

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 TEXARKANA DIVISION

MAXELL, LTD.,) (
 PLAINTIFF,) (CIVIL ACTION NO.
) (5:23-CV-92-RWS
 VS.) (TEXARKANA, TEXAS
) (
 SAMSUNG ELECTRONICS CO., LTD.,) (
 AND SAMSUNG ELECTRONICS) (
 AMERICA, INC.,) (AUGUST 7, 2024
 DEFENDANTS.) (10:01 A.M.

CLAIM CONSTRUCTION HEARING
BEFORE THE HONORABLE ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

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22 (Proceedings recorded by mechanical stenography, transcript
23 produced on a CAT system.)
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10:01:42 1 COURT SECURITY OFFICER: All rise.

10:01:43 2 THE COURT: Please be seated.

10:01:43 3 Mrs. Schroeder, if you would call the case for us.

10:01:46 4 COURTROOM DEPUTY: Case No. 5:23-CV-92, Maxell,

10:01:48 5 Ltd., vs. Samsung Electronics Company, Limited, et al.

10:01:48 6 THE COURT: Announcements for the record.

10:01:49 7 MR. CULBERTSON: Good morning, Your Honor.

10:01:57 8 THE COURT: Good morning.

10:01:57 9 MR. CULBERTSON: Geoff Culbertson for Maxell.

10:01:59 10 You'll recognize most of my colleagues from Mayer Brown,

10:02:04 11 Jamie Beaber.

10:02:04 12 THE COURT: Hello.

10:02:04 13 MR. CULBERTSON: Saqib Siddiqui.

10:02:04 14 THE COURT: Hi.

10:02:06 15 MR. CULBERTSON: Bryan Nese.

10:02:06 16 THE COURT: Yes.

10:02:08 17 MR. CULBERTSON: Mike Lindinger, and a new face,

10:02:11 18 Tariq Javed.

10:02:12 19 THE COURT: Good morning.

10:02:13 20 MR. CULBERTSON: Mr. Javed will be making his

10:02:17 21 first oral argument today.

10:02:18 22 THE COURT: Excellent.

10:02:20 23 MR. CULBERTSON: And from Maxell, we have

10:02:24 24 Mr. Yamamoto, the head of the IP Department --

10:02:26 25 THE COURT: Good morning.

10:02:27 1 MR. CULBERTSON: -- a number of members of his
10:02:28 2 team.

10:02:29 3 And we're ready to proceed, Your Honor.

10:02:33 4 THE COURT: All right. Thank you.

10:02:34 5 MR. CULBERTSON: Thank you.

10:02:34 6 MR. GILLAM: Good morning, Your Honor. Gil Gillam
10:02:35 7 on behalf of Samsung. Let me go around the table here. We
10:02:38 8 have Mark Fowler.

10:02:41 9 THE COURT: Good morning.

10:02:41 10 MR. FOWLER: Good morning, Your Honor.

10:02:41 11 THE COURT: Yes.

10:02:42 12 MR. GILLAM: Jim Heintz, Martin Ellison.

10:02:42 13 THE COURT: Hello.

10:02:44 14 MR. GILLAM: Brian Erickson.

10:02:45 15 THE COURT: Hi.

10:02:46 16 MR. GILLAM: All with DLA Piper.

10:02:48 17 This is Matt Bathon with Samsung.

10:02:51 18 THE COURT: Hello.

10:02:54 19 MR. GILLAM: And we're ready to proceed, Your
10:02:56 20 Honor.

10:02:56 21 THE COURT: All right. Good morning to everyone.
10:02:57 22 Welcome.

10:02:57 23 We're here for the claim construction hearing in
10:02:59 24 this matter. We've allocated four hours total, so two
10:03:04 25 hours per side for the hearing today.

10:03:07 1 I do want to state for the record that earlier
10:03:12 2 this morning, we delivered to counsel a set of preliminary
10:03:18 3 constructions on the disputed terms. You all should have
10:03:22 4 those.

10:03:22 5 And the purpose, of course, in giving those out in
10:03:26 6 advance of the hearing is not to dissuade anyone from
10:03:30 7 making any argument that you want to make but rather to
10:03:35 8 allow you to focus your time and your energy on where you
10:03:42 9 think the Court's gone most astray.

10:03:46 10 So I do reserve the right to change preliminary
10:03:51 11 constructions and do change preliminary constructions based
10:03:57 12 on arguments that are made at the hearing, so I hope you'll
10:04:01 13 take them in that spirit.

10:04:03 14 The way the terms were, I think, briefed and the
10:04:09 15 chart that was provided by the parties is in a slightly
10:04:12 16 different order than the order provided in the preliminary
10:04:18 17 constructions that we distributed earlier this morning.
10:04:27 18 But I'm happy to take the argument in different -- in a
10:04:31 19 different order if anyone has a compelling reason to do so.

10:04:34 20 Anybody want to do it differently than what we've
10:04:38 21 proposed?

10:04:38 22 MR. FOWLER: What the Court's proposed is fine
10:04:40 23 with Samsung, Your Honor.

10:04:41 24 MR. SIDDIQUI: That's perfect, Your Honor.

10:04:42 25 THE COURT: Okay. All right. Very good.

10:04:44 1 Whoever wishes to proceed on the first term may do
10:04:51 2 so.

10:05:10 3 Let me -- might I suggest, since I guess on the
10:05:14 4 first term we went with Maxell's proposed construction,
10:05:19 5 maybe it makes the most sense for me to hear from Samsung
10:05:22 6 first, and then if you wish to respond to their argument,
10:05:26 7 you may do so.

10:05:27 8 MR. JARED: Sure, Your Honor. Thank you.

10:05:30 9 THE COURT: Okay.

10:05:31 10 MR. FOWLER: Thank you, Your Honor. Mark Fowler
10:05:32 11 for Samsung. I'll be handling the '815 patent terms this
10:05:36 12 morning.

10:05:36 13 We only have brief argument on this. I wanted to
10:05:38 14 point out one point about the Court's preliminary
10:05:42 15 constructions, not about the Court's construction but about
10:05:46 16 Samsung's proposed construction.

10:05:48 17 If the Court were to look at that, you'll see that
10:05:51 18 right before the little iii --

10:05:54 19 THE COURT: Yes.

10:05:54 20 MR. FOWLER: -- it says "and." And in Samsung's
10:05:58 21 revised construction that was submitted to the Court in the
10:06:00 22 joint chart on July 24th, we had changed that to "or."

10:06:06 23 THE COURT: Okay.

10:06:06 24 MR. FOWLER: And the reason for doing that is we
10:06:09 25 understood that --

10:06:09 1 THE COURT: Could I get you to move your
10:06:11 2 microphone over?

10:06:11 3 MR. FOWLER: Of course. Thank you.

10:06:11 4 THE COURT: Much better.

10:06:14 5 MR. FOWLER: Apologize, Your Honor.

10:06:14 6 THE COURT: No, that's better.

10:06:15 7 MR. FOWLER: That's a bad habit of mine.

10:06:17 8 The reason we had done that is we had understood
10:06:19 9 that the only -- or at least the only material complaint
10:06:22 10 that the Plaintiff had had about our construction was that
10:06:24 11 we were -- this is from their reply brief -- is that they
10:06:27 12 had said that we were going to require that all three of
10:06:28 13 these things occur during the course of the claim.

10:06:30 14 And we had told them during meet and confer, no,
10:06:34 15 that's not what we intended and that the -- it would have
10:06:36 16 to be i, ii, or iii. And we asked if we could have an
10:06:43 17 agreed construction on that. They declined, which, of
10:06:46 18 course, is their purview to do so. But we changed our
10:06:49 19 construction. And so the construction that we're
10:06:49 20 advocating is an "or" in front of that.

10:06:52 21 And just briefly, Your Honor, our position on this
10:06:54 22 is that those are -- these are the only three things that
10:06:57 23 could happen. We're not aware of there being a fourth
10:07:00 24 possibility in the universe within this patent, and
10:07:03 25 Plaintiff hasn't identified a fourth possibility.

10:07:06 1 So what we're just basically saying is we want
10:07:08 2 this construction to make sure that it's giving the full
10:07:12 3 breadth of the claim meaning, and that's what we're trying
10:07:15 4 to do here with our i, ii, iii construction.

10:07:20 5 And, Your Honor, unless the Court has any
10:07:23 6 questions, that's all we have on this term.

10:07:25 7 THE COURT: Okay. All right. Thank you.
10:07:26 8 All right.

10:07:35 9 MR. JARED: Good morning, Your Honor.

10:07:44 10 THE COURT: Good morning.

10:07:45 11 MR. JARED: Tariq Javed on behalf of Maxell.

10:07:48 12 THE COURT: Welcome.

10:07:49 13 MR. JARED: Thank you.

10:07:50 14 Your Honor, I will be addressing this "user
10:07:53 15 preferences" term.

10:07:53 16 THE COURT: So does changing the word "and" to
10:07:57 17 "or," does that solve Maxell's concerns?

10:07:59 18 MR. JARED: No, Your Honor, it doesn't. It
10:08:02 19 doesn't matter actually if you put "and" and "or." And the
10:08:05 20 reason, Your Honor, is the specification does not use the
10:08:08 21 terms "mix" and "only," which is included in both the "and"
10:08:12 22 and the "or" construction which Samsung has provided.

10:08:15 23 Your Honor, Samsung is rewriting a 21-word claim
10:08:20 24 element into 60-plus words with unnecessary adverbs and
10:08:25 25 temporal and negative limitations in both cases, even if

1 you put "and" or "or."

2 Specifically, Your Honor, "only," which is added
3 in both constructions, "and" or "or" ones, there's a
4 close-ended set in each example, whereas the claim language
5 is inclusive of different items in a group. For example,
6 the group can include an audio file or descriptive
7 information.

8 Your Honor, Samsung's construction is improper
9 because it is based on infringement contentions. For
10 example, the SRI International case, Federal Circuit states
11 that a claim is construed in light of the claim language,
12 the other claims, the prior art, the prosecution history,
13 and the specification, not in the light of accused
14 device...claims are not construed "to cover" or "not to
15 cover" the accused device.

16 Your Honor, Samsung's proposed construction is
17 doing the opposite. Samsung, in the responsive claim
18 construction brief, have explicitly stated that their
19 construction aligns with the meaning that Maxell employed
20 in its infringement contentions. Samsung did not rely on
21 the patent specification or prosecution history for its
22 proposed construction, Your Honor. And for that reason, we
23 believe that the Court's preliminary construction, which
24 you offered in the morning, Maxell accepts that.

25 And we have no further, you know, statements for

10:09:56 1 you. Thank you, Your Honor.

10:09:56 2 THE COURT: All right.

10:09:57 3 MR. FOWLER: Your Honor, may I briefly respond?

10:09:58 4 THE COURT: Of course, yes.

10:09:59 5 MR. FOWLER: Counsel's argument just underscored
10:10:03 6 why Samsung's construction is correct. The alleged flaw in
10:10:07 7 our construction was that it did not address audio, and it
10:10:13 8 only addressed video.

10:10:14 9 But, Your Honor, look at the claim language. The
10:10:16 10 claim language only addresses video. Our construction
10:10:19 11 doesn't exclude the possibility that audio files are
10:10:23 12 included. This only addresses what the claim addresses,
10:10:25 13 which is video.

10:10:28 14 And we didn't hear anything from counsel that the
10:10:31 15 video part of our construction was wrong. These are the
10:10:34 16 only three possible outcomes. It gives the claim its full
10:10:39 17 breadth. So what we just heard from counsel underscores
10:10:45 18 why Samsung's construction is the correct one.

10:10:48 19 THE COURT: All right. May I ask a follow-up
10:10:52 20 question?

10:10:52 21 MR. JARED: Yes.

10:10:53 22 THE COURT: Where in the specification is there
10:10:54 23 support for the possibility of an audio file or descriptive
10:10:59 24 information?

10:11:02 25 MR. JARED: Sure, Your Honor. One minute.

10:11:02 1 Your Honor, in Column 4, Lines 31 to 35, the
10:11:19 2 specification states that user-defined unified
10:11:23 3 information -- user-defined unified information # m
10:11:28 4 contain -- contain arbitrary one or more than -- more from
10:11:32 5 among playlist information -- and, Your Honor, this
10:11:35 6 playlist can be audio or video -- on the management level 2
10:11:41 7 and program information, which can be a descriptive
10:11:43 8 information, pieces on the management level 3.

10:11:46 9 And then it continues. For example, when a
10:11:50 10 plurality of users use a single recording medium, it
10:11:53 11 becomes possible to manage reproduced contents that meet
10:11:57 12 respective users' tastes by using one user-defined
10:12:01 13 information...

10:12:05 14 And further, Your Honor, in Column 2, Lines 52 to
10:12:13 15 60 -- actually, Line 55 on Column 2, the specification
10:12:20 16 states that the unit of management is adapted to be handled
10:12:24 17 on the same level with unified information that indicates a
10:12:28 18 reproduction range of all AV, which is audio/video,
10:12:32 19 information that indicates a reproduction data.
10:12:37 20 User-defined unified information is adapted to be handled
10:12:41 21 on the added management hierarchical level.

10:12:44 22 So, Your Honor, there are further examples in the
10:12:48 23 specification which talk about audio thumbnails, which is
10:12:54 24 descriptive program information, and also decryption of
10:12:57 25 audio. So these are all included.

10:12:59 1 And the issue also is, Your Honor, by putting the
10:13:04 2 word "only" in front of "the video," that unduly narrows
10:13:09 3 the scope of the term. Nowhere in the spec we have "only
10:13:14 4 video information" or "only video." The spec just -- and
10:13:18 5 the claim talks about video information. The spec is all
10:13:21 6 about video information. There is no "only" or "mix" in
10:13:25 7 the spec.

10:13:26 8 THE COURT: Thank you.

10:13:27 9 MR. JARED: Thank you, Your Honor.

10:13:28 10 THE COURT: You can respond.

10:13:29 11 MR. FOWLER: Thank you, Your Honor.

10:13:30 12 None of that changes what I just said. Sure,
10:13:34 13 there's audio in the specification. The audio is part of
10:13:39 14 the video. But the more important point for the Court
10:13:42 15 today is this claim limitation talks about the processor --
10:13:46 16 I'm paraphrasing the claim language -- the processor
10:13:48 17 generating a group of video information based on user
10:13:52 18 preferences determined by the user selections of the video
10:13:54 19 information. We're not talking about audio here at all.
10:13:57 20 That's a red herring.

10:13:58 21 And, again, counsel hasn't pointed out anything in
10:14:02 22 our construction that's wrong as to the video. The fact
10:14:05 23 that there can be audio, we don't say that there can't be
10:14:08 24 audio. The construction doesn't say there can't be audio.
10:14:11 25 It just says that this group of video information is based

10:14:14 1 upon one of these three things occurring, and that three
10:14:17 2 things is the full breadth of the claim. It's broader than
10:14:20 3 they want it to be.

10:14:23 4 That's all I have to say, Your Honor.

10:14:24 5 THE COURT: Thank you, Mr. Fowler.

10:14:25 6 All right. Next term.

10:14:34 7 MR. SIDDIQUI: Good morning again, Your Honor.

10:14:54 8 THE COURT: Good morning.

10:14:55 9 MR. SIDDIQUI: How are you doing?

10:14:56 10 THE COURT: Good.

10:14:56 11 MR. SIDDIQUI: Thanks for the opportunity to
10:14:58 12 present the arguments.

10:14:59 13 So, Your Honor, the -- with respect to character,
10:15:03 14 I will be addressing the term "character" for the '815
10:15:08 15 patent.

10:15:09 16 Generally, with respect to the parties' and the
10:15:13 17 Court's ruling, we are in agreement with respect to a
10:15:19 18 portion of the construction, which is the first portion,
10:15:21 19 which is a letter, number, punctuation mark, or other
10:15:25 20 symbol. We would generally also be in agreement with the
10:15:28 21 latter part, but there needs to be some clarification in
10:15:31 22 view of the -- in view of Samsung's briefing.

10:15:35 23 In particular, control code -- the term "control
10:15:40 24 code" is nowhere in the specification or claims.

10:15:43 25 And, secondly, one unit of information. The one

1 unit of information seems to put some type of volume limit
2 on what a character -- how the character can be rendered or
3 displayed.

4 There's no such restriction on what volume can be
5 used to display a character. You know, there's nothing in
6 lexicography and disavowal. The term "one unit" never
7 appears in the spec. The term "unit" to describe
8 displaying doesn't appear in the specification. So it --
9 it sort of creates some ambiguity.

10 And the reason why Samsung appears to want to
11 include this kind of concept of volume is because they're
12 trying to exclude -- they mention Batman in their brief,
13 sort of appears out of Gotham, and it's not in the patent.
14 And so they try to say, look, you can't use a character to
15 display a graphic. And we know that's wrong because their
16 own expert explained that in the context of this claimed
17 invention, emojis, which is a character, can be like other
18 symbol would be considered by a POSITA to be a character.

19 And so the word "emoji" is -- literally means
20 picture character. And so we know that characters are
21 graphics, and there's no -- emojis are -- are considered to
22 be graphical objects. And so as long as we are
23 understanding and in the same space that you could use --
24 you can use a unit of information to display a graphic as
25 being part of the letters, figures, or symbols, then we're

10:17:34 1 okay.

10:17:34 2 But if the one unit is somehow being used to
10:17:37 3 restrict how much volume can be -- can be sort of
10:17:43 4 displayed, then there's a little bit of a problem.

10:17:49 5 THE COURT: So I take it you would be okay with a
10:17:52 6 construction of plain and ordinary meaning if "character"
10:17:56 7 doesn't include a graphical image.

10:18:01 8 MR. SIDDIQUI: If character does include a
10:18:05 9 graphical image, correct.

10:18:07 10 THE COURT: Does not include.

10:18:09 11 MR. SIDDIQUI: No, it needs to include a
10:18:10 12 graphical --

10:18:10 13 THE COURT: Includes. I misunderstood your
10:18:11 14 argument.

10:18:11 15 MR. SIDDIQUI: No problem, Your Honor.

10:18:12 16 So what we're saying is the one unit of
10:18:14 17 information, the one unit of information --

10:18:16 18 THE COURT: Okay.

10:18:17 19 MR. SIDDIQUI: -- is tying a volume -- is adding a
10:18:21 20 volume-type limitation that you can only display small
10:18:25 21 stuff, right? It's adding some sort of degree almost
10:18:31 22 for -- which is nowhere explained in the spec or the claim
10:18:33 23 how much volume do you need to display a character?
10:18:37 24 Because, Your Honor, the claim is directed to a graphical
10:18:41 25 user interface, and so the claim is directed to displaying

10:18:45 1 a first character and second character.

10:18:48 2 And we know that displaying characters includes
10:18:54 3 graphical image -- images, because that's how you render a
10:18:57 4 display.

10:18:58 5 And so it's not clear from their construction, but
10:19:01 6 this becomes more clear from Samsung's arguments in the
10:19:06 7 brief in which they say you cannot -- you cannot use one
10:19:09 8 unit to display a complex graphic such as Batman.

10:19:15 9 THE COURT: Okay.

10:19:15 10 MR. SIDDIQUI: And so we just think that's not --
10:19:17 11 that's not consistent with the plain and ordinary meaning.
10:19:20 12 That's not consistent with what their expert has testified.
10:19:24 13 And that's just not -- there's just no sort of
10:19:28 14 restriction -- no justification for restriction in the file
10:19:32 15 history or the specification, Your Honor.

10:19:33 16 THE COURT: Okay. Thank you, Mr. Siddiqui.

10:19:36 17 MR. SIDDIQUI: Thank you, Your Honor.

10:19:37 18 MR. FOWLER: Thank you, Your Honor. Mark Fowler
10:19:43 19 again.

10:19:44 20 Let me take this in the same order of points that
10:19:50 21 counsel for Maxell did. The Court had adopted as its
10:19:54 22 preliminary construction Samsung's construction, and we
10:19:58 23 agree with that.

10:19:58 24 But let me address the three points that counsel
10:20:01 25 raised. First, they conceded the letter, number,

10:20:06 1 punctuation mark, or symbol, but questioned the presence of
10:20:10 2 the control code.

