties and Board only. I don't anticipate having to --

4 JUDGE LEE: Are you okay with not mentioning any confidential
5 material in this hearing?

6 MR. PLUTA: Yes, Your Honor.

7 JUDGE LEE: Okay. Thank you very much.

8 JUDGE TROCK: This is Judge Trock. Can I just interrupt for a
9 second? Mr. Pluta, could you come back up to the podium. Your colleague,
10 was his name Mr. Blakewell?

11 MR. PLUTA: Bakewell, Your Honor.

12 JUDGE TROCK: Could you spell it for me?

13 MR. PLUTA: B-A-K-E-W-E-L-L.

14 JUDGE TROCK: I hate to be a stick in the mud, but I'm looking at
15 our docket here and I don't see an appearance from Mr. Bakewell in this
16 case, in either case. Am I missing that?

17 MR. PLUTA: I believe you are, Your Honor. I don't have a paper
18 number, but we updated our mandatory notices, perhaps a month or two ago,
19 to add Mr. Bakewell as back up counsel.

20 JUDGE TROCK: Okay, thank you. We'll take a look.

21 JUDGE LEE: I'd like to start with there's a preliminary matter. This
22 morning, I see that Petitioner has filed objections to Patent Owner's
23 demonstratives. Do you still have those objections, Petitioner's counsel?

24 MR. HEINTZ: Yes, Your Honor, we do.

25 JUDGE LEE: You want a ruling?

1 MR. HEINTZ: Yes, Your Honor, we would like a ruling.

2 JUDGE LEE: All right, give me a moment. Let me communicate
3 with my colleagues. Okay, the ruling from the Panel is the objections are
4 overruled because there's no assertion that the Patent Owner's through these
5 slides have made new arguments or presented new evidence that is not in the
6 record.

7 MR. HEINTZ: Thank you, Your Honor.

8 JUDGE LEE: You're welcome. Each side has been authorized 60
9 minutes of oral argument time and the Petitioner will go first and may
10 reserve time for rebuttal. When the Petitioner is finished in its first time up,
11 the Patent Owner will present and may reserve time for surrebuttal. When
12 the Patent Owner is finished in its first time up, the Petitioner returns to
13 present its rebuttal and after that we finish with Patent Owner's surrebuttal.
14 Please identify yourself when you begin your argument and please bring the
15 microphone closer to you, I should say the microphone is unmovable so if
16 you can, lean in closer to the microphone so it can actually pick up your
17 voice. I understand it's exhausting to do that, but the microphone bar is
18 short. We need to hear what you have to say.

19 Please bear in mind the purpose of the oral hearing is to present your
20 case based on the arguments and evidence of record. You may not introduce
21 new evidence or arguments. Petitioner, when you are ready, you may begin.
22 Let me know if you want to reserve some time for rebuttal.

23 MR. HEINTZ: Thank you, Your Honor. I'd like to reserve 25
24 minutes for rebuttal.

25 JUDGE LEE: 25?

1 MR. HEINTZ: Yes, Your Honor.

2 JUDGE LEE: Okay. I'll set the clock. You may begin. It's 1:09.

3 MR. HEINTZ: Thank you, Your Honor. James Heintz for the
4 Petitioners in this case, the Samsung entities. I will start if it please the
5 Board with Slide 3, where we will address the claim construction issue that
6 was raised in the parties' Patent Owner Response and Patent Owner Replies.

7 This construction concerns the second interface limitation which is in
8 Claims 16 and 21. On Slide 3, we show the second interface limitation itself
9 and the highlighted part reads, second user interface and that's where the
10 dispute between the parties lies. In the left hand side of Figure 3, you will
11 see Patent Owner's construction, which is a new second user dedicated
12 screen. On the right hand side is Petitioner's construction, which is that
13 there is no requirement for a new user dedicated screen. The plain meaning
14 of the claim language here is pretty simple. Second user interface does not
15 mean new second user interface dedicated screen and to make it even more
16 succinct, replacing interface with new dedicated screen is beyond the plain
17 and ordinary reading the claim language. Interface doesn't mean new
18 dedicated screen. There's no --

19 JUDGE TROCK: Counsel, this is Judge Trock. Can you hear me?

20 MR. HEINTZ: I can, Your Honor.

21 JUDGE TROCK: Okay, does the specification of the patent explain
22 to us what an interface is?

23 MR. HEINTZ: Not that I recall, Your Honor, though it seems clear
24 from the description that what they're talking about are areas on the screens,
25 areas on a display screen.

1 JUDGE TROCK: So, you're talking about the description in the
2 specifications somewhere?

3 MR. HEINTZ: I am, Your Honor. The description in Figures 6 and
4 7, I think, is where you'll see a discussion of interface or an example of an
5 interface. I think this is at Column 6. If we could go to Slide 4, please, this
6 passage at Column 6 starting at Line 19, discusses Figure 6 and 7. We'll get
7 to this in a moment, but please ignore for now those hand-drawn marks on
8 the slide. What we have here is the example in the patent of a user interface
9 and, in particular, a second user interface in which a user can select those
10 items 402, 502 and 503, which are items of video information. Item 402 is a
11 video and the 502 and 503 are actually playlists. My understanding of the
12 '815 Patent is that this is what is referred to as a user interface and as I'm
13 going to show the Board in a moment, this is actually both the combination
14 of the first and second user interfaces.

15 JUDGE LEE: Mr. Heintz, can you show me what you regard in Horn
16 as the second interface?

17 MR. HEINTZ: Yes, Your Honor. If we could go to Slide -- sorry,
18 Your Honor, I'll have it in a moment -- let's go to Slide 31.

19 JUDGE LEE: Slide 31, but your slides seem to stop at 25 on my
20 version.

21 MR. HEINTZ: Oh, Your Honor, the slide is meant to be submitted as
22 four parts, so there the demonstratives are submitted in four separate parts.

23 JUDGE LEE: Okay, so you have four documents that are your slides
24 then?

25 MR. HEINTZ: Correct, Your Honor.

1 JUDGE LEE: Okay, so this second interface appears to be also the
2 second area that you say meets Claim 1. Is that right?

3 MR. HEINTZ: Correct, Your Honor.

4 JUDGE LEE: So, this second area is the same as the second
5 interface?

6 MR. HEINTZ: I believe it is, Your Honor.

7 JUDGE LEE: In the patent though, is there any description that the
8 first and the second interface would be active at the same time?

9 MR. HEINTZ: I believe that you can see that in Figures 6 and 7.
10 There's no express discussion of the first and second interface being active
11 at the same time, but the only example of a first and second interface is the
12 example in Figure 6 and 7 and the figures that are like that, which are 4 and
13 5.

14 JUDGE LEE: Right and --

15 JUDGE TROCK: Counsel, this is Judge Trock. Sorry to interrupt,
16 but I'm in the patent, I'm in Column 6, looking at this description of Figure
17 6, I don't see the word interface in here. Maybe I'm missing it, but can
18 someone point it out to me?

19 MR. HEINTZ: I agree with you, Your Honor, I don't think it's there.
20 I think what you have to do is read the claim and then look at the
21 specification and as near as I can figure it out, the interface that they're
22 talking about is this area in which the thumbnails are located and that's the
23 second user interface. The first user interface is where the characters are
24 located.

1 JUDGE TROCK: And what makes you believe that that's what
2 they're referring to, but they don't use the word interface?

3 MR. HEINTZ: I'm sorry, Your Honor, just looking for the claim
4 language if you can bear with me one moment.

5 JUDGE TROCK: I mean I've searched the patent in Column 2, the
6 second full paragraph, which starts at Line 28 and goes to Line 39, the word
7 interface shows up there twice, but it just refers to a user's interface. It
8 doesn't really describe what the user interface is.

9 MR. HEINTZ: Agreed, Your Honor. I think if you look at the claim
10 language and it requires a little bit of guesswork. So, in Claim 16, for
11 instance, what we've been referring to as Limitation B, is displaying on a
12 display device a first user interface for a user to select a user profile from
13 among a plurality of user profiles. Then, there's also a second user interface
14 in the displaying -- this is at Column 12, Line 9 -- so there is a second user
15 interface for a user to select desired video information to be reproduced.
16 That desired video information, if we go back to Slide 4, the only disclosure
17 in the '815 patent of selecting video information is in connection with
18 Figures 6 and 7 here and Figures 4 and 5. This video information is
19 represented by these thumbnails that we see in Figures 6 and 7.

20 Working back from that, our understanding of the claim language in
21 light of the specification is the interface is the area on Figures 6 and 7 where
22 those thumbnails that represent the video information can be selected. Now,
23 if you look at where those hand-drawn lines are on Slide 4, that is where
24 Patent Owner's expert, Dr. Balakrishnan, drew the line to indicate where he
25 thought the second interface was. The areas to the right, where those

1 trapezoidal figures appears, actually they're parallelograms, those are what
2 Dr. Balakrishnan identifies as the first user interface and by clicking on
3 those parallelogram representations of what are file tabs, you can move back
4 and forth between mother and father and other folders.

5 For instance, if you look at Figure 6 on the left, the third tab has been
6 selected and it's broader and it says mother. To the right of the third tab,
7 there's a parallelogram and if you click on the parallelogram, you'll then get
8 Figure 7 and you will see that the file tab has moved over one position to the
9 right and that's indicating that we now have a different user that's selected.
10 This is where my understanding of what the claims were trying to convey
11 was that the areas to the right and the left of the hand-drawn line at the top of
12 Figures 6 and 7, that's the first interface because what you're doing there is
13 selecting what Patent Owner calls one of the user profiles, such as mother or
14 father.

15 You are absolutely right, Your Honor, the specification is not
16 particularly clear on this, but based on my understanding and my intent to
17 reconcile the claim language with the specification, I believe that the first
18 user interface, if it's disclosed at all in the '815 patent, is the areas to the
19 right and the left, where those parallelogram file tab images appear and then
20 in Figures 6 and 7 where Dr. Balakrishnan drew those hand-drawn lines,
21 that's the second user interface also called the second area.

22 JUDGE LEE: Mr. Heintz, based on what you're saying then their
23 expert is contradicting what their lawyer is saying because the brief is saying
24 the second interface has to be a full screen interface, but you just told us that

1 their expert has pointed to different things on the same screen as first and
2 second interfaces.

