

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,) (APRIL 24, 2025
 ET AL.,) (
 DEFENDANTS.) (10:00 A.M.

MOTIONS HEARING

BEFORE THE HONORABLE ROBERT W. SCHROEDER III

UNITED STATES DISTRICT JUDGE

FOR THE PLAINTIFF: Mr. Michael L. Lindinger
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Maxell, Ltd.

EX2037

Page 1 of 186

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22 (Proceedings recorded by mechanical stenography, transcript
23 produced on a CAT system.)
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25

10:00:17 1 COURT SECURITY OFFICER: All rise.

10:00:21 2 THE COURT: Please be seated.

10:02:04 3 Good morning.

10:02:06 4 Ms. Combs, if you would, call the case for us.

10:02:09 5 COURTROOM DEPUTY: Cause No. 5:23-CV-92, Maxell

10:02:12 6 Limited versus Samsung Electronics Company, Limited, et al.

10:02:15 7 THE COURT: Announcements for the record?

10:02:16 8 MR. CULBERTSON: Good morning, Your Honor.

10:02:19 9 THE COURT: Good morning.

10:02:20 10 MR. CULBERTSON: Geoff Culbertson for Maxell. We

10:02:22 11 have a large group from Mayer Brown today. At counsel

10:02:26 12 table, you'll hear argument from Michael Lindinger, Bryan

10:02:26 13 Nese.

10:02:26 14 THE COURT: Hello.

10:02:33 15 MR. CULBERTSON: Rob Pluta and Saqib Siddiqui.

10:02:33 16 MR. SIDDIQUI: Good morning, Your Honor.

10:02:40 17 MR. CULBERTSON: Also in the gallery, we have

10:02:41 18 Kfir Levy, Alan Grimaldi, and Tariq Javed. And also, last,

10:02:49 19 Mr. Tidwell from our firm. Maxell is ready, Your Honor.

10:02:51 20 THE COURT: Very good.

10:02:53 21 MR. CULBERTSON: Thank you.

10:02:54 22 MR. GORHAM: Good morning, Your Honor.

10:03:01 23 THE COURT: Good morning.

10:03:02 24 MR. GORHAM: Tom Gorham on behalf of the Samsung

10:03:05 25 Defendants. With me here today is Mr. Mark Fowler.

Maxell, Ltd.

EX2037

Page 3 of 186

10:03:05 1 MR. FOWLER: Good morning, Your Honor.

10:03:05 2 THE COURT: Good morning.

10:03:09 3 MR. GORHAM: Mr. Brian Erickson, Mr. --

10:03:09 4 THE COURT: Hello.

10:03:10 5 MR. GORHAM: -- Michael Jay --

10:03:10 6 THE COURT: Hi.

10:03:11 7 MR. GORHAM: -- and Mr. Jim Heintz. Samsung is

10:03:15 8 ready to proceed, Your Honor.

10:03:15 9 THE COURT: Very good.

10:03:16 10 Okay. Welcome to everyone. We have a full day.

10:03:25 11 We have a number of dispositive and other motions to be

10:03:32 12 argued. This case is set for trial on May the 19th, with a

10:03:39 13 pretrial conference on May the 6th. I did see that the

10:03:42 14 parties had filed their joint pretrial order.

10:03:47 15 We've allocated a total of four hours for today's

10:03:57 16 hearing, two hours per side to be used as the parties see

10:04:02 17 fit.

10:04:02 18 One scheduling note, an issue has arisen in a

10:04:07 19 criminal matter that is somewhat of an unusual nature that

10:04:12 20 I must attend to today. I have scheduled it for 11:30 a.m.

10:04:19 21 And so what we will do is start your hearing now, and we

10:04:22 22 will go until 11:30, and then we'll take a recess, and I'll

10:04:27 23 take up that criminal matter.

10:04:28 24 I don't know how long that hearing will take, but

10:04:32 25 it is possible that it will take a little while. And so I

10:04:36 1 think what -- what makes sense and in order to keep you
10:04:41 2 from waiting or causing further inconvenience, I'll ask you
10:04:46 3 to be back here in the courtroom ready to resume at 2:00
10:04:52 4 p.m., and I think that should give us enough time to handle
10:04:57 5 the criminal matter. I do apologize for the interruption
10:05:01 6 and the inconvenience to you, but it could not be avoided.

10:05:04 7 Any questions or concerns about that?

10:05:09 8 Okay. All right. Very good.

10:05:10 9 The parties, at our request, did meet and confer
10:05:18 10 and propose an order for argument on today's motions. I
10:05:26 11 think the -- Maxell's motion for partial summary judgment
10:05:32 12 on validity based on the Sotera stipulations is to be
10:05:39 13 argued first; then Samsung's non-infringement argument,
10:05:43 14 which is Docket No. 121; Maxell's motion to strike the N93
10:05:49 15 samples, 128, will be argued third; then Samsung's motion
10:05:54 16 for non-infringement of the '848 patent; then their motion
10:05:59 17 for summary judgment on non-infringement of the '241 and
10:06:05 18 '590; and then finally the 101 motions.

10:06:07 19 One question that I would ask the parties,
10:06:14 20 particularly starting with Samsung on the -- their first
10:06:19 21 motion, the non-infringement on the '757 and the '161, with
10:06:22 22 respect to the '161, I know in the briefing an issue has
10:06:27 23 come up about whether the parties believe additional claim
10:06:31 24 construction is necessary.

10:06:32 25 So whoever is slated to make that argument, I hope

Maxell, Ltd.

EX2037

Page 5 of 186

10:06:37 1 that you will address the need for or request for any
10:06:42 2 additional claim construction. And then likewise, the
10:06:45 3 Plaintiffs can respond to that.

10:06:46 4 All right. I think that's all I've got. We'll
10:06:50 5 start now and go until about 11:30.

10:06:52 6 Whoever wishes to proceed on the first motion may
10:06:55 7 do so.

10:06:56 8 MR. PLUTA: Thank you, Your Honor. I've prepared
10:07:08 9 a slide presentation. May I approach to give you a copy?

10:07:12 10 THE COURT: Yes, please.

10:07:30 11 MR. PLUTA: May I proceed, Your Honor?

10:07:41 12 THE COURT: Yes.

10:07:42 13 MR. PLUTA: Thank you.

10:07:42 14 Your Honor, Congress included an estoppel
10:07:47 15 provision in the American Invents Act to avoid duplicative
10:07:50 16 and abusive validity challenges before the PTAB and the
10:07:52 17 District Courts.

10:07:52 18 When Samsung filed its IPRs in the PTAB, it
10:07:57 19 bargained for institution of those IPRs by stipulating that
10:08:01 20 it would not pursue in this Court the same grounds as in
10:08:05 21 the petition or any grounds that could have reasonably been
10:08:07 22 raised in the petition.

10:08:09 23 As a result of that stipulation, the PTAB
10:08:16 24 instituted Samsung's IPRs, specifically noting that the
10:08:20 25 stipulations, once filed, they declined to exercise the

1 discretion to deny institution.

2 Now in this Court, Samsung attempts to sidestep
3 its stipulations by asserting system art in combination and
4 reliance on art it actually asserted in the IPRs or could
5 have asserted in the IPRs.

6 For example, Samsung isn't simply asserting prior
7 art products in its invalidity case. It's asserting some
8 of the very same references it used in its IPR petitions,
9 such as the N93 User Manuel, Dua, Herle, Chinn, Takahashi,
10 and Yamamoto. Moving from a printed publication, such as a
11 user manual describing a device in the IPR to the device
12 itself in litigation, merely swaps evidentiary proofs
13 supporting the same ground for invalidity that was raised
14 or reasonably could have been raised during the IPR.

15 Here Samsung's approach is even more suspect.
16 It's relying not solely on the prior art products but
17 continues to rely on the user manuals and art it actually
18 raised in the IPRs.

19 Samsung does not dispute it knew of and had access
20 to the S3 manual, iPhone 8 manual, and the S10 manual prior
21 to filing its IPRs. And, obviously, it knew about the N93
22 User Manual, Dua, and Herle because it expressly used them
23 in its IPRs.

24 If a party challenging a patent can make the same
25 claim based on information in a printed publication, then

1 it's the same ground for invalidity, even if the components
2 are different.

3 Samsung's approach here vitiates the purpose of
4 its Sotera stipulations, allowing it to pursue one round of
5 invalidity in the PTAB and another here in this Court.

6 Now, Samsung argues that it not only is using the
7 user manuals, but it's using the products and the service
8 manuals because they disclose additional detail beyond that
9 in the user manuals.

10 But this is not the proper inquiry. If it were,
11 then merely any entity that has confidential information --
12 confidential documents and the -- such describing a product
13 could get around IPR estoppel by simply utilizing them for
14 select limitations, as Samsung does here in some instances.

15 As the District Court in Delaware noted in Wirtgen
16 versus Caterpillar, this allows for a mammoth loophole. An
17 IPR petitioner would always add a physical device or
18 service manual, for example, that is identical to the
19 patents or printed publications, such as a user manual, in
20 the civil litigation to evade estoppel. And this is
21 precisely what Samsung has done here, and this approach is
22 not consistent with the stipulations it filed in the PTAB.

23 Now, system art ordinarily cannot be used as a
24 ground in an IPR, but in certain circumstances, estoppel
25 can extend to grounds that on their face appear to be based

1 on system art, and this is one of those examples.

2 The whole reason the AIA created IPRs was that
3 they were supposed to be a quick, inexpensive, and reliable
4 alternative to district court litigation. As the District
5 of Delaware found in Wasica, where a printed publication
6 discloses all the relevant features of the physical device,
7 IPR estoppel applies. Wasica states the materially
8 identical standard to mean the printed publication
9 discloses the same claim elements as the device.

10 THE COURT: Wasn't there a later case from the
11 District of Delaware that rejected the reasoning of Wasica?

12 MR. PLUTA: Yes, Your Honor, that was the Chemours
13 case. And after the Chemours case, the Wirtgen case came
14 out, and Judge Wolson again rejected the Chemours reasoning
15 and its interpretation of grounds.

16 And I think the courts in Wirtgen and Wasica and
17 such cases like that that we've cited in our brief found
18 that the policy animating these situations is clear,
19 preventing Defendants from simply swapping labels for what
20 is otherwise a patent or a printed publication invalidity
21 ground in order to cloak its prior art and skirt a party's
22 estoppel obligations.

23 THE COURT: But didn't the Chemours case say if
24 Congress wanted to do that, it could have done so?

25 MR. PLUTA: I think the Chemours case says if

1 Congress wanted to allow prior art products to be used in
2 IPRs, it could have done so. Where the dispute is in the
3 case law -- and we acknowledge certainly that courts go the
4 other way from Wasica, such as a case like Chemours -- is
5 the interpretation of the scope of the term "grounds" in
6 the statute.

7 And we would submit that cases like Chemours and
8 cases that follow Chemours interpret the statute too
9 narrowly; whereas Wasica, Wirtgen, and the recent case in
10 the Northern District of California, Contour IP Holdings
11 versus GoPro, interpret grounds in a proper way and a much
12 broader way that Congress intended.

13 In fact, Wasica's approach more clearly reflects
14 the purpose of why Congress included the estoppel provision
15 in the statute, and there is a growing trend, contrary to
16 Samsung's briefing, in the District Courts that is
17 following Wasica's reasoning. And these cases differ
18 somewhat on how to apply estoppel, such as whether the
19 system must be materially identical to the printed
20 publication, such as in Wasica, or whether the system art
21 must be adequately described in the printed publication,
22 such as in Avanos Medical Systems (sic).

23 But Judge Wolson in Wirtgen in the District of
24 Delaware sums up nicely what's -- the proper view of how to
25 interpret the term "ground." That opinion stated: When a

1 party relies on a printed publication before the PTAB and
2 then relies on a physical device in court, it relies on the
3 same ground if the printed publication and the physical
4 device provide the same information.

5 I mentioned earlier the recent case from about a
6 month ago in the Northern District of California, Contour
7 IP Holdings versus GoPro. That case adopted the reasoning
8 set forth in cases like Wasica and Wirtgen and noted that
9 there's trend among courts to prioritize the policy goals
10 of IPR by preventing relitigation of invalidity arguments.
11 And the Court there stated, quote, this approach better
12 aligns with the purpose of IPR estoppel as it promotes
13 efficient resolution of patent disputes by preventing
14 repetitive challenges based on slightly rebranded evidence.

15 If we take a step back, a patent infringement
16 Defendant does not have to take the IPR option. It can get
17 a full hearing of its invalidity or validity challenges
18 here in the District Court. But if the Defendant pursues
19 an IPR option and is successful in instituting the IPRs, it
20 shouldn't expect to hold a second string invalidity case
21 back in case the IPRs don't go its way.

22 Thus, we'd urge the Court to adopt the broader
23 interpretation of grounds as in Wasica, Wirtgen, and
24 Contour IP Holdings, among others, as set forth in the
25 briefs. Otherwise, there's left this mammoth loophole that

10:16:03 1 undermines the goals of the IPR process to be -- to prevent
10:16:07 2 duplicative litigation and to streamline patent invalidity
10:16:11 3 challenges.

10:16:11 4 I'd like to walk through some of the undisputed
10:16:14 5 evidence that illustrates how Samsung is simply swapping
10:16:18 6 labels for what is otherwise a patent or publication
10:16:22 7 invalidity ground in order to cloak its prior art ground to
10:16:26 8 skirt estoppel.

10:16:27 9 I'd like to start with the '590 patent. It's
10:16:33 10 undisputed that for the '590 patent, Samsung asserts that
10:16:38 11 Claims 1, 5, 11, and 16 of the '590 patent are anticipated
10:16:43 12 or obvious in view of the following three grounds: The
10:16:48 13 N93; the N93 and Herle; and Dua, Herle, and N93.

10:16:55 14 And it's undisputed that Samsung expressly relied
10:16:58 15 on the N93 User Guide, Dua, and Herle in the IPR.

10:17:03 16 But moving from a printed publication, such as the
10:17:09 17 N93 User Guide describing the device, to a combination of a
10:17:13 18 device and the printed publication in litigation merely
10:17:16 19 swaps evidentiary proofs supporting the same ground for
10:17:18 20 invalidity that was raised or reasonably could have been
10:17:22 21 raised during the IPR.

10:17:23 22 And well before opposing our motion in its
10:17:29 23 invalidity contentions, it was clear that Samsung regarded
10:17:32 24 reference to N93 to mean collectively the device, the user
10:17:37 25 guide, the service manual, and the PC Suite Guide that --

1 and they say they each constitute or describe the N93.

2 In Samsung's words, they're appropriately
3 considered as a single reference for anticipation purposes.

4 And it's true that each of the N93, service
5 manual, and the user guide constitute and describe the N93
6 and are materially identical insofar as they constitute and
7 describe the N93.

8 THE COURT: Can I ask a question? Are the user
9 guides and the -- what do you call it, the service manual,
10 are those publicly available?

11 MR. PLUTA: The user guide was publicly available.
12 Samsung contended as such in its IPR. It's disputed
13 whether the service manual was publicly available. We
14 don't have any evidence one way or the other.

15 MR. SIDDIQUI: Your Honor, sorry to interrupt.
16 Their expert does contend that the service manual -- it was
17 publicly available in his report and says the company
18 confidential was not really supposed to be confidential,
19 and that the service manual was typically distributed to
20 others at that time. So that's their expert's contention.

21 MR. PLUTA: So it sounds like the service manual
22 also is publicly available, at least that's Samsung's
23 contention, which makes sense because otherwise, how would
24 they be able to use it to support their invalidity ground?

25 I'd like to turn now to the '590 invalidity

1 grounds and illustrate why the user guide used in the IPR
2 and subject to Samsung's Sotera stipulation is materially
3 identical to the N93 and the service manual.

4 The user -- the user guide discloses the same
5 claim elements as the device.

6 Now, Samsung focuses its opposition on the
7 additional detail allegedly provided by the N93 service
8 manual and the N93 device. But this is the wrong focus in
9 light of Samsung's reliance on the N93 User Guide for every
10 element of the asserted claims.

11 Why is this additional detail in the service
12 manual irrelevant for purposes of this estoppel inquiry?
13 Because if that were the inquiry, as the Court in Avanos
14 observed, nearly any entity with confidential documents
15 describing its product could get around IPR estoppel.

16 For example, Samsung in its opposition at Page 12
17 says the service manual provides relevant hardware
18 schematics showing the input device, the controller, the
19 WiFi, Bluetooth, and cellular radios and connections
20 between those components which Samsung equates to various
21 elements of the '590, Claim 1.

22 But Samsung told the Patent Office that each of
23 these features are present in the N93 User Guide. These
24 aren't our characterizations. These are Samsung's from its
25 IPR petition that N93 discloses a multi-radio, multi-media

10:20:50 1 cellular phone that teaches Bluetooth, WiFi, UMTS, and GSM
10:20:57 2 radios, among other things. So that Samsung provides more
10:20:59 3 detail of the same allegations makes Sam -- that Samsung
10:21:05 4 provides more detail of the same allegations that it makes
10:21:10 5 with the N93 User Guide does not change that the user guide
10:21:13 6 is materially identical to the N93 device. The user guide
10:21:18 7 discloses the same claim elements as the device and the
10:21:21 8 service manual.

10:21:22 9 So I'd like to walk through each element of Claim
10:21:31 10 1 to show precisely why the user guide is materially
10:21:33 11 identical to the other evidence that Samsung presents.

10:21:36 12 For Claim Element 1[a], Samsung utilizes the user
10:21:45 13 guide to confirm that the N93's Bluetooth radio
10:21:50 14 communication circuit and functionality exists. Now, the
10:21:52 15 fact that Samsung also uses the service manual on the
10:21:57 16 device to confirm the N93's Bluetooth radio communication
10:21:58 17 circuit and functionality does not make the situation
10:22:01 18 inappropriate for application of estoppel. Samsung
10:22:05 19 confirms that the user guide meets this claim limitation.

10:22:11 20 With respect to Claim Element 1[b], Samsung
10:22:16 21 utilizes the user guide to confirm the N93's GSM radio
10:22:22 22 communication circuit. In Paragraph 247 of their expert's
10:22:25 23 report, he states: The N93 User Guide confirms that the
10:22:29 24 N93 includes a GSM radio communication circuit to connect
10:22:33 25 to an Internet and is capable of transmitting information.

1 So with respect to Claim Element 1[b], the user guide is
2 materially identical to the device. It's right there in
3 Samsung's expert report.

4 With respect to Claim Element 1[c], Samsung
5 utilizes the user guide to confirm the N93's guide -- the
6 N93 guide's WiFi radio communication circuit. In Paragraph
7 269, the expert says: The N93 User Guide confirms that the
8 N93 includes a WiFi radio communication circuit that
9 transmits in various frequency bands. So with respect to
10 Claim Element 1[c], the user guide is materially identical
11 to the service manual and the device itself.

12 With respect to Claim Element 1[d], again, Samsung
13 confirms that the N93 User Guide includes Sam -- includes
14 cameras and associated imaging circuits for taking still
15 images and video and cites the user guide at various
16 instances. So with respect to Claim Element 1[d], the user
17 guide is materially identical to the other evidence
18 presented by Samsung.

19 With respect to Claim Element 1[e], which calls
20 for a compression circuit, again, Samsung says: The user
21 guide confirms that the N93 includes electronic circuits to
22 provide images in compressed format. This is materially
23 identical to the evidence it presents with respect to the
24 service manual and the N93 device.

25 For Claim Element 1[f], which calls for an input

10:24:25 1 device capable of receiving a user indication, Samsung
10:24:28 2 states: The N93 User Guide confirms that a user can use
10:24:33 3 key presses to select different options as user
10:24:35 4 indications. So with respect to this element, 1[f], the
10:24:40 5 user guide is materially identical to the device itself.
10:24:49 6 With respect to Claim Element 1[g], an
10:24:52 7 accumulation circuit, again, Samsung uses the user guide
10:24:56 8 to -- and expressly states: The N93 User Guide discloses
10:25:01 9 that the N93 includes accumulation circuits capable of
10:25:07 10 storing video captured locally or received over a radio for
10:25:09 11 later playback or transmission. With respect to Claim
10:25:14 12 Element 1[g], the user guide is materially identical to the
10:25:15 13 service manual and the N93 device.
10:25:17 14 For Claim Element 1[h], which calls for a
10:25:25 15 controller controlling assignment of connections, again,
10:25:29 16 Samsung uses the user guide and states that it confirms
10:25:32 17 that the N93 is a computing device running the Symbian
10:25:38 18 operating system, and the N93 User Guide confirms the
10:25:42 19 application processor and N93 controls assignment of the
10:25:44 20 UMTS and GSM radios and cites to various points of -- in
10:25:50 21 the user guide for that point. With respect to Claim
10:25:54 22 Element 1[h], the user guide is materially identical to the
10:25:59 23 evidence presented by Samsung for the device and the
10:26:03 24 service manual.
10:26:06 25 With respect to Claim Element 1[i], wherein the

10:26:15 1 first radio communication circuit can transmit video
10:26:18 2 information accumulated in the accumulation circuit, again,
10:26:24 3 Samsung cites the user manual and explains by reference
10:26:31 4 back to Claim Elements 1[a] and 1[g] how the user guide and
10:26:37 5 the device meet this limitation. With respect to this
10:26:40 6 limitation, 1[i], the evidence is materially identical.

10:26:45 7 For Claim Element 1[j], the user guide confirms,
10:26:56 8 as set forth by Samsung, that the N93 satisfies this
10:27:00 9 limitation. Paragraph 320 of their expert report says that
10:27:03 10 the user guide confirms the N93 satisfies this limitation,
10:27:08 11 and it goes through for each radio controller. And
10:27:12 12 additional examples of how the controller controls the
10:27:15 13 assignment of the second radio, in Paragraphs 324 and 325,
10:27:22 14 Samsung cites extensively to the user guide. So for
10:27:26 15 Element 1[j], the evidence that the user guide is
10:27:29 16 materially identical to the service manual and the device.