10:20:10 3 THE COURT: Where is the support for the control
10:20:13 4 code?

10:20:13 5 MR. FOWLER: Sure. That's a -- that's a great
10:20:16 6 question.

10:20:16 7 I would point out they said, well, the "control
10:20:19 8 code" word does not appear in the specification. And, of
10:20:22 9 course, I'm willing to be proven wrong, but I believe the
10:20:24 10 word "punctuation mark" or "symbol" don't show up in the
10:20:29 11 specification either.

10:20:30 12 And that's because of the -- the main point behind
10:20:33 13 all of this argument, Your Honor, is that this word
10:20:36 14 "character" has a specialized meaning to those of skill in
10:20:41 15 the art in software design and graphics. And it's not what
10:20:44 16 I might think -- I'm a layman -- I might think or a juror
10:20:47 17 might think. And that special understanding has been set
10:20:50 18 forth by our expert, Dr. Bederson, and their expert also
10:20:55 19 agrees that it has a special meaning in the field. So the
10:20:58 20 question is what that is.

10:20:59 21 Our expert has explained it includes punctuation
10:21:04 22 marks, symbols, or control codes, as well as letters or
10:21:07 23 numbers.

10:21:07 24 And I can show the Court, if you'd like -- I have
10:21:10 25 slides on this. But both parties' dictionary definitions

10:21:12 1 basically support this construction, including, for
10:21:16 2 example, the Microsoft Computer Dictionary, which includes
10:21:19 3 the term "control code" within its construction or its
10:21:22 4 definition of what a character is.

10:21:26 5 So the support for this is the understanding of
10:21:29 6 one of ordinary skill in the art as reflected by the
10:21:33 7 expert's testimony and the parties' respective dictionary
10:21:40 8 definitions.

10:21:40 9 Does that answer Your Honor's question?

10:21:42 10 THE COURT: It does, yes.

10:21:43 11 MR. FOWLER: Okay. And then the second point they
10:21:45 12 raised is this represented by -- the Court's construction
10:21:49 13 says: Represented to a computer by one unit of
10:21:52 14 information. And, again, that comes directly from experts.
10:21:56 15 Our expert, Dr. Bederson, said that, and the dictionary
10:22:00 16 definitions that we cited.

10:22:01 17 If we could just go to Slide 16 for a moment,
10:22:05 18 please.

10:22:05 19 Just as a refresher, Your Honor -- I'm sorry,
10:22:08 20 Slide 10.

10:22:09 21 So we have the Microsoft -- and click one more,
10:22:21 22 please -- another click. Thank you.

10:22:22 23 So we have the Microsoft Computer Dictionary, the
10:22:26 24 Wiley Electrical and Electronics Engineering Dictionary,
10:22:29 25 Webster's Computer Dictionary, American Heritage Science

10:22:32 1 Dictionary. And you can see that all of them -- all of
10:22:34 2 these talk about basically one piece of information. One
10:22:36 3 talks about one unit, 1 byte of information; one talks
10:22:39 4 about 1 byte of computer memory; uses 1 byte of memory; 1
10:22:44 5 byte of memory.

10:22:44 6 But the interesting thing about this, and this
10:22:47 7 goes to their second point -- third point, too, is -- if we
10:22:47 8 could go to the next slide -- is the three dictionaries --
10:22:51 9 and click this again, please -- the three dictionaries
10:22:53 10 cited by Maxell essentially align with this, and this goes
10:22:57 11 to the other point, too, is their first dictionary is the
10:23:00 12 McGraw-Hill Dictionary of Scientific and Technical Terms.
10:23:02 13 And look what it says: An elementary mark.

10:23:05 14 So we're not talking here about complex graphics.
10:23:08 15 They want -- Maxell wants this to be something that's not a
10:23:12 16 character, a complex graphic like Batman, which is what the
10:23:16 17 parties have been using.

10:23:17 18 There is nothing in the specification, Your Honor,
10:23:21 19 and you won't hear anything, I think, from Maxell's
10:23:23 20 counsel, where a character ever is referred to in the
10:23:27 21 specification as a complex graphic.

10:23:30 22 And so we have an elementary mark. Down here we
10:23:33 23 have -- at the Newton's Telecom Dictionary, we have this
10:23:37 24 example, the ASCII code 65. That's one unit of
10:23:40 25 information. Again, so the unit of information, this is

1 supported by the extrinsic evidence of our expert, the
2 dictionary definitions cited by the parties. It's what one
3 of ordinary skill in the art would understand.

4 And then just finishing this out as to this last
5 point, again, there's nothing in the specification that
6 supports a graphical image that's not a character. And a
7 character is something with one unit of information, as set
8 forth in our construction. Character -- they haven't cited
9 anything, no text, no image, no nothing of a -- something
10 that's supposedly a character that's a complex graphic.

11 That's all I have on this one, Your Honor.

12 THE COURT: Thank you, Mr. Fowler.

13 MR. SIDDIQUI: So, Your Honor, there's a little
14 bit of a tension in their argument because on one hand,
15 they say plain and ordinary meaning. On the other hand,
16 they say there's a specialized meaning in the context of
17 this patent.

18 So if they're referring to dictionary definitions,
19 then I don't understand how they can also say there's a
20 specialized meaning. And so if we -- if there is agreement
21 that -- that all the dictionary definitions are aligned
22 like this is, then why is there a need for a construction?
23 Then plain and ordinary meaning applies, right?

24 The second aspect is they say that there's no
25 support for even symbols or punctuation marks in the

10:25:14 1 specification, right? So then that's why we should stick
10:25:17 2 with the plain and ordinary meaning and not introduce terms
10:25:20 3 that are not in the specification, like control code, unit,
10:25:23 4 symbol, letters, figures, and stick with what's in the
10:25:26 5 specification.

10:25:26 6 They mention that there's no support or we don't
10:25:30 7 point to any support in the specification with respect to
10:25:34 8 displaying. It's right -- graphics. It's -- that's --
10:25:38 9 that's the problem here. They're trying to add a negative
10:25:41 10 limitation into the claim.

10:25:42 11 And so the specification -- the claim itself is in
10:25:45 12 the context of graphical user interface. We have Claim 1
10:25:49 13 saying: Displaying -- a processor for controlling the
10:25:54 14 display to display -- this first and second characters in
10:25:58 15 display areas. Nowhere in the spec does it say you can't
10:26:02 16 display these using images. You -- you have images in the
10:26:06 17 figure -- Figure 6, you have images of emojis, moon.

10:26:12 18 And what they're saying is you have this mother
10:26:15 19 text, as you can see on Figure 6 on the top. Even the
10:26:19 20 text, Your Honor, the way it's rendered in a graphical user
10:26:22 21 interface is why images -- you take a collection of pixels
10:26:26 22 to render these -- these characters on the display. That's
10:26:32 23 how graphical user interfaces work. They're all images.
10:26:36 24 Even the text is rendered as an image.

10:26:39 25 And we see this -- this is why their expert

1 confirmed -- because they were going there in the briefing,
2 that's why we wanted to ask their expert: Would character
3 include images like emojis?

4 And he said: Yes. Like other symbols, emojis
5 would be considered by a POSITA to be a character.

6 And that's what we used -- everybody uses these
7 characters in their -- in their computers, in their phones.
8 You have graphical images, which are emojis, and you render
9 them using characters.

10 And then you also have -- the specification itself
11 refers to these things as display tags. The mother symbol,
12 the father symbol, in Column 6, 5 to 40, these are referred
13 to as display tags.

14 And then from Docket No. 76-3, Paragraph 46, off
15 of their expert, he describes these tags as graphical
16 images of a file folder on which appear textual labels "all
17 program" or "mother." So their expert agrees they include
18 images. We agree it includes images. The specification
19 refers to them as display tags. There's no reason to
20 introduce a negative limitation.

21 And, finally, Your Honor, with respect to the
22 Court's construction, we would agree -- we would agree with
23 letter, number, punctuation mark, or other symbol. We
24 would agree with that construction because symbol -- the
25 plain and ordinary meaning of symbol includes all of these

10:28:06 1 possibilities of emojis and various symbols.

10:28:10 2 And another place we knew that -- another place we
10:28:12 3 know that from is -- is you have -- you have -- when you go
10:28:18 4 on Word or PowerPoint, you insert symbol in your brief or
10:28:27 5 in your presentations, you have a list of all these symbols
10:28:29 6 that are able to display -- that are displayed on a
10:28:32 7 graphical user interface.

10:28:32 8 So we would be okay with Your Honor's
10:28:35 9 construction, with just some modifications. We would also
10:28:38 10 be okay with just plain and ordinary meaning because
10:28:40 11 there's no reason to include a negative limitation in this
10:28:43 12 context. In the context of graphical user interfaces, you
10:28:47 13 display by rendering images.

10:28:50 14 Thank you, Your Honor.

10:28:51 15 THE COURT: Thank you.

10:28:54 16 MR. FOWLER: May I, Your Honor?

10:28:55 17 THE COURT: Yes.

10:28:57 18 MR. FOWLER: So first, I'd like to say that there
10:29:03 19 is nothing in Samsung's construction that's a negative
10:29:06 20 limitation. I'm looking at it right now, and I don't see
10:29:08 21 it.

10:29:09 22 This is what a person of ordinary skill in the art
10:29:12 23 understands this to be, as evidenced by the evidence that I
10:29:15 24 discussed during my initial comments.

10:29:17 25 I would like to address a few of the points that

10:29:21 1 that were made by counsel.

10:29:22 2 This is Figure 4 in the patent. Counsel pointed
10:29:26 3 to some declaration testimony by our expert, Dr. Bederson,
10:29:30 4 about Unit 401 or Element 401. And although counsel didn't
10:29:36 5 mention this part of his testimony in that slide,
10:29:40 6 Dr. Bederson didn't refer to that as a character. He
10:29:43 7 referred to it as a tag, which is a different term in the
10:29:46 8 patent. If the patent had meant that to be a character, it
10:29:50 9 could have called it a character. It did not. Nor does
10:29:53 10 the patent call 402, 403, or 404 characters. It refers to
10:29:58 11 them as thumbnails. If it had wanted to call them
10:30:01 12 characters, it could have.

10:30:03 13 What Dr. Bederson said -- and let's go actually to
10:30:07 14 Slide -- if we could, Slide 15.

10:30:12 15 Counsel made the statement that Dr. Bederson
10:30:16 16 testified that emojis are characters, or something to that
10:30:20 17 effect, and they said that in their reply brief, too.
10:30:23 18 Well, that's only partly correct. What Dr. Bederson said
10:30:27 19 in his testimony -- this is at Exhibit J at Page 50, Lines
10:30:30 20 1 through 12, and I won't read the whole thing here.

10:30:34 21 But the thrust of what he actually said was that
10:30:34 22 if an emoji is represented by an index -- and an index goes
10:30:39 23 back to one of these things in a standard that's a single
10:30:42 24 piece of information -- then, yeah, it's an emoji -- it's
10:30:45 25 a -- it's a character.

10:30:46 1 But what it doesn't say in here and what
10:30:49 2 Dr. Bederson makes clear elsewhere is that if it has more
10:30:52 3 than one piece of information supporting it, then, no, it
10:30:55 4 is not a character. It is not a character.

10:30:59 5 Counsel made the point that the patent is directed
10:31:05 6 to displaying graphics, but the claim language doesn't say
10:31:08 7 displaying graphics. If they had wanted to claim that and
10:31:11 8 attempted to get a patent on it, they could have done that.
10:31:15 9 But they didn't. What they did is they claimed displaying
10:31:18 10 characters, and character has a well-known meaning to one
10:31:20 11 of skill in the art, which is what the Court's
10:31:23 12 construction -- Court's preliminary construction is.

10:31:25 13 Unless Your Honor has any questions, that's all I
10:31:28 14 have.

10:31:28 15 THE COURT: Thank you. I think that's enough.

10:31:30 16 MR. SIDDIQUI: Okay.

10:31:31 17 THE COURT: Let's move on to the next term.

10:31:33 18 MR. SIDDIQUI: Thank you, Your Honor.

10:32:07 19 MR. NESE: Good morning, Your Honor.

10:32:07 20 THE COURT: Good morning.

10:32:08 21 MR. NESE: Bryan Nese for Maxell.

10:32:09 22 I'll be addressing the "receiving first video
10:32:09 23 information" term of the '815 patent.

10:32:14 24 And it appears that the Court has adopted
10:32:16 25 Samsung's construction, at least in principle, and I want

1 to raise a few concerns that Maxell has about that.

2 Before I get to that, however, I think it's
3 important to have just a little bit of context for why I
4 suspect Samsung might be pushing for this specific
5 construction here when it seems like it may not matter a
6 whole lot to the issues that are in front of the Court
7 right now.

8 My understanding is that this is a construction
9 that Samsung believes somehow is tied to a written
10 description/priority application argument.

11 And while that wasn't clear from the briefing,
12 that is made clear from Dr. Bederson's declaration. I
13 believe if you look at that, Your Honor -- that's Exhibit C
14 to Samsung's briefing, Docket 76-3 -- Paragraphs 33 onward,
15 I think, make that fairly clear what the intention of this
16 is.

17 And so with that context in mind, I'd like to
18 raise two issues of evidence that I think caution against
19 the construction that the Court has preliminarily adopted.

20 The first is intrinsic evidence. And if we look
21 at just the words of the claim in isolation, nothing else,
22 it seems reasonable to suggest that rewriting this claim to
23 say "encrypted at the time it is received" seems like one
24 possible natural interpretation of the claim language.

25 But if we're looking at the language in complete

1 isolation, other possibilities abound. Two of them are
2 shown here on Slide 5. Also, one could rewrite this claim
3 term to say that it is encrypted -- excuse me, the video
4 information is encrypted after it is received. One could
5 envision rewriting the claim to say that video information
6 is encrypted before it is received. All of these are
7 reasonable interpretations of the claim language in
8 isolation.

9 And the claim language is written agnostic as to
10 time. To pick one of these options to the exclusion of the
11 others, I understand the grammatical argument, I understand
12 Dr. Bederson feels that way. I also understand, by the
13 way, that Dr. Bederson is not an expert in the English
14 language or grammar. The mere fact that he speaks it does
15 not make one an expert in the English language. If it
16 does, then the Court is well equipped to make that
17 determination on its own. It doesn't need an expert to
18 explain the rules of grammar.

19 But I digress. Multiple reasonable
20 interpretations based on the claim language in isolation,
21 but we don't look at the claims in isolation. We look at
22 the --

23 THE COURT: Well, let me ask you this. So how --
24 explain to me, based on what you've just told me, how the
25 phrase can be read in such a way that it doesn't require

1 the second video information to be encrypted when it's
2 received.

3 MR. NESE: Because one could, again, taking the
4 basic words of the claim say that the video information is
5 encrypted after it is received, before it is received, at
6 the exact moment that it is received. The claim doesn't
7 tell you anything about the timing of the encryption.

8 THE COURT: So you're saying that the second video
9 information could be encrypted later on?

10 MR. NESE: Yes, sir. And, Your Honor, in fact,
11 that's the exact description of the preferred embodiments
12 in the specification. I'll refer the Court to Figure 3 of
13 the '815 patent.

14 On the left-hand side of Figure 3 there are
15 several inputs that are inputting video information.
16 There's an antenna input 301, a digital input 3011, so on
17 and so forth. And if one traces the information that's
18 coming in through those inputs, one will see, as I'm
19 animating here on the slide, video information comes in
20 through input 301, it moves through a demodulator and some
21 other processing circuitry, and it gets to an encryption
22 circuit labeled as 331 in Figure 3 of the '815 patent.

23 So the specification itself in this figure shows
24 that encryption occurs after the video information is being
25 received.

10:36:38 1 And if there's any doubt about that, Your Honor,
10:36:41 2 I'll refer the Court to Column 5, Line 6 through 27, of the
10:36:46 3 specification, which says clear as day that at the time of
10:36:50 4 recording, a signal is received -- and I'm skipping ahead a
10:36:55 5 little bit, Your Honor -- but a signal is received and then
10:36:59 6 encrypted in the encryption circuit 331. There's another
10:37:02 7 example in the following sentence of the same passage: A
10:37:05 8 digital signal input from the digital input terminal 3011
10:37:10 9 is encrypted in the encryption circuit 331 after it's being
10:37:16 10 received.

10:37:16 11 And, again, if there's any doubt about this,
10:37:18 12 Samsung itself, or at least its expert, acknowledges this
10:37:22 13 in his declaration. Again, referring to Docket 76-3,
10:37:27 14 Dr. Bederson's declaration. In Paragraph 35, he says clear
10:37:30 15 as day: The only discussion of decrypting video
10:37:33 16 information in the '815 patent applies to video information
10:37:36 17 that was encrypted by an encryption circuit after it was
10:37:40 18 received.

10:37:41 19 So the intrinsic evidence counsels against the
10:37:44 20 construction that Samsung has proposed. Samsung's own
10:37:48 21 expert counsels against the construction that Samsung has
10:37:51 22 proposed. And the plain language of the claims itself,
10:37:55 23 being agnostic as to timing, suggest that the proper
10:37:59 24 interpretation, the proper plain and ordinary meaning in
10:38:01 25 view of the specification is that encryption can occur at

10:38:06 1 the time of receipt -- sure -- before receipt, or after
10:38:09 2 receipt.

10:38:09 3 And for that -- if there are any questions, Your
10:38:13 4 Honor, I'm happy to address them.

10:38:14 5 THE COURT: Thank you, Mr. Nese.

10:38:18 6 MR. NESE: Thank you, sir.

10:38:20 7 MR. FOWLER: Thank you, Your Honor.

10:38:21 8 The Court has a preliminary construction that's a
10:38:24 9 bit different than Samsung's construction, but Samsung
10:38:27 10 agrees that the Court's preliminary construction is a
10:38:31 11 correct construction, and we'd be more than willing to live
10:38:34 12 with that.

10:38:35 13 I'd like to address three points that counsel
10:38:37 14 made. The first is the claim language. The claim language
10:38:42 15 itself determines the outcome of this issue. I'll just
10:38:48 16 walk through it. I think Your Honor may already be on top
10:38:52 17 of this, but let me just walk through the language.

10:38:54 18 It says: An information processing apparatus
10:38:56 19 comprising: A network interface receiving -- so that's a
10:39:00 20 present participle, you're talking about action occurring
10:39:03 21 now -- first video information wirelessly from -- so it's
10:39:07 22 coming from something external to the information
10:39:10 23 processing apparatus -- the first information being
10:39:13 24 received -- so we're talking, again, about a present
10:39:16 25 participle being received, something happening now --

1 including the second video information that is -- that's in
2 the present tense -- is encrypted.

3 The examples that counsel showed you literally --
4 and I mean this, literally rewrite the claim by talking
5 about something later or before, but that's not what's
6 claimed. The inventor had an opportunity to claim what
7 they wanted in this claim, and they did.

8 And I will point out that counsel has acknowledged
9 or said that there are at least one example in the
10 specification of encryption that happens after, but I will
11 note for the Court that this is not the only independent
12 claim of the patent, not even the only independent asserted
13 claim of the patent. For example, Claim 1, which we've
14 already discussed earlier in this hearing, does not have
15 this limitation.

16 So no -- no -- no embodiment is being read out of
17 the claims here. There is another claim, Claim 1, that
18 would cover the embodiment that counsel pointed to.

19 This claim, the inventor chose to require that
20 encrypted information be received.

21 And just -- I don't -- I don't think counsel meant
22 to say this to mislead, but Dr. Bederson doesn't counsel
23 against our construction. He -- our expert, Dr. Bederson,
24 said our construction is correct and explained why in
25 detail.

10:40:38 1 So unless Your Honor has any further questions, I
10:40:41 2 don't --

10:40:41 3 THE COURT: I don't.

10:40:42 4 MR. FOWLER: Okay. Thank you.

10:40:43 5 THE COURT: Thank you.

10:40:43 6 Mr. Nese, anything else?

10:40:45 7 MR. NESE: Just very briefly, Your Honor. I do
10:40:50 8 want to correct -- and thank you, Mr. Fowler, for pointing
10:40:53 9 this out.