3 MR. HEINTZ: That's exactly right, Judge Lee, that's exactly what
4 happened. We asked them that question. So, in the brief, as I understood
5 Patent Owner's position, they were saying this second interface had to be a
6 new user dedicated screen. I understood dedicated screen to mean dedicated
7 to the second interface so that there wouldn't be, for instance, the first
8 interface visible on the same screen --

9 JUDGE LEE: Did you give a cite to that deposition transcript in the
10 reply or can you give us one?

11 MR. HEINTZ: Absolutely, Your Honor. If we go to Slide 5, there
12 are three different citations on my slides. In our reply, we cite to Exhibit
13 1072, which is Dr. Balakrishnan's deposition transcript, the testimony about
14 this issue starts at page 91 and there is a citation with precise line numbers in
15 our reply. But you are exactly right, when I asked Dr. Balakrishnan about
16 this at his deposition, he said plain and simple -- if you could go back to
17 Slide 4, please -- that those hand-drawn lines which you can see very clearly
18 in Figure 7, that's the second interface and those parallelograms to the right
19 across the top -- to the right and to the left -- those are the first user interface.
20 That is the only answer he could give because there is no discussion
21 anywhere in the '815 patent of some different -- some screen that would be
22 different from the kinds of figures we see at Figures 6 and 7, where one
23 could select a user profile.

24 In fact, user profiles don't even show up in the specification of the
25 '815 patent. That word profile does not appear. There is no discussion in

1 the specification about, for instance, a kind of like a log in screen where
2 someone would have to identify themselves, select a user name and enter a
3 password or something like that. No discussion of anything like that all.
4 What we've got are Figures 6, 7 and Figures 4 and 5 which are similar and
5 that's it. There is no disclosure of any user dedicated second screen or
6 second interface and so, as mentioned by Your Honor, their own expert
7 contradicted that construction, at least as I understood it in their briefs, at his
8 deposition and I think he's right. To the extent there is a first interface, it's
9 on the same screen as the second interface.

10 So, for all those reasons, this construction that Patent Owner has put
11 forward in its Patent Owner response should be rejected.

12 JUDGE LEE: I'd like to ask you something about the term
13 "character." Is there any dispute by Patent Owner in our proceedings that
14 what you identify as a "character" in Horn is not a "character"?

15 MR. HEINTZ: There is no dispute in these proceedings, Your Honor.

16 JUDGE LEE: So, if there's no dispute, do we need to construe
17 "character"?

18 MR. HEINTZ: I don't believe you do. As you noted in our briefs,
19 our position is that any arguments on that were waived because Patent
20 Owner knew about this construction -- and I can go into this now or I can
21 deal with it later if you like -- but they knew about the construction. They
22 asked, Patent Owner asked, for certain other constructions in the District
23 Court's Claim Construction Order, but did not ask for the character
24 construction and as a result of that deliberate decision, that strategic choice,

1 we believe that the issue has been waived and there is no reason to construe
2 it.

3 JUDGE LEE: What about the term “user profile”? That seems to be
4 very important in this case. You have proposed a construction which we
5 adopted at DI, but in the Patent Owner Response, the Patent Owner says
6 they have a better construction, which is the District Court’s construction.
7 Then, we go to your Reply, and you don’t actually say there’s anything
8 wrong with the District Court construction or there’s error in the Patent
9 Owner’s proposed construction, you just say well, we win under either
10 construction.

11 MR. HEINTZ: That’s right, Your Honor, I don’t --

12 JUDGE LEE: So --

13 (Simultaneous speaking.)

14 MR. HEINTZ: I’m sorry.

15 JUDGE LEE: So, why would we -- under that circumstance, why do
16 we have to make a decision one way or another? Why couldn’t we just go
17 with what the District Court interpreted and what the Patent Owner asserts
18 and which you say -- you don’t say there’s anything wrong with?

19 MR. HEINTZ: That’s correct, Your Honor. I think it’s perfectly fine
20 if you do that because as stated in our papers, we believe that the user profile
21 is disclosed under either party’s construction.

22 JUDGE LEE: So, you’d be fine with just going with the District
23 Court’s construction?

24 MR. HEINTZ: Yes, Your Honor.

25 JUDGE LEE: Thank you.

1 MR. HEINTZ: All right, if there are no further questions on this first
2 claim instruction issue, I will go to Slide 8. I want to talk a little bit about
3 the combination of Horn and Baumgartner.

4 Patent Owner takes the position that Petitioner has failed to show that
5 it would be obvious and there would be a motivation to combine Horn and
6 Baumgartner. Your Honors, I'm going to ask your forgiveness if I get too
7 far from the microphone. I had surgery in my eye for cataracts on Monday,
8 so I'm having to go back and forth. If I don't lean in enough, please just
9 prompt me. I beg your indulgence here.

10 JUDGE LEE: I'm sorry, I understand it's tiring.

11 MR. HEINTZ: It's not that, it's just hard to see, so I'm having to pull
12 back a little bit.

13 JUDGE LEE: Since you're on the topic of the combination, I'd like
14 to ask you strictly speaking, there's a scenario presented in the petition
15 where you do not rely on anything from Baumgartner. Is that right?

16 MR. HEINTZ: I don't think it is correct, Your Honor. Certainly, we
17 rely on Baumgartner for the wireless connection because --

18 JUDGE LEE: Well, the way I read the petition, you started by saying
19 it would have been obvious to go wireless, even before you started to go into
20 -- it sounds like an alternative that on Horn alone it would be obvious to
21 change hardwire LAN to wireless because of lower cost and more
22 convenience. That's entirely independent of what Baumgartner does and
23 then after that, you go, oh, by the way, Baumgartner actually is a system that
24 wirelessly transfers video. Am I wrong in reading that as Horn alone

1 renders obvious wireless and if not, then the combination renders obvious
2 the wireless?

3 MR. HEINTZ: That is our position, Your Honor, although I would
4 like to make one point. Patent Owner keeps saying in their briefs that we're
5 replacing Horn's hard wired LAN with a wireless LAN. That is not correct.
6 Horn does not say that the LAN is hard wired, that's just Patent Owner's
7 supposition. Horn talks about a LAN, but doesn't say whether it's wireless
8 or wired, but other than that, you're exactly right. We think it would have
9 been obvious to a person of skill in the art to use a wireless LAN for Horn's
10 LAN and barring that, there is expressed disclosure in Baumgartner in
11 several places of wireless LANs and combinations of wireless and wired
12 connections to get to the internet.

13 JUDGE LEE: Those are two separate arguments. One, without
14 reliance on Baumgartner, and the other one is in combination with
15 Baumgartner.

16 MR. HEINTZ: Correct and similarly, when we talk about the user
17 profiles, again, given the dearth of description of these user profiles in the
18 '815, we think there's enough in Horn to get you to the user profile, but to
19 the extent there's not, there's certainly disclosure in Baumgartner of user
20 profiles. With respect to the second set of claims in the '777 petition, those
21 are Claims 16 and 21. They require multiple user profiles and Baumgartner
22 is very express about having multiple profiles and multiple log ins per
23 person to get in. I think perhaps with respect to Claims 16 and 21, our
24 reliance on Baumgartner is greater for the user profiles limitation.

1 JUDGE LEE: Right, I'm glad you answered that because I was going
2 to say at least for the '735 case, there is a scenario where you actually are
3 not relying on Baumgartner because even the user profile, according to you,
4 is shown by Horn.

5 MR. HEINTZ: That's correct, Your Honor.

6 JUDGE LEE: As far as the multiple user profiles, I wonder if that's
7 also shown by Horn. If you look at Horn's Figure 26, it's got the person's
8 name on area one and two and the text says well, it supports multiple users,
9 so I can't help but think you can go to a different person's name.

10 MR. HEINTZ: I think that's right, Your Honor. I think it would be
11 blindingly obvious to do that based on Horn, but just to avoid any problems,
12 we wanted to cite Baumgartner also.

13 JUDGE LEE: Does Horn actually say -- I mean how do you go from
14 one person to the other in Horn?

15 MR. HEINTZ: I'm not entirely sure the answer to that question.

16 JUDGE LEE: So, it's not clear?

17 MR. HEINTZ: It's a little less than clear.

18 JUDGE LEE: But it does say it supports multiple users?

19 MR. HEINTZ: It does do that, Your Honor, yeah and that's why we
20 wanted to rely on Baumgartner to fill in any gaps.

21 JUDGE LEE: Thank you.

22 MR. HEINTZ: Okay, we were on Slide 9 and talking about the
23 motivation to combine Horn and Baumgartner. Here, we have Dr.
24 Bederson's opening paragraph on this from his expert report, where he
25 explains why Horn and Baumgartner would be combined. Horn, of course,

1 talks about a metadata filing system which helped users organize a wide
2 variety of information that can include not only video, but audio, text and
3 any information, Horn says, that can be stored on a computer can be
4 organized by Horn's MFS or metadata filing system.

5 Then, Baumgartner's teachings, again, it's got to do with organizing
6 information. In this case, videos, including video-on-demand videos and
7 recorded videos and there is mentioned in this paragraph, Baumgartner
8 explicitly discusses the wireless receipt of such information. On Slide 10,
9 this is Paragraph 132 of Dr. Bederson's declaration and, you know, there is a
10 dispute between Patent Owner and Petitioner. I'm not sure how live it is,
11 but Horn explicitly mentions movies and movies, of course, are a form of
12 video information. Patent Owner -- this was recognized in the Board's
13 institution decision that Horn explicitly states using movies, Patent Owner
14 seemed to dispute at some point that Horn shows this, but to the extent
15 there's any dispute, it's addressed in Paragraph 132. Movies are a form of
16 video information and, of course, Baumgartner talks very much in great
17 detail about other video information.

18 JUDGE LEE: Thank you. I want to ask you about Candelore. In
19 what way are you using Candelore for the encryption limitation? Are you
20 proposing to use the exact circuitry disclosed in Candelore and put that into
21 Horn's system?

22 MR. HEINTZ: No, Your Honor. We're not going on a bodily
23 incorporation kind of theory. Candelore is a document that talks about what
24 is known in the art as DVB, a DVB standard for distributing video in an
25 encrypted form.

1 Our belief is that it doesn't matter what form of encryption you use,
2 Candelore's description is fine and, in fact, when Patent Owner discusses
3 what he believes is the inherent disclosure or perhaps express disclosure of
4 the receipt of encrypted video information, they refer to the DVB standard in
5 their papers as a form of encryption that was well known to those of skill in
6 the art and that could have been used --

7 JUDGE LEE: I see, so you're just saying Candelore teaches
8 encrypting the video? You're just using the concept. Is that right?

9 MR. HEINTZ: Correct, Your Honor.

10 JUDGE LEE: I can see where the confusion arose because your
11 petition went into the specifics. It described the exact circuitry that was used
12 in Candelore, but --

13 MR. HEINTZ: And that could be used, right?

14 JUDGE LEE: It could be, but you're not proposing to bodily
15 incorporate that very thing.

16 MR. HEINTZ: Correct, Your Honor.

17 JUDGE LEE: I have another question about AIA. The parties seem
18 to have a dispute about whether AIA applies to this patent or pre-AIA
19 102/103 applies. Does it matter? Neither side says it matters whether it's
20 pre-AIA 102/103 or AIA 102/103.