10:27:34 17 Now, granted, Samsung does some testing for this
10:27:40 18 limitation, but it also discloses when user guide -- the
10:27:48 19 user guide discloses this element, and there it's just
10:27:50 20 simply swapping evidentiary proofs.

10:27:53 21 With respect to Element 1[k], again, Samsung cites
10:28:02 22 back to the discussion of the various limitations that also
10:28:07 23 support the material identical picture of the user manual
10:28:11 24 for the simultaneous data packet connections. And it uses
10:28:18 25 testing for that, as well.

10:28:20 1 But Samsung told the Patent Office that the N93
10:28:26 2 User Guide teaches simultaneous data packet connections
10:28:28 3 over its UMTS and GMS radios on the one hand and its WiFi
10:28:35 4 and Bluetooth radios on the other.

10:28:39 5 So on the one hand, Samsung is telling the Patent
10:28:42 6 Office that the user guide discloses this. On the other
10:28:45 7 hand, in this Court, it's also saying the user guide
10:28:48 8 discloses this Element 1[k] and additionally provides
10:28:52 9 further evidence confirming that fact by testing the N93.

10:29:00 10 But substituting testing for this limitation when
10:29:02 11 it believes that the user guide discloses Element 1[k]
10:29:05 12 should not allow Samsung to evade estoppel. It's simply
10:29:09 13 swapping evidentiary proofs here.

10:29:11 14 And, moreover, Samsung's use of the N93 device to
10:29:16 15 show simultaneous transfer through testing is materially
10:29:20 16 identical to Dua, as best shown in Samsung's use of Dua for
10:29:24 17 the third '590 ground in this case which it points back to
10:29:28 18 the now withdrawn Dua and Herle ground.

10:29:31 19 As can be seen, Dua was also expressed -- used --
10:29:34 20 expressly used in the IPR for this purpose. In fact,
10:29:37 21 Samsung simply copied the paragraph from its IPR with
10:29:41 22 respect to Dua and put the argument into its expert report
10:29:45 23 in this case, utilizing Dua for the exact same limitation,
10:29:52 24 making it materially identical to the device itself.

10:29:54 25 With respect to Claim Element 1[l], the user guide

1 is materially identical to the device with respect to the
2 claim limitation that relates to over-the-air updates.

3 In Paragraph 334, Samsung states: A POSITA would
4 have understood that the N93 User Guide makes clear that
5 the user can download the application update to your device
6 while browsing. The user can then view the version details
7 prior to installation using the options view details on the
8 N93 itself, citing various places to the user guide.

9 Now, Samsung accuses us of mischaracterizing its
10 expert's testimony about the effect on his opinions if the
11 Court were to exclude the N93 product. The slide we have
12 up on the screen, Slide 30, shows his testimony in this
13 regard.

14 When asked that question, he testified: I haven't
15 done that analysis to determine what would -- if the
16 samples were thrown away, whether it would weaken my
17 opinion, but I think that it wouldn't -- it certainly
18 wouldn't change my opinion of how they function.

19 From a plain reading of this testimony, it's clear
20 that without the products and relying on the user manual,
21 Samsung's expert opinion wouldn't change how the N93
22 functions.

23 Put another way, the user manual is materially
24 identical to the device.

25 For the second ground, Samsung adds the Herle

reference from the '590 IPR for Claim Element 1[1] for its alleged teaching of software updates for applications.

Herle, like the user guide, is subject to Samsung's Sotera stipulation and should be excluded as well.

And, again, Samsung uses Herle in this court the exact same way it uses Herle in the IPR, in combination with the user guide. And yet again, Samsung ported its arguments verbatim over to its expert reports in this case to utilize Herle for this limitation.

For the third ground, Samsung relies on Dua, Herle, and N93. All these IPR -- all of these are IPR references, and estoppel applies.

Samsung contends that it relies on the N93 product for this ground, but it only relies on the user manual.

For example, it relies only on the user guide, not the device for this -- for Claim Element 1[j]. And it relies on it in the exact same way as it did in the IPR. In the motivation to combine section for this ground, Samsung utilizes only the user guide and not the device.

And the other reason this ground should be estopped in light of Samsung's stipulations is that it relies heavily on a ground that was dropped by Samsung, the Dua and Herle ground, as referenced in Paragraphs 622 continuing.

10:33:07 1 So, Your Honor, unless there's any other
10:33:12 2 questions, I'm going to reserve time and move on and...

10:33:24 3 THE COURT: Thank you.

10:33:40 4 MR. FOWLER: Good morning, Your Honor.

10:33:41 5 THE COURT: Good morning.

10:33:41 6 MR. FOWLER: Mark Fowler for Samsung.

10:33:42 7 Before I -- I'm sorry, I've got some slides to
10:33:47 8 hand out.

10:33:48 9 THE COURT: All right.

10:33:48 10 MR. FOWLER: That's probably a big surprise.
10:34:06 11 May I proceed, Your Honor?

10:34:07 12 THE COURT: Yes, please.

10:34:08 13 MR. FOWLER: Before I get into the body of my
10:34:10 14 argument, which won't be very long, I wanted to address two
10:34:14 15 broader points that were raised by counsel that may be
10:34:17 16 germane to the Court's thinking about this.

10:34:20 17 They provided a slide -- it's Slide 4 in their
10:34:23 18 deck -- where they had asserted patent, District Court, and
10:34:27 19 PTAB. And what they list here are some combinations. And
10:34:30 20 they show for the '590 and the '757 some of the combination
10:34:36 21 materials.

10:34:36 22 But I'd like to remind the Court that for the '590
10:34:39 23 and the '757, in addition to obviousness combinations,
10:34:43 24 we're asserting 102 prior art as the phone itself with
10:34:48 25 evidence that supports it.

10:34:49 1 So that's not reflected accurately here. So if
10:34:52 2 they would have done the chart correctly, what you'd have
10:34:56 3 is you'd have a 102 with no red in the middle and no red in
10:35:00 4 the middle for the '757 for the 102.

10:35:02 5 And then the one factual point I want to raise,
10:35:05 6 because Your Honor asked about it, is about the service
10:35:08 7 manual for the N93. That was not public at the time of the
10:35:12 8 priority date. And there's no evidence at all that there
10:35:15 9 was. And I will remind the Court that it is their burden,
10:35:19 10 Maxell's burden, to show that this was public at the time
10:35:22 11 in order to establish estoppel. And the evidence in the
10:35:25 12 record is that Mr. Garcia, who was an engineer at the time
10:35:31 13 at Nokia, testified that this document was company
10:35:36 14 confidential. And as indicated on the picture on Slide 8
10:35:40 15 in their own deck, it says: Company confidential. And
10:35:43 16 Mr. Garcia said it was, in fact, confidential. And there's
10:35:47 17 no evidence that this was out in the public domain as of
10:35:51 18 2007, which is what it would have had to have been to
10:35:54 19 qualify as prior art.

10:35:55 20 And then at some point in time, 10, 15, 20 years
10:35:58 21 later, it got on the Internet. But it doesn't qualify as
10:36:01 22 prior art. So it could not have been used as prior art in
10:36:06 23 the -- the PTAB.

10:36:07 24 THE COURT: Is the information in the -- in
10:36:09 25 that -- what are we calling that, a service manual? Is the

10:36:15 1 information in that repetitive of the same type of
10:36:17 2 information that's in the user manual?

10:36:19 3 MR. FOWLER: No, Your Honor. It's -- it's very,
10:36:22 4 very much more detailed. I mean, if you can think of it,
10:36:25 5 the user manual is what you'd expect. It's what you or I
10:36:29 6 might use -- the service manual is for someone to be able
10:36:32 7 to fix and service the phone.

10:36:33 8 So, for example -- we'll get to this in a moment.
10:36:37 9 But the service manual has schematics in it that our expert
10:36:41 10 relies upon -- detailed schematics that are relied upon for
10:36:45 11 multiple limitations. Those are not in the user manual.
10:36:48 12 That would be one example.

10:36:49 13 THE COURT: Okay.

10:36:50 14 MR. FOWLER: So if -- if I may then, Your Honor,
10:36:54 15 with that background, as Your Honor, I think, correctly
10:36:58 16 pointed out, there is one issue that the Court will need to
10:37:00 17 decide, and that's whether the currently prevailing
10:37:05 18 Chemours standard should govern rather than -- what I
10:37:08 19 believe is the minority view in Wasica. And if the Court
10:37:13 20 decides that Chemours governs, then that's the end of the
10:37:14 21 issue.

10:37:14 22 However, even if the Wasica standard governs, as
10:37:21 23 I'll show in a moment, the Court should deny the motion --
10:37:22 24 their motion because it's clear that the product prior art
10:37:25 25 and the paper prior art are not materially identical, as

10:37:29 1 I'll go through in a moment.

10:37:30 2 So I won't rehash this, but Chemours was very
10:37:35 3 thorough in its analysis here. The basic point, I think,
10:37:39 4 is that the statute that allows for IPRs says that you can
10:37:44 5 only bring publications and patents. And as Chemours
10:37:49 6 correctly pointed out, Congress, when it did the estoppel
10:37:52 7 statute, this was subject to a lot of debate, and they
10:37:56 8 could have but they elected not to extend estoppel to
10:38:01 9 product prior art.

10:38:01 10 They specifically said it would be grounds that
10:38:04 11 you could bring an IPR, which is not product prior art.
10:38:09 12 Everyone agrees that you can't assert product prior art in
10:38:12 13 an IPR.

10:38:12 14 So there have been two cases, one of which I think
10:38:15 15 Your Honor was referring to, which is the Prolitec where
10:38:19 16 Justice Bryson, sitting by designation in the District of
10:38:23 17 Delaware, ruled that IPR estoppel does not apply to device
10:38:27 18 art even if it's cumulative. And that was in 2023.

10:38:29 19 And then the most recent word in this district,
10:38:32 20 Your Honor, is Judge Payne. Last year, Judge Payne in the
10:38:37 21 Lionra -- I'm not even sure how to pronounce that. I'll
10:38:39 22 just say Lionra, L-i-o-n-r-a, case. He had previously --
10:38:45 23 Judge Payne had previously ruled earlier in another case
10:38:48 24 that the Wasica standard was correct. But after reading
10:38:51 25 Prolitec and the Kemper case that's referred to here, he

1 came to a contrary conclusion in 2024 and agreed with the
2 Chemours line of cases and decided that product prior art
3 is not subject to estoppel even if it's cumulative.

4 As I said before, I think that result is dictated
5 by the statutes themselves. Section 311(b) specifically
6 says that the only basis for prior art in an IPR is patents
7 and printed publications.

8 And the Estoppel Statute 315(e)(2) specifically
9 says that it only applies to any ground that the petitioner
10 raised or reasonably could have raised during that inter
11 partes review.

12 And product prior art, it can't be brought. It's
13 just impossible.

14 So I think to me, Chemours is the correct
15 standard, and we ask that the Court apply it. And that
16 would be the end of the analysis.

17 However, if Your Honor wants to consider what
18 happens under Wasica and its subsequent cases, then it's
19 important to know what that standard is. And we didn't
20 really hear much about that.

21 Wasica itself said, and the case before it, that
22 the paper art and the product art had to be materially
23 identical. And it went on to say this is not a case where
24 the product art is a superior and separate reference from
25 the publication. As we'll see here, that's the case for

10:40:16 1 all three of the products.

10:40:17 2 So what I'd like to do is -- and maybe what I'll
10:40:26 3 do, Your Honor, I'll do what counsel did, I'll just focus
10:40:29 4 on the '590, and rest on the other -- on the other devices
10:40:33 5 because I think this is exemplary.

10:40:34 6 And what I'd like to focus on here is the last two
10:40:37 7 bullet points on Slide 10, because I think those are the
10:40:40 8 ones that are -- are the clearest here. And -- and I'd
10:40:43 9 like to address what counsel said about those two points.

10:40:46 10 So we're talking about Claim Limitations 1[k],
10:40:49 11 that's the second bullet point, and 1[l], which is the
10:40:53 12 third bullet point.

10:40:54 13 Now, the second to last limitation of Claim 1
10:40:58 14 requires that the simultaneous use of two radios, one to
10:41:03 15 transmit video and one to connect to the Internet, specific
10:41:07 16 video, video and the Internet, that is not shown in the
10:41:12 17 user manual. The way that this was shown by our expert in
10:41:15 18 this case was to actually have the product. We actually
10:41:19 19 have a copy of the product with us. But to run -- he had
10:41:22 20 three examples of the product. He ran them simultaneously,
10:41:25 21 and that's how we could prove it worked.

10:41:27 22 Now, if we look at the evidence that counsel
10:41:31 23 pointed to for this claim limitation, which is on Slide 27,
10:41:37 24 the one thing I will ask you to note, Your Honor, if you
10:41:40 25 look back at it after the hearing is you will not see the

1 word "video" in that paragraph at all because there is no
2 evidence that's cited here with respect to the use of
3 video.

4 It's talking about the N93 teaching simultaneous
5 data packet connections, but what's being referenced here
6 doesn't show video. They haven't cited anything in the
7 user manual that says that you could transmit video at the
8 same time as connecting to the Internet. It's just not
9 there. If it were there, presumably, they would have
10 showed it to you, but they did not.

11 And the same thing is true of Claim Limitation
12 1[1], which is the last limitation of -- actually let me go
13 back. They had another slide, Slide 28 in their deck,
14 where they were talking about the Dua reference. But as a
15 reminder, Your Honor, first and foremost, what we're
16 talking about here is a 102 case, and we don't need to rely
17 on Dua for a 102. We're relying on the actual phone.

18 So this slide is somewhat extraneous, I think, to
19 the argument because the phone is what shows simultaneous
20 connections for purposes of the 102 case.

21 Then on -- with respect to Limitation 1[1], the
22 product discloses that you can download an operating
23 system. Just by using the product itself and the
24 non-public information, it shows you can download the
25 operating system.

10:43:11 1 You will note, Your Honor, that on Slide 29 of the
10:43:15 2 Plaintiff's deck, what they cite is the downloading of
10:43:19 3 applications, not the downloading of the operating system,
10:43:26 4 because the user manual never talks about downloading the
10:43:29 5 operating system. It only talks about downloading
10:43:32 6 applications.

10:43:32 7 And, Your Honor, in the IPR, Maxell says that's a
10:43:38 8 big deal. In the IPR when we're relying on paper art, they
10:43:43 9 say, well, this is only showing applications. It's not
10:43:45 10 showing the downloading of the operating system.

10:43:48 11 So they're trying to have their cake and eat it.
10:43:52 12 In the IPR, they say -- the same thing they just showed you
10:43:55 13 is not showing the downloading of operating systems. And
10:43:58 14 it doesn't. It shows right here in this -- in this one
10:44:01 15 slide, it shows an application. What we're relying on is
10:44:05 16 the N93 itself to show the downloading of the operating
10:44:09 17 system.

10:44:09 18 And, Your Honor, unless you have any questions --
10:44:13 19 again, I'm willing to do as counsel did and rest on the
10:44:17 20 papers on the other two pieces of product prior art.

10:44:21 21 THE COURT: Okay. Thank you.

10:44:22 22 MR. FOWLER: Thank you.

10:44:23 23 THE COURT: Mr. Pluta, short reply?

10:44:30 24 MR. PLUTA: Your Honor, I'd like to address a
10:44:51 25 couple of points quickly.

10:44:52 1 The Chemours case is distinguishable on its facts.
10:44:56 2 In that case, the Defendant relied solely on prior art
10:44:58 3 products and litigation. Here the situation is very
10:45:00 4 different. Samsung pairs its prior art product with not
10:45:04 5 only publications explicitly raised in the IPRs but also
10:45:05 6 with publications that reasonably could have been raised in
10:45:12 7 the IPRs.

10:45:13 8 In the Prolitec case, which follows Chemours,
10:45:17 9 Judge Bryson interpreted grounds as the particular patents
10:45:18 10 and printed publications on which invalidity arguments are
10:45:19 11 based, and that's supporting affidavits, declarations, and
10:45:24 12 the like are evidence, not grounds.

10:45:26 13 Here, the N93 and the '590 ground in this court
10:45:31 14 case are the same arguments that Samsung made at the PTAB.
10:45:37 15 In other words, one way to label their ground that they're
10:45:40 16 presenting here to this Court, according to Prolitec and
10:45:43 17 Chemours, is that the arguments are based on the user guide
10:45:47 18 and that the N93 and the service manual are cumulative
10:45:49 19 evidence supporting those arguments.

10:45:51 20 Samsung obviously argues it's the other way
10:45:53 21 around, that the arguments are based on the device and that
10:45:56 22 the user guide and the service manual are cumulative
10:45:58 23 evidence supporting those arguments.

10:46:00 24 But even under Chemours and Prolitec, this is
10:46:03 25 simply swapping labels to get around estoppel, and

10:46:07 1 Samsung's arbitrary positioning of its evidence shouldn't
10:46:10 2 enable it to get around estoppel.

10:46:12 3 With respect to Claim Element 1[k], I guess I
10:46:18 4 didn't make the right slide, but if we look at Exhibit 8 at
10:46:22 5 Page 36, which is the IPR petition, Samsung explicitly says
10:46:29 6 the N93, which is the user guide in the IPR, explicitly
10:46:34 7 teaches that the phone can be used as a modem for PC by
10:46:34 8 simultaneously using a Bluetooth connection to the PC and a
10:46:38 9 UMTS connection to the Internet. And at the bottom of that
10:46:41 10 paragraph, it also states: POSITA would have understood
10:46:44 11 N93 discloses simultaneous Bluetooth video transfers and
10:46:49 12 data packet connections over UMTS.

10:46:51 13 Unless the Court has any other questions...

10:46:53 14 THE COURT: I don't.

10:46:54 15 MR. PLUTA: Thank you, Your Honor.

10:46:55 16 THE COURT: Thank you.

10:47:04 17 All right. Next motion?

10:47:06 18 MR. HEINTZ: Good morning again, Your Honor.

10:47:10 19 THE COURT: Good morning.

10:47:11 20 MR. HEINTZ: Jim Heintz for Samsung. I've also
10:47:14 21 got some slides --

10:47:14 22 THE COURT: All right.

10:47:16 23 MR. HEINTZ: -- as you might have guessed.

10:47:19 24 THE COURT: Hand them up.

10:47:20 25 MR. HEINTZ: Your Honor, I'm going to start on

Slide 6 of the presentation. And, again, I'm going to be addressing the non-infringement motion for the '161 and '757 patents.

On Slide 6, Your Honor, I've shown Claim 6, which is the only claim at issue for the '161 patent. And central to the issue of infringement or non-infringement, as the case is here, is the limitation I've highlighted in the middle of Claim 6. That's the chronological list of network devices connected to the network.

There are five requirements for this list, which are important in this case. First, each network device -- each network device must collect one of these lists of chronological list of network information.

Second, the list must be collected in accordance with peripheral device information that is collected while the connection to the network is established.

Now, I think, Your Honor, this is the claim construction issue you mentioned in your opening statement. That is not a dispute that was raised by Maxell during the construction proceeding. The language of the claim is quite clear. In the first limitation of Claim 6, each of the network devices collect peripheral device information indicating which ones of the devices are connected to the network while the connection to the network is established. That's plain language.

10:49:12 1 While means during the time the connection is
10:49:15 2 established. It doesn't mean before the connection is
10:49:17 3 established. It doesn't mean after. While the connection
10:49:20 4 is established.

10:49:21 5 This dispute that Maxell raises in order to avoid
10:49:27 6 summary judgment reminds me of the '815 patent dispute
10:49:31 7 where we had the question of what does it mean that
10:49:34 8 second -- that the second video information was -- is
10:49:38 9 encrypted when it's transmitted? The language here is
10:49:41 10 clear. While the connection is established means during
10:49:44 11 the time the connection is established. It does not mean
10:49:48 12 before the connection is established.

10:49:49 13 So these chronological lists are collected
10:49:56 14 based -- are designed based on peripheral device
10:50:00 15 information that's collected when the devices are connected
10:50:05 16 to the network. That's the second important requirement
10:50:10 17 for these chronological lists.

10:50:12 18 The third, Your Honor, is that these lists must be
10:50:18 19 collated at a particular time. They must be collated --
10:50:21 20 and these are two of these chronological lists from
10:50:25 21 different network devices -- they must be collated when
10:50:29 22 judging the belonging of a device to a network. Again,
10:50:32 23 this language is clear. The judging is occurring -- the
10:50:36 24 collation is occurring when the judging is happening, not
10:50:40 25 before the judging is done or not after the judging is

10:50:44 1 done.

10:50:46 2 Next slide, please.

10:50:49 3 The last two limitations that are important for
10:50:51 4 these chronological lists, Your Honor, are on Slide 7. Per
10:50:56 5 your construction, these lists must be chronologically
10:51:00 6 ordered, and they've got -- they've got to indicate the
10:51:05 7 participation or non-participation of devices, plural
10:51:09 8 devices, in the network, and that's a singular network.

10:51:14 9 So all five of those limitations are important on
10:51:17 10 the chronological lists.

10:51:20 11 Now, on Slide 8, Maxell's expert has identified
10:51:26 12 five chronological lists, and I've listed them there on the
10:51:30 13 slide. The first of these lists that we're going to talk
10:51:32 14 about is the list of available WiFi networks. This list
10:51:41 15 and the second list go together because according to
10:51:44 16 Maxell's expert, these two lists are collated with each
10:51:47 17 other.

10:51:49 18 Now, these lists -- these theories for the first
10:51:52 19 and second lists on this slide are both subject to a
10:51:55 20 separate motion to strike, which we've submitted on the
10:51:58 21 papers.