10:40:54 10 I wasn't suggesting that Dr. Bederson is saying
10:40:58 11 Samsung's construction is wrong. I merely meant to point
10:41:01 12 out here in Paragraph 35 that his statements -- those --
10:41:05 13 that extrinsic evidence suggests that the proposal Samsung
10:41:09 14 has made is not correct.

10:41:10 15 Second thing I'll say is all I heard from
10:41:14 16 Mr. Fowler was essentially just look at the words of the
10:41:16 17 claim, it's pretty obvious.

10:41:17 18 But the claim construction exercise cannot end
10:41:20 19 there.

10:41:23 20 If there are any questions the Court has, I'll
10:41:29 21 happily address them. If not, I'll take my seat. Thank
10:41:31 22 you, Your Honor.

10:41:31 23 THE COURT: Thanks.

10:41:32 24 Next term.

10:41:37 25 MR. LINDINGER: Good morning, Your Honor. Michael

10:42:00 1 Lindinger on behalf of Maxell.

10:42:01 2 THE COURT: Good morning.

10:42:03 3 MR. LINDINGER: I'll be arguing the next term for
10:42:05 4 the '815 patent, the "being deleted from the first group of
10:42:08 5 video information."

10:42:09 6 Maxell agrees with the Court's preliminary
10:42:12 7 construction of being removed from the first group of video
10:42:16 8 information. So I'll reserve any rebuttal or time in
10:42:20 9 response to whatever Samsung may say.

10:42:22 10 THE COURT: Very good.

10:42:23 11 MR. FOWLER: Your Honor, I'm happy to report that
10:42:27 12 Samsung agrees with the Court's preliminary construction,
10:42:29 13 so I think we're done.

10:42:30 14 THE COURT: Excellent. Move right along.

10:42:34 15 Thank you, Mr. Fowler. That's the best news I've
10:42:37 16 had all day.

10:42:38 17 Next term.

10:42:40 18 MR. SIDDIQUI: Sorry, Your Honor. I'm just
10:42:41 19 queuing up the slides. I wasn't expecting -- sorry about
10:43:06 20 that, Your Honor.

10:43:07 21 I would like to -- again, Your Honor, for this
10:43:10 22 term also, we're in agreement with the Court's
10:43:13 23 construction --

10:43:13 24 THE COURT: Okay.

10:43:14 25 MR. SIDDIQUI: -- so I'd reserve my time.

10:43:16 1 THE COURT: All right. Thank you.

10:43:22 2 MR. FOWLER: Your Honor, with respect to the
10:43:33 3 Court's preliminary construction, which is the composition
10:43:37 4 of the first group of video information being editable by
10:43:40 5 the user, I think it's clear that the patent requires that
10:43:45 6 the information be editable. The claim language itself
10:43:47 7 says: The first group of video information being
10:43:49 8 configured to allow -- allow a user to edit.

10:43:53 9 So that part is correct, but the -- the issue here
10:43:58 10 is what is "configured to" mean?

10:44:01 11 We know that information is editable, but the
10:44:05 12 issue is what does configured to mean in the context of
10:44:08 13 this patent? And the Court's construction does not address
10:44:12 14 that issue.

10:44:13 15 And I'd like to point out part of our argument,
10:44:17 16 which is based on -- in part on what we see in Slide 21,
10:44:21 17 which is Dr. Bederson's declaration at Paragraph 75. And I
10:44:26 18 will read the first part of it and paraphrase the rest. He
10:44:30 19 says: Second, and perhaps more fundamentally, it is not
10:44:34 20 clear what being configured to allow a user to edit means
10:44:37 21 with respect to either an individual item of video
10:44:40 22 information or a group of video information.

10:44:41 23 And this is where I'm going to paraphrase.

10:44:46 24 So what Dr. Bederson says is everybody in the
10:44:47 25 field knows what it would mean if you said configure

10:44:52 1 software to edit some information or configure some
10:44:56 2 hardware to be able to edit information. But that's not
10:45:01 3 what's claimed here.

10:45:02 4 What the patentee chose to claim in this
10:45:04 5 particular claim, which is not all of the claims of the
10:45:06 6 patent, it's just Claim 1, is that the information itself
10:45:11 7 be configured to be editable. And what Dr. Bederson points
10:45:16 8 out here in Paragraph 75 is that is a concept that's not
10:45:21 9 known to one of skill in the art -- ordinary skill in the
10:45:24 10 art, what it means to configure the information itself to
10:45:28 11 allow it to be edited.

10:45:30 12 And Maxell, in its papers -- both in its moving
10:45:35 13 papers and its reply papers, fails to identify what that
10:45:40 14 is.

10:45:40 15 And if we could go to the next slide, please.

10:45:45 16 This is underscored by Maxell's argument. I have
10:45:47 17 a quote from Page 11 of their opening brief, which says
10:45:51 18 that the -- the patent simply describes an information
10:45:53 19 processing apparatus that has the capability to allow a
10:45:57 20 user to edit first group of video information.

10:46:00 21 Well, that's kind of the point, Your Honor, is
10:46:04 22 that's not what's claimed. What's claimed is not an
10:46:09 23 information process apparatus, some hardware or some
10:46:12 24 software that's configured to edit information. What's
10:46:15 25 claimed is the configuring the actual information.

10:46:17 1 And their -- their expert, Dr. Singh, admitted
10:46:21 2 that's what the claim -- this is at the bottom -- it's
10:46:24 3 Exhibit H, Page 79, 17 through 21, of his deposition.
10:46:28 4 Where asked -- we asked him: My question is, what is the
10:46:31 5 thing that is being configured to allow a user to edit? Is
10:46:35 6 it an apparatus, or is it a group of video information?

10:46:38 7 And the answer was: It is a group of video
10:46:41 8 information on the apparatus.

10:46:41 9 So that's the point, Your Honor. There's nothing
10:46:44 10 in the specification, nothing in the claims that explains
10:46:47 11 how you configure information. There's no support for
10:46:50 12 that. And Maxell hasn't explained what it means other than
10:46:54 13 to say you're configuring the apparatus itself, which is
10:46:56 14 not what is claimed.

10:46:57 15 And so with -- with due respect to the Court's
10:47:01 16 preliminary construction, we would ask that the Court find
10:47:04 17 this claim indefinite.

10:47:07 18 Thank you, Your Honor.

10:47:08 19 THE COURT: So just to be clear, even if -- let's
10:47:11 20 say I disagree with you about that --

10:47:13 21 MR. FOWLER: Uh-huh.

10:47:14 22 THE COURT: -- what exactly is wrong with the
10:47:17 23 construction?

10:47:18 24 MR. FOWLER: Well, what's wrong with the
10:47:19 25 construction is that the construction -- well, let me put

10:47:23 1 it this way. If the Court is asking me is there a way that
10:47:26 2 the construction could be modified in a way that we think
10:47:29 3 would render the claim valid, I think the answer to that is
10:47:33 4 no because the construction talks about editable. The
10:47:37 5 claim language also talks about editing. So we know that
10:47:40 6 the information is edited.

10:47:41 7 But the construction itself does not address what
10:47:43 8 the meaning of "configured to" means in the context of this
10:47:48 9 claim and to one of ordinary skill in the art in terms of
10:47:52 10 what configuring information means. That's -- that's the
10:47:56 11 rub here, Your Honor.

10:47:57 12 And this is not a flaw that exists in other claims
10:48:00 13 of the patents. This is a particular flaw that's unique to
10:48:05 14 this Claim 1.

10:48:05 15 THE COURT: Okay. That helps.

10:48:07 16 MR. FOWLER: Thank you, Your Honor.

10:48:08 17 THE COURT: Thank you.

10:48:09 18 MR. SIDDIQUI: Your Honor, your construction is
10:48:19 19 flawless, we would contend.

10:48:24 20 And they say that nowhere in the specification is
10:48:26 21 there an explanation about what it means to be configured
10:48:29 22 to be editable. We don't -- you don't have to take my word
10:48:33 23 for it. You can take their expert's word for it.

10:48:36 24 When explaining the specification -- this is
10:48:39 25 Dr. Bederson from Column 6, 21 to 28 -- he states these

10:48:45 1 things: A POSITA would understand this passage to mean the
10:48:48 2 group of video information in the menu display tag can be
10:48:51 3 modified by adding additional programs and playlists and by
10:48:56 4 deleting programs from the playlist. A POSITA would
10:49:01 5 further understand such modification of membership in the
10:49:05 6 group of video information to constitute editing the group
10:49:08 7 of video information.

10:49:09 8 He says that again on Paragraph 65, provides
10:49:15 9 examples from the specification and says: A POSITA would
10:49:18 10 therefore consider that creating playlists that identify
10:49:21 11 one or more parts of one of the Programs in Figure 1
10:49:27 12 arbitrarily specified by a user as discussed as a form of
10:49:31 13 editing a program.

10:49:32 14 So we have their expert explaining the
10:49:35 15 specification. We can go to these portions of the
10:49:37 16 specification, but their expert has correctly characterized
10:49:40 17 these portions explaining what it means to be configured --
10:49:43 18 to configure the group to edit.

10:49:46 19 They raise the point of information processing
10:49:50 20 apparatus, that somehow our expert has said something or
10:49:54 21 we're trying to incorporate information processing
10:50:01 22 apparatus. That's correct. The claim is directed to an
10:50:07 23 information processing apparatus. The claim has a
10:50:08 24 recording medium that stores this group of video
10:50:09 25 information.

10:50:10 1 The claim says in this information processing
10:50:14 2 apparatus, you have a recording medium that stores the
10:50:16 3 group of video information. This group is editable. You
10:50:19 4 can add programs, delete programs, just like their expert
10:50:23 5 said.

10:50:23 6 Nothing further, Your Honor.

10:50:24 7 THE COURT: Thank you.

10:50:25 8 MR. FOWLER: Very briefly, Your Honor.

10:50:28 9 I think the declaration testimony cited by counsel
10:50:31 10 kind of underscores our point.

10:50:34 11 Paragraphs 65 and 67 talk about the end result,
10:50:39 12 which is the editing. Dr. Bederson says there's editing.
10:50:43 13 Of course, there is. That's what the claim talks about is
10:50:45 14 editing. But it ignores the fact that this claim is
10:50:47 15 requiring that the information be configured to be edited.
10:50:52 16 So that is something that needs to happen before the
10:50:55 17 editing occurs, and nothing in Dr. Bederson's testimony
10:50:57 18 that was cited talks about whatever that alleged
10:51:00 19 configuration is that happens before the editing occurs.
10:51:06 20 What he talks about is the end result, not the underlying
10:51:09 21 configuration.

10:51:10 22 And they have not cited what that configuration
10:51:15 23 should be. There's no support for that.

10:51:16 24 So that's all I have, Your Honor.

10:51:17 25 THE COURT: Thank you.

10:51:18 1 Next term.

10:51:38 2 MR. SIDDIQUI: Your Honor, we agree with
10:51:40 3 Your Honor's construction for "user profile."

10:51:41 4 THE COURT: Okay. Thank you.

10:51:54 5 MR. FOWLER: So, Your Honor, the issue here -- if
10:52:04 6 we could go to Slide 29, please.

10:52:06 7 The issue here is what does user profile mean in
10:52:10 8 the context of this patent and these claims?

10:52:14 9 And user profile is not used in the specification,
10:52:20 10 so we don't have any lexicography or definition of it. And
10:52:24 11 when we presented this issue to the Court as to why it
10:52:28 12 renders the claim indefinite, Maxell came up with some
10:52:32 13 potential explanations, none of which succeed.

10:52:35 14 And let's go to the next slide, please, Slide 30.

10:52:38 15 This is instructive. This is in their reply brief
10:52:41 16 after having seen our argument. They say: The user
10:52:45 17 profile limitation is about what is being associated in
10:52:48 18 memory with the user profile.

10:52:49 19 That's about as circular of reasoning as I could
10:52:53 20 think of. It doesn't tell us what the user profile is. It
10:52:57 21 begs the question of what it is.

10:52:59 22 This is in their reply brief.

10:53:00 23 So if we could go to the next slide.

10:53:04 24 What do they indicate it could be? Well, in their
10:53:07 25 opening brief, they said -- and this is a quote from Page

10:53:11 1 12 of their brief -- while the specification does not use
10:53:13 2 the term "user profile," it discloses user-dedicated
10:53:18 3 folders where each user can store its playlists according
10:53:22 4 to his/her preferences...where mother and father are shown
10:53:26 5 to have user-dedicated folders supporting their profiles.

10:53:27 6 And so they don't explain there what the user
10:53:31 7 profile is, but they suggest somehow that it's somewhere
10:53:34 8 lurking in here.

10:53:35 9 But if we go through here, we encounter the
10:53:37 10 problem that we addressed in our brief is if we address
10:53:41 11 folders first, the folders are separately claimed in Claim
10:53:44 12 1 as the first area. And I don't believe that is disputed.
10:53:49 13 And they never -- the specification never suggests that the
10:53:52 14 folders are the user profile. Instead, the folders are
10:53:56 15 where the video information is registered, like a playlist.

10:54:00 16 Well, and then we get to the playlists. Well, the
10:54:04 17 playlists are the claimed video information, so they can't
10:54:04 18 be the user information. As a matter of fact, Claim 1
10:54:07 19 makes that clear where it says: Wherein at least some of
10:54:09 20 the plurality of video information is associated with a
10:54:13 21 user profile.

10:54:13 22 So the two things are associated, but a playlist
10:54:16 23 is different than the user profile.

10:54:18 24 Well, what about these preferences they cite?
10:54:20 25 Well, Claim 1 cites a user profile, but Dependent Claim 2

10:54:25 1 cites user preferences. And so we know user preferences
10:54:28 2 under the rule of claim differentiation can't be the same
10:54:31 3 thing, and they haven't overcome -- they, I'm sorry --
10:54:35 4 Maxell hasn't overcome the presumption here that when you
10:54:38 5 use different terms in independent and dependent claims,
10:54:40 6 that they should be given different meaning.

10:54:42 7 And then lastly, they point to the mother and
10:54:44 8 father tags. Well, those are menu display tags. They're
10:54:49 9 not the user profile.

10:54:52 10 So let's go to the next slide.

10:54:53 11 So they also say: The '815 patent also discloses
10:54:58 12 user-defined unification information and contents of
10:55:04 13 user-defined information grouped to meet respective users'
10:55:10 14 tastes by using one user-defined unified information for
10:55:14 15 every user.

10:55:15 16 So that's their other -- when I looked at what
10:55:16 17 they said in their first -- the first section I quoted, it
10:55:19 18 didn't make any sense. And I think they understood that,
10:55:21 19 so they went to Plan B and said: Well, it must be lurking
10:55:23 20 in this language, too.

10:55:24 21 The problem is they're basing this on this Column
10:55:26 22 4, Lines 35 through 39, and Figures 8 and 9, but there's
10:55:30 23 nothing in Column 4, Figures 8 or 9, that tie what's
10:55:33 24 discussed here to user profiles. Nothing at all. And
10:55:37 25 Maxell never explained what user-defined unified

10:55:42 1 information is or what that information or how it somehow
10:55:45 2 renders it a user profile.

10:55:46 3 So we end -- we end up in a situation where the
10:55:51 4 claim doesn't tell you what a user profile is. Because the
10:55:56 5 claim language that's been pointed to by Maxell is actually
10:55:58 6 separately recited elsewhere, the specification certainly
10:56:01 7 never tells you what a user profile is. I think we're all
10:56:03 8 in agreement on that. The term is not even used.

10:56:07 9 What Maxell has pointed to as possibly having
10:56:09 10 something to do with user profile is not a user profile.

10:56:12 11 So there's nothing in this patent in this -- this
10:56:16 12 claimed invention, the invention that the -- that the
10:56:21 13 inventors decided to claim that tells us.

10:56:23 14 Now, why is that important? Well, the invention
10:56:26 15 is only entitled to the boundaries of what was claimed and
10:56:31 16 what the inventors actually invented. But here we don't
10:56:35 17 know what that is. That's -- that's an indefinite, almost
10:56:38 18 boundless definition.

10:56:39 19 And what we have in the Court's preliminary
10:56:42 20 construction is a collections of settings and information
10:56:45 21 associated with a user. And in the context of this patent,
10:56:49 22 respectfully, Your Honor -- respectfully, we don't believe
10:56:52 23 there's support in the specification for this. And it also
10:56:56 24 doesn't actually set what the boundaries of the claims are.
10:57:00 25 And under Nautilus, if we don't have a reasonable basis for

10:57:03 1 deciding where the boundaries of the claim are, then the
10:57:05 2 claim is indefinite.

10:57:06 3 So, Your Honor, unless the Court has questions,
10:57:08 4 that's all I have on this.

10:57:09 5 THE COURT: Thank you.

10:57:15 6 MR. SIDDIQUI: Your Honor, we all know what a user
10:57:21 7 profile is. And it's -- it's bit disingenuous to say that
10:57:27 8 the '815 patent doesn't disclose a user profile when it's
10:57:30 9 replete with references to user information, user unified
10:57:35 10 information.

10:57:35 11 In fact, Your Honor, your construction is very
10:57:38 12 close to what they said in their IPR petition to the PTAB,
10:57:42 13 that the user profile is a collection of settings. And so
10:57:45 14 it's not a boundless claim. The claim is -- defines that
10:57:51 15 you're required to associate a plurality of video
10:57:54 16 information with a user profile, just like the
10:57:56 17 specification explains. They say nowhere in the
10:57:59 18 specification is Figure 8 or Figure 9 or -- or the
10:58:04 19 corresponding descriptions describe user profile.

10:58:06 20 It's -- I'm sorry to say this, but it -- it's all
10:58:11 21 over. It explicitly says you have user unified
10:58:14 22 information -- user-defined unified information that
10:58:18 23 associates these programs, location of program information
10:58:23 24 with a user. You know, it literally talks about -- and
10:58:28 25 Dr. Singh had -- has this unrebutted testimony that

10:58:31 1 explains how at that time, Windows NT folders describe user
10:58:36 2 profiles in a similar manner with a root structure and
10:58:40 3 folders. And that's exactly what Figure 8 shows, a root
10:58:43 4 structure storing programs in Figure 8, and then Figure 9
10:58:46 5 showing that those programs are associated with a user
10:58:49 6 using user-defined unified information.

10:58:52 7 Then we have -- real quick. Then we have, Your
10:58:56 8 Honor, the specification at Column 6, Lines 25 to 40,
10:59:01 9 explicitly says you have user-dedicated folders to herself,
10:59:06 10 user-dedicated folder to himself. The mom has a specific
10:59:08 11 folder, the dad has a specific folder. They have arranged
10:59:12 12 images -- videos and playlists in their folders according
10:59:17 13 to their tastes. It's in the specification explicitly
10:59:20 14 explaining the concept of user profile.

10:59:22 15 How they explain -- one user-defined unified
10:59:28 16 information is used for every user. It says it becomes
10:59:30 17 possible to manage reproduced contents that meet respective
10:59:36 18 users' tastes by using this user unified information.

10:59:38 19 So the specification, Your Honor, is replete with
10:59:41 20 examples of how this user profile is organized, and
10:59:46 21 Your Honor captures it very accurately by explaining that
10:59:49 22 these are a collection of settings and information
10:59:51 23 associated with a user.

10:59:51 24 Thank you, Your Honor.

10:59:52 25 THE COURT: Thank you.

10:59:53 1 MR. FOWLER: Just very briefly, Your Honor.

10:59:55 2 But what counsel just said underscored why the
10:59:57 3 claim is indefinite.

10:59:58 4 He pointed to user identified -- or user-dedicated
11:00:03 5 folder. Well, that's -- in the claim, that's not the user
11:00:05 6 profile. That's the first area. That's separately
11:00:09 7 claimed. So it can't be that.

11:00:10 8 And in a prior slide, he talked about
11:00:14 9 user-identified information. Well, that's the playlist.
11:00:17 10 And so I don't think the Court is intending, by its
11:00:19 11 construction, to sweep in the playlists or the first area
11:00:22 12 as being the user profile. And that's all counsel pointed
11:00:25 13 to as the evidence in the specification of what a user
11:00:30 14 profile means. But both of those things are different
11:00:33 15 things in the claim, so they can't be.