21 MR. HEINTZ: Yeah, the question turns, of course, on whether the
22 '815 patent claims are entitled to priority and that turns on whether or not
23 what we spoke to colloquially as term one of term two, which is the terms
24 that say that the video information has got to be received in encrypted form
25 and the other term that says --

1 JUDGE LEE: I'm sorry, that's not the point though. The ultimate
2 issue is whether AIA version of the law applies or pre-AIA version of the
3 law applies, right?

4 MR. HEINTZ: Oh, yeah, I see your point. I don't think it matters
5 either way. I think --

6 JUDGE LEE: Nobody has told us it matters either way, but there are
7 portions of the briefs that argue about the entitlement to priority. It doesn't
8 really matter because no one says it matters which version of the law
9 applies.

10 MR. HEINTZ: I don't believe it matters because the question of
11 priority is going to be the same under pre-AIA or post-AIA case law and this
12 really only comes into play when we're talking about the Wong reference,
13 which is relevant --

14 JUDGE LEE: So, I don't -- correct me if I'm wrong, I don't see any
15 reason why we have to determine whether there's written -- whether the
16 '815 patent is entitled to priority going back to prior to 2017.

17 MR. HEINTZ: Well, you do to the extent that Wong is one of the
18 references that are relied on in some of the grounds. If the '815 Claims 16
19 and 21, and their dependents, are not entitled to priority then Wong is prior
20 art. Conversely, if they are entitled to priority, Wong is not.

21 JUDGE LEE: You're going to have explain that to me. I'm not
22 getting the argument. I thought the only way this matters is if the '815
23 patent does not go back to prior to March 16, 2013, then AIA applies. If it
24 goes back to prior to March 16, 2013, then pre-AIA applies. I thought that's
25 the issue.

1 MR. HEINTZ: No, Your Honor. The issue is whether the claims are
2 entitled to priority or not. If they are entitled to priority back to 2005, as
3 Patent Owner claims, then the Wong reference, which is in certain grounds
4 for Claims 16 and 21, the Wong reference would not be prior art if the
5 claims are entitled to priority.

6 JUDGE LEE: What's the date of the Wong reference?

7 MR. HEINTZ: I'm sorry, Your Honor, I don't have the date off the
8 top of my head.

9 JUDGE LEE: Oh, that's okay. We'll figure it out. Thank you. So,
10 you think if it's one way, Wong is not prior art and if it's the other way,
11 Wong is prior art?

12 MR. HEINTZ: Correct and whether it's pre-AIA or post-AIA law
13 that applies, I don't believe it will make a difference in the determination.
14 The real question is does the specification support what we call term one and
15 term two in the brief.

16 JUDGE LEE: Thank you.

17 MR. HEINTZ: Let's go to Slide 12, please. We talked about this a
18 little earlier, but this goes to the question about whether the LAN is
19 disclosed. The point made on this slide is the one I made earlier; Horn
20 doesn't say that it's a hard wired LAN so there isn't a replacement. What
21 Dr. Bederson explains is because Horn does not disclose how to implement
22 the LAN, one would look to other prior art and this is in the highlighted
23 portion at the bottom of the portion of Dr. Bederson's declaration, in
24 Paragraph 134. One would look to prior art, such as Baumgartner, for how
25 to implement that LAN.

1 Now, on Slide 13, Patent Owner made another argument about the
2 lack of motivation to combine Horn and Baumgartner. It was something to
3 the effect that these are different systems. One is a set-top box, which is
4 Baumgartner, according to Patent Owner whereas Horn is a computer. On
5 Slide 13, we show that the petition relied on an embodiment of
6 Baumgartner, which was a personal computer and you can see that on the
7 left hand slide, that's personal computer, Figure 22. On the right hand side,
8 we show Figure 1 of Horn, where you can see in the upper right hand corner,
9 we have a depiction of a laptop and there's no dispute between the parties
10 that that's a laptop. So, Horn and Baumgartner are not different systems,
11 they are both PC-based systems, at least the part the Petitioner is relying on.
12 They're both PC-based systems and in any event, this is not a bodily
13 incorporation argument that the petition makes. We are not saying you
14 would bodily incorporate the Baumgartner PC-based device into the Horn
15 PC-based device. We're just talking about incorporating teachings.

16 On Slide 14, we show Baumgartner's clear disclosure of the receipt
17 wirelessly of video information. Baumgartner discloses that the server 36 or
18 the server 50 or even 56 that device inside the television distribution facility
19 can distribute video and it can do so using, among other things, wireless
20 paths. There's actually satellite paths there mentioned also.

21 Let me go to Slide 50. Another dispute raised by Patent Owner was
22 this idea that nobody would use a LAN, a wireless LAN, in Horn's system
23 because of some great cost that was associated with this. As discussed in the
24 petition and as recognized in the institution decision, there's a very simple
25 argument for this. If you're in a home, let's say a typical house in suburban

1 America and you've got to run a wireless LAN in your home, you might
2 have to open up walls, poke holes in walls to run the wire for a wired LAN
3 assuming that was what one wanted to do, that costs money.

4 You have a choice when you run wires. You're either going to have
5 to open the walls and run the wires through the holes and that's going to
6 require something like an electrician to come over or some kind of
7 construction person. That costs a lot of money compared to the equipment
8 that Patent Owner talks about.

9 Let's go to the next slide, which is Slide 16. Dr. Bederson was asked
10 about this at his deposition. As you can see here, there's some testimony
11 from Dr. Bederson that he was renovating his house in this 2004 time frame
12 and so he had some idea of what it cost to run these wires in a house. The
13 simple answer is, as anybody who owns a house knows, it's a lot more
14 expensive than wireless equipment would have cost back then. Let me just
15 show you on Slide 17, here we have a couple of excerpts from a magazine in
16 2003, which was right before their critical date, a wireless access point 99
17 dollars and 99 cents, 100 dollars for the access point, 60 dollars for a
18 wireless card to plug into a laptop of the type that was shown in Horn.
19 That's 160 dollars. Even in 2004, you're not going to get somebody to come
20 to your house and start running wires for less than 160 dollars and that
21 doesn't even include the offset cost where you have to a LAN card for your
22 PC even if you wanted to do a wired LAN.

23 JUDGE LEE: I think we understand what you're saying from your
24 reply, but your time is almost running out. I don't know if you want to use
25 some of your reserve time, but I do have some questions about WinTV.

1 MR. HEINTZ: Yes, why don't we go to that, Your Honor.

2 JUDGE LEE: It seems to me there's not just one WinTV product.
3 There are all kinds of WinTV products and the word WinTV is a generic
4 name for multiple products, right?

5 MR. HEINTZ: That's correct, Your Honor.

6 JUDGE LEE: So, what's the connection between one finding some
7 WinTV product to the particular reference at issue?

8 MR. HEINTZ: Yes, Your Honor. The connection is that reading the
9 patents, they talk about -- and the patents we cited in our petition, they talk
10 about Hauppauge as a manufacturer of TV tuner cards that go by the name
11 WinTV and you're right, there are multiple versions of these things. That
12 information --

13 JUDGE LEE: Not just versions, right? There are different types of
14 products all together.

15 MR. HEINTZ: Well, they connect differently. There's like a USB
16 connection one. There's a PCI connection one. There's one that's high
17 definition. I'm not sure how that one connects. But this family of products
18 that are television tuner cards were known in the art and that was from the
19 patents and as Dr. Bederson testified, Hauppauge, which is the manufacturer
20 of WinTV, was one of only two manufacturers whose cards were allowed to
21 be included in the Microsoft Windows Media PC, which was a special
22 version of XP that was sold with licensed hardware that the manufacturers
23 could make.

24 JUDGE LEE: Yes.

25 MR. HEINTZ: So, this was --

1 JUDGE LEE: Let me interrupt you a second, your petition does
2 identify some WinTV product somewhere, I think either in another patent or
3 another article. Is that right? I think so.

4 MR. HEINTZ: Correct, Your Honor.

5 JUDGE LEE: Is that product the exact product for which the
6 reference WinTV is a manual for or is that product, you know, some other
7 version or model?

8 MR. HEINTZ: The patents don't identify the particular version. I
9 don't know and I apologize for this, I don't know off the top of my head
10 whether the AnandTech article that talks about the media center and the
11 WinTV being the approved product for that. I don't know what that says,
12 but that's really not what our argument is. Our argument is that the standard
13 for whether there's been a publication is whether a reasonably diligent
14 POSITA would be able to find it. Our argument is that given the Windows
15 Media PC publicity, given the mention in the patents, one of skill in the art
16 would know, if one wanted to find information about TV tuner cards that
17 plug into PCs, as discussed in Baumgartner, remember Baumgartner
18 explicitly suggests putting a TV tuner card in, one would know to go to the
19 Hauppauge.com website. Once you're at that website, you can use just the
20 facilities in the search engine, three simple clicks gets you right to the
21 manual and it's a fairly easy path to follow.

22 The Board's precedential opinions say that you don't need indexing
23 all the time if you can show that it was known to go to the manufacturer's
24 website and then from that point, you can use the website's search

1 capabilities to find the information you're looking for, that's publication,
2 that's accessibility.

3 JUDGE LEE: All right, thank you. You've used up three minutes of
4 your rebuttal time. It's up to you --

5 MR. HEINTZ: If there's any other questions, you'd like for me to
6 address, I'm happy to do so, otherwise I'll yield to my colleagues. Okay,
7 with that I'll yield.

8 JUDGE LEE: You have 22 minutes left for your rebuttal, 22 minutes.

9 MR. HEINTZ: Thank you, Your Honor.

10 MR. BAKEWELL: Sorry, Your Honors. This is a bit of a tangle of
11 cords.

12 JUDGE LEE: Thank you.

13 MR. BAKEWELL: Let me start by confirming that this microphone
14 is picking me up.

15 JUDGE LEE: Yeah, I'm sorry to have to ask you to speak closer to
16 the microphone a bit, that's the issue we're dealing with. Thank you or
17 speak louder.

18 MR. BAKEWELL: Good afternoon, Your Honors. Thank you for
19 hearing us out. I'm prepared to address kind of proofing by prior art
20 references and combinations to go through the grounds that way, but I know
21 that, Your Honors, have had a lot of questions so far, so if you'd prefer to
22 jump in --

23 JUDGE LEE: We can do it anyway you want. We'll just interject
24 when we have questions and let me know if you want to reserve some time.

25 MR. BAKEWELL: Yes, I would like to reserve 15 minutes, please.

1 JUDGE LEE: Thank you. It's 1:49.

2 MR. BAKEWELL: I'm going to start with Slide 5 of our
3 demonstratives because this is where we get into the core combination at the
4 heart of Grounds 1 through 3 and 6 through 8. This is the Horn and
5 Baumgartner combination.