10:51:59 22 But even if the Court does not strike these
10:52:02 23 theories that were brought up late, not in their
10:52:04 24 infringement contentions, Maxell can't establish
10:52:07 25 infringement based on either one. And in particular, the

Maxell, Ltd.

EX2037

Page 34 of 186

1 list of available WiFi networks is not the claimed
2 chronological list for multiple reasons.

3 So on Slide 9, Your Honor, three of these
4 requirements for the chronological lists are important for
5 this first list, the list of available WiFi networks.

6 First, again, this chronological list must be in
7 accordance with peripheral device information collected
8 while the connection to the network is established.

9 Second, this chronological list must indicate
10 which ones of the network devices are connected to the
11 network.

12 And, third, this must be a chronological list of
13 network devices, plural, connected to the network,
14 singular.

15 On Slide 10, Your Honor, we show that this first
16 chronological list, the list of available WiFi networks,
17 cannot be the claimed chronological list.

18 The first reason is the one we've just alluded to,
19 Your Honor. This list cannot be collected before the
20 connection to the network is established.

21 So this chronological list we're talking about,
22 Your Honor, is nothing mysterious. It's the same kind of
23 list that Your Honor would look at on his phone if he were
24 to go to try to establish a connection to the WiFi network.

25 I've shown an example of the list here on the

10:53:42 1 left-hand side. It's simply a list of those network --
10:53:46 2 those WiFi networks that are in range of the device. Here,
10:53:52 3 there's four, and part of a fifth one shown.

10:53:55 4 And what -- what you see there are the names of
10:54:01 5 the WiFi networks and then the signal strengths. Those are
10:54:06 6 those little -- little pie-shaped indications on the left.

10:54:10 7 Now, again, this list cannot be the claimed
10:54:17 8 chronological list because all of these entries on the list
10:54:20 9 are connected before any connection is made. The entire
10:54:24 10 purpose of this list is to make a decision as to which of
10:54:27 11 these networks a device, such as a washer or a
10:54:33 12 refrigerator, is going to connect to at some future point.

10:54:36 13 At the time this list is connected and at the time
10:54:38 14 this list is sent by one of those devices to the S23, there
10:54:43 15 is no network connection to the WiFi network.

10:54:47 16 So this list is not a list that is collected
10:54:51 17 before -- while the device, the washer or the fridge, is
10:54:57 18 connected to the WiFi network. That's the first reason
10:55:01 19 this fails.

10:55:02 20 But that's not the only reason. The second reason
10:55:05 21 is that this list is not a list of network devices. The
10:55:10 22 only thing that this list indicates is which wireless
10:55:17 23 routers are within range of the washer or the fridge. A
10:55:24 24 wireless range -- I'm sorry, a wireless router is not one
10:55:25 25 of the claimed network devices.

10:55:26 1 And as you can see here, Maxell's own expert,
10:55:30 2 Dr. Weissman, testified to that at his deposition. I've
10:55:32 3 got the citation there at Page 45, Line 1, to Page 46, Line
10:55:37 4 4.

10:55:38 5 And that makes perfect sense. When you look at
10:55:42 6 these items on the list, such as a WiFi network, such as
10:55:46 7 John's WiFi, you cannot tell from that entry whether
10:55:49 8 there's one device, a hundred devices, or no devices
10:55:53 9 connected to that WiFi network. It only identifies a
10:55:59 10 network. It doesn't identify any network devices because
10:56:02 11 those transmissions that are being sent are coming from a
10:56:06 12 WiFi router, which their own expert admits is not a network
10:56:10 13 device within the meaning of the '161 patent.

10:56:15 14 There's yet another reason this WiFi list doesn't
10:56:17 15 work, Your Honor. The list includes only one entry for any
10:56:23 16 WiFi network. But the Court's construction requires that
10:56:28 17 any list be a list of devices that are available --
10:56:34 18 available, plural devices, for one network. There's only
10:56:38 19 one entry for any one network here, and, therefore, there
10:56:40 20 aren't multiple devices on this list for any one WiFi
10:56:46 21 network.

10:56:46 22 So that's the third reason this list cannot
10:56:51 23 qualify as the claimed chronological list.

10:56:53 24 And the fourth point, Your Honor, is there is no
10:56:56 25 evidence, none, that this list is in any kind of

10:57:01 1 chronological order.

10:57:02 2 So for all of those reasons, Maxell cannot
10:57:07 3 establish infringement on -- of Claim 6 based on the
10:57:14 4 claimed -- sorry, based on the list of available WiFi
10:57:19 5 networks.

10:57:19 6 Slide 12, please.

10:57:21 7 So, Your Honor, the first list will not work for
10:57:24 8 them, and that also means the second list cannot establish
10:57:29 9 infringement either. And that's because under the only
10:57:32 10 theory that their expert has put forth in his expert
10:57:35 11 report, the first and the second list are collated with
10:57:39 12 each other. Because the first list, the list of available
10:57:43 13 WiFi networks, is not the claimed chronological list, even
10:57:47 14 if it were being collated with the -- the WiFi Locker/Vault
10:57:54 15 information, even if that were true, which we dispute, it
10:57:57 16 doesn't matter because it's -- the first list is not a
10:58:00 17 chronological list. Without the first list, the second
10:58:03 18 list does them no good.

10:58:04 19 So the first two lists will not allow them to
10:58:07 20 establish infringement of Claim 6.

10:58:13 21 So what does that leave? That leaves Lists 3, 4,
10:58:20 22 and 5, which are history, notifications, and favorites.
10:58:24 23 But, Your Honor, we're going to show that those lists don't
10:58:27 24 work for them either. They can't for at least two
10:58:29 25 different reasons.

1 Next slide, please.

2 So there's a slightly different set of
3 requirements we're going to focus on for these three lists,
4 Your Honor, and those are the ones shown here.

5 First, to be clear, this chronological list of
6 network devices connected to the network is defined in the
7 claim, and that's in the first highlighted paragraph, to be
8 home network information. The home network information --
9 home network information is a chronological list, and
10 that's all it is.

11 Now, the claim requires that the first network
12 device is the one that collates the home network
13 information from some other device with the home network
14 information that's stored on that device, and it does this
15 collation when judging the belonging of the second network
16 device, not before or after, but when this judging is
17 happening, that's when the collation has got to occur. And
18 the determination or the judging of whether this second
19 network device belongs to the same network must be done in
20 accordance with the result of this collation.

21 As I'm going to show the Court, all of the devices
22 on these third, fourth, and fifth lists have already been
23 determined to be part of SmartThings before anything that
24 happens on the S23, which is the one claimed first network
25 device that's identified by their expert, before anything

10:59:57 1 happens on that device with those lists.

10:59:59 2 So let's go on to the next page.

11:00:01 3 I asked Dr. Weissman, their expert on the '161, at
11:00:06 4 his deposition whether the S23 is the first network device
11:00:10 5 and whether there's anything else, and he said there was
11:00:13 6 not.

11:00:13 7 The S23 is the claimed first network device.

11:00:18 8 On the next slide, Your Honor, the key point here
11:00:23 9 is by the time that the S23 gets any one of these lists,
11:00:30 10 favorites, history, or notifications, all of the devices on
11:00:35 11 that list have already been judged to be part of
11:00:38 12 SmartThings. This all happens up in the cloud.

11:00:42 13 When the cloud sends those lists to the S23, there
11:00:47 14 is no determination by the S23 of whether any of these
11:00:51 15 devices on those lists are part of SmartThings or not.
11:00:55 16 That has already been determined. It's over.

11:00:59 17 So for that reason alone, Lists 3, 4, and 5 does
11:01:05 18 not work for Maxell. They cannot establish infringement
11:01:07 19 based on any of those lists. That's the first reason.

11:01:11 20 Your Honor, there's a second reason.

11:01:12 21 Next slide, please.

11:01:14 22 The only thing that the S23 does with these lists
11:01:19 23 that are received from the cloud -- this is the cloud
11:01:22 24 server, not anything on the home network -- the only thing
11:01:25 25 the S23 does is either replace one of these lists with a

1 new version or it appends the new version of the list to a
2 previous version.

3 Your Honor, replacing and appending are not
4 collating as that term is used in the '161 patent. This is
5 another dispute perhaps that might influence this case.
6 It's not determinative. It doesn't necessarily determine
7 because the temporal limitation is already an issue for
8 them, but replacing and collating are nothing like what's
9 described in the '161 patent.

10 The Court may remember there's these long lists in
11 Figure 5 of the patent, which I can show for the Court if
12 it likes, but these lists have got to be matched up entry
13 by entry, and there's got to be a determination of what the
14 rate of agreement is. Nothing like that's going on when
15 you simply replace a list or add a list onto the back of an
16 existing list. It's not collating.

17 So for those two reasons, Your Honor, Lists 3, 4,
18 and 5, the favorites, notifications, and history, are also
19 not chronological lists, as required by the claim, and,
20 therefore, there is -- can be no infringement of Claim 6 of
21 the '161 patent.

22 So, Your Honor, that -- Maxell realizes they have
23 a problem with this. So what they've tried to do is try to
24 point to things that are happening on the cloud server and
25 tried to establish infringement that way.

11:03:00 1 That simply doesn't work, Your Honor. Recall that
11:03:05 2 the only first network device identified by Dr. Weissman
11:03:09 3 was the S23. That's the claimed first network device that
11:03:13 4 has to do the collating.

11:03:15 5 So by talking about what happens at the cloud and
11:03:18 6 saying that the cloud is doing the collating on behalf of
11:03:21 7 the S23 is not within the literal scope of Claim 6 because
11:03:26 8 Claim 6 says that the first network device, the S23, does
11:03:31 9 the collation.

11:03:31 10 So what does Maxell do? Then they try to rely on
11:03:36 11 the doctrine of equivalents, and they say doing it on
11:03:40 12 the -- doing the collation in the cloud is equivalent to
11:03:44 13 doing it on the S23. That doesn't work, Your Honor, and
11:03:50 14 there's an easy reason that doesn't work.

11:03:52 15 We'll go to Slide 19.

11:03:54 16 The '161 patent itself describes -- doesn't claim
11:04:02 17 this, but it describes that you can have a different device
11:04:06 18 do the collation on behalf of one device.

11:04:10 19 So, for instance, you could, according to the '161
11:04:14 20 specification, have some other device do the collation on
11:04:18 21 behalf of the S23.

11:04:20 22 The problem is the disclosure dedication doctrine
11:04:26 23 bars the application of this -- of the doctrine of
11:04:29 24 equivalents for this very reason. You cannot recapture
11:04:33 25 what's disclosed in the specification but not claimed using

11:04:37 1 the doctrine of equivalents.

11:04:39 2 And here, there is a clear disclosure of having
11:04:41 3 some other device do the collation, but the claim -- the
11:04:47 4 claim says the first network device must do the collating.
11:04:51 5 And the only theory they have is that the S23 is the first
11:04:55 6 network device.

11:04:56 7 So the doctrine of equivalents also does not save
11:05:01 8 Maxell from a finding of non-infringement by summary
11:05:04 9 judgment in this case, Your Honor.

11:05:06 10 Now, with that, I will -- that's it for the '161,
11:05:09 11 unless the Court has any questions.

11:05:10 12 THE COURT: I don't.

11:05:12 13 MR. HEINTZ: Okay.

11:05:12 14 Let's now move on to the '757.

11:05:15 15 Slide 21, please.

11:05:17 16 We have two limitations that are important here,
11:05:20 17 Your Honor, and the first -- for the first reason there's
11:05:23 18 no infringement. That's the first and second camera
11:05:26 19 limitations, and that's the ones -- those are the ones I
11:05:29 20 discussed with the Court at the claim construction hearing.

11:05:31 21 None of the accused Samsung products practice
11:05:36 22 these first and second camera limitations.

11:05:39 23 On Slide 22, I note that the -- there are
11:05:43 24 constructions for both of these terms. The first camera
11:05:47 25 term is an agreed construction. That's on the upper right.

11:05:50 1 And it means that the first camera is located on a same
11:05:54 2 side of the touch display.

11:06:01 3 And under Your Honor's construction of the second
11:06:03 4 camera limitation, the requirement is that the second
11:06:05 5 camera is located on a side of the touch display that is
11:06:09 6 opposite a side of the touch display on which the first
11:06:12 7 camera is located.

11:06:13 8 This simply means, Your Honor, that there are two
11:06:17 9 cameras, and they're on opposite sides of the touch
11:06:21 10 display. That's the plain meaning of the claim language.
11:06:25 11 It's also the plain meaning of the Court's construction.
11:06:27 12 It cannot mean anything other than that.

11:06:29 13 Next slide.

11:06:31 14 When I asked their expert -- Maxell's expert,
11:06:38 15 Dr. Wobbrock, about this at deposition, his answer makes it
11:06:42 16 perfectly clear there's no infringement. I gave
11:06:45 17 Dr. Wobbrock an example of a brick wall, and I put a first
11:06:49 18 person on the front side of the brick wall and a second
11:06:52 19 person on the rear side of the brick wall. They're on
11:06:55 20 opposite sides of the brick wall. And I asked him: In
11:06:58 21 this figure, is the second person on the side of the brick
11:07:02 22 wall that's opposite the side of the brick wall on which
11:07:05 23 the first person is located?

11:07:06 24 Not surprisingly, he said: Yes.

11:07:10 25 Next slide, please.

11:07:11 1 I then put the first person on the other side of
11:07:16 2 the brick wall, in other words, the same side, the rear
11:07:19 3 side of the brick wall. And, again, I asked Dr. Wobbrock:
11:07:23 4 Is the second person on the same side -- sorry, is the
11:07:27 5 second person on a side of the brick wall that's opposite
11:07:30 6 the side on which the first person is?

11:07:34 7 Here he answered: No, of course, they're on the
11:07:37 8 same side.

11:07:38 9 What else could he say?

11:07:39 10 Next slide, please.

11:07:41 11 I then put cameras in place of the people. And I
11:07:45 12 asked him: Now, Dr. Wobbrock, is the second camera on a
11:07:48 13 side of the brick wall that's opposite the side of the
11:07:50 14 brick wall on which the first camera is located?

11:07:52 15 Not surprisingly, Your Honor, the answer was,
11:07:56 16 again: No.

11:07:56 17 Next slide, please.

11:07:57 18 And then I replaced the brick wall with a touch
11:08:01 19 display, asked him the same question again. And as
11:08:05 20 Your Honor might not be surprised to learn -- if we go to
11:08:07 21 the next slide -- the answer was the same.

11:08:10 22 In that figure, the first and second camera are
11:08:12 23 not on opposite sides of the wall. The second camera is
11:08:15 24 not on the side of the touch display that's opposite the
11:08:18 25 side of the touch display on which the first camera is

11:08:21 1 located.

11:08:21 2 And that's just based on the plain meaning of the
11:08:26 3 language and the plain meaning of the Court's construction.
11:08:28 4 There's no other possible answer.

11:08:29 5 Because that's what the claims mean, it is
11:08:36 6 perfectly clear that there's no infringement of these first
11:08:39 7 and second limitations.

11:08:40 8 Let's go to the next slide, please.

11:08:43 9 This is an exploded view of the S23 device, Your
11:08:49 10 Honor. That's one of the accused products, and perhaps the
11:08:51 11 one that has the largest sales in the case.

11:08:52 12 As you can see from this exploded view, at the
11:08:57 13 very top, we have a touch display, and then we have --
11:09:01 14 there are actually three rear cameras in this device and a
11:09:04 15 front camera. And all of those components are located on
11:09:07 16 the rear side, the underside, the inside side of the touch
11:09:11 17 display. None of them -- none of these cameras are located
11:09:15 18 on opposite sides of the display.

11:09:18 19 Next slide.

11:09:19 20 Here, Your Honor, it's even more clear. This is a
11:09:26 21 CAD cam drawing that's just including a couple of the rear
11:09:31 22 cameras and the front camera. You can see the front camera
11:09:33 23 on the right. The rear camera is on the left. That green
11:09:37 24 surface is the inside surface of the touch display. And as
11:09:41 25 you can see in this figure, the cameras are both located on

11:09:44 1 the same side of that touch display. They may be facing
11:09:48 2 opposite directions, but they are located on the same side
11:09:51 3 of that touch display. And, again, that's the -- the
11:09:55 4 interior side of the touch display inside the casing.

11:09:59 5 THE COURT: Does is anything on the front camera
11:10:01 6 protrude to the front side of the touch display?

11:10:06 7 MR. HEINTZ: Not on the S23 and not on any accused
11:10:08 8 product. There is one issue for one subset of products
11:10:14 9 where, quite frankly, Maxell has mischaracterized what's
11:10:18 10 called the lens hood, which is not part of the camera
11:10:21 11 module.

11:10:21 12 But on the S23 device itself, there is nothing.
11:10:25 13 If you have a -- if you happen to have one of these -- I
11:10:28 14 can show the Court one here. This is an S23. There is
11:10:35 15 nothing on the front. There's no camera. You can see the
11:10:38 16 camera from the front, and that's because there's actually
11:10:40 17 a little window cut into the touch display to allow the
11:10:43 18 camera to be seen through it. But there's nothing on the
11:10:46 19 front side of this device, no camera. They're both on the
11:10:50 20 back.

11:10:50 21 Okay. Next slide, please.

11:10:55 22 Your Honor, when you look at the -- the touch
11:11:03 23 display hypothetical I gave their expert, Dr. Wobbrock, and
11:11:05 24 you compare it to the CAD cam drawing I just showed you,
11:11:09 25 it's perfectly clear. The first and second cameras are on

1 the same side of the touch display. They're behind the
2 touch display. They are not on opposite sides of the touch
3 display. And so there's no way under the plain meaning of
4 the claim language or the Court's construction that this
5 limitation can be satisfied.

6 So you're probably wondering, Your Honor, how is
7 it we're here? What are we arguing about?

8 Let's go to the next slide.

9 The way Dr. Wobbrock purports to establish
10 infringement is by rewriting the plain language of the
11 claims and the language of Your Honor's construction. As
12 you can see over here, for the front camera, what
13 Dr. Wobbrock says is that the front camera is on the same
14 side of the device as the touch display screen. That "of
15 the device as" is nowhere in the claim language. It is
16 nowhere in the Court's con -- sorry, this is the agreed
17 construction for the first camera. It's nowhere in the
18 agreed construction.

19 In the second excerpt -- this is Paragraph 777 of
20 Dr. Wobbrock's report -- he's talking about the rear
21 camera. And what he says is that the rear cameras are
22 located on the opposite side of the device from the touch
23 display screen.

24 That language, again, Your Honor, is nowhere in
25 the claim language. It is nowhere in your construction.

1 These are words that Dr. Wobbrock is inserting into the
2 claim because he has to in order to establish infringement.

3 The claim limitations are talking about three
4 things, a touch display -- sorry, Your Honor -- and front
5 and rear cameras. That's the spatial relationship between
6 the three devices. The display is in the middle. There's
7 a camera on one side and a camera on the other side.

8 There is nothing in those limitations that allows
9 Maxell to rewrite them to start talking about what side of
10 the device the cameras are on. It's simply not there.

11 Next slide, please.

12 Dr. Wobbrock's assertion that you can rewrite the
13 claims this way is directly contrary to multiple Federal
14 Circuit precedents, Your Honor. We have the citation here
15 from the Chef America case which tells us that the Federal
16 Circuit has repeatedly and consistently recognized that you
17 cannot -- that the courts, or Dr. Wobbrock, cannot redraft
18 the claims. And that's true whether or not they need to be
19 redrafted to make them operable or to sustain their
20 invalidity.

21 And I've got a long list of citations on Page 32
22 where the Court has again and again said, sorry, there are
23 no mulligans. We cannot draft -- redraft the claim
24 language. That's clear and unmistakable.

25 And, Your Honor, in Chef America, they even went

1 so far as to say that even a nonsensical result does not
2 require the Court to redraft the claims.

3 So nothing that Maxell is going to tell you about
4 what might be seen in Figure 4 or what might make sense
5 matters. The language of the claims is what matters. That
6 language is clear. The Court has construed it in a way
7 that's also perfectly clear, and under that language and
8 Your Honor's construction, there can be no infringement by
9 any accused Samsung device.

10 So that, Your Honor, is the first reason there is
11 no infringement of the '757 patent.

12 If there's no questions on that, I'll just go on
13 to the last one and hit this quickly.

14 We're on Slide 33 now.

15 In Maxell's rebuttal expert reports, when they
16 were trying to stave off a finding of invalidity, they came
17 up with a new construction of the claims. That -- under
18 that construction, there is a limitation in the '757 that
19 talks about a touch operation instruction giving a second
20 instruction.

21 And according to Maxell's expert, Dr. Wobbrock,
22 two things must happen in response to that one instruction.
23 The first thing that must happen is we must start recording
24 of an image signal. In other words, start storing a
25 photograph into a memory.

11:15:30 1 And then the second thing that must happen in
11:15:32 2 response to this one instruction is that you must enable
11:15:35 3 the rear camera and disable the front camera.

11:15:39 4 And as I'll show you in a couple of minutes, Your
11:15:42 5 Honor, that -- those two operations require two separate
11:15:45 6 instructions on all of the Samsung products.

11:15:49 7 Now, let's go to Slide 34.

11:15:50 8 When I deposed Dr. Wobbrock, he tried to gloss
11:15:58 9 over this issue by talking about that these -- these two
11:16:02 10 different button pushes we're going to see in a moment are
11:16:06 11 part of an overall operation instruction.

11:16:09 12 But most importantly, Your Honor, on Slide 35,
11:16:13 13 when Dr. Wobbrock testified, what he said was these two
11:16:18 14 touches would be touch operation instructions, plural, two
11:16:25 15 different instructions that the touch display receives.
11:16:27 16 And then he goes on to talk about the overall instruction.