11:00:34 16 So that's all I have, Your Honor, unless you have
11:00:36 17 questions.

11:00:37 18 THE COURT: Thanks.

11:00:37 19 MR. SIDDIQUI: Sorry, Your Honor. Real briefly on
11:00:39 20 this point.

11:00:40 21 Yes, it's in the -- there are portions in the
11:00:43 22 claim that talk about displaying a first character,
11:00:48 23 displaying a second character, displaying these folders.
11:00:51 24 You -- in a separate limitation, we have associated with a
11:00:55 25 user profile. It's okay to be allowed to display content

11:01:00 1 from the folders.

11:01:02 2 One portion of the claim that they somehow says is
11:01:04 3 redundant and superfluous is not because they have a
11:01:09 4 misunderstanding of the technology in the claimed
11:01:10 5 invention. We're talking about displaying items in one
11:01:13 6 section of the claim. In the other section, we're talking
11:01:16 7 about how you associate that information with a user
11:01:18 8 profile.

11:01:18 9 Nothing further, Your Honor.

11:01:20 10 THE COURT: Next term.

11:01:28 11 MR. NESE: Your Honor, if I'm not mistaken, the
11:01:33 12 next term is from the '757 patent. It's the "second camera
11:01:37 13 arranged on an opposite side of the touch display."

11:01:41 14 Maxell is in agreement with the Court's
11:01:42 15 preliminary construction in principle, however, we would
11:01:46 16 suggest one slight non-substantive revision to change the
11:01:50 17 word "located" that appears twice to "arranged," simply to
11:01:55 18 be more consistent with the language that the claim used
11:01:58 19 originally.

11:01:59 20 With that modification, Maxell is in agreement
11:02:02 21 with the Court's preliminary construction.

11:02:03 22 THE COURT: And the word "arranged" in both
11:02:06 23 places?

11:02:06 24 MR. NESE: Yes, sir. Yes, Your Honor.

11:02:08 25 THE COURT: All right.

11:02:08 1 MR. NESE: Thank you.

11:02:09 2 THE COURT: Thank you, Mr. Nese.

11:02:15 3 MR. HEINTZ: Good morning, again, Your Honor.

11:02:22 4 THE COURT: Good morning.

11:02:22 5 MR. HEINTZ: James Heintz for Samsung.

11:02:24 6 Your Honor, this -- the problem with making the
11:02:29 7 change that Maxell just asked for was that it conflicts
11:02:33 8 with what's already the agreed construction of the first
11:02:36 9 camera term, and that's what I've shown on Slide 125.

11:02:38 10 That first camera arranged on a same side of the
11:02:43 11 touch display, the agreed construction, agreed to by Maxell
11:02:46 12 and Samsung, is that it's located on the same -- on the
11:02:50 13 side of the touchscreen display.

11:02:52 14 THE COURT: What do you mean by agreed to by
11:02:58 15 Maxell?

11:02:58 16 MR. HEINTZ: Your Honor, the parties agreed to
11:03:00 17 this construction.

11:03:00 18 THE COURT: Oh, Mr. Nese?

11:03:02 19 MR. HEINTZ: The first camera term, Your Honor.

11:03:03 20 THE COURT: Oh, sorry.

11:03:04 21 MR. HEINTZ: Yeah, there's a first camera term.

11:03:07 22 THE COURT: I misunderstood.

11:03:08 23 MR. HEINTZ: Yeah, I'm sorry, Your Honor.

11:03:09 24 So the first camera term on Slide 125, there's an
11:03:12 25 agreed construction. The first camera arranged is the

11:03:17 1 first part of that limitation. And then the Court's -- and
11:03:21 2 in the agreed construction is "located." They've agreed to
11:03:24 3 the term "located."

11:03:25 4 In fact, we -- I can show the Court emails, if it
11:03:30 5 likes, but they've -- they've -- they actually proposed the
11:03:35 6 word "located" language in -- that's in the Court's
11:03:38 7 construction of the second term. They agreed to that a
11:03:41 8 couple of times, and then at the last minute withdrew that
11:03:45 9 agreement.

11:03:45 10 And, Your Honor, "located" is the right word. For
11:03:49 11 a jury, it's not going to be clear to a jury what
11:03:52 12 "arranged" means, but "located" is simple.

11:03:55 13 Your Honor, I've got a simple exhibit here in my
11:03:57 14 hand that will help explain the concept. I think it's very
11:04:00 15 clear. Imagine this is a touch display inside a cell
11:04:05 16 phone. The claim requires that there be one camera located
11:04:08 17 on one side of the touchscreen display. That's the first
11:04:11 18 camera.

11:04:13 19 And the second camera is located on the second
11:04:17 20 side of the touchscreen display, okay? These 1 and 2
11:04:19 21 colored labels are it. One's on one side. One's on the
11:04:23 22 other. It's a simple spatial relationship, Your Honor.

11:04:26 23 THE COURT: And if we used the word "arranged,"
11:04:28 24 how would it change the analysis --

11:04:30 25 MR. HEINTZ: It might --

11:04:31 1 THE COURT: -- of your hypothetical --

11:04:33 2 MR. HEINTZ: Sure.

11:04:34 3 THE COURT: -- or your example?

11:04:35 4 MR. HEINTZ: Sure, Your Honor.

11:04:36 5 One problem is the jury might not understand what
11:04:38 6 "arranged" means.

11:04:39 7 And the second problem is I think what Maxell
11:04:42 8 wants to do is use the term "arranged" because they're
11:04:45 9 going to want to start arguing about which way these
11:04:48 10 cameras face. They're going to talk about an arrangement
11:04:50 11 to the jury, if this construction is adopted. They're
11:04:55 12 going to start talking about how the cameras face, which
11:04:59 13 direction they face, rather than where they're located.

11:05:01 14 The claim language is a spatial relationship about
11:05:06 15 a camera on one side of a touch display and a second camera
11:05:09 16 on a second side of a touch display. That's how they're
11:05:13 17 located, not how they're oriented.

11:05:15 18 And the problem with "arranged" is it starts
11:05:17 19 bleeding into this -- it starting blurring the distinction
11:05:21 20 between location and orientation.

11:05:23 21 So I think that's the problem. Locating is a
11:05:28 22 clear, simple term that the jury will understand. One
11:05:32 23 camera located on one side of the touch display, a second
11:05:36 24 camera located on the other touch display. Orientation
11:05:41 25 doesn't matter. Whatever "arranged" might mean doesn't

11:05:44 1 matter. It's "located."

11:05:47 2 THE COURT: Okay.

11:05:48 3 MR. HEINTZ: Does that answer your question, Your
11:05:49 4 Honor?

11:05:49 5 THE COURT: Yes, it does.

11:05:50 6 MR. HEINTZ: Okay. With that, I'll -- I'll yield.

11:05:52 7 THE COURT: Thank you.

11:05:53 8 So, Mr. Nese, what's the difference between
11:05:55 9 "located" and "arranged"?

11:05:56 10 MR. NESE: I don't think there is one, Your Honor.
11:05:58 11 I think these are synonyms. The only difference in my view
11:06:03 12 and in Maxell's view between these two words is that the
11:06:05 13 claim originally used "arranged," and it's a
11:06:09 14 well-understood word that I think any lay juror could
11:06:12 15 appreciate and understand. And we would simply have a
11:06:15 16 preference for using that word in the construction itself.

11:06:18 17 THE COURT: But you originally proposed "located";
11:06:22 18 is that correct?

11:06:22 19 MR. NESE: Correct, Your Honor. And that was
11:06:24 20 admittedly an oversight in the first camera construction
11:06:27 21 agreed to that Mr. Heintz referenced, something we would go
11:06:34 22 back and change if we could, but simply we don't feel that
11:06:35 23 strongly about it because there really is no difference.

11:06:37 24 Now, I heard a lot of what sounds an awful lot
11:06:41 25 like non-infringement arguments just now from Mr. Heintz,

11:06:44 1 but that's not what we're here to talk about today. What
11:06:46 2 we're here to talk about today is what's the most
11:06:50 3 appropriate construction. Because the claim originally
11:06:51 4 uses the word "arranged," Maxell feels that that's the most
11:06:55 5 appropriate word to use in the construction. However, we
11:06:58 6 really don't see a difference between "located" and
11:07:00 7 "arranged." It seems to be substantively the same in our
11:07:03 8 view.

11:07:03 9 THE COURT: So you won't be too unhappy with
11:07:06 10 "located"?

11:07:06 11 MR. NESE: Your Honor, I don't think there's
11:07:07 12 anything the Court has done that has made me too unhappy
11:07:10 13 thus far.

11:07:11 14 THE COURT: All right. Thanks.

11:07:11 15 MR. NESE: Thank you, Your Honor.

11:07:16 16 THE COURT: Anything further?

11:07:17 17 MR. HEINTZ: Nothing further.

11:07:18 18 THE COURT: All right. Next term.

11:07:19 19 MR. SIDDIQUI: Your Honor, we're moving along
11:07:28 20 quite nicely, so I don't even have to speak fast today.

11:07:33 21 THE COURT: All right. That's good news for
11:07:34 22 Ms. Holmes.

11:07:35 23 MR. SIDDIQUI: So, Your Honor, with the next term,
11:07:38 24 it's for the '590 and '241 patent. Your Honor, we agree
11:07:42 25 with Your Honor's construction, and we would reserve our

11:07:46 1 time.

11:07:46 2 THE COURT: All right. Thank you.

11:07:51 3 MR. ERICKSON: Your Honor, Brian Erickson for the
11:07:58 4 Samsung Defendants. May I proceed?

11:08:01 5 THE COURT: Yes, please.

11:08:02 6 MR. ERICKSON: Thank you.

11:08:03 7 The claims listed on Slide 81 are invalid for
11:08:06 8 mixing apparatus and method claim limitations.

11:08:12 9 Moving to Slide 83, we've reproduced on Slide 83
11:08:14 10 on the left side Claim 1 of the '590 patent. Now, all the
11:08:17 11 independent claims are extremely long, and we acknowledge
11:08:19 12 it can't be read at this size. What we've done here, we've
11:08:23 13 done this to establish two important conceptual points that
11:08:27 14 are key to remember as we discuss these issues.

11:08:29 15 The first point is that the claim explicitly
11:08:33 16 recites certain structural limitations in terms of their
11:08:37 17 capability. We've highlighted some of those examples in
11:08:39 18 blue here on the left, and we've magnified one example at
11:08:43 19 the top center of the slide.

11:08:44 20 That limitation is: An input device capable of
11:08:48 21 receiving a user indication.

11:08:49 22 Those repeated types of limitations in the first
11:08:54 23 half of the claim are juxtaposed with the disputed three
11:08:58 24 method steps that come later in the claim and are
11:09:01 25 highlighted in light red down at the bottom of the claim.

1 Those three method steps are magnified here on the right
2 side of the slide.

3 So the first point, Your Honor, is that the
4 juxtaposition of very clear claims to structures with
5 capability and these recitations of events or steps which
6 signal to a person of ordinary skill that this is a mixed
7 method and apparatus claim.

8 The second point to note, Your Honor, is that all
9 of these limitations or most of these limitations in the
10 claim and all of the ones that are highlighted here on the
11 right are in italics. And what that means, Your Honor, is
12 that these limitations were added during re-examination,
13 and, in fact, they were added during the same amendment.

14 Now, the history here, Your Honor, is that Maxell
15 asserted the original '590 patent claims against Apple,
16 settled that case, and then Maxell requested re-examination
17 of its own patent. And Maxell filed an amendment adding
18 all of these limitations shown here on the right.

19 So that file history shows that in one breath,
20 Maxell chose to add certain limitations explicitly to
21 structures and their capabilities, and then these three
22 method steps. So the combination of the juxtaposition of
23 those types of claims and the file history would indicate
24 to a person of ordinary skill in the art that these are
25 improper mixed method and apparatus claims.

1 Now, Your Honor may be aware that Maxell did not
2 brief Steps 2 and 3 in its opening brief. And given the
3 page requirements, most of the briefing was focused on
4 Step 1. And so I think Steps 2 and 3 got short shrift in
5 the briefs, and so I'd like to focus on those two today.

6 If I could have Slide 98, please.

7 Slide 98 recites the second step limitation, which
8 is: The second or third radio communication circuits
9 receive a signal from the Internet indicating that an
10 update for an operating system of the video processing
11 apparatus is available.

12 Now, in context, as we show here on Slide 99,
13 we've highlighted that second step in light red at the
14 bottom of the slide, and we showed it in context with the
15 preceding limitations related to the capabilities of the
16 radio circuits.

17 And I direct the Court's attention to the first
18 limitation which recites: The second radio communication
19 circuit capable of connecting by radio to an Internet or a
20 home network to transmit and receive information using the
21 second transmission frequency band.

22 So that clearly sets forth the capability of the
23 second radio communication circuit to a person of ordinary
24 skill.

25 What does this red method step add? Well, this

11:11:46 1 red method step adds an actual receipt of a particular
11:11:51 2 signal bearing certain informational content, specifically
11:11:56 3 an indication that an update for an operating system of the
11:12:00 4 video processing apparatus is available.

11:12:02 5 Now, to highlight this juxtaposition of a
11:12:06 6 capability versus an instance of receipt, we have developed
11:12:16 7 this analogy, Your Honor.

11:12:18 8 Back in 1876, Alexander Graham Bell, widely
11:12:18 9 credited with inventing the telephone, on the left here, we
11:12:21 10 have an image of his notebook that's available from the
11:12:24 11 Library of Congress. You can see the citation down under
11:12:28 12 the image. And you see Mr. Bell first describes the
11:12:31 13 apparatus he invented. He has the figure. On the left,
11:12:34 14 you see the transmitting instrument. On the right, you
11:12:37 15 have the receiving instrument. And in the first paragraph,
11:12:39 16 he describes the structures in that apparatus, including
11:12:44 17 the receiving instrument.

11:12:45 18 But then he goes on, and he describes his first
11:12:49 19 use of that apparatus. And what he said was he sent
11:12:53 20 Mr. Watson with the receiving unit into the next room,
11:12:56 21 closed the door, and he uttered the words: Mr. Watson,
11:12:59 22 come here.

11:13:00 23 And Mr. Watson received that signal, and then came
11:13:03 24 into the room.

11:13:03 25 All right. So by analogy, Your Honor, this is a

11:13:06 1 claim that we created. This is not Mr. Bell's claim. But
11:13:09 2 to highlight this point, if you would claim this as a
11:13:11 3 receiving instrument comprising a circuit capable of
11:13:14 4 receiving audio signals, and then you have the method step,
11:13:17 5 wherein the circuit receives audio signals indicating
11:13:20 6 Mr. Watson come here, that's purely informational content.
11:13:23 7 It's an act of receiving a particular message. It doesn't
11:13:26 8 add anything to the capability of the circuit.

11:13:28 9 So the question under IPXL, Your Honor, is to a
11:13:33 10 potential infringer, how do they know if or when they
11:13:37 11 infringe this claim? So you have a potential infringer
11:13:39 12 that's trying to manufacture a telephone. Do they infringe
11:13:43 13 when they manufacture a telephone that is capable of
11:13:46 14 receiving audio signals, because by definition whatever
11:13:50 15 information is in that audio signal it can receive, or do
11:13:53 16 they actually have to receive the signals indicating
11:13:56 17 Mr. Watson come here, when those signals could just as
11:13:58 18 easily be an update on the Olympic medal count or you have
11:13:58 19 an update, Mr. Watson, or whatever other information could
11:14:05 20 be in that signal?

11:14:06 21 Here, this style of claiming is improper.

11:14:12 22 In response to some of the briefs that Maxell
11:14:15 23 cited -- I'm sorry, some of the cases that Maxell cited for
11:14:17 24 the first time in its reply brief, we have an additional
11:14:21 25 case we'd like to bring to the Court's attention.

11:14:23 1 THE COURT: Before you do that, can -- I mean, to
11:14:25 2 follow up on your last point, I mean, in this case, Maxell
11:14:28 3 is not claiming how the radio circuits receive the signal,
11:14:32 4 though, right?

11:14:34 5 MR. ERICKSON: The limitation is directed to the
11:14:40 6 fact that they do, in fact, receive a signal indicating
11:14:43 7 certain information. So the method step limitation at the
11:14:49 8 bottom on the left here of Slide 102 requires that the
11:14:52 9 circuit receive a signal with certain information. That is
11:14:57 10 a method step. That's not a capability -- it doesn't add
11:15:01 11 anything to the capability. It just says: Here's the
11:15:04 12 message that you actually did receive.

11:15:05 13 Previously in the claim, it said: You have a
11:15:07 14 circuit capable of receiving information from the Internet.

11:15:10 15 And this is the step that says: This is the
11:15:12 16 informational content in a message you actually received.

11:15:16 17 THE COURT: Okay.

11:15:17 18 MR. ERICKSON: Okay. If your question was to what
11:15:21 19 Maxell is asserting, I understood the Court's question to
11:15:25 20 go to the claim, not what Maxell was accusing, if that's
11:15:29 21 correct, Your Honor.

11:15:29 22 THE COURT: Correct, yes.

11:15:31 23 MR. ERICKSON: Okay. Thank you.

11:15:32 24 The additional case we'd like to bring to your
11:15:34 25 attention, Your Honor, is on Slide 103. It's Rembrandt

11:15:37 1 Data Technologies, LP versus AOL, LLC, 641 F.3d 1331,
11:15:47 2 Fed Circuit 2011.

11:15:48 3 This is a case that's applying IPXL, and you see
11:15:52 4 the claim recited: A data transmitting device for
11:15:56 5 transmitting signals corresponding to an incoming stream of
11:16:00 6 bits.

11:16:00 7 So we already have an apparatus, a data
11:16:03 8 transmitting device. It's for transmitting signals.
11:16:07 9 There's several limitation to the structures of the
11:16:09 10 apparatus, but then there's the last step that says:
11:16:12 11 Transmitting. All right. We already know we have a data
11:16:15 12 transmission device for transmitting signals.

11:16:18 13 And then the last step of the claim -- the last
11:16:20 14 limitation of the claim actually switches to a step. It
11:16:22 15 says: Transmitting the trellis encoded frames. And the
11:16:29 16 Federal Circuit affirmed that this was invalid for mixing
11:16:32 17 apparatus and method claims.

11:16:33 18 I'll move on to the third step, Your Honor, which
11:16:41 19 is: The video processing apparatus executes an update
11:16:43 20 process.

11:16:43 21 The claim -- relevant portions of the claim are on
11:16:51 22 the right. The claim begins: A video processing
11:16:54 23 apparatus, comprising. And then way down at the bottom of
11:16:57 24 the claim, we have a limitation that the video processing
11:17:02 25 apparatus executes an update process.

11:17:03 1 As the Federal Circuit has held, an apparatus
11:17:06 2 claim covers what a device is, not what it does. This
11:17:09 3 third step is clearly claiming what the video apparatus
11:17:13 4 does, not what it is.

11:17:14 5 I'd also remind the Court of the In re Rembrandt
11:17:19 6 case we just looked at where we had the data transmitting
11:17:26 7 device in the preamble. And later in the claim, you
11:17:29 8 actually had the claim step of transmit -- transmitting.
11:17:32 9 That's something the data transmitting device does, not
11:17:35 10 what it is.

11:17:36 11 Same thing applies to Step 3 in the asserted
11:17:39 12 claims.

11:17:39 13 Unless there are any other questions...

11:17:45 14 THE COURT: I don't have any.

11:17:46 15 MR. ERICKSON: Thank you, Your Honor.

11:17:47 16 MR. SIDDIQUI: Your Honor, so it looks like they
11:18:13 17 went away with their first set of argument about user
11:18:13 18 indication, which we have addressed in the briefing. Their
11:18:19 19 reply brief does, Your Honor, address all three
11:18:20 20 limitations.