6 To start with Horn, it's pretty clear from the disclosures of Horn what
7 they're talking about is this MFS, this metadata filing system, really the
8 server architecture that includes storage of, well, metadata and other
9 information about multimedia information stored on it. It is a server-based
10 architecture. Petitioner has pointed to computer 101 looking at Horn Figure
11 1, that is a computer that is connected to the MFS. That is not what the MFS
12 is running on. So, really why this matters -- because I think all of Your
13 Honors will know, there's no, like, no server language in the claims, but
14 what it does is it explains why the reference isn't really applicable to the
15 invention at hand and gets into a couple of the specific claim limitations.

16 When we move over to Baumgartner, the usage of Baumgartner is as
17 was brought up in opposing counsel's remarks, this use of the wireless
18 interface communications for receiving this video information, this
19 multimedia information that gets transmitted according to the invention.
20 Here, I do want to interject a point of disagreement with what I heard spoken
21 in response to Judge Lee's question about the grounds at issue. I do not
22 agree that there is a ground that is Horn alone. I think the petition is quite
23 clear that Ground 1 is Horn with Baumgartner and that is true too with
24 Grounds 2, 3, 6, 7, 8 although there are additional secondary references
25 thrown in. A transition from Horn with Baumgartner to well, it would be

1 obvious on Horn alone is contrary to the grounds that were presented in the
2 petition and to which this dispute needs to focus on.

3 With that in mind, we look at what Baumgartner is and discloses.
4 Baumgartner is, granted it's a set-top box, it does have wireless
5 communication with video information that is what it does, but it's this
6 combination of a set-top box with a server architectural that, to us, doesn't
7 make sense. It's not just a matter of bodily incorporation, although I do
8 think that the petition goes in that direction. The issue is that it's not a
9 matter of just sucking out a concept out of Baumgartner and saying, cool,
10 there's a device out there somewhere that has wireless exchange of
11 information, exchange of video, therefore in any given context it would be
12 obvious in any other device to go from wired to wireless. I don't think that
13 that makes sense because the question here is not in 2004, the priority date
14 of the patent, is the exchange of wired to wireless a known obvious thing,
15 it's in the system of Horn is that exchange necessary. A lot of time has been
16 spent on the cost thereof. I think the briefs are pretty clear on that. I think
17 that just pointing to consumer wireless devices or talking about how you'd
18 retrofit a house is kind of beside the point.

19 The real issue though is not cost, although that plays a role, it's this
20 security and speed of information, even today servers, data centers, you
21 name it, they're using wires. I was at a convention last week and it was
22 talking about these interfaces, these wired interfaces, granted for a different
23 form of server, but the automatic exchange of one to the other isn't
24 necessarily obvious. What it does, is it really emphasizes why Horn is in a
25 different category than the invention, whereas the invention is talking about

1 really this user interface that helps users at home sort between different
2 playlists. We've got this separate Horn system that isn't receiving
3 information wirelessly and just sort of, yeah, trying to tinker in specific
4 claim limitation to meet the claim language seems inappropriate.

5 Really what we have is no reason to bring Baumgartner's set-top box
6 design or just the general concept, if that's the way that Petitioner is moving
7 into Horn's metadata filing system and we've addressed that.

8 If I don't hear questions on that, I'll move to a separate issue with the
9 combination, which is that of user profiles. I don't agree that the petition
10 has been clear on identifying the user profiles at issues in the combination.
11 The petition kind of says Baumgartner also has user profiles. It's not clear
12 that they're relying upon it. Horn is really the reference at issue here for the
13 interface.

14 Horn has collections. Collections, by the words of Horn, are a
15 grouping of objects based on a metadata specification describing properties
16 that all objects of the group have in common. Moving from there to user
17 profiles is a little bit of a, well, it's not appropriate because Horn doesn't
18 have simultaneous users that you have these different folders for.

19 JUDGE LEE: This is Judge Lee; can you show me what are the user
20 profiles in the '815 patent?

21 MR. BAKEWELL: Yes. The user profiles are best understood as the
22 mother and father folders. These would be Figures 6 and 7 and then the
23 corresponding descriptions in Column 6, Lines 19 through 40. I think that
24 this gets to the core of the dispute, because --

25 JUDGE LEE: The dedicated user folders?

1 MR. BAKEWELL: Precisely.

2 JUDGE LEE: Is there any other thing or is that the only described
3 user profiles?

4 MR. BAKEWELL: I hesitate to say there is no other relevant
5 description. Obviously, you take a patent as its whole, but that is --

6 JUDGE LEE: On your papers though, I think I understand that those
7 are what you're saying are the user profiles --

8 MR. BAKEWELL: Correct.

9 JUDGE LEE: Dedicated mother and father folders.

10 MR. BAKEWELL: Correct.

11 JUDGE LEE: So, one level higher though, how do you get to the
12 mother and father folders? I can't tell from the figures.

13 MR. BAKEWELL: Well, I don't have a specific answer because
14 that's not part of the necessary part of the invention here to analyze. The
15 part of the invention is this displaying of the playlist you have from the
16 figures, starting with Figure 1 talking about the hierarchical --

17 JUDGE LEE: I understand, but somehow a user has to get there,
18 right? To the mother folder or to the father folder.

19 MR. BAKEWELL: Correct and, you know, we might be going a little
20 bit far afield, I would expect that it would have something to do with
21 selecting an application.

22 JUDGE LEE: How about the first interface and the second interface?
23 Can you show us what, in your view, are the first interface and the second
24 interface in the '815 patent?

1 MR. BAKEWELL: Yes, the first user interface at issue is the area
2 below the -- well, the first interface would be the area on top of the folders in
3 Figures 6 and 7, this mother and father area where you're selecting it. The
4 second interface is going to be the area of the folder. Now, opposing counsel
5 provided on the demonstratives an illustration from the deposition where the
6 entirety of the folder area was circled. I'm sure you know what I'm
7 referring to, I don't know the exact slide at this --

8 JUDGE LEE: Can you make it clear? What's shown in Figure 6 and
9 7 are the first or the second interface?

10 MR. BAKEWELL: Well, frankly it's both, but the first interface is
11 going to be Figure 6 going onto the second interface, Figure 7, as you go
12 between them because we have these user dedicated folders that get to the
13 interfaces at issue.

14 JUDGE LEE: Are you saying Figure 6 shows a first interface and
15 Figure 7 shows the second interface? That doesn't make any sense because
16 according to the claim, the second interface is supposed to show the videos
17 which correspond to a character that was selected in the first interface.

18 MR. BAKEWELL: Yes. Apologies. What I'm saying is when you
19 select in the first interface, so you're selecting the tab area of the folder. It's
20 hard to describe this purely with words, but, I think, it's been described as
21 this trapezoidal area, if that makes sense.

22 JUDGE LEE: I can see, so the tab area with multiple tabs, that would
23 be the first interface?

24 MR. BAKEWELL: Correct.

1 JUDGE LEE: And the second interface would be one of the
2 parallelograms?

3 MR. BAKEWELL: Sure, I'd call it a rectangle, but yes.

4 JUDGE LEE: So, then they're all on the same screen?

5 MR. BAKEWELL: Correct and I think that this is a
6 misunderstanding with our proposed claim construction, which is it's not
7 that we are talking about totally different display screens or moving to a
8 different area of the display. This idea of this dedicated screen comes from
9 the language of the claim where you have these user dedicated folders,
10 where the -- I mean we're talking about user interface graphical elements.
11 So, whenever you're talking about this, we're not talking about specific
12 pixel areas, we're talking about what is the concept being described here.
13 It's really more of precision to the specification and what was being
14 conveyed because you have these two different folders between 6 and 7 that
15 get switched beyond. Yes, they're being shown in the same area of the
16 screen, that's fine, that's not being --

17 JUDGE LEE: Yes, but you agree. Your Patent Owner Response
18 says second interface has to be -- has its own screen. It has to be full screen.

19 MR. BAKEWELL: I would argue that the second interface has now -
20 - it's coexistent with where the prior interface when you switched between
21 the folders to the extent that the brief misinterpreted that. I do apologize, but
22 what we're saying is just as the way that the patent describes these user
23 dedicated folders, what we need is a dedicated part of the screen for the
24 users.

25 JUDGE LEE: Thank you.

1 JUDGE MCMILLIN: Mr. Bakewell, this is Judge McMillin. Can you
2 identify or tell me where in Figure 6 and Figure 7 are the first character and
3 the second character?

4 MR. BAKEWELL: Yes, I can. It would be the mother and the father;
5 I suppose would be the first and the second character. Now, this would get
6 to, you know, I don't want to be presumptuous, but I think this would get to
7 what would be kind of the information in the recent briefing about
8 characters. Patent Owner has been consistent all along that if you look
9 through the briefs, we're not contesting characters based on a claim
10 construction of character. You won't find that in the briefing because that's
11 not what our position has been.

12 The reason we're bringing this up is that it is Petitioner who has been
13 flip-flopping and impermissibly flip-flopping in positions without
14 explanation. So, it's not so much that we're seeking a contrary claim
15 construction here that that is what this patent means. Again, this is not why
16 we are distinguishing the prior art, but if you look at the Ultratech Federal
17 Circuit case law that's cited in our Motion for Supplemental Information, the
18 issue -- one of the requirements of the specification is that if you're going to
19 be taking contrary positions in other proceedings, while Petitioner has a
20 burden to at least explain it and on that, I don't think Petitioner has a great
21 answer for why they're pursuing different answers. It didn't show up
22 anywhere. That is the point we're driving at and it's really not a novel or
23 last minute claim construction position, so much as this is a threshold
24 requirement that Petitioner has failed to meet.

1 So, continuing on, Grounds 6 through 8 then seek to add in Candelore
2 and Your Honors spoke about that briefly with opposing counsel. I think
3 that there's been a little bit of a shift in approach here that the petition talks
4 about the circuitry involved and why you would move the circuitry in to
5 somehow match up with Horn. I don't think that there's any particular
6 reason to move this particular circuitry in to Horn. That was in the papers,
7 we can discuss this if you want.

8 I got the sense that they're moving away from that position and
9 moving more to well, Candelore speaks about encryption and that's -- we're
10 bringing over encryption standard, they pointed to broadcast standards.
11 That's not the theory in their petition and again, this gets to -- kind of is
12 going to be a theme here, the statutory requirements of you've got to stick to
13 the grounds in your petition. Here, the shifting sands approach away from
14 this specific interface which has a smart card that you need to work with, but
15 it's inapplicable to if you start with the metadata filing system of Horn to
16 just well, encrypted information is known, so be it, but that isn't really the
17 ground of invalidity that we are relying upon.

18 So, again, when we're talking about Candelore, when you look at
19 what the petition is actually talking about, it's about this embedded IC, this
20 integrated circuit that's requiring to co-work with a smart card, that is what
21 is inapplicable, this particular ground of supposed invalidity. Then, we get
22 to Grounds 2 and 3 and 7 and 8, where on top of either two or three
23 references, we're adding WinTV.