11:16:30 17 So Dr. Wobbrock acknowledged that each one of
11:16:34 18 those button pushes is a touch operation instruction. And
11:16:40 19 so there are two of them to do the two functions that are
11:16:44 20 required.

11:16:46 21 Your Honor, any doubt about what Dr. Wobbrock's
11:16:50 22 position is on this was erased in the IPR.

11:16:54 23 Next slide, please.

11:16:55 24 In the IPR, Your Honor, just about six days after
11:16:58 25 they filed their brief in this case, Dr. Wobbrock submitted

1 a declaration to the Patent Office. And there,
2 Dr. Wobbrock was trying to distinguish a reference called
3 Chinn from the claims.

4 Now, on the right-hand side, I've shown you the
5 relevant part of Chinn. There are multiple buttons in
6 Chinn. These are soft buttons, Your Honor. And button 242
7 is the button that can be used to select the front or the
8 rear camera. It basically toggles front or rear, just like
9 probably the way your phone works. And then button 233,
10 the camera activation control, that's the button you press
11 when you want to actually take the picture.

12 So the two functions that Dr. Wobbrock says are
13 required in the claim is that you've got to enable the
14 camera, and you do that by selecting the front or rear
15 camera, and then you've got to press the shutter button to
16 start the capture process. Two separate button pushes,
17 that's in the prior art.

18 And look how Dr. Wobbrock described that in the
19 IPR. He said this is a two-step, two-instruction process.
20 And that's exactly right. There are two steps. There are
21 two instructions.

22 Next slide, please.

23 And, again, Dr. Wobbrock made clear that those two
24 button pushes are two separate instructions. They're not
25 one overall instruction. They're separate instructions.

11:18:23 1 And, again, he was distinguishing the Chinn reference from
11:18:27 2 the art in the IPR -- sorry, from the claims in the IPR.

11:18:31 3 Next slide.

11:18:32 4 Your Honor, that kind of disclaimer is binding.

11:18:38 5 It was made in an IPR. And under Aylus, that can bind the
11:18:46 6 patent holders even though it's in the IPR. And most
11:18:49 7 importantly, I think you're going to hear from them
11:18:51 8 something to the effect that this disclaimer wasn't
11:18:54 9 necessary. We were talking about a voice instruction.
11:18:57 10 You're going to hear something about that. But the point
11:18:59 11 is, Your Honor --

11:18:59 12 THE COURT: So there was a different claim
11:19:00 13 limitation; is that what you're saying?

11:19:03 14 MR. HEINTZ: There are two claim limitations that
11:19:06 15 are closely related. There's a voice activation -- what
11:19:08 16 they call a command voice that enables -- that is used when
11:19:11 17 you want to take a selfie using the front camera. And then
11:19:14 18 there's a touch that's used when you want to take a picture
11:19:17 19 using the rear camera.

11:19:18 20 And what Dr. Wobbrock testified to was that those
11:19:23 21 things, for the same reasons, mean the same thing, that one
11:19:27 22 command, whether it be the voice or the touch, has got to
11:19:31 23 both enable one of the cameras and start the storing
11:19:35 24 process -- start the image capture process.

11:19:38 25 And so in the particular point they were talking

11:19:40 1 about, they were discussing the voice command, right, and
11:19:45 2 they were saying in Chinn, even though they were talking
11:19:49 3 about a voice command, they were saying those two button
11:19:53 4 pushes are two different things. And they were using
11:19:56 5 those -- the different instructions to make the point that
11:19:59 6 even if the shutter command, right, which was the button
11:20:02 7 push, and the camera selection thing, which could have been
11:20:07 8 the voice command, even if -- even if they were the same
11:20:10 9 thing, the same kind of -- the same kind of commands, what
11:20:14 10 they were saying was those are two separate commands, two
11:20:18 11 different actions.

11:20:18 12 So there was a slight difference in claim
11:20:21 13 language. But honestly, when you think about it, what they
11:20:25 14 showed in the Chinn reference is even more applicable to
11:20:28 15 the touch operation because in Chinn, they were both touch
11:20:31 16 operations.

11:20:31 17 So how could they be one limitation when they're
11:20:36 18 both touches under this -- under the limitation we're
11:20:40 19 talking about now, the touch operation instruction?

11:20:43 20 Okay. Next slide, please.

11:20:45 21 And the point here, Your Honor, for the -- for --
11:20:49 22 that's important is Chinn is exactly like the accused
11:20:55 23 products. On the right, we have Galaxy S23 screen. On the
11:20:59 24 far right, you can see a camera select button. Again, you
11:21:02 25 got to press that to go -- to flip back and forth between

11:21:05 1 the front and the rear camera. When you toggle it so that
11:21:10 2 the rear camera becomes active and the front camera becomes
11:21:14 3 inactive, that's one touch operation instruction.

11:21:18 4 Then if you want to take a picture, you've got to
11:21:21 5 press that white button in the middle. That's a different
11:21:24 6 button. It's a different action. It's two separate
11:21:27 7 presses of your finger.

11:21:28 8 And that's why under their construction, which
11:21:32 9 says that there's got to be one touch that enables the
11:21:35 10 camera and captures the image, there can be no infringement
11:21:39 11 because in their own words, pressing two buttons are two
11:21:43 12 different instructions, two different operations.

11:21:45 13 With that, Your Honor, I will conclude unless
11:21:49 14 there are any questions.

11:21:50 15 THE COURT: I don't have any questions. Thank
11:21:52 16 you.

11:21:53 17 MR. HEINTZ: Thank you.

11:22:04 18 THE COURT: Mr. Nese, you want to go about 10
11:22:06 19 minutes?

11:22:07 20 MR. NESE: Pardon, Your Honor?

11:22:08 21 THE COURT: I don't know how long your
11:22:10 22 presentation on this motion will take, but if you'll -- if
11:22:12 23 you'll use about 10 minutes, and then we'll break.

11:22:15 24 MR. NESE: Certainly, Your Honor.

11:22:18 25 May I approach to --

11:22:19 1 THE COURT: Yes.

11:22:20 2 MR. NESE: -- hand some slides? Thank you.

11:22:22 3 Actually, Your Honor, recency is primacy, and I
11:22:48 4 think I can get through most of the '757 patent argument.
11:22:52 5 So if it's okay with the Court --

11:22:52 6 THE COURT: Sure.

11:22:54 7 MR. NESE: -- I'd like to start with that.

11:22:57 8 THE COURT: Uh-huh.

11:22:59 9 MR. NESE: So Mr. Heintz raised two issues for the
11:23:15 10 '757 patent. The first is the opposite side of the display
11:23:20 11 limitation. And Your Honor may recall, this is precisely
11:23:23 12 the issue we were discussing right here in this courtroom
11:23:26 13 back in August at the Markman hearing. And this issue was
11:23:30 14 addressed by Your Honor in the Markman opinion, Docket 107.

11:23:35 15 On Page 18, the Court noted: Maxell treats same
11:23:38 16 side of the touch display as same side of the image
11:23:41 17 recording device as the touch display. This is consistent
11:23:47 18 with the specification's description. This is also
11:23:50 19 consistent with Samsung's construction which the Court
11:23:53 20 adopts. This issue has already been resolved, Your Honor.

11:23:56 21 Right here in Figure 4 of the '757 patent
11:24:01 22 specification, we have the same configuration that is shown
11:24:05 23 in the S23 device that Mr. Heintz just showed the Court.
11:24:09 24 And so, yes, the claim does use this language, "same side
11:24:12 25 of the touch display." But even under Chef America, what

Maxell, Ltd.

EX2037

Page 56 of 186

11:24:17 1 we are to do when we're construing claim terms or
11:24:21 2 interpreting claim language is not to look at these words
11:24:23 3 in a vacuum. We're looking at these words in the context
11:24:26 4 of the specification, which Phillips tells us is the single
11:24:31 5 best guide to the claim's meaning.

11:24:34 6 And so right here in the specification in
11:24:37 7 Column 7, around Line 49, the specification tells us that
11:24:41 8 the first imaging unit -- in other words, the camera, which
11:24:44 9 is labeled as 123 -- is arranged on a same side -- same
11:24:48 10 face, front face, as that of the display unit 121.

11:24:51 11 And here in Figure 4, we can see that first camera
11:24:55 12 highlighted in orange. That's the front camera. So the
11:24:58 13 reason why we call these things the front camera and the
11:25:02 14 rear camera, because they are on opposite sides.

11:25:05 15 The specification also tells us that the second
11:25:07 16 camera unit 124 here is arranged on a face -- rear face,
11:25:12 17 opposite to the display unit. It's the same language in
11:25:15 18 the claims. The specification makes this clear, that
11:25:18 19 they're referring to opposite sides of the device, not
11:25:22 20 physically opposite sides of the display.

11:25:24 21 The specification recognizes that, the Court's
11:25:26 22 construction recognizes that, and it's a bit perplexing why
11:25:31 23 we're still having the argument that was resolved back in
11:25:34 24 August.

11:25:34 25 And Mr. Heintz is very excited about his artwork,

11:25:41 1 and I'm sure that took a lot of time to put these images
11:25:44 2 together, but that is simply not analogous to how the
11:25:48 3 devices work. And it's not analogous to how the
11:25:51 4 specification describes these arrangements of cameras.

11:25:54 5 At bottom, we have a factual dispute. If they
11:26:00 6 want to present this argument to the jury, that's their
11:26:02 7 right. And maybe they think they have some good points
11:26:04 8 here. It will make for excellent cross-examination, and
11:26:07 9 that's the proper procedure here, not to grant summary
11:26:11 10 judgment when we have one expert saying one thing and
11:26:14 11 another expert saying something else.

11:26:15 12 If there are no questions about that, Your Honor,
11:26:20 13 I'd like to jump to the second issue quickly.

11:26:22 14 The second issue, Mr. Heintz kept referencing
11:26:26 15 Maxell's construction, Dr. Wobbrock's construction. I'm a
11:26:29 16 bit perplexed by that, as well, Your Honor, because Maxell
11:26:33 17 and its expert, frankly, cannot construe the claims.
11:26:36 18 That's the Court's job. And so Maxell hasn't construed
11:26:40 19 anything. Dr. Wobbrock hasn't construed anything.

11:26:43 20 All Dr. Wobbrock has said is that when we have
11:26:47 21 this claimed touch operation instruction, that instruction
11:26:52 22 can consist of multiple touches.

11:26:54 23 Now, Samsung may want to limit that instruction to
11:26:58 24 be one and only one touch, but that's a dispute that should
11:27:01 25 have been raised and could have been raised earlier.

11:27:03 1 And so the -- Mr. Heintz didn't mention this in
11:27:08 2 his presentation, but in the briefing, there's a robust
11:27:13 3 discussion of this Varma case from the Federal Circuit.
11:27:16 4 It's the dog case. If I say my dog has to learn how to sit
11:27:21 5 and fetch, I can't have two different dogs that are doing
11:27:24 6 both of those actions.

11:27:25 7 The claim language, however, in this Varma case is
11:27:28 8 distinct from what we have here. In the Varma case, we
11:27:32 9 have one -- what I'll call a trigger or an input, this
11:27:37 10 statistical analysis request, and we have that one
11:27:40 11 statistical analysis request having two effects. In other
11:27:44 12 words, it corresponds to two or more selected investments.
11:27:49 13 That's the claim language in Varma.

11:27:51 14 That's different from the '757 language, which
11:27:53 15 says we have this one trigger, this touch operation
11:27:57 16 instruction, and it has to do just one effect, one thing.
11:28:00 17 It starts the recording of the image signal.

11:28:03 18 Mr. Heintz also was very excited to tell the Court
11:28:08 19 about the IPR arguments that Maxell and its expert made.
11:28:14 20 There was separate -- there were three separate briefs on
11:28:17 21 that issue, and it's quite simple. This is a plain
11:28:20 22 misreading of what the argument was in the IPR. It's an
11:28:24 23 example of why we can't just sound byte a couple of words,
11:28:28 24 put that in front of a court, and expect a result of
11:28:33 25 non-infringement.

1 When Maxell and Dr. Wobbrock referred to a
2 two-step, two-instruction process, what that really
3 means -- and Dr. Wobbrock made this clear -- is that the
4 two instructions refer to two different input methods.
5 Because as the Court recognized in Your Honor's question,
6 this is a different claim limitation than the touch
7 operation instruction. It is the voice command limitation.

8 And what Dr. Wobbrock was saying here is that
9 Chinn requires two different input methods corresponding to
10 separate instructions. One of those input methods is a --
11 is a voice, and the other is a touch. And you cannot mix
12 those methodologies to meet the limitation that says a
13 voice command that has to do something. If this wasn't
14 clear from Dr. Wobbrock's declaration that Mr. Heintz
15 cited, it should absolutely have been clear from the very
16 preceding page which is Page 11 of this figure that we keep
17 seeing in the briefing and -- that Mr. Heintz just showed
18 us now.

19 Page 11 makes this abundantly clear. Chinn's
20 two-step combination of, 1, a voice command for taking a
21 picture, and, 2, manual selection of the camera are
22 different than what the patent claim requires. In other
23 words, a single voice command that established the first
24 camera disables the second camera, and initiates a first
25 standby time preceding the capture of the first camera.

Maxell, Ltd.

EX2037

Page 60 of 186

11:30:02 1 That is not what Chinn is doing.

11:30:04 2 And so this is a fundamental misunderstanding of
11:30:06 3 Maxell's arguments here. And if there's any dispute about
11:30:09 4 that, if there's anything at all is unclear about, we have
11:30:12 5 another brief in the IPR, and Maxell will make that
11:30:16 6 abundantly clear. What we're not saying is that a touch
11:30:19 7 operation instruction is limited to just one thing. That's
11:30:22 8 inconsistent with what Dr. Wobbrock said.

11:30:24 9 So at the end of the day, this is a claim
11:30:27 10 construction issue that -- that really doesn't exist. And
11:30:30 11 it's a classic battle of the experts that either way this
11:30:33 12 Court should deny summary judgment.

11:30:35 13 If there are questions about that, I'll take them.
11:30:37 14 If not, I will allow the Court to get to its criminal
11:30:40 15 matter.

11:30:40 16 THE COURT: Thank you --

11:30:41 17 MR. NESE: Thank you very much.

11:30:42 18 THE COURT: -- Mr. Nese.

11:30:44 19 Mr. Heintz, do you have a short -- a very short
11:30:47 20 reply on this issue or...

11:30:50 21 MR. HEINTZ: It will probably take me a couple
11:30:51 22 minutes, Your Honor.

11:30:53 23 THE COURT: All right. Let's go ahead and break,
11:30:56 24 as we had discussed, and I'll ask you all to be back at
11:30:58 25 2:00 o'clock, and hopefully we'll be ready to go at that

11:31:02 1 time.

11:31:02 2 COURT SECURITY OFFICER: All rise.

11:31:05 3 (Recess.)

01:57:44 4 COURT SECURITY OFFICER: All rise.

01:57:45 5 THE COURT: Please be seated.

01:59:54 6 Mr. Heintz?

02:00:00 7 MR. HEINTZ: Thank you, Your Honor. I will

02:00:01 8 briefly address three points my colleague made.

02:00:04 9 Your Honor, with respect to their slide deck on
02:00:09 10 Slide No. 9, if Your Honor has that handy. I don't have
02:00:13 11 the ability to put it up on the screen right now. They
02:00:17 12 mentioned the Figure 4 from the -- from the '757 patent and
02:00:22 13 the description of that.

02:00:23 14 And what my colleague is trying to do is draw the
02:00:26 15 Court's attention away from the language in the claims and
02:00:30 16 the language in Your Honor's construction, the actual
02:00:33 17 construction, and focus on things like the specification.

02:00:39 18 In Figure 4 on Slide 9, you cannot tell Your Honor
02:00:44 19 whether the front camera -- that's that orange dot -- is in
02:00:49 20 front of the touch display, even with the touch display, or
02:00:53 21 behind the touch display. There's no depth indicated in
02:00:56 22 Figure 4. One can simply not tell.

02:01:00 23 What we do know, Your Honor, is that the issue in
02:01:03 24 this case is shown on Slide 30 of our deck.

02:01:08 25 Mike, if you would.

02:01:10 1 Slide 30 shows the issue the Court has to decide,
02:01:18 2 and these products have front and rear cameras on the rear
02:01:22 3 side, the same side of that green touch display. There's
02:01:26 4 no question about this.

02:01:27 5 They may be facing in different directions.
02:01:30 6 That's why one is called the front, and one is called the
02:01:33 7 back, as my colleague mentioned, but they're both on the
02:01:37 8 rear side of the touch display. That's the same side.
02:01:40 9 That's not what the claim says, and that is not what
02:01:43 10 Your Honor's construction says.

02:01:44 11 So that's a simple point.

02:01:47 12 Now, Your Honor, looking at their slide deck at
02:01:54 13 Slide No. 11, they put up on the screen that figure on the
02:01:58 14 right. And they said to Your Honor that this is a battle
02:02:02 15 of the experts. My colleague said their expert says that
02:02:06 16 there's this part of the front camera module that sticks
02:02:09 17 out of the front screen.

02:02:11 18 That is not true, Your Honor. No expert says
02:02:14 19 that. This figure on this slide is not in anybody's expert
02:02:18 20 reports. The only evidence in this case about this range
02:02:24 21 hood, this little conical thing that they've labeled as the
02:02:29 22 front camera module, our expert says that that is not the
02:02:33 23 front camera module.

02:02:34 24 And this is all addressed in our reply brief at
02:02:37 25 Page 2. There is no testimony from any expert that matches

02:02:42 1 what's on this slide. This is all attorney argument. And
02:02:47 2 you can even see that they acknowledge that this text about
02:02:51 3 front camera module and other text is something that they
02:02:56 4 added. This is attorney argument, not expert.

02:02:59 5 And, Your Honor, I'll briefly address the question
02:03:02 6 about the IPR declaration.

02:03:04 7 On Slide 36 -- oh, I'm sorry, before I forget,
02:03:10 8 Your Honor. On what you saw on Slide 11, that product on
02:03:13 9 the right-hand side, that is only one product out of the
02:03:18 10 five representative products. Every other product is
02:03:22 11 different from this, and that's -- that's discussed again
02:03:25 12 in our reply brief at 2.

02:03:27 13 So at most, if -- even if the Court were to
02:03:31 14 believe there was some -- some -- some real dispute on this
02:03:35 15 product, that's 1 out of 5. That's something like
02:03:39 16 5 percent of the products in this case. Every other
02:03:41 17 product in this case, like this S23, has nothing on the
02:03:46 18 front side of the display, okay?

02:03:50 19 Now, can we have Slide 36, please?

02:03:54 20 Your Honor, this Slide 36 is in our deck. And,
02:03:58 21 again, this concerns the declaration in the IPR that
02:04:04 22 Dr. Wobbrock gave.

02:04:05 23 Now, my colleagues are trying to convince the
02:04:07 24 Court that what Dr. Wobbrock said only concerned a voice
02:04:11 25 command. That simply is not true.

02:04:12 1 If you look at what's in Paragraph 81, it says
02:04:16 2 that Chinn, which is the prior art that they were trying to
02:04:20 3 distinguish over, has a system with specific user
02:04:24 4 interfaces. And then they talk about a setting screen that
02:04:27 5 emphasizes a two-step, two-instruction process. The steps
02:04:33 6 that Dr. Wobbrock is talking about here are, one, pressing
02:04:39 7 the camera selection control button 242. That's the one
02:04:44 8 that goes back and forth between the front and rear camera.
02:04:47 9 So that's the one that enables the rear camera.

02:04:50 10 And then another button, button 233 -- that's the
02:04:54 11 one that's highlighted in blue -- that's the one that you
02:04:58 12 use to actually capture the image, to start the recording
02:05:01 13 process.

02:05:02 14 What Dr. Wobbrock says clearly and unambiguously
02:05:07 15 here is that those two button presses are two different
02:05:13 16 instructions. It's a two-step, two-instruction process.

02:05:17 17 Now, they go on to say that if you change one of
02:05:22 18 those button presses to a voice command -- so in Chinn, you
02:05:26 19 could also activate the camera -- you can start the
02:05:30 20 photographing process with a voice command instead of
02:05:33 21 pressing the button. They go on to say that, yes, those
02:05:36 22 are two different input methods. But it doesn't change the
02:05:40 23 fact that Dr. Wobbrock is saying quite clearly here that
02:05:43 24 pressing two different buttons to do two different things
02:05:47 25 are two different instructions.

02:05:49 1 This is a situation where they probably said more
02:05:52 2 than they needed to. They probably could have just said,
02:05:55 3 these were separate steps because one is a voice command,
02:05:58 4 one's a button press, but they didn't. They even said two
02:06:03 5 different button presses are two different instructions.

02:06:06 6 And in the TPL case cited in our brief, it's very
02:06:10 7 clear that even if the patentee is saying more than they
02:06:13 8 needed, they are still held to all of the arguments they
02:06:17 9 made, including the one that says two button pushes are two
02:06:22 10 different instructions.

02:06:23 11 With that, Your Honor, I'll rest.

02:06:25 12 THE COURT: All right. Thank you very much,
02:06:29 13 Mr. Heintz.

02:06:29 14 Next motion, Maxell's motion on the N93 samples?

02:06:35 15 MR. NESE: Your Honor, my apologies, but I did not
02:06:46 16 have the chance to address Mr. Heintz's arguments on the
02:06:49 17 '161 patent that were made earlier today.

02:06:51 18 THE COURT: Okay.

02:06:52 19 MR. NESE: If the Court wishes to hear that, I'll
02:06:54 20 be happy --

02:06:55 21 THE COURT: It's up to you, Mr. Nese.

02:06:57 22 MR. NESE: If there are any questions about that,
02:06:59 23 Your Honor, I'm happy to address them.

02:07:00 24 THE COURT: I don't have any questions.