11:18:20 21 So the first thing I just wanted to clarify,
11:18:23 22 Maxell did not put its patents in re-examination. Their
11:18:28 23 former client, Apple, had put the patents in
11:18:31 24 re-examination. Just wanted to clarify the -- I don't
11:18:33 25 think it's relevant, but just wanted to make sure the

11:18:36 1 record is clear that we did not. And the examiners,
11:18:39 2 including multiple examiners, found the claim scope to be
11:18:43 3 valid and definite and to be directed to an apparatus
11:18:46 4 claim. So the re-examination only underscores the point
11:18:49 5 that these claims are valid and definite.

11:18:51 6 In terms of capability, they say processor -- or,
11:18:58 7 sorry, a radio communication circuit transmitting is a
11:19:02 8 method step and does not denote capability.

11:19:04 9 Well, we didn't hear from them any at all today
11:19:07 10 about MasterMine, the MasterMine Federal Circuit case that
11:19:12 11 distinguishes IPXL and very neatly provides multiple
11:19:19 12 examples where an apparatus claim is definite even if it
11:19:22 13 has such functional steps.

11:19:23 14 For example, a mobile station in HTC Corp. versus
11:19:28 15 IPCom says: A mobile station storing, holding,
11:19:33 16 maintaining. A pipeline processor performing, producing,
11:19:37 17 disabling, determining.

11:19:40 18 UltimatePointer case: A handheld device including
11:19:44 19 an image sensor, said image sensor generating data.

11:19:49 20 So MasterMine said all of these -- and
11:19:52 21 MasterMine's own claim: A reporting module displays. A
11:19:57 22 reporting module presents. A reporting module invokes.

11:20:01 23 So again and again the Federal Circuit has said
11:20:04 24 there's nothing wrong in having an apparatus claim with
11:20:08 25 these phrases. And as -- Your Honor, this is a very common

1 way of claiming apparatus claims. We -- we have -- this
2 denotes capability of the components to be receiving those
3 signals. This does not denote any method step. In fact,
4 one of the extrinsic evidence we've cited is their own
5 patents. There's about 10 that we've cited in our briefing
6 that show that their own apparatus claim, Samsung, has
7 many, many similar claim language, which is a component
8 performing the function, which is consistent with IPXL --
9 sorry, MasterMine, UltimatePointer, Microprocessor, Motion
10 Games, and that's the law that applies.

11 In terms of their -- I think they -- they were
12 making a point that, look, they added capability in some
13 places and others, so they're really -- what they're doing
14 is they're arguing claim differentiation, and they're
15 saying when you recite capability in a particular
16 limitation and do not in another limitation, then somehow
17 you're creating this distinction. Well, that's not
18 accurate because there's other limitations in the claim
19 that also mention implementing, and they never say that
20 there's a problem with those.

21 And in addition, what we know, Your Honor, is the
22 language of MasterMine -- let's go back to MasterMine
23 again. And MasterMine's claim said: A database adapted to
24 store, a programmable processor adapted to store. They had
25 that "adapted to" language in two limitations. Then for

11:21:37 1 the limitation that was under dispute, wherein the
11:21:41 2 reporting module, it says: Wherein the reporting module
11:21:45 3 receives, generates a database query, invokes.

11:21:48 4 So you have, again, the Federal Circuit telling us
11:21:51 5 it's okay if you use implementing or capable of in certain
11:21:56 6 places and do not in other places.

11:21:58 7 And, lastly, we haven't heard anything from them.
11:22:00 8 We've cited this in our reply brief. Puff Corp. versus
11:22:05 9 SHO Products, Central District of California. Your Honor,
11:22:09 10 this case is exactly on point of what they're arguing,
11:22:13 11 which is when you recite "capable of" or "configured to" in
11:22:18 12 some places and not in others, somehow you're adding a
11:22:18 13 method claim. That's just not accurate.

11:22:21 14 There -- and I'm quoting -- the Defendant argues
11:22:23 15 the claim uses explicit functional language to describe
11:22:27 16 capabilities of the device, such as "for," "capable," and
11:22:33 17 "configured to," but do not use such language in the
11:22:35 18 limitations at issue. This argument does not persuade the
11:22:39 19 Court. Moreover, the fact that Claim 1 lists so many
11:22:42 20 capabilities suggests a claim strategy rooted in describing
11:22:46 21 capabilities of the device. Therefore, the limitation at
11:22:50 22 issue also describes a capability. And that's why
11:22:54 23 Defendant had not shown in that case by clear and
11:22:57 24 convincing that the claims are indefinite.

11:22:59 25 So, Your Honor, your ruling is correct, and it

11:23:03 1 follows with MasterMine, all those cases, and Puff Corp.

11:23:09 2 Thank you, Your Honor.

11:23:10 3 THE COURT: Thank you.

11:23:11 4 MR. ERICKSON: Your Honor, I'd like to thank
11:23:27 5 counsel for correcting the record. It was Apple that
11:23:31 6 requested that re-examination.

11:23:32 7 With respect to Puff Corp., this was a case that
11:23:36 8 Maxell cited for the first time in its reply brief. The
11:23:40 9 claim is reproduced on the left. Again, it's very long.
11:23:42 10 This is a very specific holding by the Court where the
11:23:45 11 claim addressed a vaporizing device, so one of these vape
11:23:52 12 cigarette replacement devices. And the claim goes to each
11:23:56 13 microscopic portion of that structure, and it recites that
11:24:00 14 this little part is capable of receiving the flow of gas,
11:24:04 15 the next part is capable of receiving the flow of gas,
11:24:07 16 capable of receiving -- so it walks through from the
11:24:11 17 mouthpiece all the way down to the atomizer.

11:24:14 18 We've highlighted on the left the last two
11:24:16 19 limitations and expanded those so the Court can read them.
11:24:19 20 The second to the last is in the middle top of the slide,
11:24:23 21 and you see this is the part where it's talking about the
11:24:26 22 atomizer outlets capable of receiving the flow of gas and
11:24:29 23 from one portion and providing it to another portion.

11:24:32 24 Then the last step is this wherein clause where it
11:24:35 25 kind of connects the dots between all of the other portions

11:24:37 1 of the device. And it says: Wherein the flow of gas -- in
11:24:42 2 other words, the flow of gas we've been talking about in
11:24:44 3 all the other limitations where each component is capable
11:24:47 4 of handling that flow of gas. And it says: Wherein the
11:24:50 5 flow of gas flows on the following path. And it kind of
11:24:54 6 connects the shoulder bone to the elbow bone to the wrist
11:24:58 7 bone and all the way to the inhalation outlet.

11:25:01 8 So when you look at that opinion, the Court is
11:25:03 9 very specific that that antecedent basis, that they were
11:25:07 10 talking about the same flow of gas, and the capability that
11:25:10 11 had been recited throughout that claim that on that
11:25:13 12 particular claim, the holdings here at the bottom of the
11:25:18 13 slide, that it is a definite article "the" and it's
11:25:22 14 referring to the capability in that flow of gas that had
11:25:25 15 been recited throughout the claim. So this was not a
11:25:28 16 method step.

11:25:29 17 So this case, like all of these cases, are very
11:25:32 18 fact-specific, and the nuance of how it is claimed is
11:25:34 19 critically important. And the steps in the asserted claims
11:25:38 20 in Maxell's patents are written in a way that we think
11:25:43 21 makes very clear that there are certain structural capable
11:25:48 22 of limitation and then there are the recited method steps.
11:25:52 23 That, plus the file history, would indicate to a person of
11:25:54 24 ordinary skill that these claims are, in fact, invalid
11:25:58 25 mixed method and apparatus claims.

11:25:59 1 A final point, Your Honor, I understand your
11:26:02 2 tentative ruling is that the claims are not indefinite. We
11:26:07 3 would request that if the Court maintains that tentative
11:26:11 4 ruling that it do, in fact, explicitly do what Maxell is
11:26:16 5 implicitly requesting of the Court which is to construe
11:26:20 6 these to be capable of.

11:26:21 7 I think the jury looking at these claims will not
11:26:23 8 see the words "capable of" in the claims themselves. And
11:26:26 9 so if it's the Court's opinion that these limitations are
11:26:29 10 directed to capability, we'd request that the Court
11:26:31 11 construe them that way so that the jury is not confused
11:26:34 12 when they see these active steps. And when they compare
11:26:38 13 these claims to the prior art versus the accused products,
11:26:41 14 they should know they're only looking -- and be told by the
11:26:44 15 Court that they're only looking for capability, not an
11:26:48 16 action.

11:26:49 17 Thank you, Your Honor.

11:26:49 18 THE COURT: Could you -- on the MasterMine case,
11:26:52 19 can you specifically address that and distinguish it, if
11:26:57 20 possible, on how the claims were written?

11:26:59 21 MR. ERICKSON: Yes.

11:27:00 22 THE COURT: Not so much the procedural aspects of
11:27:03 23 the case.

11:27:04 24 MR. ERICKSON: Yes, Your Honor.

11:27:05 25 If could have Slide 96, please.

11:27:08 1 Okay. So MasterMine is one of the cases that are
11:27:16 2 addressing the user action issue, which really only applies
11:27:23 3 to the first step that's been -- that was briefed pretty
11:27:28 4 heavily to Your Honor.

11:27:29 5 The '59 patent -- the '590 patent claims the user
11:27:33 6 action slightly differently from both MasterMine and IPXL.
11:27:39 7 All of these are claimed slightly differently from each
11:27:42 8 other. None of them are identical.

11:27:44 9 But here, Maxell added this limitation that claims
11:27:48 10 an indication from the user. In fact, when an indication
11:27:51 11 from the user indicates something. So this is introducing
11:27:54 12 what we've referred to as a temporal cause/effect. In
11:27:59 13 other words, that's not present in MasterMine. And the
11:28:04 14 claim here in the '590 has, again, those explicit capable
11:28:09 15 of limitation, which are not present in MasterMine, and, of
11:28:14 16 course, there's the file history, which Your Honor is aware
11:28:14 17 of.

11:28:14 18 So those three issues, I think the claim is
11:28:21 19 different from MasterMine. It's, of course, different from
11:28:24 20 IPX (sic), as well, but this claim is directed to when an
11:28:28 21 indication from the user indicates. To the extent there's
11:28:34 22 any ambiguity there, it is clarified in the file history
11:28:36 23 where they were distinguishing the prior art that lacked
11:28:37 24 that particular indication both temporally and
11:28:40 25 substantively.

11:28:41 1 Thank you, Your Honor.

11:28:42 2 THE COURT: Thanks. Thank you.

11:28:48 3 MR. SIDDIQUI: Sorry, Your Honor.

11:28:56 4 Your Honor, the word I heard was slightly --

11:29:00 5 slightly different.

11:29:01 6 Did I hear that correct, Jim?

11:29:04 7 And so clear and convincing is what we're working
11:29:06 8 with, not slight differences. And so there's actually not
11:29:10 9 a difference because they say there's no temporal
11:29:14 10 limitation.

11:29:17 11 What we have is receiving a user selection on the
11:29:22 12 left from MasterMine. What we have here on the right is
11:29:24 13 when an indication from the user indicates. So you receive
11:29:27 14 it. And on the left, you have generates a database query.
11:29:32 15 On the right, you have a controller assigns a connection.
11:29:35 16 And this is the temporal limitation.

11:29:38 17 They were saying there's a cause-and-effect. When
11:29:41 18 you receive, you do this. On the right, you say -- on the
11:29:44 19 left, sorry -- on the left for MasterMine, you say:
11:29:47 20 Generates a database query as a function of the
11:29:52 21 user-selected database fields. So you have
11:29:56 22 cause-and-effect there, as well, and temporal limitation
11:29:59 23 there, as well.

11:30:00 24 And, Your Honor, real briefly with respect to not
11:30:05 25 just MasterMine, but there's all the additional cases in

11:30:09 1 MasterMine, HTC Corp. and MEC and UltimatePointer that all
11:30:15 2 explain why this is allowed, and it's definite. And
11:30:19 3 another point they use was claim differentiation. They
11:30:22 4 said -- they ignored what I just said and walked through
11:30:25 5 the MasterMine claim that we had capability in one place
11:30:27 6 and not in another. But same thing, MasterMine had adapted
11:30:30 7 to in one place and not in another, and that was okay.

11:30:35 8 So nothing further from me, Your Honor -- from me,
11:30:37 9 Your Honor.

11:30:37 10 THE COURT: Okay. All right. Thank you.

11:30:40 11 All right. Very good. We are moving along quite
11:30:44 12 nicely, but I do think we need to take a short break. And
11:30:46 13 I'll be optimistic that we can get done at a reasonable
11:30:51 14 hour, so we won't just -- we won't stop for lunch, we'll
11:30:55 15 just take a short, say, 10 or 15-minute break and press on,
11:30:59 16 and hopefully -- hopefully you all will give us all back
11:31:03 17 some time.

11:31:03 18 We'll be in recess about 10 or 15 minutes.

11:31:08 19 COURT SECURITY OFFICER: All rise.

11:31:09 20 (Recess.)

11:31:09 21 COURT SECURITY OFFICER: All rise.

11:31:10 22 THE COURT: Please be seated.

11:41:39 23 Next term.

11:41:45 24 MR. SIDDIQUI: Good morning, Your Honor, again,
11:41:47 25 Your Honor. Sorry that you have to listen to me so much.

11:41:50 1 THE COURT: No, you're doing fine.

11:41:52 2 MR. SIDDIQUI: Thank you, Your Honor.

11:41:52 3 Your Honor, for the next term, we agree with

11:41:54 4 Your Honor's construction --

11:41:56 5 THE COURT: Okay.

11:41:56 6 MR. SIDDIQUI: -- so I would reserve my argument.

11:42:03 7 MR. ERICKSON: Thank you, Your Honor.

11:42:20 8 THE COURT: Yes, sir.

11:42:21 9 MR. ERICKSON: Starting with Slide 109, this

11:42:25 10 wherein clause is in all asserted claims of the '590 and

11:42:28 11 '241 patents. And Your Honor's tentative this morning was

11:42:30 12 actually extremely helpful in focusing the issues here, but

11:42:34 13 it doesn't get to the core issue in dispute, which is must

11:42:39 14 the controller assign the particular radio indicated by the

11:42:43 15 user?

11:42:43 16 Now, Your Honor, I've modified this slide from

11:42:46 17 what you have in your printouts based on Your Honor's

11:42:49 18 tentative ruling. This -- this issue used to say: Must

11:42:53 19 the controller assign the particular radio selected by and

11:42:57 20 indicated by the user?

11:42:58 21 The real issue here that we need your Court --

11:43:03 22 Your Honor's help with is under 02 Micro, can the

11:43:06 23 controller assign -- can the controller choose and assign a

11:43:09 24 radio of its choosing that has not been indicated by the

11:43:12 25 user?

11:43:13 1 Now, the limitation in dispute is shown here in
11:43:24 2 italics on Slide 110, and it has two parts. The first part
11:43:29 3 defines the indication from the user, and the second part
11:43:34 4 defines what the controller does when that indication
11:43:36 5 occurs.

11:43:37 6 So let me start with the first part of the phrase.
11:43:39 7 It states: When an indication from the user indicates to
11:43:44 8 transmit video information using the first radio
11:43:48 9 communication circuit.

11:43:48 10 So let me stop there. The claim defines what the
11:43:53 11 indication must include, and it has to include two things.
11:43:56 12 It's got to include an indication to transmit video, and it
11:43:59 13 must include an indication of the first radio communication
11:44:01 14 circuit. So the user must indicate the first radio
11:44:06 15 communication circuit.

11:44:06 16 Now, in light of Your Honor's tentative ruling --
11:44:11 17 thinking about it today, it's possible that sometime prior
11:44:14 18 to the user indicating that radio, maybe something else
11:44:18 19 selected the radio. But regardless of how that radio was
11:44:23 20 selected, the claim requires that the user indicate the
11:44:26 21 first radio communication circuit. The plain language of
11:44:29 22 the claim requires that.

11:44:30 23 The second part of the limitation, continuing on,
11:44:32 24 states: The controller assigns a connection to the first
11:44:38 25 radio communication circuit for transmitting the video

11:44:39 1 information.

11:44:40 2 So the antecedent basis there for the first radio
11:44:44 3 communication circuit and the video information is what was
11:44:46 4 indicated by the user.

11:44:48 5 Now, the plain language of this claim does not
11:44:51 6 give the controller any discretion here. The controller
11:44:54 7 cannot go off and choose the radio it wants to use. It
11:44:59 8 cannot go off and choose the video it wants to transmit.
11:45:02 9 Those two things had to be indicated by the user, and then
11:45:05 10 the controller must assign that radio to transmit that
11:45:10 11 video. That's the plain language of the claim. Full stop,
11:45:15 12 Your Honor. The Court need not look at the file history,
11:45:17 13 it need not look at the specification. The claim resolves
11:45:20 14 this issue.

11:45:20 15 Now, it does beg the question of why are we here
11:45:23 16 today? Why did we have to brief this issue, and what is
11:45:27 17 the dispute under 02 Micro that requires the Court's
11:45:30 18 resolution?

11:45:31 19 Well, the answer to that is on Slide 113.

11:45:35 20 Now, as Maxell alluded to in its opening brief on
11:45:39 21 Page 25, Maxell states: The controller will have to select
11:45:43 22 the first communication circuit.

11:45:46 23 Now, there are several similar statements on Page
11:45:48 24 25 of its opening brief. Maxell doesn't revisit this in
11:45:51 25 its reply brief. It's not entirely clear what Maxell is

1 arguing in its brief, but it is very, very clear that this
2 is just the tip of the iceberg.

3 What we've reproduced here on Slide 113 is an
4 excerpt from Maxell's infringement contentions, and one of
5 the ways Maxell asserts that this limitation is practiced
6 is when the user invokes a select program, all right? The
7 specific select program is this Intelligent WiFi switch to
8 mobile data program. The user can turn that on. And when
9 you turn it on, the accused controller will evaluate
10 multiple cellular mobile data radios and multiple WiFi
11 radios, and the controller will select the radio to assign.

12 So when we saw this contention from Maxell, we
13 realized we thought we had a -- probably a claim
14 construction dispute here. We met and conferred with
15 Maxell for claim -- on purposes of claim construction, and
16 we realized we did, in fact, have a dispute over this
17 ordinary meaning of the scope of this term where Maxell
18 believes that the user need not indicate the first
19 communication radio circuit. Instead, the controller can
20 just select it on its own.

21 This does not satisfy the plain language of the
22 claim. There's at least three reasons why it doesn't, but
23 the one that's relevant today is this does not include the
24 user indicating the radio. This is the user delegating
25 that or abdicating that indication and just telling the

11:47:17 1 controller: You evaluate all the radios. You pick the
11:47:20 2 radio you want.

11:47:21 3 That does not comport with the plain language of
11:47:22 4 the claim. And that is the disagreement between the
11:47:24 5 parties about the scope of the plain and ordinary meaning
11:47:27 6 that requires the Court's resolution.

11:47:28 7 Now, again, the plain language of the claim is
11:47:32 8 enough, but the file history is absolutely crystal clear
11:47:35 9 that this type of select program was the very reason this
11:47:39 10 limitation was added to the claim and was exactly what
11:47:42 11 Maxell distinguished during the re-examination.

11:47:45 12 Now, on Slide 114, we have the actual amendment
11:47:49 13 that added this limitation. That's why it's underlined.
11:47:51 14 It's not in italics. It's underlined because the format
11:47:55 15 for an amendment is to underline new language.

11:47:57 16 And you see just before the underlining starts,
11:48:00 17 you have the original limitation that just said: An
11:48:03 18 indication from a user. Very broad. And so they added the
11:48:07 19 limitation to distinguish the indications in the prior art
11:48:10 20 to require that the user indicates to transmit video
11:48:15 21 information using the first radio communication circuit.
11:48:17 22 That took away all the discretion from the controller.

11:48:20 23 Now, to understand what happened during
11:48:23 24 re-examination, we have to look at the prior art very
11:48:26 25 briefly.

11:48:26 1 On Slide 115, we have the original claim
11:48:29 2 limitation shown at the top of the slide. And you see the
11:48:32 3 original claim limitation just very broadly claimed an
11:48:35 4 indication from a user.