24 Judge Lee, I want to address what, I believe, your question was about
25 WinTV and I think that the Panel's order on the supplemental evidence

1 really made clear and I don't think this is something that you misunderstand,
2 but when we get down to it, because this is an IPR, what we're talking about
3 is the WinTV manual. It's not the product prior art out there, what this TV
4 tuner card may or may not have done, what version of it was out there.
5 We're talking about the manual and what can we rely upon in this manual
6 and that's crucial because the evidence that they're pointing to is not
7 evidence of the publication and availability of this particular manual, it's at
8 most about the knowledge of the product itself. That is a big distinction
9 because what is at issue is not whether or not this WinTV TV tuner
10 application card existed, it's whether or not this particular manual, cited in
11 the petition, the basis of these grounds, was publicly available.

12 JUDGE LEE: Thank you. Thank you for bringing up this subject. I
13 want to ask, Petitioner has said in the reply that your expert was able to find
14 the manual in three clicks, but when I read more carefully, your expert's
15 declaration said at first that he looked around and was unable to find it, right,
16 so what Petitioner was referring to was actually a deposition. Their counsel
17 telling your expert what to click on and in three clicks he arrived at the
18 manual. Is that what happened?

19 MR. BAKEWELL: It is. I think you have accurately summarized the
20 arguments and what is going on. The issue is, of course, that the three clicks
21 at issue were not the clicks at issue in the petition. You follow the petition,
22 what it's saying, you're getting these dead end links. Those, there's no
23 showing that this path of public availability which, of course, is part of the
24 element of invalidity, is satisfied in the petition. In the deposition, now we
25 have kind of two problems with going down this -- kind of two threshold

1 problems with going down this. One, it's different than the petition. Two,
2 we have this hearsay issue. We've made Dr. Balakrishnan available if they
3 want to go for, you know, try to bring this out at the hearing, they aren't, so
4 we have this additional stumbling block upon relying on deposition
5 testimony.

6 This is not material that was in his opinion, this is counsel using him
7 more or less as an automaton of click here, there, there.

8 JUDGE LEE: That's precisely what I'm getting at. Am I incorrect in
9 understanding that that's what I get from the transcript, that their counsel
10 told your expert what to do and he did it and that's how you get the three-
11 click to the result? Is that right?

12 MR. BAKEWELL: Absolutely and this was a new theory, a new set
13 of clicks done at deposition. Our expert was not here. Let me show you
14 how a person of ordinary skill would do it. It was click here on the screen,
15 click here on the screen, click here on the screen.

16 JUDGE LEE: So, we actually don't know how much time the other
17 side spent to figure out those three clicks. Is that correct?

18 MR. BAKEWELL: Precisely. We do not know. Those three clicks
19 are not going to be establishing public accessibility. This is even if you do
20 consider on that, this is just a late and, quite frankly, unsupported --

21 JUDGE LEE: And the manual, is that a manual for all of the WinTV
22 products or is it a manual just for certain types or versions of WinTV
23 products?

1 MR. BAKEWELL: My understanding is it's just certain types and
2 versions and those types and versions that are in the manual itself. I don't
3 think it's broadly applicable.

4 JUDGE LEE: When I follow the reply, it looked like he had to click
5 on just one of three possible types to get there.

6 MR. BAKEWELL: Precisely, I think you are picking up on another
7 issue of their proof of, you know, to move from a generalized concept of
8 knowledge in the art of this TV tuner, whether or not that is true, this
9 particular pathway alleged through a specific product to a specific web page,
10 that is what just has not been shown.

11 JUDGE LEE: Thank you. I have another question. Up to now, from
12 my experience, when I deal with printed publication issues and what to
13 search, it's always been if a POSITA has desire to know of a certain
14 technical subject, then he would know where to go, but this is a little bit
15 different. This sounds like if I want to know something about this product,
16 but I don't know what the person is looking for. What is the subject matter?

17 MR. BAKEWELL: You are precisely enunciating the backwards
18 nature, which is that it doesn't make sense to follow the path until you know
19 arguably what's in the manual, but a POSITA doesn't know what's in the
20 manual until they get there and so the path at issue, frankly, Your Honor, I
21 think you stated it better than I am getting at, but what you are getting, I
22 believe, is that you have to start with a desire because you want to know
23 more about the topic. The pathway that they are describing doesn't have any
24 nexus to a desire to learn about -- well, we don't know what a POSITA
25 going down this path is desiring to know.

1 JUDGE LEE: It's kind of like we don't know what the WinTV
2 product has to do with the claim --

3 MR. BAKEWELL: Correct.

4 JUDGE LEE: Is my question.

5 MR. BAKEWELL: I would agree. It is an open-ended question and
6 the hindsight of well -- the question isn't, Dear POSITA, if you wanted to
7 get a WinTV manual, where would you go? That is backwards. The
8 question has to be, Dear POSITA, if you are looking for topic, you know,
9 information on X, how are you going to go find that out? That is what really
10 break down and don't get to.

11 JUDGE LEE: All right. What about the recommendation list? Do
12 you have some arguments about some claim, maybe Claim 2, requiring a
13 recommendation list relying on the District Court's construction for the
14 language of Claim 2? I read that construction by the District Court and I see
15 nothing about any recommendation list. Can you discuss that?

16 MR. BAKEWELL: I do apologize, Your Honor. Could you direct
17 me to what you're talking about? I'm not quite following.

18 JUDGE LEE: Well, Claim 2, the District Court construed, I think the
19 entire claim of Claim 2, and there's nothing in the court's construction about
20 requiring a recommendation list. I believe it's in your argument that the
21 claim requires something that's merely a recommendation and not
22 something the system produces based on what the user has defined. The
23 pertinent clause in Claim 2 is, wherein the processor generates a group of
24 video info based on user preferences, determined by users' selection of the
25 video info, that's what at issue and the Petitioner pointed out how the

1 processor generates a group of videos that are selected by the user and you,
2 in turn, said, well, that's not a recommendation list. So, I want to ask you
3 why is the recommendation required?

4 MR. BAKEWELL: Apologies for the delay, Your Honor. The issue
5 for this really in some ways gets back to the difference between user profiles
6 and multiple users on the screen and when you look at the language of Claim
7 2, it is talking about wherein the processor generates a group of video
8 information based on the user preferences, which comes down to well, if you
9 don't have these user profiles that are making these selections, you aren't
10 following specific multiple user preferences. I don't know if I'm making
11 myself clear on this, but I do believe that this, as best as I can explain, is
12 coming back to this issue of multiple users.

13 JUDGE LEE: Are you familiar with the Court's construction of
14 Claim 2's language?

15 MR. BAKEWELL: I want to be frank with you, Your Honor, the
16 answer is no on that. The claim construction disputes that I'm aware of are
17 not the ones for Claim 2.

18 JUDGE LEE: That's okay, you can continue whatever you want to
19 say. I'm fine.

20 MR. BAKEWELL: Thank you, Your Honor. We addressed the
21 public accessibility of the WinTV card which is going to kind of effect a lot
22 of the claims, basically those claims that are not Grounds 1 and 6, at least for
23 the Horn/Baumgartner combinations. We get to this issue of it's not really
24 bodily incorporation, but again we're coming to a very specific teaching of
25 this WinTV. This integration might be that the tuner might be applicable to

1 the set-top box. The combination into Horn itself is just left a little bit
2 unexplained and that is another failing in the grounds advanced for the
3 WinTV grounds.

4 If there are no further questions on these groups of grounds, I would
5 move onto the Kaplan/Bryant grounds, but I'll pause there.

6 JUDGE LEE: Okay, how about the AIA versions, does that matter
7 whether AIA applies or pre-AIA?

8 MR. BAKEWELL: This is going to be one of those rare instances
9 where I fully agree with opposing counsel that the distinction is one of
10 almost semantic precision. It's not about which version applies, but the
11 priority date that does apply does matter and the priority date determines
12 which grounds purely for, it's not a word, but correctness, so whether or not
13 the priority date of the '815 claims dates back to 2004 is very much at issue.
14 If the answer it does, then for purposes of applying the correct law, pre-AIA
15 law would apply. If it does not gain the priority claim back to its Japanese
16 provisional, well then post-AIA law would apply. That being said, the
17 differences enacted by the AIA would not be relevant to any disputes here.

18 JUDGE LEE: Thank you.

19 MR. BAKEWELL: Moving onto Grounds 4 and 5 and 9 and 10, the
20 core combination for these grounds is Kaplan and Bryant. Kaplan and
21 Bryant, they are different interfaces, but fundamentally, what we have is you
22 have Kaplan is this multimedia management system. It's an interface for
23 managing multimedia information. Bryant is about grouping images and
24 videos in a digital camera, again using an interface. So, we have two
25 different interfaces being combined. Patent Owner's first disagreement with

1 this combination is a pick-and-choose between the user interfaces. When
2 you look at the art of what goes into the design elements, the presentation of
3 elements in user interfaces, it's not whether or not any given element on its
4 own is possibly present in prior art, it's whether or not it would be obvious
5 to create a unified user interface such as claimed according the claim scope
6 of the '815 patent at the time of the '815 patent.

7 Here, the pick-and-choose between Bryant and Kaplan has not been
8 enunciated. They talk about the advantages of Kaplan. Fine, use the Kaplan
9 interface. They talk about the advantages of Bryant. Fine, use the Bryant
10 interface for those types of purposes. The why you would mash them isn't
11 in their motivations to combine. The simply having advantageous uses for
12 each one does not give an advantageous usage for both of them together.
13 So, that's what I would push Your Honors to consider when it comes time
14 for the right decision is why would you ever use both of these together.
15 There isn't an answer in the petition other than the individual benefits for
16 use on a digital camera of Bryant or basically just organizing for Kaplan.

17 Once we go into the limitations of the claims at issue, and here we're
18 talking about Claims 1 and 9, so we're in that '735 investigation, we have
19 this issue of affective information. This is Bryant's teaching of basically
20 adding -- it would be what is colloquially known as likes or users' reactions
21 to certain multimedia images. Examples of other types of metadata are
22 image capture time, capture device, capture location and so it's not that there
23 isn't an ability in Bryant for a user to add their own tag/like on a given piece
24 of multimedia, it's that there aren't user profiles therefore being created in
25 the context of what the claims made.

1 This gets down to the core issue here that there's not this user profile
2 at issue, just because there are users and users can interact with multimedia
3 does not create a user profile and especially not in terms of the claim
4 construction of either the District Court or proposed by Patent Owner here.