02:07:01 25 MR. NESE: Okay. In that case, I will cede my

02:07:05 1 time to my colleagues. Thank you very much.

02:07:07 2 THE COURT: Uh-huh.

02:07:27 3 MR. SIDDIQUI: Good afternoon, Your Honor.

02:07:28 4 THE COURT: Good afternoon.

02:07:28 5 MR. SIDDIQUI: Saqib Siddiqui here. How are you
02:07:30 6 doing?

02:07:30 7 THE COURT: Good.

02:07:31 8 MR. SIDDIQUI: So, Your Honor, I will be
02:07:34 9 addressing Maxell's motion to strike the N93 product
02:07:41 10 samples. If Your Honor -- I have a presentation prepared.
02:07:44 11 If Your Honor has any questions, I can go directly to that,
02:07:49 12 or should we go to the presentation?

02:07:51 13 THE COURT: No, go right ahead.

02:07:53 14 MR. SIDDIQUI: Sure. Your Honor, may I approach?

02:07:59 15 THE COURT: Yes.

02:08:00 16 MR. SIDDIQUI: Sorry about that, Your Honor. We
02:08:30 17 left them at the back there.

02:08:32 18 THE COURT: That's okay.

02:08:33 19 MR. SIDDIQUI: If Mr. Nese will be kind enough to
02:08:36 20 distribute them.

02:08:37 21 But, Your Honor, the issue here with respect to
02:08:43 22 the testing of the N93 products by Dr. Buehrer is that it
02:08:50 23 just lacks -- the evidence is of dubious merit. And so
02:08:58 24 they were required to perform testing that would rise to a
02:09:02 25 level of something that is clear and convincing and

Maxell, Ltd.

EX2037

Page 67 of 186

02:09:05 1 something that has technical grounding.

02:09:09 2 And so what we see is that courts exclude evidence
02:09:14 3 by experts that is of dubious merit, and that's what we
02:09:18 4 have here.

02:09:19 5 And so what -- what Samsung's burden was to show
02:09:23 6 that the N93 products purchased today in 2024 work the same
02:09:37 7 way that they did prior to the priority date of the patent.
02:09:40 8 So prior to 2007 -- so prior to the 2007 priority date, the
02:09:49 9 35 U.S.C. 102 requires that the products be in use and sold
02:09:54 10 in this country.

02:09:56 11 And so what they were required to show is how did
02:10:00 12 the N93 work in America in 2007. That was the burden.
02:10:06 13 That was what their expert was required to show, to
02:10:08 14 establish that these functionalities existed at that time
02:10:12 15 prior to the '590 patent.

02:10:18 16 Instead, what they did was they purchased products
02:10:20 17 that were overseas, not sold in the U.S., overseas foreign
02:10:23 18 products. They purchased them used over eBay, and they
02:10:26 19 tested them in a foreign country. They tested them in
02:10:31 20 Costa Rica, not in the United States.

02:10:32 21 And so what we have is a missing link. And so
02:10:35 22 what we have is a missing connection on why the products
02:10:42 23 work the same way -- or would have worked the same way if
02:10:44 24 they were U.S. products.

02:10:45 25 And so what we have is foreign testing of N93

Maxell, Ltd.

EX2037

Page 68 of 186

1 product samples. There is a subset of tests that they did
2 perform in the -- in the U.S., but it was also on the
3 foreign products.

4 And so what we have is Dr. Buehrer offers no
5 opinion whatsoever that the N93 that were purchased and
6 tested in Costa Rica would have worked the same way in the
7 United States at that time. He provides no opinion on
8 whether the TG networks operating in Costa Rica, or the
9 networks operating in Costa Rica today or in 2024, that's
10 when the testing happened, would work the same way in 2007.
11 He provides no testimony on the products that were
12 purchased on eBay have not been repaired or fixed or some
13 modem being changed.

14 And then in terms of the reliability of the
15 methodology, Dr. Buehrer purchases an IoT SIM card. And so
16 instead of testing on a SIM card that was purchased, let's
17 say, or shown to work the same way from 2007, he purchased
18 a SIM card from a company called Truphone IoT, Internet of
19 Things, SIM card.

20 Now, Internet of Things SIM cards did not exist in
21 2007. That's the data connection he's trying to test.
22 That's connecting to the Internet he's trying to show. The
23 company, Truphone, didn't exist. The IoT SIM cards didn't
24 exist. And so he used that SIM card to show the tests in
25 Costa Rica.

02:12:34 1 And so there's no opinion from Dr. Buehrer or no
02:12:38 2 evidence saying that the way this SIM card or this data
02:12:44 3 connection is working on this -- in 2024, it would have
02:12:45 4 worked the same way in 2007.

02:12:50 5 And how do we know that? We know that when you
02:12:53 6 put the SIM card in the phone and you try to make a phone
02:12:56 7 call, it doesn't even do a phone call. So the phone is not
02:13:00 8 working in its intended use.

02:13:02 9 Now, they say that making a phone call is not part
02:13:05 10 of the claim -- claim, but using a cellular network or
02:13:09 11 using a cellular connection is part of the claim. And they
02:13:14 12 show a data connection.

02:13:16 13 But how can you show a data connection with a SIM
02:13:19 14 card from today when that kind of SIM card, that kind of
02:13:22 15 network didn't even exist in 2007?

02:13:25 16 And so all of this evidence combined creates --
02:13:31 17 creates a doubt whether this evidence is of any
02:13:35 18 technical -- or shows that this evidence is of dubious
02:13:39 19 merit.

02:13:39 20 Their response to all of that is, well, Maxell
02:13:42 21 doesn't show that these are different or there were
02:13:47 22 differences. Maxell has -- Dr. -- Mr. McNair has pointed
02:13:52 23 to differences, but let's just make it clear, it was not
02:13:54 24 our burden to show that there were differences. It was
02:13:57 25 their burden to show their similarities, and they haven't

02:14:00 1 done that.

02:14:00 2 And another thing about the foreign samples, Your
02:14:04 3 Honor, when we tested them, they're all locked to foreign
02:14:09 4 carriers. This is in Mr. McNair's report, so these phones
02:14:12 5 were locked to foreign carriers. So this is why this
02:14:17 6 evidence needs to be excluded.

02:14:18 7 Moreover, they point to in their briefing a lot to
02:14:21 8 Maxell versus Apple case where there were cameras -- Sony
02:14:26 9 cameras purchased by -- by Apple, and they were also
02:14:31 10 purchased from eBay, and there was this dispute that came
02:14:34 11 up. And Mr. Nese had argued this before Your Honor, and --
02:14:40 12 and Your Honor had allowed those Sony samples into the case
02:14:42 13 in that case.

02:14:43 14 This case is distinguishable because unlike
02:14:49 15 imaging technology, cellular technology has evolved, has
02:14:52 16 changed. Also unlike that case, here, the testing occurred
02:14:56 17 in a foreign country. Unlike that case, here, there was a
02:15:02 18 known SIM card used that was not in existence at the
02:15:06 19 time -- at 2007.

02:15:08 20 In this case, there are known samples of foreign
02:15:12 21 origin, and in this case, there's known spoliation of
02:15:16 22 evidence.

02:15:17 23 So the first part is -- I'm going to address
02:15:19 24 spoliation next. The first part of this is, Your Honor,
02:15:24 25 based on just the fact that all of these samples are

02:15:27 1 foreign, there's foreign testing, there's a SIM card that
02:15:31 2 didn't exist, cellular networks that didn't exist, all of
02:15:33 3 these reasons rise to a Daubert challenge, and this
02:15:37 4 evidence should be excluded.

02:15:38 5 Now, spoliation. In terms of spoliation, Your
02:15:43 6 Honor -- for spoliation, there's three elements. There
02:15:46 7 needs to be an existence of a duty to preserve evidence, a
02:15:51 8 breach of a duty, and resulting prejudice to the innocent
02:15:53 9 party.

02:15:54 10 And here, each of these claim elements has been
02:15:57 11 met. By spoliation, what happened was they purchased these
02:16:01 12 N93 samples from eBay. That's not disputed. They failed
02:16:07 13 to preserve the listing information. So when you purchase
02:16:11 14 a product from eBay, you get a listing information. The
02:16:14 15 listing describes what the products' conditions are.
02:16:20 16 There's no dispute that they failed to preserve that
02:16:22 17 evidence. They cannot produce that -- that eBay listing
02:16:27 18 anymore. It's gone.

02:16:27 19 Why is that important? So they breached the duty
02:16:31 20 of preservation. There was a duty to preserve evidence.
02:16:35 21 And there is prejudice.

02:16:36 22 What's the prejudice? The prejudice is when we do
02:16:39 23 see the one or two listings that they did preserve, that
02:16:44 24 listing shows for a fact that these -- there were products
02:16:47 25 that were used. That listing shows for a fact there were

1 products that were overseas in Morocco. That product --
2 that listing does show that -- describe that these samples
3 were used previously. They're used samples. They may be a
4 floor model, or they may not have a particular -- they may
5 be just 2G phones and not 3G phones. So the
6 listings that -- or there were open box items.

7 So the listings that they preserved shows that
8 these N93 samples had used or repair issues or floor models
9 or have issues that Mr. McNair, our expert, would be able
10 to rely on and show the jury that these products are not
11 technically accurately representing what the product would
12 do in 2007.

13 Now, they failed to preserve the evidence, and so
14 that's where the prejudice is. But for them preserving
15 this evidence, our expert could have relied on such facts
16 to provide validity rebuttal opinions. And he cannot
17 anymore.

18 So what we're seeking -- we're not -- they --
19 their focus a lot on their briefing is that there's no bad
20 faith, because we don't -- we say it was a mistake.
21 Mistakes happen. They didn't do it -- we agree, there's no
22 bad faith. But courts, including in this -- in this
23 district, Edwards versus State of -- 2021, 1600282, have
24 found even absent showing a bad faith, there is a cure for
25 prejudice, and that's to exclude specific items.

02:18:31 1 And so even if it -- there's intentional,
02:18:34 2 spoliation has occurred. Even if it's unintentional, I'm
02:18:37 3 sorry, spoliation has occurred.

02:18:37 4 And so what we're seeking is based on the fact
02:18:40 5 that they didn't preserve the listings, they should be --
02:18:42 6 the product samples should be excluded for which they
02:18:45 7 didn't preserve the listings, or -- or alternatively, there
02:18:51 8 should be admission or inferences given to the jury that
02:18:54 9 these samples were foreign origin, these samples are not in
02:18:58 10 original condition, modified, repaired, they're floor
02:19:01 11 models, they're limited to 2G functionalities, and have an
02:19:05 12 unknown date of first sale because --

02:19:07 13 THE COURT: Is Edwards the best case you've got
02:19:10 14 for this point --

02:19:11 15 MR. SIDDIQUI: Yes.

02:19:11 16 THE COURT: -- because there are very important
02:19:13 17 differences between what I understand occurred here and
02:19:16 18 what happened in Edwards.

02:19:18 19 Isn't it the case in Edwards, that involved
02:19:23 20 screenshots that were excluded because the originals had
02:19:28 21 been deleted? That doesn't seem to be what happened here.

02:19:32 22 MR. SIDDIQUI: Yes. Yes, Your Honor, that's what
02:19:34 23 happened in Edwards. Your Honor's recollection is right.

02:19:37 24 But here, there was -- they purchased these
02:19:41 25 samples, and so screenshots -- they -- is similar to the

02:19:46 1 eBay listing information where they could have just printed
02:19:49 2 to PDF. All they had to do was make those screenshots.
02:19:53 3 When they purchase the products, print the receipt.
02:19:56 4 Basically go into My Orders on eBay, print to PDF, and
02:20:01 5 that's your screenshot.

02:20:02 6 So in order to be able to purchase the product,
02:20:05 7 they had on their screens -- their paralegal on their
02:20:10 8 screen had the listing information. They just never
02:20:13 9 printed it to PDF. They never saved it.

02:20:15 10 After making the purchase, Your Honor -- even
02:20:17 11 after making the purchase, it stays in your eBay orders in
02:20:22 12 there -- whoever made the purchase, it stays. The listing
02:20:25 13 information stays. And so they never preserved it.

02:20:29 14 THE COURT: And so tell me again exactly what's
02:20:31 15 the information that you would have gotten from these
02:20:35 16 samples.

02:20:36 17 MR. SIDDIQUI: That they're used. They're used.
02:20:39 18 They have -- they have been repaired. They're foreign
02:20:43 19 samples. The samples were purchased from a foreign
02:20:46 20 country. They -- one of the -- so, for example, one of the
02:20:51 21 information on this eBay listing that they did preserve is
02:20:55 22 they most are 2G phones, and they no longer offer 2G
02:20:58 23 support. And this item may have been a floor model or
02:21:03 24 store return.

02:21:04 25 So just, again, creating -- it would provide

02:21:08 1 doubts about the authenticity of these samples and whether
02:21:11 2 they have been modified or repaired or whether they're in
02:21:14 3 the original condition from 2007. So those are the kind of
02:21:17 4 information that are typically in these eBay listings.

02:21:22 5 THE COURT: All right. Anything else?

02:21:23 6 MR. SIDDIQUI: Nothing further, Your Honor.

02:21:24 7 THE COURT: Okay.

02:21:25 8 MR. SIDDIQUI: Thank you very much.

02:21:33 9 MR. ERICKSON: Brian Erickson for Samsung, Your
02:21:46 10 Honor. May I proceed?

02:21:47 11 THE COURT: Yes, please.

02:21:48 12 MR. ERICKSON: Thank you, Your Honor.

02:21:49 13 Dr. Buehrer's opinions regarding the N93 product
02:21:53 14 samples are reliable, and all of the complaints raised by
02:21:57 15 Plaintiff go to the weight of that testimony.

02:21:59 16 Dr. Buehrer analyzed -- started with the public
02:22:03 17 use and on sale information. He analyzed the hardware of
02:22:07 18 the samples. He analyzed the software of the samples. He
02:22:10 19 analyzed the contemporaneous documents from 20 years ago
02:22:13 20 that describe them to match them up. He considered the
02:22:15 21 testimony of the percipient fact witnesses. He conducted
02:22:18 22 reliable testing that we'll go through here briefly, Your
02:22:22 23 Honor. And he considered the consistency of all the facts,
02:22:25 24 that you're able to buy six of these samples from around
02:22:27 25 the world today of these 20-year-old phones and that they

02:22:31 1 all checked out and they were all the same.

02:22:33 2 Starting with the evidence of what the product
02:22:35 3 was, Your Honor. The priority date -- the earliest alleged
02:22:39 4 date of invention is November 28th, 2007. So Dr. Buehrer
02:22:44 5 analyzed the fact that the N93 was launched in the spring,
02:22:48 6 May of 2006, at a trade show, and we have a fact witness,
02:22:52 7 Mr. Berry, that was there as an eyewitness to see that
02:22:55 8 Nokia had displayed the N93 at this trade show in the
02:23:00 9 spring of 2006. Nokia began sales in July of 2006.

02:23:03 10 Shortly thereafter, Rob Dickinson filmed a music
02:23:07 11 video called Oceans, and he actually made a documentary
02:23:11 12 about making that video with the cell phone. You see, it's
02:23:13 13 common nowadays on new cell phones, people say, oh, look
02:23:14 14 how good the camera is. You can actually make a video with
02:23:17 15 it.

02:23:18 16 Well, there was actually a music video made with
02:23:20 17 the N93 camera, and it was uploaded to YouTube. And Google
02:23:27 18 produced that in this litigation.

02:23:28 19 Moving to No. 4, Your Honor, the last software
02:23:31 20 update was October of 2006. That was the last software
02:23:34 21 update for these phones. And that's important, Your Honor,
02:23:36 22 because sometimes a prior art product starts being sold
02:23:39 23 before the priority date, but it's continued to be sold
02:23:41 24 after the priority date or it's continued to be updated.
02:23:45 25 And so sometimes there's an issue with, well, did you get a

1 version that predates the patent or not? Well, here, the
2 last software update was October of 2006.

3 And Mr. Berry used it publicly and published a
4 review in January 2007. And then Nokia stopped selling the
5 N93 in the second quarter of 2007. So this is a very short
6 run, Your Honor. It was one hardware model with the last
7 software update in October 2006. And then it was succeeded
8 by the N93i. The N93 was featured prominently in the movie
9 The Bourne Ultimatum. There's the Wikipedia page that ties
10 all this evidence together and --

11 THE COURT: Mr. Erickson, can I get you to slow
12 down just a little bit?

13 MR. ERICKSON: I'm sorry. Thank you, Your Honor.

14 The takeaway for this issue, Your Honor, is the
15 very short time period during which this phone was sold.
16 It made a very big splash, but there was only one type of
17 N93 from a hardware architecture perspective, and the last
18 software update was October 2006.

19 This is important because Dr. Buehrer was looking
20 at what he said -- he conceded were used samples. And when
21 he introduced them, he said: I don't know where these
22 samples came from. They were bought used. He's not
23 pretending that these were sealed in a box for 20 years.
24 He says: These were bought used, and I, as an expert, need
25 to compare these samples to all of the relevant evidence to

02:25:08 1 form an opinion on whether it's reasonable to rely on these
02:25:12 2 samples.

02:25:13 3 Which is exactly what he did.

02:25:14 4 We'll start with the hardware, Your Honor. Again,
02:25:21 5 it was sold for less than a year. There was a single
02:25:24 6 hardware architecture with a single FCC ID. Any time you
02:25:28 7 launch a cell phone, these cell phones are used around the
02:25:31 8 globe, you have to register, including with the FCC, to
02:25:35 9 show what radius you have and to make sure that they don't
02:25:40 10 interfere with human tissue. There was only a single FCC
02:25:43 11 ID for all the N93s, including on all the N93 samples.

02:25:46 12 There's no evidence that there was ever a second
02:25:49 13 hardware version of the N93. And there's no material
02:25:52 14 differences in the hardware between the N93 samples.
02:25:55 15 Dr. Buehrer actually looked at them. Mr. McNair did not.
02:25:58 16 Mr. McNair has never even been in the same room with the
02:26:02 17 N93 samples.

02:26:03 18 Dr. Buehrer checked the N93 samples with key
02:26:08 19 contemporaneous documents and -- to form his opinion. All
02:26:11 20 of their complaints just go to weight.

02:26:14 21 Very briefly, Your Honor, I want to talk about a
02:26:16 22 couple of key documents. One is the FCC report. All of
02:26:19 23 these samples are labeled with the QVVRM-55 FCC ID. That's
02:26:26 24 the document that you file with the FCC that has to explain
02:26:28 25 the radios that are in the device. There's only one, and

Maxell, Ltd.

EX2037

Page 79 of 186

02:26:30 1 they're all labeled with it.

02:26:32 2 Mr. McNair -- this is Maxell's expert -- at his
02:26:36 3 deposition, he didn't know that. And so we actually showed
02:26:39 4 him the label on one of the samples, and I said: Do you
02:26:42 5 see right there where it says QVVRM-55?

02:26:46 6 He says: Yes.

02:26:48 7 And is that one of the types of certification
02:26:50 8 markings you're referring to?

02:26:53 9 Because he had referred to that earlier in his
02:26:55 10 testimony.

02:26:55 11 He says: I'm not familiar with that grouping.

02:26:58 12 And he asked: Where is the SAR report?

02:27:01 13 Because that was an exhibit in the deposition.

02:27:01 14 And he looked, and he said: That's the same
02:27:04 15 number that's on the SAR report.

02:27:05 16 Answer: Yes, it is -- or, I'm sorry, question:
02:27:07 17 Yes, it is.

02:27:07 18 Answer: That tells me that's definitely
02:27:09 19 consistent with the SAR report.

02:27:11 20 So even their expert, once he looked at the actual
02:27:14 21 evidence, realized it was consistent with the SAR report.

02:27:16 22 There are a number of detailed hardware-related
02:27:21 23 documents. The main one I'll just mention, Your Honor, is
02:27:23 24 the confidential service manual. This is the document
02:27:26 25 that's about 400 pages. It was discussed earlier today.

02:27:30 1 This has the detailed internal information that's
02:27:33 2 confidential about the N93, or at least was confidential.

02:27:38 3 Mr. Garcia, the engineer from Nokia, testified
02:27:41 4 that that document accurately represented the N93 product.
02:27:44 5 And after Mr. Garcia's deposition in October, Dr. Buehrer
02:27:49 6 had an interview with Mr. Garcia, and they went through
02:27:52 7 the -- one of the samples. We disassembled one of the
02:27:55 8 samples, and they went through and looked at the sample to
02:27:58 9 look -- compare the hardware of the N93 sample to the very
02:28:00 10 detailed schematics and images in the N93 service manual.

02:28:05 11 So, yes, these are used devices, but the hardware
02:28:09 12 matches what the contemporaneous documents say should be
02:28:12 13 there.

02:28:12 14 And, finally, after marching through a lot of this
02:28:18 15 evidence with Mr. McNair at his deposition, you can see the
02:28:20 16 page cite here of this deposition transcript on Slide 12 is
02:28:24 17 Page 148.

02:28:25 18 We asked him: Have you seen any evidence that
02:28:29 19 there were different versions of the N93 that implemented
02:28:32 20 different radio communication circuits?

02:28:35 21 He said: I'm not sure what you're asking.
02:28:38 22 Different radio communication circuits than what are
02:28:41 23 described in the service manual?

02:28:42 24 Question: Sure.

02:28:44 25 Answer: I'm not aware of any.

02:28:46 1 Right there, Your Honor, the service manual
02:28:49 2 describes the 3G, the 2G, the WiFi, the Bluetooth. All the
02:28:52 3 four radios that are relevant to this investigation,
02:28:55 4 they're in the service manual. Their expert is not aware
02:28:57 5 of any evidence that there's ever an N93 that might have a
02:29:01 6 different configuration.