11:48:37 5 Now, there are two relevant indications from the
11:48:39 6 user in the prior art. There's turning on the device, and
11:48:44 7 when you turned on the device, the controller would
11:48:46 8 automatically run a select program.

11:48:47 9 And then there's a second embodiment disclosed in
11:48:50 10 the prior art where the device was already on, but the user
11:48:52 11 would manually invoke a select program. The user would
11:48:56 12 say: Controller, run a select program.

11:48:58 13 And in response to either one of those in the
11:49:01 14 different embodiments, in response to those user
11:49:04 15 indications, the controller would execute a select program,
11:49:08 16 select program 260, and it would automatically assign one
11:49:11 17 of two radios. It would automatically assign the
11:49:14 18 appropriate one of transceivers 202 and 203.

11:49:18 19 So that was the basis for the prior art
11:49:20 20 rejections. You had prior art that had a select program.
11:49:23 21 The user would invoke the select program. The user
11:49:26 22 wouldn't indicate the radio. The user would say:
11:49:28 23 Controller, you decide. The controller would then select
11:49:32 24 the appropriate radio, either 202 or 203.

11:49:35 25 Now, there was a third user indication in that

11:49:38 1 prior art that's irrelevant to our discussion today. The
11:49:41 2 third user indication was a subsequent confirmation by the
11:49:44 3 user to transmit video. That's the user indication that
11:49:47 4 Maxell focuses on in its briefs, and I've seen it in some
11:49:51 5 of its slides that it may use today. That user indication
11:49:51 6 is totally irrelevant.

11:49:55 7 What we're talking about are the initial user
11:49:57 8 indications in response to which controller selected and
11:50:01 9 assigned the radio transceiver on its own.

11:50:04 10 Slide 116, we show how Maxell distinguished or
11:50:12 11 disclaimed that type of selection. In the upper left, we
11:50:15 12 have the first user indication where the user turns on the
11:50:19 13 mobile terminal, and it would automatically run the select
11:50:23 14 program. And Maxell said that's not enough. That does not
11:50:25 15 identify a particular transceiver for assignment.

11:50:27 16 Similarly on the bottom right, this is where the
11:50:30 17 user indication is the user manually invoking the select
11:50:33 18 program 260. Again, Maxell said that has nothing to do
11:50:37 19 with the user indicating a particular radio communication
11:50:42 20 circuit to be used.

11:50:42 21 Slide 117 includes more examples of this
11:50:57 22 disclaimer, Your Honor.

11:50:59 23 Slide 118 discusses -- are the disclaimers about
11:51:03 24 the controller automatically selecting the radio. You see
11:51:07 25 the first three is Maxell saying, no, Tee -- in Tee, the

11:51:14 1 controller automatically selects transceiver 202 or 203
11:51:16 2 using its select program. That's not what they say they
11:51:18 3 claimed.

11:51:19 4 Instead, you see down in the bottom right-hand
11:51:22 5 corner where Maxell argued that it would not have been
11:51:25 6 obvious to modify Tee to include the claimed manual step of
11:51:30 7 assigning connections to transceiver 202 or 203 in response
11:51:34 8 to an indication by the user.

11:51:35 9 Now, Your Honor, that file history is crystal
11:51:37 10 clear that it -- the user must indicate both transmit video
11:51:43 11 and the first radio communication circuit. But it's
11:51:47 12 really, again, Your Honor, that file history is an
11:51:50 13 additional reason to support the plain and ordinary meaning
11:51:53 14 of the claim, but honestly, it's not necessary. When you
11:51:56 15 look at the plain and ordinary meaning of the claim, the
11:51:59 16 user must indicate -- or the indication from the user must
11:52:02 17 indicate two things.

11:52:03 18 The indication must indicate to transmit video
11:52:06 19 using the first radio communication circuit. When that
11:52:09 20 indication occurs, the controller has no discretion. The
11:52:12 21 claim requires the controller to assign that radio
11:52:16 22 communication circuit to transmit that video. That's the
11:52:19 23 plain and ordinary meaning of the claim. That's the issue
11:52:22 24 that needs to be resolved.

11:52:23 25 And so the Court's tentative, we understand that

11:52:28 1 the Court understands that the plain and ordinary meaning
11:52:30 2 should apply. The Court has tentatively ruled that the
11:52:34 3 user doesn't have to select the radio, but the plain and
11:52:39 4 ordinary meaning requires that the user indicate the radio
11:52:41 5 in the video and that the controller assign that radio for
11:52:45 6 transmitting that video.

11:52:47 7 Thank you, Your Honor.

11:52:47 8 THE COURT: Thank you.

11:52:49 9 MR. SIDDIQUI: Your Honor, if they say that the
11:53:07 10 plain language of the claim is clear and the plain and
11:53:10 11 ordinary meaning applies, I'm unsure why we're talking
11:53:14 12 about disclaimer and why we're talking about infringement
11:53:16 13 contentions.

11:53:17 14 Maxell is not walking away from the claim
11:53:20 15 language. The claim language says what it says. When an
11:53:23 16 indication from a user indicates to transmit video
11:53:27 17 information, the controller assigns a connection.

11:53:30 18 So they have a negative limitation saying the
11:53:33 19 controller cannot. But the controller must necessarily
11:53:36 20 select the radio communication circuit to be able to assign
11:53:40 21 it.

11:53:40 22 THE COURT: So you're -- you're saying that the
11:53:42 23 limitation requires the controller to do the selecting?

11:53:46 24 MR. SIDDIQUI: It's a cause-and-effect.

11:53:47 25 So you have a -- it has to do it when it receives

11:53:51 1 the user indication. So it has to do both. We're not --
11:53:54 2 we're not -- we're not saying that the user does not have
11:53:59 3 to do anything and it automatically assigns it. And, you
11:54:04 4 know, I don't know why we're discussing infringement
11:54:05 5 contentions, because, you know, this is about claim
11:54:08 6 construction.

11:54:09 7 But even if we -- even if we take their example,
11:54:13 8 Your Honor, I have this over here, they talk about somehow
11:54:16 9 Intelligent WiFi, the controller itself is doing it. This
11:54:20 10 is Slide 130. Even there in our contentions, we point to a
11:54:24 11 user indication, which is this manual toggle bar.

11:54:27 12 So we're not walking away from the fact that the
11:54:30 13 claim requires a user indication. The claim requires there
11:54:34 14 to be a user indication which then the controller uses to
11:54:38 15 assign a connection. That's in the claims -- language,
11:54:43 16 that's in Your Honor's construction. And nothing in the
11:54:46 17 file history of the re-examination departs from that.

11:54:48 18 The file history, in fact, explicitly is
11:54:51 19 consistent with that. This is on Docket No. 76-13 at Page
11:54:57 20 21: When distinguishing Tee, the prior art, from the
11:55:00 21 claim, it explicitly says: Responsive to the user
11:55:03 22 indication, the controller affirmatively assigns a
11:55:06 23 connection. So, again, there's a relationship here.
11:55:08 24 There's a relationship between a user indication. There's
11:55:12 25 a relationship what the controller does from that user

11:55:15 1 indication.

11:55:15 2 So I don't think there's any confusion there or
11:55:18 3 any need to include a negative limitation.

11:55:23 4 And in terms of -- briefly in Tee -- in the
11:55:29 5 re-examination file history, if we were to go to
11:55:31 6 disclaimer, even though they say that there's no need as
11:55:36 7 plain and ordinary meaning, in Tee, there was a user input.
11:55:40 8 In the re-examination history, the prior art that was
11:55:42 9 distinguished, there was a user input. It just occurred
11:55:45 10 after the controller processor had already assigned the
11:55:49 11 connection.

11:55:49 12 So it was just -- it was actually consistent with
11:55:51 13 what we're saying today, which is you need a user
11:55:57 14 indication before the controller assigns a connection. The
11:56:00 15 two are linked. It's cause-and-effect. The claim language
11:56:03 16 is clear. Your Honor's construction is clear. No need for
11:56:05 17 a negative limitation. No need to find a disavowal of
11:56:09 18 claim scope.

11:56:10 19 Thank you, Your Honor.

11:56:10 20 THE COURT: Thank you.

11:56:18 21 What's -- what's the difference between indicate
11:56:20 22 and select?

11:56:22 23 MR. ERICKSON: I didn't catch that, Your Honor,
11:56:25 24 I'm sorry?

11:56:26 25 THE COURT: What's the difference between indicate

11:56:27 1 and select?

11:56:29 2 MR. ERICKSON: We introduced the phrasing of
11:56:34 3 "select," Your Honor, to highlight the issue of essentially
11:56:38 4 choosing, Your Honor. And because what we see the -- the
11:56:42 5 cause-and-effect that they're not recognizing in the plain
11:56:49 6 and ordinary language of the claim is that the user -- the
11:56:52 7 cause is the user indicating a particular radio.

11:56:54 8 So the user has come to a conclusion, whether the
11:56:57 9 user chose it or selected it or whatever -- however you
11:57:00 10 want to characterize the thought process that goes into
11:57:03 11 coming to the conclusion to use a particular radio, the
11:57:07 12 user made that indication.

11:57:11 13 And what I heard counsel for Plaintiff acknowledge
11:57:14 14 is that there is a cause/effect relationship. But what
11:57:17 15 they didn't acknowledge is the substance of that
11:57:22 16 cause/effect. The cause is the user indicating two things,
11:57:24 17 one of which is the first radio communication circuit.
11:57:26 18 That's where they stop short.

11:57:28 19 They acknowledge that the user indicates something
11:57:32 20 and that after that, the controller assigns a circuit, but
11:57:35 21 they did not acknowledge that the controller must assign
11:57:38 22 the first radio communication circuit indicated by the
11:57:41 23 user. That's what they did not acknowledge in response to
11:57:44 24 Your Honor's questions. That's what we're here to --
11:57:47 25 that's the disagreement the parties have under 02 Micro

11:57:49 1 about the ordinary meaning of this claim.

11:57:50 2 The claim language says the user indicates the
11:57:54 3 radio, and when that happens, the controller assigns that
11:57:58 4 radio.

11:58:01 5 THE COURT: Okay. Thank you.

11:58:02 6 MR. ERICKSON: Thank you, Your Honor.

11:58:03 7 THE COURT: All right.

11:58:04 8 MR. SIDDIQUI: Your Honor, sorry. Thank you, Your
11:58:08 9 Honor. I think Your Honor addressed that issue perfectly.

11:58:10 10 The selection is something that they're bringing
11:58:13 11 in that's not in the claim language. So it's not
11:58:15 12 consistent with their own position that the plain and
11:58:17 13 ordinary meaning of the claim language is clear on its
11:58:19 14 face.

11:58:19 15 THE COURT: Thanks.

11:58:21 16 Next term.

11:58:23 17 MR. NESE: Your Honor, I believe the next term
11:58:32 18 brings us into the '086 patent, and I believe based on the
11:58:32 19 Court's preliminary ruling, Samsung has earned the silver
11:58:35 20 medal here, so perhaps they would like to address this
11:58:37 21 first.

11:58:38 22 THE COURT: Very good.

11:58:55 23 MR. ELLISON: Good morning, Your Honor. I'm
11:58:56 24 Martin Ellison.

11:58:58 25 THE COURT: Good morning.

11:58:59 1 MR. ELLISON: I'll be covering the "first
11:59:00 2 information" and "second information" terms from the '086
11:59:02 3 patent.

11:59:03 4 And as Your Honor is aware, the dispute here is
11:59:11 5 whether the terms encompass information about a user's
11:59:17 6 fingerprints. The answer, as shown here on Slide 60, is
11:59:23 7 that they don't. And my slides today are going to cover
11:59:27 8 some of the reasons why the answer to that question is no.

11:59:29 9 I'd like to start by talking about the '086 patent
11:59:31 10 itself and what it actually covers.

11:59:33 11 It's about entering a passcode on a
11:59:38 12 touch-sensitive device where the device senses, in addition
11:59:42 13 to the passcode itself, the type of touch used to enter
11:59:47 14 each passcode character or symbol. The patent talks about
11:59:51 15 two types of touch inputs that are being recognized, input
11:59:56 16 by a fingertip, like you see in Figure 1A at left on Slide
12:00:01 17 61, or input by a finger pad, which is in Figure 1B at
12:00:06 18 right.

12:00:06 19 Now, the patent specification explains exactly how
12:00:13 20 to distinguish between these two types of touch input. It
12:00:17 21 says to measure the area of contact or the contact range of
12:00:23 22 the touch input. And that's what you see here, Your Honor,
12:00:25 23 on Slide 62. The left Figure 5A shows a smaller number of
12:00:34 24 capacitive sensors being triggered by the touch input and
12:00:39 25 the device recognizing that because a smaller number of

12:00:42 1 sensors are triggered, that it is a fingertip input.

12:00:48 2 Figure 5B on the right shows a wider number of
12:00:54 3 sensors being triggered by the touch input and, therefore,
12:00:57 4 determining that a finger pad input has been entered.

12:01:00 5 And I want to emphasize that this is exact
12:01:05 6 terminology from the '086 patent specification. So Column
12:01:07 7 3, Lines 3 to 12, in the specification uses the words "area
12:01:11 8 of contact," "contact range," "small," and "wider" to
12:01:18 9 describe the types of touch input that are being determined
12:01:21 10 here. These are not terms that are associated with
12:01:26 11 fingerprint recognition.

12:01:27 12 And now I'll show on Slide 63 these pieces put
12:01:34 13 together and how a passcode is mapped to the type of touch
12:01:38 14 input used to enter it.

12:01:39 15 Figure 11A on the left shows the prompt to a user
12:01:45 16 to enter a four-digit passcode where each digit is entered
12:01:49 17 by one of the two types of touch that the device can
12:01:53 18 recognize.

12:01:54 19 And then on the right, Figure 12A, you see the
12:01:59 20 password that is selected by the user. You see the
12:02:02 21 password itself, the numbers in that second row, password,
12:02:06 22 and they are 0, 5, 2, 8. And then in the third row, the
12:02:12 23 input method, you see the type of touch that the device has
12:02:15 24 associated with each password item that's been selected.

12:02:20 25 Now, the specification mentions that the passcode

12:02:25 1 does not need to comprise numbers. It says that the touch
12:02:31 2 panel of Figure 11A could, and I quote: Display pieces of
12:02:36 3 identification information, including letters, figures, or
12:02:40 4 symbols.

12:02:41 5 So the selectable numbers that you see here on
12:02:45 6 Figure 11A at left could be replaced with these
12:02:47 7 alternatives. And you may have seen in Maxell's brief that
12:02:51 8 they have expanded the disclosure about letters, figures,
12:02:56 9 and symbols to be a reference to complex strings of
12:03:01 10 characters, letters, symbols that would be associated with
12:03:06 11 potentially a fingerprint that's being recognized. But
12:03:10 12 when viewed in the context of the disclosures in the
12:03:13 13 patent, that's just simply not the case.

12:03:15 14 And so I'll move on to Slide 64. And the reason
12:03:18 15 all of this matters is because it's a hundred percent clear
12:03:21 16 from the specification that the patent is not discussing
12:03:25 17 fingerprints, recognition, or authentication. It's just a
12:03:30 18 passcode entry patent that's mapped to the type of touch
12:03:34 19 input used to enter the passcode.

12:03:36 20 And Maxell notes in its brief that the word
12:03:40 21 "finger" appears over a hundred times in the patent. But
12:03:43 22 that's what you'd expect from a patent that covers passcode
12:03:46 23 entry by touch input.

12:03:49 24 Maxell overlooks that the word "fingerprint"
12:03:52 25 doesn't appear once.

12:03:54 1 Moreover, the type of finger touch input that's
12:03:56 2 being described here, touch input that's measured by small
12:03:59 3 or wider contacts, is entirely different from the type of
12:04:05 4 high resolution, precise imaging and processing you would
12:04:08 5 need in order to evaluate the minutia of a person's
12:04:12 6 fingerprints.

12:04:16 7 And this aligns with common sense. We all have
12:04:19 8 devices with capacitive touchscreens on them, but the
12:04:22 9 screens themselves don't detect fingerprints, or else the
12:04:25 10 devices would not need separate fingerprint sensors.
12:04:29 11 They're different applications of capacitive sensors,
12:04:33 12 different fields.

12:04:34 13 In short, the patent doesn't mention fingerprints
12:04:36 14 because the patent doesn't cover them. And it's not just
12:04:38 15 Samsung saying this, these are the words of the examiner
12:04:42 16 during prosecution of a related patent with an identical
12:04:47 17 specification.

12:04:48 18 And that brings us to the disclaimer issue, Your
12:04:53 19 Honor. I'm going to skip ahead to Slide 66.

12:04:55 20 On Slide 66, we see Claim 1 of the '086 patent,
12:05:02 21 and highlighted here are the two limitations from Claim 1
12:05:05 22 that contain the disputed "first information" and "second
12:05:08 23 information" terms.

12:05:10 24 And, Your Honor, I'd like to draw your attention
12:05:12 25 to the "second information" term, the one that begins with

1 the word "memory." And it's: Memory that is configured to
2 store second information relating to the identification of
3 the user which is stored in advance.

4 On Slide 67, you can see proposed Claim 8 from the
5 '830 reissue application. This is the reissue application
6 that the applicant submitted with an identical
7 specification. Proposed Claim 8 has a substantively
8 identical memory limitation with one exception. The
9 applicants tried to add the highlighted language: The
10 first information corresponding to a fingerprint of the
11 user.

12 So I just want to take a second, Your Honor, to go
13 back and forth between these two because I recognize the
14 words have some slight distinctions between them in these
15 two, but substantively they're the same.

16 So if you look at Proposed Claim 8, the memory
17 limitation, for example, it says that it's storing first
18 information relating to the identification of the user
19 during operation of the registering mode.

20 If you go back to Slide 66, you can see in '086
21 Claim 1, the second information is created during the
22 registering mode, and that's in the very final limitation
23 there. Do you see at the bottom, it says: In said
24 registering mode? And then about four lines below that, it
25 says: The second information is produced.

12:06:47 1 So substantively, these two memory limitations are
12:06:52 2 identical with the exception of the applicant's attempting
12:06:56 3 to add the "corresponding to a fingerprint of the user"
12:06:59 4 limitation to the memory.

12:07:01 5 Your Honor, again, I'm going to skip ahead to
12:07:08 6 Slide 69.

12:07:09 7 And this is what the examiner said during the
12:07:13 8 reissue application. The examiner rejected that claim.
12:07:19 9 And one of the bases for the rejection is, and I quote:
12:07:22 10 There's no support for storing information related to a
12:07:26 11 fingerprint, as the specification discloses storing
12:07:30 12 information as to the fingertip or finger pad.

12:07:33 13 So that's what I was discussing before in the
12:07:35 14 context of the specification. It's talking about two types
12:07:39 15 of touch input used to enter passcode symbols. It's not
12:07:43 16 talking about fingerprint. That's what the examiner
12:07:45 17 concluded when looking at the identical specification in
12:07:50 18 the reissue application.

12:07:51 19 And what did the applicants do in response to this
12:07:54 20 rejection? The applicants canceled the claim. They
12:07:59 21 canceled the claim, Your Honor.

12:08:01 22 And then I'm going to skip ahead again, too --
12:08:06 23 they ported over to Proposed Claim 1 virtually every
12:08:11 24 limitation of Claim 8 and Claim 20, which depended from
12:08:15 25 Claim 8, except for one thing. They left behind the

12:08:21 1 fingerprint information limitation.

12:08:26 2 So the Claim 8 was rejected for a number of
12:08:30 3 grounds. There was an improper broadening rejection.
12:08:33 4 There was a prior art rejection. There was a written
12:08:35 5 description rejection. The applicants canceled Claim 8,
12:08:42 6 and then resolved every one of those other rejections by
12:08:46 7 porting over the limitations of Claim 8 and 20 to Claim 1,
12:08:50 8 with the exception of the written description objection --
12:08:53 9 rejection from the examiner for fingerprint information.

12:08:58 10 So they intentionally left behind that one
12:09:00 11 specific item, and then they told the -- the applicants
12:09:04 12 told the examiner the following, Your Honor, on Slide 73,
12:09:08 13 that Claim 1 has been amended to include Claim 20 and care
12:09:13 14 has been exercised to avoid the introduction of new matter.