5 The other issues that we see are that the petition kind of, in my mind,
6 strangely moves onto references for both Claims 1 and 9 that are not in these
7 grounds. For Claim 1, which again is Kaplan and Bryant, they move over
8 and say it would have been obvious to a POSITA to modify Bryant's home
9 computer by incorporating such a wireless modem in place of the model 22
10 for connection to an internet service provider. Such wireless connection of
11 the computer to the internet is disclosed in Baumgartner. So, we've gone
12 back to Grounds 1 through 3 adding in Baumgartner kind of outside of the
13 ground at issue with no -- you know, if we're talking about an obviousness
14 combination, there has been no suggestion of the obviousness analysis for a
15 new secondary reference.

16 The same is true for Claim 16, where it moves from Wong and it
17 would have been obvious to a POSITA to replace that text with graphical
18 thumbnails, such as those disclosed by Horn. Again, this movement from
19 Wong to Horn, it's a one sentence statement. So, the Grounds 4 and 9, and
20 therefore 5 and 10, really suffer from this with respect to Claims 1 and 16
21 and their dependent claims because we have these unsupported additional
22 secondary references that form apparently a part of the ground.

23 If we go to Wong, this is going to get to the priority date of the '815
24 patent. The priority date of Wong isn't in dispute between the parties, it's
25 whether or not the '815 patent antedates it. Here, they have either two or

1 three terms, it seems like they've dropped term three, two or three terms that
2 they say are in the claims not supported by the Japanese provisional. I'd like
3 to address both of these terms because this determines whether or not Wong
4 is afforded status as a prior art.

5 The first term is first video information being received included
6 second video information that is encrypted. So, we need to look at whether
7 or not they've made a written description argument, i.e., that the inventors
8 did not possess the information that incoming information was encrypted.
9 This is clearly incorrect. When you look at the disclosures of the Japanese
10 provisional application. We have the translation at Exhibit 2019, in
11 Paragraphs 17 through 18 it talks about a signal transmitted by a digital
12 broadcast, for example, and received as demodulated using a predetermined
13 method in the demodulated circuit 302 and then subjected to any requisite
14 signal processing, such as modulation or addition of data for a timing
15 adjustment in the recording system, signal processing circuit 303 before
16 being encrypted again. It's a separate encryption step for storage within the
17 device.

18 To say that the inventors didn't understand that when they talk about
19 the signal being transmitted by a digital broadcast isn't that they didn't have
20 possession of encryption and again, it's not a specific type of encryption, it's
21 just not supported because, of course, you have to approach written
22 description with the knowledge of a POSITA. What we've shown in Exhibit
23 2013, which is frankly undisputed, is that at the time, scrambling of
24 broadcast signals has become widespread. They've been achieved through a
25 conditional access system, so we have these digital broadcast signals being

1 encrypted as a widespread measure at the time of the patent and here we
2 have the patent talking about well, you're going to receive it by the digital
3 broadcast system and you're going to do any requisite signal processing. It's
4 within that. This is not the point of the invention, of course, but it is well
5 within the invention and the description that the inventor is setting forth.

6 Turning to the second term, this is about, I think it's been called the
7 deletion limitation and that goes to whether or not the patent describes that
8 when you have a user playlist, here the mother and the father, if say the
9 mother is deleting some information out of her playlist, whether that
10 information, if it exists in the father's playlist, is also deleted. That is
11 straight forward what is being described in Exhibit 2019, Paragraphs 24 and
12 25, with reference to Figure 1, which of course, is what this passage is
13 talking about. What you have is mom can freely register and delete data to
14 be played back using the mom menu display tag 601 as her own folder. If
15 you go earlier in that paragraph, you know that what we're talking about is
16 the integrated user defined information number one in Figure 1. That,
17 turning to Figure 1, is talking about this management level one, this playlist,
18 this playback collection of metadata. That's not where these files are stored,
19 these are the collections of playlist information, program information,
20 however you want to look at it, where the storage is going to be well, quite
21 frankly, at the program layer, the first program for Figure 1, which goes into
22 management level two and three which are then used in the user interfaces.

23 When you take something out of a -- apologies, not out of a user
24 interface, out of a user playlist, so when you take something out of a playlist
25 because you don't want it to be played back, that doesn't delete the

1 information or make it unavailable to another user. So, to say that this
2 somehow is describing deletion or that they wouldn't recognize that it just
3 doesn't -- it's not square with the hierarchical data management tools set
4 forth in Figure 1 and described in Paragraphs 24 and 25.

5 JUDGE LEE: This is Judge Lee. Do you know which claims are the
6 Wong reference used for by Petitioner?

7 MR. BAKEWELL: I do, Your Honor. This would be Grounds 9 and
8 10, which together encompass all of Claims 16 through 27.

9 JUDGE LEE: I know, but Wong is probably not used for every claim
10 in that ground, so my question is which specific claims of the group.

11 MR. BAKEWELL: I now understand your question.

12 JUDGE LEE: That's okay. I completely --

13 (Simultaneous speaking.)

14 MR. BAKEWELL: I would have to go back, I apologize.

15 JUDGE LEE: How about the level of ordinary skill, does it make any
16 difference whether it's Petitioner's definition or your definition?

17 MR. BAKEWELL: Neither party has enunciated why it would
18 matter, I don't think the Board needs to take a position on this, but each
19 party has said that the analysis is essentially the same under both.

20 JUDGE LEE: Thank you. I also read in the District Court
21 proceeding, Petitioner agreed with Patent Owner's proposed level of
22 ordinary skill for this patent.

23 MR. BAKEWELL: That may be correct, I do not know that off --

1 JUDGE LEE: I read it and I have reproduced the text on my screen
2 that's what it says in the Court opinion. Have you changed your level of
3 skill here compared to what you proposed in the District Court?

4 MR. BAKEWELL: I do not believe we have and I certainly do not
5 believe that there -- I don't have what you have in front of you, but I do not
6 believe there's been a substantial change --

7 JUDGE LEE: You haven't changed your position?

8 MR. BAKEWELL: No.

9 JUDGE LEE: Okay, thank you. Do you know which claims of the
10 patent were found invalid in the latest District Court opinion?

11 MR. BAKEWELL: So that is technically still under seal. I want to be
12 cognizant of confidentiality requirements.

13 MR. HEINTZ: On behalf of the Petitioner, Your Honor, we don't
14 think there's anything confidential about the identification of those claims,
15 so if counsel for PO would like to do it, would like to identify it, that's fine.

16 JUDGE LEE: It's up to you to decide.

17 MR. BAKEWELL: Claims 1, 21 and 24 are subject to the District
18 Court's opinion.

19 JUDGE LEE: Thank you.

20 MR. BAKEWELL: I see, Your Honor, that my time has elapsed. I
21 would like to reserve the remainder of my time for rebuttal unless you have
22 any further questions.

23 JUDGE LEE: Oh yes, you're three minutes into your rebuttal.

24 MR. BAKEWELL: Yes.

25 JUDGE LEE: Do you want to save the rest?

1 MR. BAKEWELL: I do.

2 JUDGE LEE: Okay, so you have 12 minutes left. Thank you.

3 MR. BAKEWELL: Thank you.

4 JUDGE LEE: Mr. Heintz, you have 22 minutes.

5 MR. HEINTZ: Thank you, Your Honor. May I proceed, Your
6 Honor?

7 JUDGE LEE: Yes. Are all of the challenge claims here involved in
8 the District Court?

9 MR. HEINTZ: No, Your Honor. The only asserted claims were the
10 ones that counsel just mentioned.

11 JUDGE LEE: Oh, only three claims?

12 MR. HEINTZ: Correct.

13 JUDGE LEE: Thank you.

14 MR. HEINTZ: And that was 1, 21 and 20.

15 JUDGE LEE: Thank you.

16 MR. HEINTZ: Just as a bit of housekeeping, Your Honor, you asked
17 me earlier what the priority date for Wong was, that was July 21, 2005 and
18 as my colleague mentioned, in order to antedate Wong, they need to show
19 priority back to the 2004 Japanese applications.

20 JUDGE LEE: Thank you. Can you answer the question about level
21 of skill? Did you agree with the Patent Owner's definition in District Court?
22 If so, why are you disagreeing here?

23 MR. HEINTZ: Your Honor, I don't remember whether we disagreed
24 or not, I apologize. I was at the trial. I just don't remember that being an
25 issue. I apologize.

1 JUDGE LEE: Okay, thank you.

2 MR. HEINTZ: All right, I want to address what Patent Owner said
3 about Horn's MFS running only on the server. I'm at Slide 20 of our
4 presentation now. As you can see in Figure 1, there is a laptop shown in the
5 figure. You can also see that there's a dotted line, which is labeled MFS.
6 What you do not see is any kind of network connection between the laptop
7 in the upper right hand corner and the MFS. There is a straight line going
8 through from part of the MFS to the laptop. That should be contrasted with
9 what is shown in the lower right hand side of the figure, where there is a
10 network connection shown between the email server, where certain of the
11 emails are going to come from and the MFS.

12 This figure contradicts my colleague's position that the MFS only
13 runs on the server. Next slide, please.

14 On Slide 21, we have an excerpt from Horn which explains that the
15 actual invention, the inventive system is a relatively small application
16 program. A relatively small application program that function with any type
17 of operating system. At the bottom of the passage, we see that the preferred
18 environment runs on Apple Macintosh OS9.

19 On Slide 22, I asked Dr. Balakrishnan about this Macintosh OS9
20 operating system and he testified that at the time, this was something that ran
21 on a Macintosh computer which is a desktop computer. So, we're not
22 talking about Horn being limited to servers. In fact, the preferred
23 embodiment is not a server, it's a desktop computer. Our position is not that
24 Horn cannot be extended to run on servers, but the preferred embodiment
25 runs on a PC, a laptop or a desktop, just like the laptop shown in Figure 1.

1 So, the idea that Horn is limited to these enterprise level, server-based
2 systems with vast amounts of data that need scalability and all the other
3 hyperbole that was in Patent Owner's papers is just contrary to the preferred
4 embodiment of Horn as shown on this page.

5 I want to talk a little bit about the so called user dedicated folders that
6 my colleague discussed. In the '815 patent, at Column 6, Lines 19 to 40,
7 there's a discussion in Figures 6 and 7 that we talked about earlier and the
8 language there is kind of interesting because what the language talks about is
9 that -- and this is Column 6, Line 25 -- the mother can use the menu display
10 tag for Mother 601 as a folder dedicated to herself. It says the mother can
11 use that folder that way. It does not say the system enforces any kind of
12 restriction on who is going to access that folder and who is to do what.
13 Judge Lee, you asked my colleague how someone gets to the mother folder
14 and the answer is, as we saw in Figures 6 and 7, you click one of those
15 parallelograms and that's it. You can be in the mother folder and if you
16 want to go to the father folder, you just click the next parallelogram.

17 JUDGE LEE: Wait, wait, wait. You mean the tabs not the
18 parallelograms?

19 MR. HEINTZ: Yes, can we go to Slide 4 very quickly?

20 JUDGE LEE: Can you bring up Figure 6?

21 MR. HEINTZ: Yes, we're on Slide 4 now.

22 JUDGE LEE: It seems like a tab would be a mother tab and if you go
23 to another tab, it might be the father's tab, so --

24 MR. HEINTZ: Correct. What I mean by parallelograms are those
25 little four-sided figures to the right and to the left of mother.