02:29:02 7 Software, Your Honor. The N93 samples have three
02:29:08 8 different versions of software. The latest one is the
02:29:10 9 October 2006 update. Recall, we're talking about a
02:29:14 10 November 2000 priority date. So based on that, Dr. Buehrer
02:29:18 11 determined that all of these N93s were running prior art
02:29:23 12 version of the N93 software.

02:29:24 13 Mr. Garcia, the Nokia engineer, testified that
02:29:27 14 those -- software version numbering scheme is consistent
02:29:30 15 and reliable. Dr. Buehrer compared the software
02:29:34 16 functionality to the other contemporaneous documents and
02:29:38 17 formed his opinion that it was reliable.

02:29:40 18 Here's one example, Your Honor. There's a
02:29:43 19 screenshot of one of the N93 samples where you navigate
02:29:47 20 through to find the software version that's running. It is
02:29:49 21 a Version 20 from October 2006.

02:29:52 22 There's additional evidence. Here's a
02:29:58 23 contemporaneous document that was captured by the Internet
02:30:02 24 Archive from February 2007, again, about seven -- seven
02:30:06 25 months before the priority date, describing Version 20.

02:30:10 1 And it describes the features that would be expected in
02:30:12 2 that release. And Dr. Buehrer considered that evidence
02:30:14 3 to form his opinion that it's reliable to rely on the
02:30:17 4 samples.

02:30:17 5 Your Honor, BroadSoft is the most applicable case
02:30:27 6 to this situation. This case was cited by Plaintiff in
02:30:30 7 their opening paper -- in their motion.

02:30:33 8 And in BroadSoft, the Court relied on the
02:30:36 9 screenshots from the software, just like we have here, to
02:30:39 10 say it was sufficient to actually grant summary judgment.
02:30:42 11 In light of the lack of any genuine disputed material fact,
02:30:47 12 as we have here, it was not enough for summary judgment of
02:30:52 13 invalidity.

02:30:52 14 Dr. Buehrer also considered the testimony of the
02:30:55 15 percipient fact witnesses, Mr. Berry, who used the phone
02:30:59 16 for a month before writing his review, and Mr. Garcia, who,
02:31:02 17 again, worked on the N93 hardware and worked with
02:31:05 18 prototypes before it was launched.

02:31:07 19 And now to the testing, Your Honor. Slide 19
02:31:13 20 shows one image -- or actually two different images. You
02:31:16 21 can see the left image is Dr. Buehrer testing the GSM radio
02:31:21 22 in the 1800 band. That was in Costa Rica because
02:31:25 23 politically they've assigned the 1800 bands there.

02:31:28 24 On the right, you have the testing on T-Mobile's
02:31:31 25 2G network here in America. That's the GSM 1900 band.

02:31:35 1 And that's -- this is really what we're here to
02:31:37 2 discuss today, Your Honor. There's a limitation 1[k], the
02:31:41 3 penultimate limitation that says you need to be able to
02:31:45 4 transmit video over one radio while you connect to the
02:31:50 5 Internet over a second radio.

02:31:51 6 And so here, Dr. Buehrer is showing that you
02:31:53 7 connect to the Internet, and you're actually running a
02:31:56 8 Google search, you can connect to the Internet over the
02:31:56 9 cellular radio, the 2G cellular radio, either T-Mobile in
02:32:00 10 America or -- I can't remember the name of the network in
02:32:03 11 Costa Rica -- while you're sending a video file by
02:32:07 12 Bluetooth. And you can actually see on the oscilloscope,
02:32:11 13 you can see on the left -- upper left there, there's the 2G
02:32:16 14 network working, and on the right, there's the Bluetooth
02:32:18 15 network. He used standard testing equipment and
02:32:21 16 methodologies, he documented it well, and all the phones
02:32:24 17 performed the same way.

02:32:25 18 So, Your Honor, this is a very basic function that
02:32:31 19 we're testing for here. Can it -- does the phone -- and
02:32:34 20 remember, this is an apparatus claim, not a method claim.
02:32:39 21 This is an apparatus claim to capability, and we're just
02:32:42 22 testing whether the N93 had the capability of sending video
02:32:44 23 over Bluetooth while connecting to the Internet over its
02:32:48 24 cellular radio. We're testing the phone, not the network.

02:32:51 25 Slide 20 shows the same test for the 3G radio.

02:32:57 1 America, all the 3G networks were turned off long ago. We
02:33:01 2 just have the T-Mobile 2G network left. So this had to be
02:33:05 3 tested in Costa Rica.

02:33:06 4 You can see on the right -- you can see the -- the
02:33:09 5 traces there, the 3G network. On the left has a signal.
02:33:12 6 It's exactly like the signal looks in the N93 service
02:33:15 7 document. It's in the right band. It's the right
02:33:17 8 frequency.

02:33:18 9 And on the right, you have the Bluetooth signals,
02:33:20 10 and you can see they're simultaneous.

02:33:21 11 That's the extent of the testing, Your Honor.
02:33:25 12 There's no -- the -- really the only what I would call
02:33:30 13 technical issue that they point to is the SIM card.

02:33:35 14 Now, the SIM card is the identity module. So you
02:33:39 15 have your subscriber identity module. When you log onto a
02:33:42 16 network, they need to know who you are. You pay your bill,
02:33:46 17 right? So you have a number. You have an identity on your
02:33:48 18 SIM card. And if you switch to a different phone, you can
02:33:52 19 pull your SIM card out of one and put it in the other. It
02:33:54 20 can't change your radio, Your Honor. It can't change what
02:33:58 21 the phone can do with its radios. It's just a SIM card.

02:33:59 22 And so we asked Mr. McNair at his deposition, you
02:34:02 23 know: So you are not aware of any differences in how the
02:34:05 24 phone operates with the Truphone SIM card versus a
02:34:07 25 different type of SIM card, correct? With respect to data

02:34:11 1 connection to the Internet, correct?

02:34:12 2 Answer: Correct.

02:34:14 3 If there were a genuine dispute of material fact
02:34:17 4 here, Your Honor, that would not have been his answer. He
02:34:20 5 would have had at least one example of how the different
02:34:24 6 SIM card might have mattered. We bought these -- we had to
02:34:28 7 buy these phones used -- these 20-year old phones. Of
02:34:32 8 course, they don't have a SIM card. We had to go get a new
02:34:35 9 SIM card. We had to get a SIM card from 2024. We didn't
02:34:37 10 have a choice.

02:34:38 11 The delay in prosecution made it such that there
02:34:42 12 are no more N93s available with -- you know, users don't
02:34:46 13 sell their SIM cards. When they have a phone, an old
02:34:50 14 phone, and they sell it, you don't provide somebody your
02:34:52 15 identity module. You pull that out so that they provide
02:34:55 16 their own SIM card.

02:34:56 17 All right. Again, Your Honor, this just goes to
02:34:59 18 the weight. And the weight here is really undisputed that
02:35:02 19 there can be -- there is no technical difference based on
02:35:05 20 the SIM card with respect to whether a radio can
02:35:08 21 communicate -- two radios can communicate at the same time.
02:35:11 22 There's no way the SIM card could have made a difference.
02:35:14 23 If there were, Mr. McNair would have given a very different
02:35:17 24 answer here.

02:35:17 25 Finally, Dr. Buehrer considered the consistency of

Maxell, Ltd.

EX2037

Page 86 of 186

02:35:25 1 the evidence. Any time you're trying to figure out what a
02:35:28 2 20-year-old phone did -- and, again, it was a very short
02:35:31 3 run, very small volume number of phones, he grabbed
02:35:35 4 multiple samples. All of them were consistent with all of
02:35:38 5 the contemporaneous documents, all of them work the same
02:35:41 6 way with the exception of those software features that
02:35:43 7 corresponded to their updates which all tied together.
02:35:46 8 There's just no inconsistency here. The data is all
02:35:49 9 consistent and reliable.

02:35:51 10 So as much time as I've spent here, Your Honor,
02:35:57 11 the opinion itself, of course, is very lengthy and weighty.
02:36:00 12 And, again, as we've explained in the briefing, Maxell and
02:36:05 13 its expert have not been able to find any purchase on any
02:36:08 14 one issue to really have any grounds to say, here's where
02:36:12 15 you may have missed something. They waved their hands at
02:36:15 16 some possibilities, but they can't ever explain why
02:36:18 17 something might have mattered that wasn't addressed by
02:36:24 18 Dr. Buehrer.

02:36:24 19 And this is important, Your Honor. It all just
02:36:26 20 goes to weight. This is just -- our expert, Dr. Buehrer,
02:36:29 21 considered all the relevant evidence and formed an opinion
02:36:31 22 that it would be reliable to rely on these samples.

02:36:35 23 Mr. McNair disagrees. He has no basis for that
02:36:38 24 disagreement. He has no -- he couldn't explain why
02:36:41 25 anything might have made a difference, why testing the

02:36:46 1 phone in Costa Rica would be different than testing it in
02:36:48 2 the United States.

02:36:49 3 Again, we're just focused on the capability of the
02:36:51 4 phone, Your Honor. We're not focused on the network in
02:36:54 5 Costa Rica or the network in the U.S. The capability of
02:36:57 6 the phone, could the phone transmit video over Bluetooth
02:37:01 7 while it was connecting to a cellular network?

02:37:04 8 That capability is clearly present. Any issue
02:37:07 9 they have with that just goes to weight.

02:37:09 10 Maxell, of course, did not purchase its own
02:37:15 11 samples. It didn't identify any material difference,
02:37:17 12 either in the hardware or the software, and it couldn't
02:37:20 13 drive a wedge anywhere between the N93 and any of the
02:37:24 14 corroborating documents.

02:37:30 15 Let's see, they did complain that some of the N93s
02:37:36 16 may be Europe -- from Europe. There's indications that one
02:37:39 17 was in 2024. We don't -- let me put it this way, Your
02:37:44 18 Honor. We don't know where any of them were sold
02:37:46 19 originally. In 2024 when we purchased them, one of them
02:37:49 20 was purchased from North Carolina. The others were
02:37:52 21 purchased from overseas.

02:37:53 22 But, again, Dr. Buehrer's opinion is not premised
02:37:56 23 on that. Dr. Buehrer is not testifying that these were all
02:37:59 24 sold in the U.S. He's saying they're all representative of
02:38:02 25 the N93, which is a single relevant hardware and software

02:38:06 1 model sold around the globe.

02:38:08 2 Let's see, they mentioned today that they thought
02:38:15 3 the phones were locked to the European networks. I don't
02:38:19 4 know what they mean by that, Your Honor. Their expert used
02:38:21 5 it on the T-Mobile network. Our expert used it on the
02:38:24 6 T-Mobile network and the Costa Rica networks. I don't
02:38:27 7 understand. They keep saying it's locked to a different
02:38:29 8 network. I don't even know what they mean by that. But,
02:38:33 9 again, that would just go to weight. Clearly our expert,
02:38:35 10 in fact, did use it on multiple networks so it's clearly
02:38:38 11 not locked.

02:38:38 12 Their main complaint, Your Honor, and I saw this
02:38:42 13 today in their slides, and this is both irrelevant and
02:38:45 14 highly prejudicial. We're just testing the capability of
02:38:50 15 the apparatus.

02:38:51 16 As the Court knows, these claims have been
02:38:54 17 construed to be pure apparatus claims now -- to the
02:38:57 18 capability of the apparatus. They're not method claims.
02:38:59 19 We don't have to show that this method was performed in the
02:39:03 20 U.S. We're just asking about -- the only relevant question
02:39:05 21 for the jury is: What's the capability of the apparatus?

02:39:09 22 Clearly from their demonstratives today, they
02:39:12 23 intend to run this theme that -- you know, that testing in
02:39:16 24 Costa Rica shouldn't count. Well, testing in 2024 is not a
02:39:20 25 prior art test, Your Honor. Testing in Costa Rica is not a

1 prior art test. It's a test of the capability of the
2 apparatus.

3 And regardless of where that testing is performed
4 or when that testing is performed, the question is: Is
5 that test of the apparatus reasonably reliable to show the
6 function or the capability of that apparatus?

7 And so regardless of where the network is or when
8 the network is in this case, you can test the device since
9 the device hardware and software is from -- is all prior
10 art, and we're just showing the capability of the
11 apparatus.

12 Again, Your Honor, the BroadSoft case is
13 instructive here. There, summary judgment of invalidity
14 was granted in light of a prototype actually. They
15 actually built it according to the specs, the hardware and
16 the software. The patent owner failed to raise a genuine
17 dispute of material fact. And the evidence that we have
18 here far exceeds what they had in BroadSoft.

19 Any complaints Plaintiff have just go to the
20 weight of Dr. Buehrer's testimony and whether his opinion
21 is correct and should be believed that it's reasonable to
22 rely on these samples as evidence of the prior art hardware
23 and software.

24 Okay. Now, I'll just briefly address Plaintiff's
25 spoliation claims. There is no allegation of intentional

02:40:46 1 destruction or bad faith here that would justify severe
02:40:50 2 sanctions. As they explain in their motion, it's their
02:40:52 3 contention that if these products are excluded, they would
02:40:59 4 strike effectively this entire defense.

02:41:01 5 They've also asked for adverse inferences. These
02:41:04 6 are all the types of severe sanctions. They're only
02:41:08 7 appropriate when you have intentional destruction or bad
02:41:10 8 faith.

02:41:11 9 The actual best evidence has been produced, and I
02:41:15 10 think Your Honor's questions were going to this. The N93s
02:41:18 11 themselves are the best evidence. That's why we have
02:41:22 12 technical experts to analyze the N93s themselves, the
02:41:25 13 hardware and the software, like Dr. Buehrer did, and those
02:41:29 14 are here to be analyzed by the experts.

02:41:32 15 What we're missing is four -- we have two of them.
02:41:35 16 We're missing four of the product listings, in other words,
02:41:39 17 in 2024, what some reseller said about the products.

02:41:44 18 Now, Maxell, in its motion, came up with its best
02:41:51 19 examples. And I believe Your Honor asked this question, as
02:41:54 20 well: What are your best examples of what you've been
02:41:56 21 deprived of by these four missing advertisements or
02:42:01 22 listings?

02:42:02 23 And these are the examples they featured in their
02:42:05 24 motion at Page 13, and they referred to them in their
02:42:08 25 sur-reply. They didn't add to them in the sur-reply. This

Maxell, Ltd.

EX2037

02:42:12 1 is it. This was their best they could find. This is the
02:42:15 2 seller saying effectively: We don't know. Right? The
02:42:17 3 seller said: It might be new, or it may be a floor model
02:42:21 4 or a store return. Maybe it's a factory second. We don't
02:42:24 5 know.

02:42:24 6 So this is -- this is hearsay from a seller in
02:42:26 7 2024 saying they don't know what the origin of these phones
02:42:30 8 are, okay?

02:42:32 9 And then they had some statements about most phone
02:42:36 10 companies no longer support 2G, and generally collectors
02:42:39 11 would not talk on these every day.

02:42:41 12 Their expert, Mr. McNair, as they cite in their
02:42:50 13 brief, said, well, that indicates to me -- as a supposed
02:42:53 14 technical expert, since you said it's a 2G phone, that
02:42:56 15 indicates to me that I'm going to form an opinion and tell
02:42:58 16 the jury that the N93 may have lacked a 3G radio.

02:43:03 17 Now, you know, as we've seen from his deposition,
02:43:07 18 he already admitted, once he looked at the actual evidence
02:43:10 19 of the phone, that he had not seen any phone that differed
02:43:13 20 from the N93 service manual that shows they all have a 3G
02:43:17 21 radio. And he didn't look at the phones themselves, which
02:43:20 22 you can -- the one we have torn down, you can actually
02:43:24 23 physically see the 3G radio. You can actually use the
02:43:27 24 phone on a 3G network.

02:43:29 25 And here's his testimony at his deposition on this

02:43:29 1 point, and you can see -- we'll go right to the bottom.

02:43:33 2 Question: Have you seen any evidence of an N93
02:43:36 3 that lacked an MTS 2100 (sic) radio?

02:43:40 4 Answer: I haven't seen evidence of that.

02:43:42 5 There's a transcription error. That should be
02:43:46 6 UMTS 2100. That's the 3G radio in the N93, Your Honor.

02:43:51 7 So here's their expert, after we marched through
02:43:52 8 at his deposition all the evidence, and saying he hasn't
02:43:54 9 seen any evidence of an N93 that lacked a 3G radio.

02:43:57 10 Now, that's relevant here, Your Honor, because
02:43:59 11 this is the type of evidence that they're saying they've
02:44:01 12 been deprived of. A seller saying, you know, this works on
02:44:05 13 2G. The seller didn't say -- the seller did not say it
02:44:08 14 does not work on 3G. The seller just said it works on 2G,
02:44:12 15 and they want their expert to be able to use that hearsay
02:44:15 16 to say, well, something doesn't have a 3G radio and skip
02:44:17 17 over the actual evidence.

02:44:18 18 That's the level of evidence that they say they've
02:44:21 19 been deprived of, Your Honor.

02:44:25 20 Two cases that were discussed in their opening,
02:44:28 21 I'll just discuss them. The Edwards case. That case was
02:44:31 22 about the actual Facebook posts that were allegedly
02:44:35 23 defamatory. The Plaintiff deleted the Facebook account
02:44:40 24 entirely and wanted to go with screenshots instead. And so
02:44:46 25 there, the best evidence was deleted, and that deprived the

02:44:50 1 Defendant of the metadata they needed to prove that it
02:44:53 2 wasn't them. They didn't make those posts. And so the
02:44:55 3 Plaintiff destroyed the best evidence and wanted come in
02:44:58 4 with screenshots.

02:44:59 5 So the situation here is completely reversed, Your
02:45:02 6 Honor. We still have the phones. The experts can analyze
02:45:04 7 the phones and see what they do.

02:45:06 8 The four pieces of hearsay we're missing about
02:45:09 9 what someone said about the phones in 2024 don't justify
02:45:12 10 striking the actual evidence. It's the reverse of the
02:45:14 11 situation in Edwards.

02:45:16 12 The other case that was shown in their slides was
02:45:22 13 the Estate of Esquivel versus Brownsville. There the
02:45:31 14 school district had a video camera of the place where the
02:45:33 15 incident took place. So the video footage was really the
02:45:36 16 only evidence of the actual event, and that's what was --
02:45:39 17 that's what was lost. So the same situation, Your Honor,
02:45:41 18 that --

02:45:41 19 THE COURT: Is it your view, under controlling
02:45:47 20 authority, that bad faith has to be present in order to
02:45:51 21 order spoliation, either exclusion of evidence or sanctions
02:45:56 22 or whatever?

02:45:57 23 MR. ERICKSON: For the particular relief they're
02:46:00 24 requesting, yes, Your Honor. Perhaps not for all types of
02:46:03 25 relief, but for the particular relief they're seeking, yes,

02:46:07 1 Your Honor.

02:46:07 2 THE COURT: And what do you mean by that?

02:46:09 3 MR. ERICKSON: Well, they're seeking to exclude --
02:46:11 4 essentially this would -- this would, according to their
02:46:13 5 brief, be dispositive of this entire defense of invalidity
02:46:17 6 because once you -- as we discussed earlier with the Sotera
02:46:20 7 motion, once you take away all the documents, if you don't
02:46:23 8 have the product and the testing, particularly as we just
02:46:25 9 showed, the simultaneous nature showing that Bluetooth can
02:46:30 10 be transmitted -- I'm sorry, the Bluetooth radio can
02:46:33 11 transmit video while one of the cellular radios connect to
02:46:37 12 the Internet, if we can't show that, it would be
02:46:40 13 effectively dispositive of this defense.

02:46:44 14 THE COURT: Okay. And so why do you say that bad
02:46:46 15 faith is necessary? I'm just trying to figure out what
02:46:50 16 you're relying on.

02:46:51 17 MR. ERICKSON: So the severity -- it's because of
02:46:57 18 the -- so the adverse inferences are by law, I believe,
02:47:01 19 severe restrictions. As far as excluding the devices, Your
02:47:07 20 Honor, the impact of that would be severe. So it -- I
02:47:15 21 believe -- is Your Honor's question splitting those two
02:47:17 22 things or --

02:47:18 23 THE COURT: I'm just trying to understand why you
02:47:20 24 think bad faith is necessary really.

02:47:23 25 MR. ERICKSON: Okay. So the Rimkus case and --

02:47:30 1 let's see, yeah, the Smith and Chrysler, there, there was
02:47:38 2 the -- the actual Jeep. They said they were the -- the
02:47:42 3 Jeep was a defective product, and they failed to preserve
02:47:44 4 the Jeep. But it -- even though that -- again, the best
02:47:49 5 evidence wasn't preserved. There wasn't any bad faith, and
02:47:52 6 so there were no sanctions at all.

02:47:54 7 The Guzman v. Jones, there was no evidence or
02:47:58 8 suggestion of bad faith even though there was the loss of
02:48:01 9 evidence, and so there were -- no spoliation finding was
02:48:06 10 appropriate.

02:48:24 11 Okay. And, finally, Your Honor, as Dr. Buehrer --
02:48:29 12 as Dr. Buehrer introduces these N93 devices, he effectively
02:48:34 13 does reset, if you will -- he starts from scratch. He
02:48:40 14 doesn't rely on -- there's no implication, for example,
02:48:43 15 that these are, like I said, hermetically sealed for 20
02:48:48 16 years, and they're opening them up for the first time. He
02:48:51 17 says these are used. We can't rely on where they came
02:48:55 18 from. We're not going to rely on the two of the four that
02:48:57 19 we did produce, Your Honor. He doesn't rely on those two
02:49:01 20 because as an expert, he didn't find those reliable.