12:09:16 15 The new matter being referenced here is the
12:09:19 16 fingerprint information that was left behind. That's the
12:09:22 17 one thing they didn't port over. It's the one rejection
12:09:25 18 not addressed.

12:09:31 19 Now, Maxell in its briefing has pointed to some
12:09:36 20 post-notice of allowance remarks that were submitted to the
12:09:40 21 examiner by the applicants and said that this introduces
12:09:43 22 some level of ambiguity to the cancellation of the claims
12:09:47 23 and the subsequent amendments and prevents there from being
12:09:51 24 a disclaimer here. But that's not true, and that's for a
12:09:54 25 couple of reasons, Your Honor.

12:09:56 1 First, as covered in Samsung's briefing, this is
12:10:01 2 boilerplate disclaimer language, and the case law is clear
12:10:04 3 that boilerplate disclaimer language can't -- or
12:10:08 4 boilerplate language can't avoid a disclaimer.

12:10:11 5 The second thing is, Your Honor, I want you to
12:10:14 6 look at the date of the comments that were submitted here.
12:10:19 7 These were submitted in October of 2021. This is well
12:10:24 8 after Maxell and the applicants had been made aware of the
12:10:30 9 disclaimer problem that they were facing from briefing
12:10:35 10 submitted during a Markman hearing at the beginning of that
12:10:37 11 year. The actions that led to the disclaimer happened in
12:10:42 12 2019 and 2020.

12:10:43 13 So these comments, which are featured prominently
12:10:47 14 in Maxell's brief, are well after the fact of the
12:10:50 15 disclaimer and just an attempt to unring the bell of what
12:10:55 16 had happened previously.

12:10:59 17 So we submit, Your Honor, that all of these in
12:11:05 18 combination result in clear and convincing evidence of
12:11:08 19 disclaimer that the fingerprint information limitation is
12:11:12 20 no longer part of the claims. It's been disclaimed, and
12:11:16 21 that's why Samsung's proposed construction is correct.

12:11:22 22 THE COURT: What's your best case for finding
12:11:25 23 disclaimer when a narrower limitation is replaced by a
12:11:31 24 broader limitation?

12:11:32 25 MR. ELLISON: I believe, Your Honor, the -- the

12:11:41 1 Reckitt Benckiser case that we cited in our brief addresses
12:11:45 2 the cancellation of the claim and then being replaced by a
12:11:55 3 claim with different language.

12:11:56 4 THE COURT: Okay. Thanks.

12:11:58 5 MR. ELLISON: Thank you.

12:11:59 6 THE COURT: Thank you very much, Mr. Ellison.

12:12:17 7 MR. NESE: Your Honor, recency is primacy. So I'd
12:12:29 8 like to start off on Slide 109 of Plaintiff's slide deck.
12:12:29 9 This is the statements on the reasons for allowance that
12:12:34 10 Maxell had submitted, making quite clear that there was no
12:12:39 11 disavowal.

12:12:40 12 I heard from opposing counsel that this is just
12:12:44 13 boilerplate language. But I want to juxtapose what's said
12:12:49 14 in Exhibit 42 here -- that's Docket 73-44 -- with the
12:12:55 15 language from the Raffle Systems case, which is the case
12:12:58 16 that Samsung had cited addressing the boilerplate issue.

12:13:09 17 I'm quoting from the Raffle case -- forgive me,
12:13:13 18 I'm trying to find a pin cite here. I believe this is pin
12:13:16 19 cite asterisk Page 8. And the Raffle case says: While
12:13:19 20 Raffle points to the general language in its response that
12:13:22 21 it was making its amendments, quote, without prejudice to
12:13:26 22 or disclaimer of subject matter thereto, this language
12:13:31 23 appears to be boilerplate, not tailored specifically to the
12:13:37 24 scope of flange, and the flange was the issue -- the term
12:13:40 25 at issue in the Raffle case.

1 Juxtaposing that boilerplate language here with
2 what Maxell said, it's apparent that it's quite different.
3 The statements here that Maxell made are, in fact,
4 specifically tailored to the scope of the term at issue.
5 We see that when applicant says that the cancellation of
6 Claims 8 through 34 and silence as to certain rejections
7 should not be taken as acquiescence. New Claims 8 through
8 34 were supported by the specification. That's in direct
9 contravalance to what opposing counsel had said about the
10 no new matter being added. We say right there that new
11 Claims 8 to 34 were supported by the specification,
12 directly addressing that written description argument.

13 Further down on this same page, the document says:
14 Applicant canceled Claims 8 through 34 to expedite
15 allowance of Claims 1 through 7 and to overcome the alleged
16 impermissible broadening rejection, not because applicant
17 agreed with examiner's rejections under 112 and not because
18 applicant agreed to disclaim claim scope. I may have
19 skipped a word or two there, I apologize, Your Honor, but I
20 did not mean to change anything substantively.

21 And so when we look at the prosecution history as
22 a whole, as we must, the context of this is quite clear
23 that there was no disavowal.

24 And I don't think I heard anything new from
25 Samsung this afternoon, and so I'm assuming the Court is

1 aware of those points when it rendered its preliminary
2 ruling that there was, in fact, no disavowal.

3 My colleague from DLA mentioned the Reckitt case,
4 and let me turn to that now if I could.

5 Here on Slide 112.

6 The Reckitt case is not, as Samsung's briefing
7 sort of hints at, standing for the proposition that the
8 mere cancellation of a claim and nothing else results in a
9 disavowal. That's not the case.

10 In the Reckitt case, their best case, as you just
11 heard, it was the cancellation of claims, plus applicant's
12 remarks distinguishing the prior art that led to the
13 disavowal here. If anything, in this case, Your Honor,
14 applicant's remarks make quite clear that no disavowal was
15 intended and no disavowal was, in fact, triggered.

16 I also heard from my colleague on -- for Samsung
17 that the timing of Maxell's statements on the reason for
18 allowance -- again, here in Docket 73-44 -- that the timing
19 of this somehow causes a concern or supports disavowal.
20 I'm not aware of a single case saying that the timing of a
21 statement in the prosecution history somehow matters one
22 way or another for whether or not there was disavowal. No
23 case has been cited for that proposition.

24 And, in fact, the cases that we cite make clear
25 that the context of the prosecution history as a whole must

1 be considered. That's the Ecolab case from the Federal
2 Circuit, the Braintree Labs case from the Federal Circuit,
3 and the Massachusetts Institution of Technology case, as
4 well, that you have to consider the whole context of the
5 prosecution history. Timing does not necessarily matter.

6 Finally, Your Honor, Samsung began its argument by
7 pointing to portions of the specification and bemoaning a
8 want of mention explicitly of fingerprint information or
9 the ability to detect fingerprints. It's true, the word
10 "fingerprint" does not appear in the specification.
11 However, unrebutted testimony from Maxell's expert,
12 Dr. Jake Woobrock, makes very clear that one of ordinary
13 skill in the art would understand the descriptions of the
14 types of capacitive sensors used and described in the
15 '086 specification to be perfectly aligned with the
16 technology that was known at the time for detecting
17 fingerprints.

18 Dr. Woobrock in his declaration, Exhibit 38 to our
19 briefing, that's Docket 73-39, mentions quoting from the
20 Handbook of Fingerprint Recognition, but as of 2009, when
21 this text was published, capacitive touch sensors, the same
22 sensors described in the '086 specification, is the most
23 common method used today within the silicon-based sensor
24 arena for detecting fingerprints.

25 The handbook goes on to say: A capacitive sensor

12:18:36 1 is a two-dimensional array of microcapacitor plates
12:18:38 2 embedded in a chip, the same types of sensors that are
12:18:42 3 shown in Figures 2 and 5 of the '086 patent specification.

12:18:45 4 And so while the term does not appear expressly in
12:18:50 5 the specification, Dr. Woobrock does make quite clear why a
12:18:56 6 person of ordinary skill in the art reading that
12:18:57 7 specification as a whole would understand the ability to
12:19:00 8 detect fingerprints was, in fact, disclosed and would be
12:19:04 9 apparent to a person of ordinary skill in the art.

12:19:07 10 I believe I've addressed all the points that I
12:19:10 11 would like to in response to what my colleague has said.
12:19:14 12 If there are any questions, Your Honor, I'll entertain
12:19:19 13 them.

12:19:19 14 THE COURT: Thank you.

12:19:20 15 MR. NESE: Thank you, Your Honor.

12:19:21 16 THE COURT: Mr. Ellison, any response?

12:19:24 17 MR. ELLISON: Yes, Your Honor. Thank you.

12:19:46 18 Your Honor, I'd like to take the points in order
12:19:49 19 if I can.

12:19:51 20 First, Maxell's counsel brought up again those
12:19:53 21 post-notice of allowance comments, which as I mentioned,
12:19:58 22 were made with the benefit of knowing that the disclaimer
12:20:01 23 had already happened, courtesy of Markman briefing that had
12:20:07 24 happened nine months before those comments were submitted.

12:20:11 25 Now, Maxell's counsel also mentioned that their

1 case law, which -- which we agree with, that the entire
2 prosecution history must be evaluated and evidence here
3 supports them, but that's entirely incorrect.

4 The self-serving post-notice of allowance
5 statements are -- should provide very little information
6 towards whether a disclaimer has happened here because
7 they -- they were made from the backwards-looking
8 perspective of having known the mistake that had already
9 happened.

10 And the evidence shows that there's not only a
11 cancellation of the fingerprint limitations from Claim 8,
12 but there was an intentional omission of the fingerprint
13 limitations when the limitations of Claim 8 were ported
14 over to pending Claim 1 in the re-examination history.

15 So this is not just simply the cancellation that
16 we're talking about. It's the intentional leaving behind
17 the fingerprint limitation when Proposed Claim 1 was
18 amended to include everything from Claim 8 and 20 in the
19 reissue history.

20 So the context of the prosecution history as a
21 whole is clear and convincing evidence of disclaimer.

22 We also heard counsel talk about the unrebutted
23 testimony of Dr. Woobrock. Well, Dr. Woobrock's testimony
24 doesn't matter in the context of a disclaimer. He can't
25 defeat in 2024 a disclaimer that happened four years ago.

12:21:49 1 Secondly, his testimony is rebutted. It's
12:21:53 2 rebutted by the examiner during the file history who was
12:21:56 3 looking at the identical specification and concluding
12:22:00 4 there's no written description support for fingerprint
12:22:02 5 touch. There's only the finger pad and the fingertip touch
12:22:10 6 that's being supported by the specification here.

12:22:11 7 And that's the final point we would make, Your
12:22:13 8 Honor, is that the lack of support in the specification for
12:22:21 9 fingerprint touch is not just a disclaimer issue, but it
12:22:25 10 could also just be the specification doesn't support a
12:22:29 11 claim broad enough to encompass fingerprint information.
12:22:33 12 So Your Honor could find that Samsung's construction is
12:22:37 13 correct even without disclaimer.

12:22:40 14 THE COURT: Thank you.

12:22:41 15 MR. ELLISON: Thank you.

12:22:42 16 MR. NESE: With the Court's indulgence for one
12:22:50 17 moment, Your Honor.

12:23:00 18 Thank you, Your Honor.

12:23:08 19 I'm not sure how an examiner rendering an Office
12:23:14 20 Action in January of 2020 can rebut an expert declaration
12:23:18 21 we submitted in this case in 2024. That's the first point.

12:23:21 22 The second point is on the bit about fingerprint
12:23:26 23 information being intentionally left out of the amended
12:23:31 24 claim. That's not at all what happened, Your Honor. What
12:23:33 25 happened was the examiner indicated allowable subject

1 matter in that same Office Action that had the
2 impermissible broadening rejection, the 112 rejection,
3 there was an anticipation rejection, an obviousness
4 rejection, a litany of issues that the examiner had raised
5 in order to get around those issues, specifically the
6 impermissible broadening. Maxell did what most folks
7 that -- most clients that I had when I was prosecuting
8 would do, you take the allowable subject matter that the
9 examiner had indicated. That was the reason for perhaps
10 certain things being left out and others not.

11 There were actually additions that were made in
12 that amended claim, as well, in order to address the
13 impermissible broadening rejection. So it's not as if
14 Maxell had said, gosh, we really stepped in it here. We
15 want to take out that fingerprint information. That's not
16 at all what happened. We were simply moving forward with
17 the allowable subject matter.

18 And the final point I'll make, Your Honor, is
19 that, again, the timing of the statements in response to
20 the examiner's reasons for allowance, I am not aware of any
21 case and I haven't heard one being mentioned today that
22 says that if you wait until the last minute to explain why
23 you did something, that somehow invalidates your reasons
24 for disclaimer. We all agree the prosecution history as a
25 whole must be considered. Those statements are part of the

1 prosecution history. They should be given the same weight
2 as any other statements there.

3 If there are no questions, Your Honor, I'll give
4 folks back some time. Thank you.

5 THE COURT: All right. Next term.

6 MR. LINDINGER: Good afternoon. Good afternoon,
7 Your Honor. Michael Linderger on behalf of Maxwell. I get
8 to bat clean-up on the last two terms of the day, both for
9 the '161 patent.

10 I'm going to use the ELMO, but just not right at
11 this moment.

12 Your Honor, Maxell is happy to see that the Court
13 resolved the threshold question in its preliminary
14 construction, that being the corresponding structure for
15 the "collation unit" term is definite.

16 While the briefing focused on -- mostly focused on
17 the algorithms, we'd like to address a few items related
18 the Court's -- related to the overall structure in the
19 Court's preliminary construction.

20 I've reproduced the agreed-upon function on Slide
21 90 here. In sum, and as bolded, it collates the home
22 network information received with the home network stored
23 and then judges. The function is a simple comparison
24 between two data sets to determine if there is a match or a
25 degree of match. And a simple algorithm can be used to

1 perform this simple function.

2 While there are portions of the Court's
3 preliminary construction that Maxell is generally okay
4 with, we think that the agreed-upon function takes care of
5 the first subpart of it, and that is the -- you know,
6 subpart 1 that starts with: Assemble the home network
7 information. The agreed-upon function takes care of that
8 first subpart.

9 In addition, as set forth on Slide 90, the
10 agreed-upon function, Your Honor, does not reference or
11 impose any period of time. Thus Maxell disagrees that the
12 given period and the same period references in subpart 1
13 should remain if the entirety of subpart 1 -- if the Court
14 chooses to keep subpart 1.

15 As to the algorithms, importantly, Samsung does
16 not dispute that an algorithm exists. And specifically,
17 there's no dispute that the '161 patent discloses at least
18 a few algorithms.

19 You know, the Court did note in its preliminary
20 construction relating to the tendency algorithm, the one
21 No. 3 listed on Slide 91 -- the Court, though, in doing --
22 making the note, identifies that there are multiple
23 algorithms set forth in the '161 patent.

24 Now, there might not be sufficient disclosure for
25 the tendency-related one, but for the No. 1 and 2, there

1 are multiple ones. And these are simple algorithms. We're
2 fine with the Court's note on the preliminary construction
3 on the tendency one.

4 But just because there are simple algorithms to
5 perform the simple function, that does not result in
6 indefiniteness. Samsung is frustrated that the simple
7 algorithms set forth to achieve the agreed upon function
8 are apparently not complex enough to be definite, but as
9 the Court recognized, the law does not require the
10 complexity that Samsung requires.

11 Before I talk a little bit more about the other
12 subparts, I want to hop back to the proposed structure here
13 and address the general purpose processor, the beginning of
14 the Court's preliminary construction.

15 And for this, I do want to use the ELMO.

16 Oh, while we're working on the ELMO, Your Honor, I
17 want to note for the Court's awareness, in the joint claim
18 construction chart submitted in Docket No. 80, I want to
19 direct the Court's attention to the agreed-upon
20 constructions.

21 For three of the four agreed-upon
22 means-plus-function terms, the "collection unit," the
23 "transmission unit," and the "reception unit," each of
24 those agreed-upon structures reference a CPU.

25 For the fourth agreed-upon construction, the

1 "storage unit," as part of the agreed structure, it is a
2 RAM or hard disk or optical disk or semiconductor memory
3 included within or external to the network device to store
4 information or equivalents thereof.

5 And why I highlight this, Your Honor, is while the
6 Court's preliminary construction references a general
7 purpose processor, we believe that Maxell's proposed
8 construction, CPU operating in conjunction with ROM 22
9 and/or RAM 21 included within or external to the network
10 device for executing, that portion of our proposed
11 structure is more accurate and it's more consistent with --
12 it's more consistent with the other agreed-upon
13 constructions set forth in the joint claim construction
14 chart.

15 Again, the CPU that we include in the proposed
16 structure for collation unit, CPU 20, CPU is in three out
17 of the four other agreed-upon terms, and the storage
18 component of the collation unit, that's commonly and
19 similarly reflected in the storage unit agreed-upon term.

20 So for those reasons, we believe that it's a
21 little bit more consistent and accurate to take Maxell's
22 proposed structure, CPU 20, through the executing term, and
23 replace it -- replace the general purpose processor with
24 that language.

25 Oh, can we go back to the presentation?

1 Now, there's no dispute that the '161 patent
2 discloses the flowchart providing multiple steps relating
3 to the comparison and judging algorithm. Indeed, Figure 7
4 that I've replicated -- reproduced on Slide 92 is described
5 in the patent as a flowchart illustrating how a network
6 device operates to judge whether another network device
7 belongs to the same home network.

8 Now, looking at Figure 7 and the supporting
9 language in the specification, we believe that the Court's
10 preliminary construction subparts 2 and 3 unnecessarily
11 limit the claims to specific embodiments. Specifically
12 subparts 2 and 3 of the Court's preliminary construction
13 reference consecutive list entries in the respective
14 devices.

15 But the specification is not limited to only
16 comparing consecutive sets or consecutive list entries of
17 these devices.

18 For example, in Column 7, Line 17 to 23, it
19 states: Two extracted UDN columns are then compared.
20 While the UDN columns are shifted in chronological
21 direction, the rate of agreement is determined when the
22 number of matching UDNs is maximized. When the rate of
23 agreement is equal to or larger than a predetermined value,
24 e.g., 50 percent, it is judged that the two devices belong
25 to the same home network.

1 That says nothing about the events or the entries
2 have to be consecutive.

3 Then you go to Column -- a little bit later in
4 Column 7, starting at Lines 38, through Column 8, 22 --
5 Line 22, those are the examples -- those are the comparison
6 examples that the '161 patent presents looking at Figure 5.

7 But at the very start of that section in Line 38,
8 it says: In the following examples. It is not saying that
9 it is a requirement that you have to compare consecutive
10 list entries as set forth in the preliminary construction.

11 Also, Column 10, Line 41, again, it's referring to
12 the example shown in Figure 5, not mandating that it's a
13 consecutive list.

14 And most importantly, if the Court looks at
15 Column 8, Lines 48 to 52, the patent contemplates
16 non-consecutive comparisons can be done. It states:
17 Alternatively, however the rate of agreement may be
18 determined in a flexible manner when, for instance,
19 non-consecutive UDNs agree with each other while one or
20 more intermediate UDNs disagree with each other.

21 And, finally, Your Honor, as to subparts 2 and 3
22 of the Court's preliminary construction, which includes the
23 consecutive list entries phraseology, those subparts appear
24 to potentially raise some claim differentiation issues.

25 Now, that wasn't briefed, but looking at the

1 Court's preliminary construction, I direct the Court to
2 Dependent Claim 5 which ultimately is dependent on Asserted
3 Independent Claim 3.

4 Now, Claim 5 states: The network device according
5 to Claim 4 -- and Claim 4 depends on Claim 3 -- wherein the
6 peripheral device information collation unit calculates the
7 rate of agreement of device listings contained in the two
8 pieces of home network information from the number of
9 device listings that agree with each other consecutively in
10 a chronological direction.

11 Claim 8 has the similar consecutive language. But
12 the point is, Your Honor, the dependent claim is
13 specifically calling out the consecutive example. Well, by
14 definition under Federal Circuit claim differentiation
15 principles, Claim 3 ultimately has to be broader. The
16 specification contemplates that with both consecutive and
17 non-consecutive language and examples.