1 JUDGE LEE: Oh, okay, because I thought 402 and 502 are also
2 parallelograms. There were larger parallelograms.

3 MR. HEINTZ: Fair enough, Your Honor.

4 JUDGE LEE: I thought you were mentioning those.

5 MR. HEINTZ: No, I apologize. What I mean are the irregular
6 parallelograms or whatever you might call those things, not the rectangles.

7 JUDGE LEE: Thank you. What's the difference between a program
8 and a playlist in the context of the '815 patent?

9 MR. HEINTZ: A program would be the recording of a video of some
10 kind, like a television program or a movie. A playlist would be some
11 collection or instructions to play a particular time period from movie number
12 one and then go over to play a different time period for movie number two.

13 JUDGE LEE: Oh, I see, so a program would just be a program that's
14 playable, whereas a playlist is for selection by a user?

15 MR. HEINTZ: Correct. It's kind of like an audio kind of playlist
16 where you get a bunch of songs rather than just one. Okay, so the point I
17 was making is in Column 6 it's saying that mother can treat this folder
18 labeled mother as dedicated to herself, but the system doesn't enforce that in
19 any way. There's no requirement in the system, as I discussed earlier, for
20 mother to log in and identify herself, provide a password or a user name or
21 anything. There's only one user and so those folders called mother that's
22 just a name and as far as the system is concerned, it's no different than any
23 other name, even like all programs or anything else. It's just a name on a
24 folder, so the idea that the '815 discloses user profiles to the extent it does,
25 it's a very simplistic disclosure and when my colleague talked about Bryant

1 and Kaplan and he showed you, I think it was, Slide 21 and there was a
2 discussion in Kaplan about a user name or user identification being
3 associated with video information, to the extent there's any disclosure of the
4 user profile in the '815, that's equally as well disclosed in Kaplan.

5 I want to go talk about WinTV now. I want to make sure our position
6 here is perfectly clear. The Baumgartner reference in Paragraph 83 talks
7 about -- and this is with respect to the personal computer embodiment of
8 Baumgartner. That's the one that's relied in in the petition. This is right at
9 the start of Paragraph 83. This is Exhibit 1016. It says, personal computer
10 unit 98 may contain a television or video card, such as television tuner card,
11 for decoding analogue and digital television channels and for handling
12 streaming video content. Baumgartner is about organizing stored video
13 content. Baumgartner is telling a person of skill in the art that one place this
14 content can come from is through incorporation of one of these television
15 tuner cards into a personal computer embodiment. That disclosure in
16 Paragraph 83 of Baumgartner is about all Baumgartner tells us about these
17 tuner cards that are going to be incorporated into a PC to receive video
18 which is going to be stored and used in Baumgartner.

19 That raises the question if a person of skill in the art wants to find out
20 information about these tuner cards, where would he or she go. That's
21 where, if we turn to Slide 24, if one of skill in the art were to look for
22 information about tuner cards, you would see in those two patents there as
23 well as others, that Haupauge, a company called Haupauge Computer
24 Works, makes these kinds of tuner cards that can go into a PC. Our position
25 is that one of skill in the art having seen Haupauge Computer Works being

1 identified as a manufacturer of these tuner cards discussed in Paragraph 83
2 of Baumgartner would look for information about these cards, would come
3 across these patents, would also be familiar with the Windows media PC and
4 how Haupauge cards were acceptable for those kinds of PCs and they would
5 be led to the Haupauge website.

6 As soon as the user -- and by the way, I mentioned earlier a
7 precedential Board case on this point. The case is Sandoz, Inc. v. AbbVie
8 Biotechnology Limited. This is IPR 2018-00156, Paper 11 at 9 PTAB June
9 5, 2018 and that cites a number of Federal Circuit precedents including
10 Kyocera Wireless Corp. 545 F. 3rd, 1340 Fed. Circuit 2008.

11 When you get to the Haupauge.com website, now the question is, can
12 a POSITA find information about these television tuner cards that are
13 mentioned in Baumgartner. Now, Your Honor asked if there was something
14 in the record about how long it took for Petitioner to go figure out these
15 three clicks. It is true there is nothing specifically in the record. I'm here to
16 tell you it's not long, but we don't have to guess because we also don't know
17 how long Patent Owner's expert spent trying diligently to find this manual
18 and wasn't able to do so. He says he tried a couple of links and just couldn't
19 find it.

20 I'd like to walk through how it is one gets there. Let's go to Slide 25.
21 This is the Haupauge.com home page. This is where you land when you
22 type in Haupauge.com and this is from the Internet Archive. We've got
23 declarations that these were all authentic pages as they existed back prior to
24 the priority date of '815, I think this is September/October 2003.

1 You see there, there are six buttons on the left. The fourth button
2 down is software updates and if you look at the description on the right, it
3 says that what you will find by clicking that button is product support and
4 software updates. Among the things you'll find there are technical notes.
5 So, it's not a stretch that a POSITA would be looking for information about
6 TV tuner cards that it knows Haupauge Computer Works makes would press
7 that button and see what's --

8 JUDGE TROCK: Counsel, this is Judge Trock.

9 MR. HEINTZ: Yes, Your Honor.

10 JUDGE TROCK: So, Slide 25 has got the Wayback Machine's URL
11 on there and it looks like it's September 27, 2003. Is that right?

12 MR. HEINTZ: It is, Your Honor.

13 JUDGE TROCK: What evidence do you have that this website was
14 up and active and running on any date other than that?

15 MR. HEINTZ: I think you will see -- can we go to the next slide?
16 (Simultaneous speaking.)

17 JUDGE TROCK: Just to clarify my question, this is a moment in
18 time, is it not?

19 MR. HEINTZ: It is, Your Honor.

20 JUDGE TROCK: So, how do we know that this was available for a
21 longer range of time than what is indicated on that URL?

22 MR. HEINTZ: Yes, I understand the question. Can we go to the next
23 slide, Slide 26? This is another page from the Haupauge.com website. It's a
24 different page --

1 JUDGE TROCK: Just to clarify and help out, Judge Lee and Judge
2 McMillin, your slide 26 is in the second group of demonstratives that you
3 filed, correct?

4 MR. HEINTZ: Oh, I'll take your word for it, Your Honor. I don't
5 have the exact pagination. You will note across the top, the web archive link
6 says 20030801, so that August 1, 2003, so that's almost a couple of months -
7 - almost two months before the September date, so I understand that this is
8 not the exact home page, but given the way that Internet Archive works, as
9 I'm sure the Board is familiar, they capture different pages at different times,
10 so there's at least a two-month period in here, in which the Haupauge.com
11 website was up and running.

12 JUDGE TROCK: Let me ask you this legal question then, do you
13 think it is appropriate for us to make an assumption that based upon this
14 declaration from the Wayback Machine, showing us these particular dates,
15 that this should extend to any other time other than what's shown on the
16 URL? And is that what you're referring to with this precedent you're
17 referring to which is 2018-00156? Is that what it allows us to do?

18 MR. HEINTZ: No, Your Honor.

19 (Simultaneous speaking.)

20 JUDGE TROCK: Or do we need some kind of testimony from
21 somebody at Haupauge that it was available during that time period?

22 MR. HEINTZ: I don't think you need that testimony, Your Honor.
23 Let me try to answer your questions. I believe that even if that information
24 was available during just a two-month period that we've seen on the first
25 two slides and I haven't looked at the next date to be sure, but I think that's

1 going to be a different time period, but even if it was available for just that
2 two months, that's sufficient for a publication, number one. Number two --

3 JUDGE TROCK: Okay, well, so what's your basis for that? Do you
4 have a Federal Circuit case or something that tells us that?

5 MR. HEINTZ: I don't have one at the top of my tongue, but I can
6 find one very easily for you that I think will satisfy you on that.

7 JUDGE TROCK: Okay, if you can, I would appreciate that.

8 MR. HEINTZ: All right.

9 JUDGE LEE: Mr. Heintz, it's Judge Lee. Can we look at Slide 25
10 and I'm just wondering why would one searching for information click on
11 Software Update --

12 MR. HEINTZ: Yes, Your Honor.

13 JUDGE LEE: When there's a box saying Technical Info right above
14 it and there's a box right above it that says Product Specs.

15 MR. HEINTZ: Yes.

16 JUDGE LEE: I mean if it was me, I'd click on the other buttons.

17 MR. HEINTZ: Go back to Slide 25, please. So, in 25, you see under
18 Software Updates, it's not just Software Updates that's available there. It
19 says that there are also technical notes that are available and while you might
20 --

21 (Simultaneous speaking.)

22 JUDGE LEE: Yes, but in small print, right? The other ones are huge,
23 right in your face and it says Technical Info, so it's not like this is the only
24 place you would go. It's a different question whether the manual in indeed

1 somewhere there. It's probably there but you have to tell us why it's
2 reasonably efficient with diligent efforts to get there.

3 MR. HEINTZ: What Baumgartner says is you can incorporate one of
4 these television tuner cards in your PC. If you look at the Technical Info
5 button, the description is that this information on technologies used in the
6 products, including digital TV and e-commerce and more. None of that is
7 really going to help you incorporate this product, this TV tuner card into a
8 PC as taught by Baumgartner. Information about digital TV is not going to
9 tell you how to install the card. Okay? So, I think -- and by the way, you
10 might click on that, but that doesn't mean you would stop there. If you were
11 looking for information about a product that I can incorporate into a PC as
12 taught by Baumgartner, I don't disagree with Your Honor that you might
13 click Technical Info, but if you didn't find what you were looking for, you
14 wouldn't stop and I think you would go to Software --

15 (Simultaneous speaking.)

16 JUDGE LEE: Exactly, that's my concern. How do we know how
17 much effort? You haven't told us if we clicked on the other ones, you would
18 quickly find that it's a dead end and then you click on the other one and you
19 quickly find it's a dead end and then you manage here. I spend a whole day
20 on Technical Info looking around and can't find anything. Isn't it your
21 burden to tell us that with reasonable ease, you can somehow figure out you
22 will click on Software Updates?

23 MR. HEINTZ: Your Honor, our position is that the description next
24 to the button that talks about Technical Notes is going to be a guidepost

1 that's going to get a reasonably diligent POSITA there. I'm not aware of a
2 case that says 24 hours, more than that makes it unreasonable.

3 JUDGE LEE: I understand. What about the nexus though? I'm not
4 even sure what I'm looking for technically, just looking for information on a
5 product.