02:49:04 21 So there's just no reason to rely on those. He's
02:49:07 22 reset the record to say these have to stand on their own.
02:49:10 23 I have to be able to compare these to the contemporaneous
02:49:15 24 documents. I have to be able to test these devices and
02:49:18 25 come to an opinion, based on the technology, whether it's

02:49:21 1 reasonable to rely on these samples as evidence of the
02:49:24 2 prior art product that was sold for one year. That's his
02:49:29 3 opinion.

02:49:29 4 They disagree with it. They can certainly argue
02:49:31 5 that to the jury that these are 20-year-old phones, and you
02:49:35 6 just didn't do enough to show that they were, in fact,
02:49:37 7 representative of that prior art product.

02:49:40 8 But that's the dispute, Your Honor. And that just
02:49:44 9 goes to the weight of his testimony. And two of the four
02:49:47 10 certainly gives them enough flavor if they want to use
02:49:50 11 these two to say, you don't know if these are floor models
02:49:54 12 or not, you don't know where these were sold, they can make
02:49:57 13 that point with those two. And it's not going to be
02:49:59 14 contested because Dr. Buehrer doesn't offer any other
02:50:02 15 opinion on that point.

02:50:08 16 THE COURT: That's all I have.

02:50:10 17 MR. ERICKSON: Thank you, Your Honor.

02:50:10 18 MR. SIDDIQUI: So, Your Honor, to answer your
02:50:17 19 question, real quick, bad faith is not needed. There's
02:50:20 20 no -- we're not seeking severe sanctions.

02:50:22 21 So like I said, two of the four samples have the
02:50:24 22 eBay listing. So if they want to use those two samples,
02:50:27 23 they can. The four where they didn't preserve evidence,
02:50:31 24 they shouldn't be allowed to.

02:50:32 25 THE COURT: Well, why is bad faith not necessary?

02:50:36 1 What's your authority for that?

02:50:37 2 MR. SIDDIQUI: I think, Your Honor, the best case
02:50:38 3 we have here is the Edwards case and also the -- Esquivel
02:50:47 4 versus Brownsville case where even if it's unintentional,
02:50:50 5 if there's spoliation, the jury should be allowed the
02:50:54 6 choice to infer the facts.

02:50:56 7 THE COURT: In Edwards, they only excluded
02:51:00 8 evidence, right? You're talking about something much more
02:51:00 9 drastic here.

02:51:00 10 MR. SIDDIQUI: So there's two options here. One
02:51:03 11 is the samples where they didn't preserve the evidence, the
02:51:06 12 four samples. So they have six. The four where they
02:51:09 13 didn't preserve the evidence, they could be excluded. The
02:51:13 14 other option is to have -- like, essentially admit facts
02:51:18 15 that all the samples are foreign, repaired, used, infer
02:51:22 16 those facts. And so we have -- we have options there.

02:51:27 17 So what we heard from counsel was essentially what
02:51:32 18 highlights the prejudice to Maxell, which is that
02:51:35 19 Dr. Buehrer will come up here and tout the reasons that
02:51:37 20 these products are authentic and reliable.

02:51:41 21 And one of the things we should be able to
02:51:43 22 cross-examine Dr. Buehrer on is how can you say they're
02:51:45 23 reliable and authentic when the eBay listing that it was
02:51:50 24 purchased from itself says it's used, itself says it's from
02:51:57 25 countrywide, itself says it's from Morocco or Ukraine or

Maxell, Ltd.

EX2037

Page 98 of 186

02:51:59 1 Europe. We don't know. So we should be able to
02:52:02 2 cross-examine their expert to challenge that. And so we've
02:52:06 3 been deprived that right to cross-examine him based on that
02:52:10 4 information.

02:52:11 5 And turning back, Your Honor, to the fact that
02:52:13 6 they had mentioned that there was only one hardware, so
02:52:17 7 that's not accurate because they were talking about the
02:52:20 8 FCC -- FCC ID and FCC report. This is the FCC report for
02:52:24 9 the -- and this is in -- sorry, it says Buehrer, Paragraph
02:52:30 10 176. This is actually Mr. McNair, Paragraph 176.

02:52:35 11 THE COURT: Mr. Siddiqui, would you slow down a
02:52:38 12 little bit for me, please?

02:52:38 13 MR. SIDDIQUI: Please.

02:52:38 14 THE COURT: Thank you. Sorry.

02:52:38 15 MR. SIDDIQUI: It was Mr. Erickson's fault.

02:52:40 16 THE COURT: Did he start it? He started it? All
02:52:43 17 right. Thank you.

02:52:43 18 MR. SIDDIQUI: Mr. Tidwell was supposed to -- now,
02:52:47 19 Your Honor, Mr. Tidwell will take me back to DeKalb. So
02:52:51 20 you can't say that out in front of him.

02:52:55 21 THE COURT: Mr. Siddiqui, I think you better stay
02:52:57 22 here.

02:52:58 23 MR. SIDDIQUI: So, yes, Your Honor. The FCC
02:52:59 24 report for the N93 that Mr. McNair did point to in his
02:53:03 25 rebuttal report does show that it doesn't have a UMTS,

02:53:06 1 which is the 3G circuit. This -- the report only
02:53:09 2 identifies these radios.

02:53:11 3 So there is evidence in Mr. McNair's report that
02:53:14 4 there may be different models because this FCC report only
02:53:19 5 shows 2G, Bluetooth, and WiFi circuits. And so there is
02:53:23 6 evidence that there were models without UMTS. That's the
02:53:27 7 FCC report. He talks about the FCC ID, so that's one.

02:53:37 8 Second, we talked briefly about Nokia engineer,
02:53:42 9 Mr. Garcia. And Mr. Garcia did say that he did not have
02:53:44 10 any personal knowledge of these phones prior to his
02:53:47 11 deposition, where they came from, were they ever sold.
02:53:51 12 This is Nokia's engineer.

02:53:54 13 And when we asked: Do you know if any parts of
02:53:56 14 these phones have been replaced?

02:53:58 15 He said: No, because I haven't opened these
02:54:00 16 devices.

02:54:01 17 So even the engineers -- Nokia engineer that they
02:54:05 18 talk about did -- did agree that he does not know where
02:54:08 19 these samples came from.

02:54:10 20 And Mr. Erickson said that he doesn't understand
02:54:15 21 what locked to a foreign network means. This is in Mr. --
02:54:21 22 Dr. -- Mr. McNair's report. These phones were -- when you
02:54:24 23 open them up, they say -- they were locked to this operator
02:54:31 24 KPN Mobile, Netherlands.

02:54:33 25 And why -- why that's important, Your Honor, you

02:54:35 1 heard them talk about it themselves, is Element 1[k]
02:54:38 2 requires connecting to the Internet while transmitting with
02:54:41 3 your Bluetooth.

02:54:42 4 Connecting to the Internet in 2007, connecting to
02:54:46 5 the networks of 2007, these samples are working the same
02:54:50 6 way today because they used a SIM card from today. It's a
02:54:54 7 data card. They're just saying it's an identifier. It's
02:54:57 8 not. It was an IoT, Internet of Things, SIM card,
02:55:00 9 completely different, which is a purely data connection.

02:55:03 10 So they've added this ability into these phones,
02:55:08 11 and then tested them. And that's the heart of the problem,
02:55:11 12 which is that these kind of data connection SIM cards did
02:55:14 13 not exist at that time. And so they -- that's the key
02:55:18 14 evidence and the key flaw in the reliability of the
02:55:23 15 testing.

02:55:23 16 And so --

02:55:24 17 THE COURT: And I think that's -- I just don't
02:55:26 18 understand why that's not great ground for
02:55:28 19 cross-examination. You don't know where these samples came
02:55:31 20 from, do you?

02:55:35 21 MR. SIDDIQUI: Correct.

02:55:35 22 THE COURT: Why does that not solve it?

02:55:38 23 MR. SIDDIQUI: There's -- it's not just that
02:55:42 24 they -- we don't know where they came from. There's a lot
02:55:45 25 of flaws.

02:55:49 1 So for -- so the statute 102 requires known or
02:55:55 2 used in this country at that time. And it's just that
02:55:57 3 these weren't known or used in the United States. We know
02:56:00 4 these came from Netherlands, we -- some of them, they were
02:56:04 5 locked. We know that they were -- they're used with the
02:56:07 6 SIM card from 2024. So what we do know is that it's --
02:56:12 7 it's in combination, it's very unreliable. And plus, we
02:56:16 8 have lost some of the evidence to be able to cross-examine
02:56:18 9 them on.

02:56:19 10 I think with that, I think Your Honor's heard
02:56:26 11 enough.

02:56:27 12 THE COURT: Fair enough. Thank you.

02:56:28 13 MR. SIDDIQUI: Thank you, Your Honor.

02:56:28 14 THE COURT: Uh-huh. Thank you, Mr. Siddiqui.
02:56:30 15 Mr. Erickson?

02:56:31 16 MR. ERICKSON: Thank you, Your Honor.

02:56:37 17 Very briefly, Your Honor, two points. First, as
02:56:53 18 Dr. Buehrer said in his expert report, he doesn't know
02:56:55 19 where they came from. And that cross-question can and
02:56:59 20 should be asked, and they already know what his response
02:57:02 21 will be.

02:57:02 22 Secondly, Your Honor, counsel showed the FCC
02:57:06 23 report. They actually cropped off the bottom part below
02:57:08 24 this table that talks about the 21 megahertz band. Even
02:57:12 25 their own expert admitted at his deposition that that 21

02:57:16 1 megahertz band below the table is what's referring to the
02:57:19 2 3G radio. Counsel just cropped that off when they showed
02:57:23 3 Your Honor the FCC document.

02:57:24 4 So, again, last point, Your Honor, is the first
02:57:28 5 point, which is these were only sold for a year.
02:57:32 6 Regardless of where they were sold, they were all sold
02:57:34 7 prior to the invention date, and there's only one model of
02:57:38 8 N93 that was ever sold from a hardware and relevant
02:57:41 9 software perspective.

02:57:42 10 So these samples, only one of which may have come
02:57:45 11 from North Carolina, at least in 2024, you know, they're
02:57:51 12 representative of this very short-run product.

02:57:54 13 THE COURT: All right. Thank you, Mr. Erickson.

02:57:56 14 MR. ERICKSON: Thank you.

02:57:56 15 THE COURT: Mr. Siddiqui, it's your motion, you
02:57:59 16 want the last word?

02:58:00 17 MR. SIDDIQUI: Yes, last word, Your Honor, about
02:58:02 18 that cropping, just because -- can I have that slide, I'm
02:58:05 19 sorry, from Buehrer outside of the U.S. slide, the FCC
02:58:09 20 report? I'm sorry, Brian.

02:58:18 21 This is -- it wasn't cropped on purpose or
02:58:21 22 anything, Your Honor. It's because it's not relevant.
02:58:23 23 Because, again, it talks about outside -- outside of USA
02:58:27 24 and Canada. So the statute said what's known or used at
02:58:32 25 that time in this country.

02:58:33 1 So when a foreign model -- it actually goes to
02:58:36 2 support our point. When a foreign model has a different
02:58:40 3 hardware configuration -- a foreign model has UMTS, the
02:58:43 4 UMTS is what they're relying on for testing. It just goes
02:58:47 5 to show that the foreign model was different. There is a
02:58:50 6 different hardware configuration for outside the U.S., and
02:58:52 7 the standard is you need to test a U.S. sample in U.S.
02:58:56 8 network conditions in 2007.

02:58:57 9 That's it, Your Honor.

02:58:58 10 THE COURT: Okay. Good.

02:58:59 11 MR. SIDDIQUI: Thank you.

02:59:00 12 THE COURT: Thank you.

02:59:02 13 Samsung has the next motion.

02:59:09 14 MR. JAY: One moment, Your Honor.

02:59:25 15 Your Honor, may I approach with the slides?

02:59:27 16 THE COURT: Yes, please.

02:59:38 17 MR. JAY: Thank you.

02:59:39 18 All right. Your Honor, I'm going to talk about
02:59:40 19 the motion for summary judgment of non-infringement on the
02:59:46 20 '848 patent.

02:59:46 21 Just to start out, there are three grounds for
02:59:48 22 non-infringement, one that applies to all three asserted
02:59:50 23 claims, Claims 11, 12, and 84; one ground that applies to
02:59:54 24 only two of the claims, Claims 11 and 12; and one that
02:59:57 25 applies only to the last of the claims, Claim 84.

03:00:00 1 Now, I'm first going to focus on the
03:00:04 2 non-infringement argument that applies to all asserted
03:00:07 3 claims, and the basis for this non-infringement argument is
03:00:10 4 that none of the accused products perform or are capable of
03:00:14 5 performing the first setting mode that the claims require.

03:00:17 6 Now, a critical piece of this non-infringement
03:00:21 7 grounds is that there is no disagreement whatsoever about
03:00:25 8 how the products work. There's no issue of fact.

03:00:28 9 Under the plain language of the claims, these
03:00:31 10 products cannot infringe.

03:00:32 11 And what Maxell does to try to get around this is
03:00:37 12 to rewrite the claim to eliminate the requirement that
03:00:41 13 under the first setting mode a specific person must be
03:00:45 14 registered.

03:00:46 15 Now, the '848 patent is directed to a device that
03:00:53 16 identifies and registers people's and image information and
03:00:56 17 selectively reproduces that image information.

03:01:02 18 Now, the asserted claims all require that the
03:01:04 19 device be able to register a person that appears in one or
03:01:07 20 more images. And all that means is that a person whose
03:01:10 21 face is in the images is identified by name in the device.

03:01:14 22 Now, the claim requires two ways of registering a
03:01:20 23 person. There has to be a first setting mode and a second
03:01:23 24 setting mode. So there has to be a first setting mode
03:01:27 25 where a person is newly photographed and the image

03:01:30 1 information from that newly captured photo is used to
03:01:34 2 register that specific person in the photo.

03:01:37 3 And there also has to be a second setting mode
03:01:41 4 where a specific person is registered from images that have
03:01:44 5 already been taken and stored on the device. And to
03:01:48 6 infringe, a device must be capable of registering a
03:01:52 7 specific person under both of these modes.

03:01:54 8 Now, in a moment, I'm going to get into how the
03:01:59 9 accused Samsung devices work, and what I'm going to show is
03:02:02 10 that the Samsung devices do not infringe because the only
03:02:07 11 way to register a specific person on those devices is to do
03:02:12 12 so from images that are already stored on the device.
03:02:16 13 There is no way to register a person from a newly taken
03:02:20 14 photograph.

03:02:20 15 And what -- what Maxell points to as the first
03:02:25 16 setting mode, when that takes place, the person has already
03:02:29 17 been registered. No new registration is taking place at
03:02:34 18 that point.

03:02:34 19 So here we see a Galaxy S23 device, which is the
03:02:40 20 representative device of the '848 patent, and this S23 has
03:02:45 21 two ways of registering a person from pictures that have
03:02:48 22 already been stored on the phone.

03:02:50 23 So we're in that gallery application, and here you
03:02:55 24 can see a blue box drawn around one of the photos on the
03:02:59 25 phone. What happens is you select that photo, and then you

03:03:02 1 press the three dots on the upper right-hand corner of the
03:03:07 2 device.

03:03:08 3 And one of the things that you can do when you
03:03:11 4 press those three buttons is create an auto updating album.
03:03:15 5 You enter the name of the person you want to create an
03:03:18 6 album for, and then the phone gives you thumbnails of the
03:03:21 7 various faces that appear in that picture. You pick one of
03:03:25 8 the faces, and then the registration of that person is
03:03:28 9 complete.

03:03:29 10 There's now an auto updating album for that
03:03:35 11 person, who in this instance, her name is Hawah. After
03:03:40 12 that, all photos in which Hawah -- all photos containing
03:03:44 13 Hawah are then placed in that album.

03:03:46 14 Now, there's also a second way of registering a
03:03:50 15 person. When you hit those three buttons, you select the
03:03:52 16 photo, you hit the three -- three dots on the upper
03:03:55 17 right-hand corner of the device, and instead of hitting
03:03:59 18 auto updating album, you press a little button that says
03:04:05 19 hash tag add tag. And then you add a name for a particular
03:04:09 20 person who appears in the photo. And at that point, again,
03:04:12 21 the registration of that person is complete. That tag is
03:04:18 22 then applied to any photo with Hawah's face in it.

03:04:22 23 Now, Maxell points to both of these ways of
03:04:26 24 registering a person as meeting this second setting mode of
03:04:30 25 the asserted claims.

03:04:31 1 Now, even though these are two ways of doing it,
03:04:34 2 the critical piece here is that in both instances, the
03:04:38 3 registration is being done using photos of the person that
03:04:44 4 are already stored on the device.

03:04:46 5 So these registration methods can only be the
03:04:50 6 second setting mode, not the first setting mode. And
03:04:53 7 Maxell agrees, like I mentioned a moment ago, it points to
03:04:58 8 both of these as the second setting mode.

03:05:01 9 THE COURT: Does the -- can I ask you, Mr. Jay,
03:05:03 10 does registration in the first setting mode have to be a
03:05:07 11 new registration under the '848?

03:05:10 12 MR. JAY: Yes, Your Honor. So a person -- under
03:05:15 13 the first setting mode -- I'll go back to the claims for a
03:05:20 14 moment. Yes, there has to be a registration of a person as
03:05:24 15 the specific person that happens in the first setting, just
03:05:27 16 as it does with the second setting mode.

03:05:29 17 So next I'm going to talk about what Maxell points
03:05:37 18 to as the first setting mode. So here, we see a new
03:05:42 19 picture taken of Hawah, and the phone does one of two
03:05:45 20 things. If an auto updating album has been set up, the
03:05:51 21 phone recognizes the face and then sorts the picture into
03:05:54 22 the Hawah folder because Hawah has already been registered.

03:05:57 23 If the tag was set up, the phone recognizes the
03:06:01 24 face of Hawah who has already been registered, and that
03:06:05 25 Hawah tag is applied to the new photo.

03:06:07 1 So these two things, sorting the new picture or
03:06:12 2 assigning the tag to the new picture, are what Maxell
03:06:15 3 points to for the first mode limitation. There's nothing
03:06:20 4 else on the device that Maxell points to for this first
03:06:23 5 setting mode.

03:06:23 6 Again, the critical point here is that what Maxell
03:06:27 7 points to as the first setting mode is taking place, what
03:06:29 8 we see on the right side of the screen here, the person,
03:06:32 9 Hawah, is already registered. And the only way that she
03:06:35 10 can be registered on the Samsung device is from pictures
03:06:39 11 already stored on the device.

03:06:40 12 So there's no dispute that when a new picture is
03:06:47 13 taken and that new picture is either sorted or assigned to
03:06:53 14 Hawah, Hawah has already been registered.

03:06:56 15 Here we see the testimony of Maxell's expert,
03:07:04 16 Dr. Balakrishnan, and he was asked about how tagging a
03:07:05 17 person is the second setting mode, and he actually
03:07:06 18 interjects that this second setting mode is not just
03:07:07 19 tagging a person with a name, it is registering the person.
03:07:11 20 He made this very clear. These are his words, not ours.

03:07:15 21 So we're all in agreement that, one, a person is
03:07:17 22 registered at what Maxell points to as the second setting
03:07:17 23 mode.

03:07:22 24 And, two, that registration takes place before
03:07:27 25 what Maxell points to as the first setting mode.

03:07:29 1 So now we know that the specific person is already
03:07:32 2 registered as part of the second setting mode, and all
03:07:35 3 that's happening in what Maxell points to as the first
03:07:35 4 setting mode is a new picture is either being sorted into
03:07:40 5 an auto updating album or assigned a tag.

03:07:43 6 But the asserted claims require that a specific
03:07:46 7 person is registered in the first setting mode. That's not
03:07:50 8 what's happening in Samsung's phones.

03:07:51 9 And if we look closely at what -- at Maxell's
03:07:56 10 words in its briefs, what we see is that Maxell never
03:07:59 11 actually says that a specific person is registered in the
03:08:04 12 first setting mode as the claims require.

03:08:06 13 Instead, Maxell uses words that sound kind of like
03:08:10 14 what the claim is saying, but what Maxell is telling us is
03:08:13 15 actually something that's very different.

03:08:15 16 So first here we see where Maxell admits that when
03:08:19 17 a new picture is taken, the person has previously been
03:08:24 18 registered. So no new registration of a person is taking
03:08:27 19 place.

03:08:28 20 We then see what Maxell says is that the newly
03:08:31 21 taken photograph is sorted to be registered with a specific
03:08:34 22 person. So what Maxell is saying is not that a person is
03:08:39 23 being registered, and it can't say that because the person
03:08:42 24 has already been registered. Instead, what Maxell is
03:08:46 25 essentially saying is that a photograph is associated with

03:08:50 1 this already registered person.

03:08:52 2 So Maxell uses the words "registered with a
03:08:56 3 specific person" to make it sound like this fits the claim
03:09:01 4 language. But that's not what the claim says. The claim
03:09:03 5 says nothing about registering a photograph or associating
03:09:06 6 it with a particular person. Instead, the claim requires
03:09:09 7 that the person, not the photograph, be registered in this
03:09:14 8 first setting mode.

03:09:14 9 Maxell never argues that a person -- a specific
03:09:19 10 person is registered in what it identifies as the first
03:09:23 11 setting mode.

03:09:23 12 And the reason for that is Maxell has no evidence
03:09:30 13 to support that a registration is taking place in the first
03:09:33 14 setting mode. Here again, we see deposition testimony from
03:09:38 15 Maxell's expert, Dr. Balakrishnan, and he says the exact
03:09:45 16 same thing as what Maxell said in its brief. Under the
03:09:48 17 setting mode, the photo is registered. But he never said
03:09:52 18 anything about a specific person being registered under the
03:09:56 19 first setting mode. And the reason for that is that's not
03:09:58 20 what's happening when a new photo is taken. The Samsung
03:10:02 21 devices are not capable of registering a specific person
03:10:05 22 from a newly taken photograph.