18 Finally, as to subparts 4 and 5 of the Court's
19 preliminary construction, the comparing the percent rate
20 and then subpart 5 appears to kind of address the judging
21 portion of the agreed-upon function, that language appears
22 to track what's in Figure 7. I zoomed in on a portion of
23 it on Slide 93, specifically Step 704 through the end of
24 the flowchart in Figure 7.

25 Maxell, however, would just kind of prefer to

1 stick to the intrinsic evidence, rather than add additional
2 verbiage in the subsection -- subparts 4 and 5 of the
3 Court's preliminary construction.

4 We'd much rather have a -- not much, we'd just
5 rather have a cleaner reference to the flowchart in
6 Figure 7. That lists -- or that articulates very clearly,
7 as well as the specification support, the comparison and
8 judging algorithm set forth in the patent.

9 As the Court briefly is aware, algorithms can be
10 described a variety of ways. The Finisar case, the Federal
11 Circuit case, it can be done in prose, flowchart, or any
12 other manner that provides sufficient structure. We just
13 talked about how Figure 7 sets forth the flowchart example,
14 and then I highlighted a few other instances in my
15 presentation where the support for the algorithm is found
16 in prose.

17 Here on Slide 94 are a few other examples. The --
18 Column 5, Line 62, to Column 6, Line 29; Column 7, Line 18,
19 to Column 8, Line 42; and Figure 5, again, those are
20 examples of how the comparisons may work, but the claims
21 and the corresponding structure need not and should not be
22 limited to the consecutive list entry point.

23 In conclusion, Your Honor, going back to the kind
24 of original slide, we're okay with the Court -- the
25 corresponding structure, again, being Maxell's proposed

1 structure, the CPU 20 through the executing language, plus
2 Figure 7 and the algorithm set forth in Figure 7.

3 Anything else simply excludes embodiments.

4 I'd like to reserve any further time to rebut --
5 if the Court has no further questions, I'll rebut my
6 time -- reserve my time for rebuttal.

7 THE COURT: Fair enough.

8 MR. LINDINGER: Thank you, Your Honor.

9 MR. HEINTZ: Your Honor, Jim Heinz again. I'll be
10 addressing this and the last term.

11 Your Honor, my colleague began by characterizing
12 this -- these algorithms that they say are disclosed as a
13 simple algorithm. They're not simple algorithms, Your
14 Honor.

15 Now, let me -- let me start from the beginning.

16 We are disappointed that the Court found that the
17 claim was not indefinite, and we -- that continues to be
18 our position, and so we would like to stick with that.

19 But to the extent that the Court has determined
20 there is an algorithm, the Court's preliminary construction
21 properly captures that algorithm. It is not so simple as
22 Maxell would have the Court believe.

23 And my colleague began talking about the function
24 of the claim.

25 And I'd like to go to Slide -- Slide 38.

12:41:55 1 There's actually two functions here, Your Honor.
12:42:00 2 There's collating the home network information received
12:42:03 3 from the other network device with the home network
12:42:07 4 information stored in the peripheral device information
12:42:13 5 storage unit. That's the first step.

12:42:14 6 And then there's a second step: Judges whether
12:42:17 7 the other network device belongs to the same network as the
12:42:20 8 local network device.

12:42:21 9 So there are actually two functions that the claim
12:42:24 10 recites. And by focusing on these functions, what Maxell
12:42:30 11 is trying to do is to convince the Court to construe
12:42:36 12 these -- these -- these limitations -- this "peripheral
12:42:43 13 device information collation unit" term as if the function
12:42:45 14 itself were sufficient to define the term.

12:42:47 15 But that's not the case. This is a
12:42:49 16 means-plus-function limitation. And so what you have to do
12:42:52 17 is first identify the functions and then identify the
12:42:57 18 algorithms that are disclosed in the spec that are
12:43:00 19 sufficient to perform those algorithms.

12:43:02 20 What Maxell would have the Court do is just focus
12:43:07 21 on those two algorithms -- sorry, just focus on those two
12:43:11 22 functions, and anything the spec might happen to mention as
12:43:13 23 an example, as an aside, pretend that that's a sufficient
12:43:17 24 disclosure of an algorithm. You're not allowed to do that
12:43:22 25 under 112(6). That's functional claiming.

1 The claim cannot be satisfied by any algorithm
2 that might perform those functions. The claim is limited
3 under 112(6) to the algorithms that are actually disclosed
4 in the specification that perform those two functions.

5 Now, my colleague mentioned Figure 7, and he
6 pointed the Court's attention to Steps 704 and 705. If you
7 give me a moment, Your Honor, I'm going to try to get 7 --
8 that figure back up on the ELMO here. Sorry, Your Honor.

9 If you look at Step 703 and 704 -- I'm sorry, 704
10 and 705, right? 704 just simply says: Compare information
11 A and information X to calculate a rate of agreement.

12 How do you determine what the rate of agreement
13 is? This Step 704 is not an algorithm. It doesn't
14 disclose an algorithm. It doesn't disclose specific steps
15 that I use to determine this rate of an agreement, okay?

16 So there is one way that's described in the -- in
17 the '161 patent that's reflected in the Court's structure.
18 It's a detailed way of doing it, but that's the -- to the
19 extent there's any algorithm disclosed, that's the one.

20 Those statements my colleague, Mr. Lindinger,
21 referred to is, oh, you could do something else. You could
22 have a number of skips in between where the agreements are.
23 There's no algorithm for that. That's just something you
24 might try, but there's no disclosure of an algorithm.

25 And so when Mr. Lindinger says they're just

1 examples so you shouldn't limit the claim to those -- to
2 those -- to the structure that's disclosed, that's turning
3 112(6) on its head. 112(6) says: The claim includes the
4 algorithms that you do disclose. And the one that is
5 disclosed, if there are any, is the one that's identified
6 in the Court's construction.

7 And 705 talks about comparing a rate of an
8 agreement to the referential value. That's the judging
9 step. Again, you know, that is the way in which the patent
10 determines -- sorry, discloses performing that step. Any
11 other example that might be mentioned in passing in the
12 7 -- in the '161 patent is not disclosed structure.

13 Now, Mr. Lindinger also mentioned claim
14 differentiation, and he directed the Court to Claim 4. The
15 simple answer is, Your Honor, claim differentiation is not
16 a hard and fast rule, and it's certainly not going to be
17 able to override 112(6).

18 To the extent that there's any claim
19 differentiation issue that's raised by Claim 4, that must
20 yield to what's required by 112(6) which is a statutory
21 requirement. You're only allowed -- in the context of a
22 112(6) limitation, the structure is the one that's
23 disclosed in the specification and equivalence thereof.
24 You can't use claim differentiation to expand the scope to
25 beyond what's disclosed in the specification and its

12:47:03 1 equivalence in the way Mr. Lindinger is suggesting.

12:47:05 2 So with that, Your Honor, if there aren't any
12:47:09 3 questions, I'll step down.

12:47:09 4 THE COURT: Thank you.

12:47:18 5 Anything further?

12:47:19 6 MR. LINDINGER: Just briefly. Just a brief
12:47:22 7 response, Your Honor.

12:47:22 8 Just a few points, Your Honor. Neither Maxell's
12:48:10 9 originally proposed construction or slightly revised
12:48:14 10 proposed construction that I mentioned working in Figure 7
12:48:19 11 establishes functional claiming. That is not what's
12:48:22 12 happening at all. There are algorithms, as identified in
12:48:25 13 the specification, both in prose and in the flowchart in
12:48:29 14 Figure 7, that perform the comparison and judging
12:48:33 15 functions.

12:48:33 16 Contrary to what Samsung's counsel stated, at no
12:48:38 17 point are we saying it's unlimited. My point earlier was
12:48:38 18 we were identifying the specification contemplates
12:48:42 19 comparing both consecutive and non-consecutive data sets.

12:48:47 20 We're not -- again, contrary to what Samsung's
12:48:51 21 counsel stated, we're not attempting to expand the claim
12:48:55 22 scope with claim differentiation. Again, I was simply
12:49:00 23 pointing out that the Court's preliminary construction
12:49:02 24 appears to raise that issue by focusing only on the
12:49:05 25 consecutive part when the dependent claim raises that

1 issue.

2 And, finally, Your Honor, the law requires
3 alternative algorithms -- alternative algorithms and
4 structures to be included. And the Court's preliminary
5 construction -- I'm sorry, Your Honor -- the law requires
6 alternative algorithms to be included, and the Court's
7 preliminary construction, as written, appears to exclude
8 certain of the algorithms set forth in the patent.

9 Finally, I have Slide 95 up here. I just wanted
10 to address this briefly.

11 In our opening brief and in our reply brief, we
12 highlighted our expert, Dr. Weissman's, very thorough
13 analysis and why the corresponding structure is definite in
14 support of our construction.

15 But don't take our expert's word for it.
16 Samsung's expert, Dr. Shields, he recognizes the simplicity
17 of the algorithm at issue here. He looked at the
18 specification, and in Paragraph 82 of his declaration --
19 this is at Docket 76-24 -- he recognized that the disclosed
20 comparison algorithm was the longest common substring
21 algorithm. He then went on to identify other well known
22 mechanisms for comparing and scoring similar strings. I'm
23 not going to attempt to pronounce them, but they're in his
24 declaration at Paragraph 103.

25 So a POSITA can choose any of these well-known

12:50:46 1 mechanisms to perform the comparison and judging function.
12:50:49 2 And as set forth in our briefing, the Enfish case and the
12:50:53 3 Atmel case, in our opening brief, which Samsung -- they did
12:50:57 4 not rebut at all the Enfish and the Atmel case in its
12:51:00 5 responsive brief, these cases as set forth in our briefing
12:51:06 6 support the definiteness of the claim vis-à-vis
12:51:12 7 Dr. Shields, Samsung's expert's, identification of the
12:51:17 8 algorithms and alternatives.

12:51:17 9 THE COURT: Thank you.

12:51:21 10 MR. HEINTZ: Can you put up Slide 95?

12:51:27 11 Your Honor, I'll be very brief, given the hour of
12:51:31 12 the day here.

12:51:31 13 Slide 95 demonstrates exactly what I'm talking
12:51:34 14 about. My colleague has said that you could use Hamming
12:51:40 15 Distances and Levenshtein Distance and these other ones
12:51:47 16 that I'm not going to try to pronounce either, right? And
12:51:49 17 what they want is to have the claims cover all of those
12:51:53 18 different kinds of algorithms.

12:51:56 19 That is not allowed under 112(6). This is a
12:51:58 20 means-plus-function limitation. These algorithms are not
12:52:00 21 in the specification. They don't become corresponding
12:52:05 22 structure, even though you might use those algorithms to
12:52:08 23 perform the function. If you don't disclose the algorithm
12:52:11 24 in the specification, the scope of the claim doesn't
12:52:16 25 include that algorithm. It's that simple.

12:52:20 1 And by trying -- this point demonstrates why
12:52:23 2 exactly the Court's construction or the identification of
12:52:25 3 structure, assuming there is some, is correct. It doesn't
12:52:28 4 include all these other things, and the claims can't be
12:52:30 5 expanded to cover those.

12:52:33 6 With that, Your Honor, if there's no further
12:52:34 7 questions at this time.

12:52:35 8 THE COURT: Thank you.

12:52:36 9 Final term.

12:53:05 10 MR. LINDINGER: Your Honor, Michael Lindinger for
12:53:07 11 Maxell addressing the last term of the day, the
12:53:09 12 "chronological list of network devices connected to the
12:53:13 13 network" for the '161 patent.

12:53:15 14 Maxell agrees with the Court's preliminary
12:53:18 15 construction, so I'll reserve any of my time to rebut
12:53:21 16 Samsung's arguments, Your Honor.

12:53:23 17 THE COURT: Thank you.

12:53:24 18 MR. HEINTZ: Your Honor, the good news is this
12:53:38 19 will be brief because we, too, agree with the Court's
12:53:41 20 construction.

12:53:42 21 THE COURT: Excellent.

12:53:43 22 MR. HEINTZ: There's one point that I would like
12:53:45 23 to raise with the Court.

12:53:45 24 THE COURT: Oh.

12:53:46 25 MR. HEINTZ: One request for clarification, Your

12:53:55 1 Honor.

12:53:55 2 I'd like to put up Slide 45 if I could.

12:53:59 3 The question, Your Honor, raises an 02 Micro
12:54:00 4 issue, and I think it's a simple one. And I think the
12:54:01 5 Court's construction may already address this, but we'd
12:54:03 6 just like to be sure.

12:54:04 7 The question, Your Honor, is can one of these
12:54:07 8 chronological lists of network devices be a list with only
12:54:14 9 one -- one entry on the list?

12:54:16 10 Now, Maxell has told me that they say it can be.
12:54:21 11 I spoke with my colleague, Mr. Siddiqui, when we were doing
12:54:24 12 our meet and confer, and he said with -- in no uncertain
12:54:29 13 terms, it can. And you can see we've included an excerpt
12:54:33 14 from the supplemental infringement contentions which also
12:54:36 15 seems to talk about a list with one entry on it for one
12:54:39 16 device.

12:54:40 17 Now, Your Honor, that can't be the right -- that
12:54:43 18 can't be correct. The Court's construction says in
12:54:48 19 relevant part a list of network devices. That's a plural
12:54:53 20 term, Your Honor. That can't be -- a list of network
12:54:59 21 devices can't be a list with just one device on it. And,
12:55:02 22 Your Honor, that makes sense logically. This is -- the
12:55:06 23 term being construed here is a "chronological list of
12:55:08 24 network devices." If you have one entry on the list,
12:55:12 25 there's no order in it at all. It can't be a chronological

12:55:15 1 list because there's one entry.

12:55:17 2 In fact, arguably, a list with one thing on it
12:55:21 3 isn't a list at all. But even if it is --

12:55:25 4 THE COURT: Well, if you have a grocery list and
12:55:27 5 you just have coffee on it, it's still a grocery list,
12:55:31 6 isn't it?

12:55:31 7 MR. HEINTZ: It is, Your Honor, but it's not a
12:55:33 8 chronological list.

12:55:34 9 THE COURT: That, I may agree with.

12:55:35 10 MR. HEINTZ: Okay. And finally, Your Honor,
12:55:36 11 logically it doesn't work. There's no discussion, no
12:55:40 12 disclosure in the patent of any chronological list with
12:55:43 13 just one entry on it.

12:55:44 14 And I'll just note, to finish this up, we asked
12:55:48 15 Dr. Weissman, who is Maxell's expert, about this in
12:55:51 16 deposition, and he said that that -- he agreed, if you have
12:55:55 17 just a transmission, and in this case we're talking about a
12:55:58 18 UPnP transmission, which is one of the examples in the
12:56:02 19 spec, if there's just one item on this list, it can't be a
12:56:06 20 chronological list because if there's one item, it can't
12:56:13 21 have -- be chronologically ordered.

12:56:15 22 So, Your Honor, I think the Court's construction
12:56:17 23 which begins "a list of network devices" handles this, but
12:56:20 24 I know this is going to be an issue. The parties have
12:56:22 25 already -- or I've been led to believe by my counsel that

12:56:26 1 this is going to be an issue, so I just respectfully
12:56:29 2 request that the Court's order make this clear, that a list
12:56:31 3 with one entry cannot be a chronological list.

12:56:35 4 THE COURT: Understood. Thank you.

12:56:36 5 MR. HEINTZ: Thank you, Your Honor.

12:56:37 6 MR. SIDDIQUI: Good afternoon, Your Honor. Real
12:56:43 7 briefly because counsel had mentioned my name, invoked me,
12:56:48 8 means-plus-function.

12:56:48 9 THE COURT: You have to defend your honor,
12:56:50 10 Mr. Siddiqui.

12:56:50 11 MR. SIDDIQUI: Yes, sir. Yes, sir.

12:56:52 12 So, Your Honor, I think there's -- the dispute is
12:56:54 13 not -- if I understand, it's not whether it can have one --
12:57:01 14 one event. The dispute is one device.

12:57:02 15 So, for example, one device, and the figure --
12:57:05 16 Figure 4 of the '161 patent discloses this. It has the
12:57:11 17 same device name and entries 1. It ends with a 2 and
12:57:17 18 followed with a bunch of 0s and a 1. And then you have it
12:57:21 19 No. 5. So it's the same device coming in and out of the
12:57:24 20 network.

12:57:25 21 THE COURT: Well, is there anything in the patent
12:57:26 22 with only one device?

12:57:27 23 MR. SIDDIQUI: Yeah. So it provides these
12:57:31 24 examples that you could have the device having -- coming in
12:57:36 25 and out of the same -- at different times. So the list --

12:57:39 1 sorry.

12:57:39 2 THE COURT: So show me where in the patent --

12:57:41 3 MR. SIDDIQUI: Sure.

12:57:41 4 THE COURT: -- there's only one device listed.

12:57:45 5 MR. SIDDIQUI: Sure, Your Honor. Just one second.

12:57:46 6 So, Your Honor -- so, Your Honor, it will be at
12:58:45 7 Column 6, Lines 44 onwards, where it says: For example, a
12:58:55 8 friendly name derived from the device description of a
12:58:59 9 network device, a UDN, serial number, and other device
12:59:04 10 information and the time device can be recorded. For the
12:59:05 11 sake of brevity, Figure 4 lists log information that
12:59:10 12 indicates device names.

12:59:11 13 So the first portion of this says that it could be
12:59:13 14 one device, and it could be "a" device. And so "the"
12:59:18 15 device -- the list will still have multiple entries. It
12:59:21 16 will have this device coming in, sending in live packet at
12:59:26 17 certain time. And it shows this in Figure 4, as well, Your
12:59:35 18 Honor, that you have the same list, this device coming in
12:59:39 19 at a particular time, and the same device coming back. And
12:59:42 20 so this -- this tracks Your Honor's construction that
12:59:46 21 it's -- it's events -- it's events of that device.

12:59:50 22 So, you know, coffee -- the same -- it's the same
12:59:54 23 item, coffee purchased, Day 1. Next day coffee purchased,
12:59:58 24 Day 2. Same coffee, Folgers, but it's a chronological list
01:00:05 25 of the days coffee was purchased. Same thing,

01:00:06 1 chronological list of when the same person stayed in the
01:00:09 2 same hotel multiple times. So it could be the same device,
01:00:13 3 but the list includes multiple entries related to the
01:00:16 4 events of that device.

01:00:17 5 That's it, Your Honor.

01:00:21 6 MR. HEINTZ: Your Honor, very briefly.

01:00:28 7 I don't understand that answer at all. Figure 4
01:00:31 8 shows a list with mobile devices on it, and each entry --
01:00:35 9 each device has more than one entry on it. There's no list
01:00:39 10 of one device with one entry, which is the question
01:00:43 11 Your Honor asked of my colleague.

01:00:44 12 The description in Column 6 about Figure 4 that
01:00:51 13 was read to the Court, you know, it -- it says a device,
01:00:56 14 but it's just talking about one of the devices on the list,
01:00:59 15 and it's talking about the -- you know, a network name for
01:01:02 16 that device. Every device on the list has a network name.

01:01:05 17 There is no disclosure anywhere in this patent in
01:01:08 18 any form that says a chronological list of network devices
01:01:13 19 can be a list with one entry. It's that simple, Your
01:01:16 20 Honor.

01:01:16 21 THE COURT: And the claim language is "network
01:01:19 22 devices," right?

01:01:20 23 MR. HEINTZ: Correct, Your Honor, plural.

01:01:21 24 THE COURT: Okay. Anything else, Mr. Siddiqui?

01:01:23 25 MR. SIDDIQUI: Nothing further, Your Honor.

01:01:24 1 THE COURT: Okay. All right. Thanks to all of
01:01:26 2 you for being here. Very helpful argument. We saved
01:01:31 3 ourselves an hour, so congratulations.

01:01:35 4 Safe travels to everybody. Thanks a lot.

01:01:39 5 COURT SECURITY OFFICER: All rise.

01:01:40 6 (Hearing concluded 1:01 p.m.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
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Expiration Date: 10/31/2025

8/12/2024
Date