6 MR. HEINTZ: Yes.

7 JUDGE LEE: Is that enough?

8 MR. HEINTZ: I think it is, Your Honors. What Baumgartner is
9 saying is incorporate a TV tuner card into a PC-based embodiment, so what
10 I'm looking for is information that will allow me to do what Baumgartner
11 says to do. So, I need a card that's a TV tuner card that's going to be
12 capable of being placed into a PC.

13 JUDGE LEE: But how do you know that's in a WinTV product?

14 MR. HEINTZ: The patents tell you that these WinTV cards are
15 suitable for PCs and if you look at the home page, it says bringing TV and
16 broadcast data to your PC right across the top. So, this is clearly telling
17 someone who is skilled in the art, if you come to this page, you will find
18 information on this website about how to take a TV tuner card and put it into
19 a PC just as Baumgartner tells you.

20 JUDGE LEE: That's what you're telling me now, but when I read the
21 petition, I don't see it. I don't see any explanation that this is the reason
22 relating to these claims for which I'm interested in the WinTV product.

23 MR. HEINTZ: If you'll bear with me for just a minute, Your Honor.
24 So, I'm looking at the petition -- I'm sorry, this is the '777 petition, at Page
25 15. The petition explains that this WinTV card is a product made by

1 Haupauge Computer Works and on sale. It explains that it was published on
2 the website, the Haupauge.com website. It goes on to say that a POSITA
3 would have been familiar with Haupauge WinTV products as they were
4 among the early TV tuner products at the time and were only one of two TV
5 tuner products supported by the Windows Media PC. Therefore, for that
6 reason, a POSITA would have known to go to the Haupauge.com website
7 for relevant information and then it further goes on to talk about the two
8 patents that were Exhibits 1037 and 1038 and how Haupauge was mentioned
9 in those.

10 JUDGE LEE: So far, where's the nexus? It doesn't say there's
11 something in those products that relates to the subject matter of the claim,
12 that's my question.

13 MR. HEINTZ: Okay, so the claim is about the management of video
14 information. We're relying on Baumgartner in combination with Horn.
15 Baumgartner --

16 JUDGE LEE: So, you're telling me now, but what you just read to
17 me doesn't have it.

18 MR. HEINTZ: I'm sorry, I don't have the paper in front of me. I
19 believe our reply certainly mentions that Baumgartner teaches TV tuner
20 cards.

21 JUDGE LEE: Okay, thank you.

22 MR. HEINTZ: Okay. I see I'm just about out of time here, so unless
23 there are further questions, I will yield to my colleague.

24 JUDGE LEE: Can we -- we certainly would like to have a copy of the
25 District Court's JNOV order.

1 MR. HEINTZ: Yes. We both agree it should be submitted and I'm
2 happy to do it if you can tell us to go ahead.

3 JUDGE LEE: I understand there is a disagreement as to what, if
4 anything else, should be submitted pursuant to the general order. We are
5 going to read the District Court's JNOV order and go from there and then
6 contact you either in a conference call or issue a formal order or send an
7 email, but we'd like to read the District Court's order first.

8 MR. HEINTZ: Sure. So, I am authorized to submit it, so we will do
9 it if not tonight, then first thing in the morning.

10 JUDGE LEE: Either party can submit it.

11 MR. HEINTZ: Is there anything further, Your Honor?

12 JUDGE LEE: Not for the Petitioner's side. The Patent Owner has 12
13 minutes left.

14 MR. HEINTZ: Thank you, Your Honor.

15 JUDGE LEE: Thank you.

16 MR. PLUTA: Your Honor, I'd just like a point of clarification on that
17 last point. We did send a joint email yesterday. We would like to --

18 JUDGE TROCK: Counsel, could you identify yourself, please?

19 MR. PLUTA: Thank you, Your Honor. Rob Pluta for Maxell
20 Limited. Just a point of clarification on that last discussion, we sent a joint
21 email including information we would like to submit. Is that separate or
22 together?

23 (Simultaneous speaking.)

24 JUDGE LEE: We were aware of that; the disagreement and we're
25 holding off on --

1 MR. PLUTA: Understood.

2 JUDGE LEE: Deciding anything in that regard.

3 MR. PLUTA: Understood, Your Honor. Thank you.

4 JUDGE LEE: Thank you.

5 MR. BAKEWELL: Your Honors, Clark Bakewell for Maxell with
6 my reply. Judge Lee, I'd like to start with discussion of the Claim 2 claim
7 construction that you asked about before. Quite frankly, I gave a convoluted
8 and insufficient answer previously.

9 Claim 2 is not being independently challenged in these IPRs by
10 Petitioner, but there was a construction in the District Court of Claim 2 that
11 is arguably relevant to claims -- not Claim 2 so much as our arguments in
12 Claims 18 and 24 for the '777 investigation. The reason why the District
13 Court's claim construction quite frankly does not need to be resolved by the
14 Board is that it's not going to be pertinent to any of the disputes between the
15 parties. My recollection was refreshed on the construction of Claim 2, but
16 the arguments about Claims 18 and 24 are really about this whole history of
17 the tab in Kaplan and whether or not that is a recommendation for a user
18 based on clicks. It doesn't actually come down to that construction and so
19 hopefully --

20 JUDGE LEE: Thank you for the clarification, but it does piggyback
21 upon the Court's construction of Claim 2, right? There's a big portion of
22 your argument referring to the Court's construction for Claim 2. I just don't
23 know how you managed to get a recommendation list out of that.

24 MR. BAKEWELL: Well, the --

1 JUDGE LEE: Claim 18 doesn't call for a recommendation list and
2 neither does Claim 24. So, why does it have to be a recommendation?

3 MR. BAKEWELL: You're right, Your Honor, you should be
4 applying the language of the claims and we're not trying to swap out
5 recommendation lists.

6 JUDGE LEE: Can you speak louder?

7 MR. BAKEWELL: You're right, Your Honor. The correct analysis
8 is to apply the plain meaning of these claims as not to swap out the language
9 of a recommendation list and I apologize for any confusion.

10 JUDGE LEE: Do you still assert that a recommendation is required?

11 MR. BAKEWELL: Well, if you go specifically to the language of
12 Claim 24, it generates a list of video information based on preferences of a
13 user determined by a user selection. I would say that is a recommendation
14 list and that's what the argument was trying to convey, but the claim
15 language itself, that is perhaps a little imprecise.

16 JUDGE LEE: Okay, just going by the plain reading of the words?

17 MR. BAKEWELL: Correct.

18 JUDGE LEE: Whereas they were guide -- when you read it, it doesn't
19 say anything about recommendation and it's up to us to decide which is the
20 correct reading?

21 MR. BAKEWELL: Yes, that's correct.

22 JUDGE LEE: Thank you.

23 MR. BAKEWELL: Next, I'd like to go to some of the discussions
24 about the availability of WinTV that were had with opposing counsel. An
25 observation that I think is really the only fair observation about the

1 Technical Notes part of the Software Updates tab and, again, this is
2 something that we're hearing for the first time, but how that Technical Notes
3 is anything other than technical notes about software updates, whether it's
4 bug fixes, what have it, I don't know. Granted, this is speculation, but that
5 goes to the heart of the problem of now we are at a hearing and we are
6 speculating about what or what not a POSITA would do, what they would
7 see, how long they would take into account for a very specific pathway that
8 was developed after the petition.

9 Second, I'd like to refute what was referred to by opposing counsel as,
10 I believe, a two-month window of availability as somehow being shown by
11 the evidence. That is not how the Wayback Machine works with its
12 captures. We have two captures in time of different web pages. You have
13 the first web page, this is the one with the Technical Info/Software Updates
14 and it has a hyperlink for one of the software updates, the chosen list. We
15 can set aside whether or not someone would actually click on it, but had
16 they, we don't know where that led. We know that if you type in that URL
17 two months later, it goes to the page that they show, but we don't know at
18 the time where that led. You can speculate. Again, there's a problem with
19 speculation, but you can speculate that there's going to be some similarity,
20 but we don't know that this pathway actually existed even on one day
21 because there has never been this collection of links, this collection of
22 pathways that has ever been shown on any particular day. Really, if you
23 want to by the literal evidence of the Wayback Machine shown belatedly by
24 Petitioner.

1 Something that they made a point about Baumgartner and this is
2 switching gears obviously, but Baumgartner is being organized by users.
3 This, I believe, is an incorrect portrayal of what Baumgartner -- the clear
4 discussion of Baumgartner when it comes to multiple users. Baumgartner is
5 about multiple users, we will not contest that, but it's about multiple users at
6 the time of the log in.

7 What you do is you select a user, you go through an authentication
8 pathway and then you have the user interface, the data available within
9 Baumgartner. At no point is Baumgartner describing a user interface with
10 multiple users being simultaneously available. You start with the
11 administrator, you go down, you select the user profile. To bring that into
12 Horn and just say well, Horn has multiple folders you can select on.
13 Baumgartner has multiple users you can correlate users to folders, like that is
14 quite frankly a step well beyond obviousness and goes to the heart of, and
15 the incongruities between this combination.

16 The last point I'd like to make is this assertion that Horn's preferred
17 embodiment in on a PC. That's quite frankly not true. They don't have any
18 figures showing this. There is a disclosure. I would argue it's a fairly brief
19 and unsubstantiated one in Horn about being able to use on an operating
20 system, such as a Mac OS, but that's not actually integrated with the other
21 teachings of Horn. Again, computer 101 is outside the metadata filing
22 system and so a throwaway observation that you can use this invention on a
23 PC, that is not creating a preferred embodiment. There is no embodiment,
24 meaning it's suggesting you could go in a direction maybe, but that is, again,
25 not the ground being presented. They're not saying modify Horn with this

1 also disclosure in Horn to make it a use of a PC, that would be obvious, a
2 person of skill would know how to do it that's been an enabled disclosure.
3 We're not in that territory; somehow modify that modification with
4 Baumgartner.

5 You can see why I'm kind of showing why there's a lot of steps here
6 and when you have multiple embodiments within a reference, you have to
7 show a reason to combine them somehow. So, it's to go from this metadata
8 filing system to bring in their short disclosure at the end of oh, by the way,
9 you can do this on any operating system ever. It's a, yeah, it's a step and it's
10 unsupported.

11 I have three minutes left, Your Honors, but those were the notes that I
12 had for what I heard opposing counsel in their own reply speak about, so
13 that's what I wanted to revisit. If there are any further questions, I'm happy
14 to answer them.

15 JUDGE LEE: Let me see if my colleagues have any questions left.
16 Okay, let me think if I have anymore, I don't think I do. Thank you very
17 much. We asked a lot of questions and we appreciate your candid answers.
18 We would like to have a copy of the District Court's JNOV order as soon as
19 possible. You'll hear from us after that. Thank you. If you could stay a
20 moment if the court reporter has any clarifications, he needs to ask you,
21 otherwise we are adjourned. Thank you.

22 (Whereupon, the above-entitled matter went off the record at 3:12 p.m.)

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