03:10:06 23 So, now, just going back to the claim language, we
03:10:12 24 see that the claims are very clear on what's required when
03:10:17 25 a person -- to be registered. We don't dispute that

Maxell, Ltd.

EX2037

03:10:19 1 there's a second setting mode where a specific person is
03:10:23 2 registered. That's the auto updating album and the tagging
03:10:25 3 that I was speaking about before. But at that point, the
03:10:28 4 person is registered.

03:10:29 5 Just like the second setting mode, the claims
03:10:33 6 require that there is another way of registering a person,
03:10:37 7 and that's the first setting mode, where a person
03:10:39 8 identified in a newly taken photograph be registered as the
03:10:42 9 specific person. That's not what's happening. The person
03:10:45 10 is already registered. All that happens is the new
03:10:51 11 photograph is being sorted, which does not meet the claim
03:10:54 12 limitations.

03:10:55 13 Unless Your Honor has any additional questions on
03:10:58 14 that, I'm going to move to the next argument.

03:10:59 15 THE COURT: Okay.

03:11:01 16 MR. JAY: So the second non-infringement ground
03:11:07 17 applies to only Claims 11 and 12, and the ground there is
03:11:12 18 that Samsung -- the Samsung accused products do not
03:11:16 19 infringe these two claims because they do not satisfy the
03:11:20 20 reproducing mode limitations of Claims 11 and 12.

03:11:26 21 So as with the first issue, again, there's no
03:11:28 22 dispute between the parties about how the products work.
03:11:31 23 But here what we have essentially is Maxell rewriting
03:11:36 24 Claims 11 and 12. Although Maxell is not calling it this,
03:11:41 25 the reality is that Maxell is asking the Court to engage in

03:11:45 1 de facto claim construction, even though it never asked the
03:11:48 2 Court to construe these reproducing terms during claim
03:11:52 3 construction, and there's no basis to rewrite the claims in
03:11:56 4 the manner that Maxell is suggesting.

03:11:59 5 Now, we see here Claims 11 and 12, and we can see
03:12:03 6 that in every instance in which the reproducing modes are
03:12:07 7 discussed, the claims describe reproducing the image
03:12:11 8 information. The claims say nothing about reproducing only
03:12:16 9 a portion of or only a subset of the image information.

03:12:20 10 And when we look at Claim 8, which is the claim on
03:12:26 11 which Claims 11 and 12 depend, we see that the antecedent
03:12:29 12 basis for the image information in Claims 11 and 12 comes
03:12:33 13 from Claim 8.

03:12:33 14 Claim 8 shows that the image information are all
03:12:38 15 of the images that include the person who was registered.

03:12:42 16 So we see here what Maxell's theory is for the
03:12:49 17 reproducing mode limitation. So we have this Hawah album
03:12:53 18 here, and these are all of the photos in which the
03:12:55 19 registered person, Hawah, appears.

03:12:57 20 Under the language of Claim 8, the entirety of
03:13:01 21 these photos in this album are the image information.
03:13:06 22 There can't be any dispute about the entirety -- or that
03:13:09 23 the entirety of this album is the image information, and I
03:13:12 24 don't see anywhere in Maxell's briefing where they
03:13:14 25 contested that.

1 Now, Maxell's theory is they point to, for the
2 reproducing modes, three different modes on Samsung's
3 devices: The highlight reel mode, the movie mode, and the
4 slide show mode.

5 And Maxell's infringement theory is that for each
6 of these modes, you combine different subsets of images
7 from the Hawah folder.

8 So in doing that, though, you're not using the
9 image information for each of the modes. Instead, what
10 they're showing is only a subset of the image information,
11 but that's not what the plain language of the claim says.

12 So going back to the claim limitations, the claims
13 consistently say reproducing the image information. So
14 under the plain language of the claims, this has to mean
15 that all of the image information, meaning all of the
16 images in the Hawah folder, must be reproduced in each of
17 the reproducing modes.

18 Now, Maxell doesn't point to anything in the
19 specification or the intrinsic record for the '848 patent
20 that would support construing the image information as a
21 subset of the image information. All that Maxell points to
22 is the portion of Claim 11 where it says -- starting
23 towards the last clause about five lines up from the bottom
24 where it says: The image information reproduced under the
25 second mode includes the image information reproduced under

03:14:45 1 the first reproducing mode and other of the information --
03:14:49 2 image information not reproduced under the first
03:14:51 3 reproducing mode.

03:14:53 4 So what Maxell argues in its briefs is that this
03:14:55 5 has to mean that when the claim says "the image
03:14:59 6 information," that it has to be a subset of the information
03:15:02 7 because otherwise it wouldn't make sense.

03:15:04 8 But that's just wrong.

03:15:07 9 So if we look at the -- in making that argument,
03:15:11 10 Maxell ignores the specification of the '848 patent. The
03:15:17 11 specification, when it's talking about the reproducing
03:15:21 12 mode, it shows an example of different reproducing modes of
03:15:25 13 a video that is the image information. And there's a video
03:15:28 14 we can see in Figure 9 on the left-hand side, this is a
03:15:31 15 representation of a video that's divided up into different
03:15:34 16 chapters, and we see excerpts from the specification that
03:15:38 17 talks about different modes. There's a standard
03:15:40 18 reproducing mode in which all of the chapters are
03:15:44 19 reproduced, and an express reproducing mode, in which only
03:15:48 20 some of the chapters with a certain importance level are
03:15:54 21 reproduced.

03:15:54 22 The key here is while different chapters of the
03:15:57 23 video are being reproduced, the same video is being used
03:16:02 24 for each of the reproducing modes. The reason for that is
03:16:04 25 that the video is the image information, and the same image

03:16:09 1 information is used in every reproducing mode.

03:16:11 2 So contrary to what Maxell claims, Claims 11 and
03:16:17 3 12 do make sense without adding the words "subset of" to
03:16:22 4 the image information. And regardless, the law is clear
03:16:28 5 that the plain language of the claim controls. The image
03:16:30 6 information in Claims 11 and 12 have to be the same image
03:16:34 7 information in Claim 8, even if it doesn't make sense. And
03:16:37 8 that's based on the Process Control v. HydReclaim claim
03:16:42 9 case that we cited on Page 3 of our reply.

03:16:45 10 So under the plain language of the claim and the
03:16:50 11 law governing antecedent basis, the Samsung devices cannot
03:16:54 12 infringe Claims 11 and 12 under Maxell's infringement read
03:16:58 13 because the read is based on different image information
03:17:01 14 used for each mode.

03:17:03 15 Unless Your Honor has any questions, I'll move on
03:17:09 16 to the next --

03:17:10 17 THE COURT: Okay.

03:17:11 18 MR. JAY: -- the last argument.

03:17:13 19 THE COURT: All right.

03:17:13 20 MR. JAY: So the last of the non-infringement
03:17:15 21 argument applies only to Claim 84.

03:17:18 22 Now, Claim 84 has a limitation that requires a
03:17:22 23 video camera providing video image data and the device
03:17:27 24 performing facial recognition on that video image data.

03:17:32 25 Now, the important part of this particular

Maxell, Ltd.

EX2037

Page 116 of 186

03:17:33 1 limitation, which is the limitation on which the
03:17:36 2 non-infringement ground is based, it says in the last
03:17:39 3 clause: The display displays the video image data with a
03:17:45 4 frame surrounding at least a portion of the face of the
03:17:48 5 person.

03:17:48 6 Essentially there has to be a box or frame
03:17:52 7 surrounding at least a portion of the person's face when
03:17:57 8 video image data is displayed.

03:17:59 9 Now, Maxell's expert confirmed that this box or
03:18:05 10 frame has to be applied to video image data.

03:18:09 11 He was asked: So the frame surrounding a portion
03:18:11 12 of the face of a person has to be applied to the video
03:18:14 13 image data in order for this claim limitation to be met,
03:18:18 14 correct?

03:18:18 15 Yes.

03:18:19 16 Very clear on that.

03:18:22 17 So this is what Maxell's expert points to for this
03:18:26 18 limitation. In the camera application on the S23 device, a
03:18:32 19 preview of the image comes up before a photo is taken. And
03:18:37 20 here we see the device draws a box around the face of the
03:18:40 21 person in the picture. This is the one and only thing that
03:18:45 22 Maxell relies on for infringement of this limitation.

03:18:48 23 And that's what Dr. Balakrishnan confirmed here.

03:18:52 24 He said: The only infringement read for this limitation is
03:18:57 25 that preview in the application.

03:19:00 1 He was asked: So your infringement opinion reads
03:19:03 2 onto the preview in the camera application, right?

03:19:05 3 That's correct.

03:19:06 4 That's it. He was very clear about that.

03:19:08 5 The issue, however, is that the claim requires
03:19:15 6 that when the box appears around the person's face in the
03:19:18 7 preview mode, the claim requires that the box be placed
03:19:24 8 around someone's face when there's a video image data
03:19:28 9 displayed. But what's happening on the Samsung devices in
03:19:33 10 the preview mode -- when the box is around the person's
03:19:36 11 face, what is being shown is not video image data at that
03:19:41 12 point.

03:19:41 13 So here, Dr. Balakrishnan said --

03:19:44 14 It is image data in the preview pane that you're
03:19:46 15 showing here on Page 746, right?

03:19:49 16 Yes.

03:19:50 17 It is not video image data yet?

03:19:55 18 Correct.

03:19:55 19 THE COURT: Can you go into the -- can you go into
03:19:58 20 the preview mode in the video setting?

03:20:01 21 MR. JAY: There is no preview mode in the video
03:20:04 22 setting, Your Honor.

03:20:05 23 THE COURT: Okay.

03:20:05 24 MR. JAY: So this -- this appears in the -- in the
03:20:09 25 regular photograph setting.

03:20:12 1 And then he said -- so he then went on to say that
03:20:20 2 not only is what's in the preview mode, that is
03:20:24 3 definitively not video image data. And then he went on to
03:20:28 4 say that even if you press the white button on the screen
03:20:31 5 at the time to capture an image, when you do that, it will
03:20:34 6 become a photo.

03:20:35 7 So there's nothing in Maxell's infringement read
03:20:37 8 that implicates video image data as the claim requires.

03:20:43 9 So faced with that, the one thing that Maxell
03:20:45 10 points to in its briefs is it points to the deposition
03:20:48 11 testimony of Dr. Kia, who did say that there is a way in
03:20:54 12 the camera application to save a video. But that's just
03:20:57 13 not relevant to the analysis here. That's not what Maxell
03:21:01 14 pointed to for infringement of this limitation.

03:21:07 15 For this limitation, Maxell accuses one thing, the
03:21:11 16 box drawn around the face in the preview pane. Maxell's
03:21:15 17 expert was absolutely clear that this is not video image
03:21:18 18 data, and the analysis should end there.

03:21:21 19 What happens at some later point, whether when you
03:21:24 20 capture an image it later becomes a photo or a video is
03:21:28 21 immaterial. There's nothing in the claims that concerns
03:21:32 22 what the data becomes later on down the road. All that
03:21:36 23 matters is what the data is when the box of the frame is
03:21:40 24 surrounding the recognized face.

03:21:41 25 And Maxell's infringement theory for this

03:21:45 1 limitation does not concern what happens down the line.

03:21:48 2 That's not something in Dr. Balakrishnan's report that he

03:21:52 3 points to as satisfying this limitation.

03:21:54 4 So what Dr. Kia testified about has no impact on

03:22:00 5 whether this limitation is met under Maxell's infringement

03:22:04 6 read. There can be no infringement of Claim 84.

03:22:10 7 That's all I have.

03:22:12 8 THE COURT: Uh-huh.

03:22:13 9 MR. JAY: Thank you.

03:22:14 10 THE COURT: Thank you, Mr. Jay.

03:22:39 11 MR. LINDINGER: Your Honor, may I approach?

03:22:41 12 THE COURT: Yes.

03:22:42 13 MR. LINDINGER: Good afternoon, Your Honor.

03:23:18 14 Michael Linderger on behalf of Plaintiff, Maxell. I'll be

03:23:21 15 addressing the '848 patent-related issues.

03:23:26 16 THE COURT: Okay.

03:23:26 17 MR. LINDINGER: I want to skip a little bit ahead.

03:23:30 18 Samsung's counsel began with the discussion of the second

03:23:33 19 setting mode, and I think it is important to just briefly

03:23:35 20 go over that to illustrate why Maxell has shown

03:23:40 21 infringement for the first setting mode and why Samsung's

03:23:43 22 arguments as to the first setting mode are incorrect.

03:23:46 23 The second setting mode, as Samsung's counsel

03:23:52 24 indicated, and we agree, you can register a person from the

03:23:56 25 auto updating album or the person tagging feature.

03:23:59 1 This is an operational state that's effectuated by
03:24:04 2 a manual user input, such as typing a name. There's
03:24:08 3 separate source code for creating and manipulating the
03:24:12 4 albums in the first setting mode, and then there's separate
03:24:16 5 menu options. And the user input begins in the gallery
03:24:16 6 application.

03:24:16 7 We saw a few of the same photos in Samsung's
03:24:22 8 presentation -- I'll skip these, these are on Slide 5 --
03:24:25 9 illustrating the second setting mode is, in fact, in the
03:24:30 10 two representative accused products.

03:24:31 11 Moving to the first setting mode, as Maxell fully
03:24:38 12 explained in its opposition on Pages 4 to 7 and sur-reply
03:24:43 13 at Pages 1 to 2, backed with its expert testimony and
03:24:47 14 citations to its expert report, the Samsung accused
03:24:50 15 products comprise a first setting mode.

03:24:54 16 Samsung's briefing on this issue rests on its
03:24:57 17 belief that simply Maxell's expert's opinions do not show
03:25:01 18 that the accused products comprise this first setting mode,
03:25:05 19 but Samsung is wrong. Its arguments are rooted in a
03:25:08 20 factual dispute between the experts. And while it's free
03:25:12 21 to cross-examine -- we heard this a little bit earlier.
03:25:14 22 Isn't this more appropriate for cross? They're free to
03:25:19 23 cross-examine Dr. Balakrishnan at trial, but its arguments
03:25:22 24 regarding the first setting mode are not amenable to
03:25:26 25 summary judgment.

03:25:26 1 The first setting mode is in part an automatic
03:25:32 2 operational state. The first setting mode in the accused
03:25:35 3 products begin when a picture is taken in the camera
03:25:38 4 application. The image processing facial recognition code
03:25:41 5 is executed to associate that new picture with a specific
03:25:44 6 person. Samsung concedes this functionality exists. And
03:25:48 7 nothing in the claims precludes Maxell's infringement
03:25:51 8 theory.

03:25:56 9 These are some examples, again, on Page 7. This
03:25:59 10 is cited to in our brief as far as -- including
03:26:04 11 Dr. Balakrishnan's report. On the left-hand side, the
03:26:06 12 person tagging theory is shown. On the right-hand side,
03:26:10 13 the auto updating album is shown. Again, illustrating
03:26:15 14 that when a new picture is taken, that picture is
03:26:24 15 associated with that specific person. That person is
03:26:26 16 registered.

03:26:30 17 On Slide No. 8, you saw Samsung's attorney
03:26:37 18 highlight some of Dr. Balakrishnan's testimony. There was
03:26:40 19 a lot of testimony -- here on Page 8 was just about a page
03:26:44 20 or so later from a citation that Samsung highlighted.
03:26:47 21 Here, Dr. Balakrishnan confirms that the new photos assign
03:26:52 22 the same tag and as a result is registered as the same
03:26:56 23 person, in this example, Hawah.

03:26:58 24 And later on, a few pages later, the deposition
03:27:00 25 citation at Pages 73 to 74, he confirms that the first

03:27:05 1 setting mode is equally applicable and applied in the auto
03:27:08 2 updating album.

03:27:08 3 Now, we've shown infringement, both in our
03:27:15 4 briefing and today really briefly. I didn't want to
03:27:19 5 belabor the point and respectful of the Court's time, but I
03:27:23 6 do want to address Samsung's arguments in its brief and
03:27:26 7 heard today.

03:27:27 8 Samsung first contends that the first setting mode
03:27:29 9 cannot automatically register a person because that person
03:27:32 10 has already been registered in the second setting mode.
03:27:38 11 But Samsung's arguments rest on its expert, Dr. Kia,
03:27:42 12 reading limitations into the claim.

03:27:45 13 What do I mean by that? Dr. Kia testified that
03:27:50 14 despite the word "manual" not being in Claim 8 at all, he
03:27:54 15 read "manual" into the claims. Dr. Kia read Claim 8 to
03:28:00 16 require that a user must manually select the first or
03:28:06 17 second setting modes.

03:28:07 18 That's wrong as a matter of both fact and law.
03:28:12 19 Manual selection of the modes is not a claim requirement.

03:28:16 20 And importing limitations into the claim is
03:28:21 21 improper, as repeatedly held by the Federal Circuit.

03:28:23 22 Samsung's next argument is that the claim does not
03:28:28 23 refer to registering a person in a photograph but rather a
03:28:33 24 specific person. But any such distinction is irrelevant,
03:28:37 25 as Maxell's infringement theory is consistent with the

03:28:40 1 claim language and the specification of the '848 patent.

03:28:44 2 For example, the specification discloses
03:28:48 3 registering a person in advance of the face recognizing
03:28:53 4 operation. The specification also explains that a user
03:28:56 5 photographs a VIP to be registered. And the patent also
03:29:00 6 talks about how a VIP is registered in the manner described
03:29:05 7 above upon the face recognizing management information 24,
03:29:09 8 Figure 3, during a photograph.

03:29:12 9 Maxell and its expert has plainly identified
03:29:16 10 distinct registering modes originating in different
03:29:20 11 applications, camera versus the gallery application.

03:29:24 12 Samsung's final argument relates to a statement in
03:29:28 13 a PTAB filing made by Maxell in a pending IPR for the '848
03:29:33 14 patent.

03:29:34 15 The Nozaki reference -- this is the prior art
03:29:39 16 reference -- relied on by Samsung has a -- what it calls a
03:29:43 17 new face registration mode that Samsung identified as the
03:29:47 18 first setting mode.

03:29:47 19 Maxell's response in the IPR proceeding
03:29:50 20 distinguishing Nozaki relates only to the first setting
03:29:53 21 mode. Despite that clear line of demarcation in the IPR
03:30:00 22 filings, Samsung's arguments attempt to blur Maxell's
03:30:03 23 first and second setting mode infringement theories
03:30:05 24 together.

03:30:05 25 As set forth in more detail in Maxell's opposition

Maxell, Ltd.

EX2037

Page 124 of 186

03:30:11 1 at Page 6, Nozaki operates differently than the first
03:30:17 2 setting mode Maxell has identified in the accused products.

03:30:23 3 In Nozaki -- it's really a question of before and
03:30:25 4 after, Your Honor. In Nozaki, in the first setting mode
03:30:27 5 that's being pointed to, the person -- as the name is typed
03:30:32 6 in and then the picture is taken.

03:30:35 7 In both of our first and second setting modes we
03:30:38 8 point to for infringement here, the picture is taken, then
03:30:43 9 the name, then the person is registered. It's apples and
03:30:46 10 oranges. There is nothing inconsistent with Maxell's
03:30:50 11 arguments before the PTAB and its infringement theory in
03:30:52 12 this case.

03:30:53 13 Samsung's only authority that it points to, the
03:30:57 14 Aylus case, is inapposite, and Samsung's reply was silent
03:31:03 15 as to Maxell's distinguishing of that case.

03:31:07 16 In sum, Samsung's arguments regarding the first
03:31:08 17 setting mode highlight a clear factual dispute between the
03:31:10 18 two experts. However, such disagreement regarding the
03:31:13 19 operation or functionality of the accused products is
03:31:16 20 inappropriate to resolve on summary judgment.

03:31:20 21 Your Honor, do you have any questions, or can I
03:31:23 22 move to Issue 2?

03:31:26 23 THE COURT: Yes.

03:31:28 24 MR. LINDINGER: The second issue relates to the --
03:31:30 25 what we'll call the reproducing modes issue for Claims 11

03:31:35 1 and 12 of the '848 patent.

03:31:37 2 I heard Samsung's counsel state in his
03:31:41 3 presentation that Maxell was engaging in de facto claim
03:31:47 4 construction. That is simply incorrect. And that's, in
03:31:51 5 fact, interesting, very interesting, given the positions
03:31:55 6 that Samsung's expert has taken as far as his
03:32:01 7 interpretation of the claims, which we're going to get to
03:32:04 8 in just a few slides.

03:32:06 9 Maxell has shown, supported by expert testimony,
03:32:08 10 that each of the representative accused products, the S23
03:32:12 11 and the S23 Ultra, have a first and second reproducing mode
03:32:18 12 where the time to reproduce the first reproduction mode is
03:32:21 13 shorter than the second reproducing mode.

03:32:23 14 I provided some examples for the Court here on
03:32:26 15 Slide 14. This is the S23 Ultra example. Dr. Balakrishnan
03:32:31 16 included similar pictures in his expert report, which is
03:32:35 17 Docket 181-2, for the other accused representative product,
03:32:41 18 the S23.

03:32:42 19 Here, the first reproduction mode, the highlight
03:32:48 20 reel is on the left. That's about a minute and 49. It is
03:32:50 21 shorter than the second reproduction mode, the movie, at
03:32:51 22 2 minutes and 15 seconds on the right-hand side.

03:32:54 23 The second theory, the first reproduction mode,
03:32:58 24 the movie on the left-hand side, 2 minutes and 15 seconds,
03:33:02 25 is shorter than the second reproduction mode.

03:33:04 1 The slide show mode, which is on a continuous
03:33:08 2 loop, it includes all the pictures and it just puts it on a
03:33:13 3 continuous loop.

03:33:14 4 Now, I highlighted the last limitation in green on
03:33:21 5 Slide No. 15 here, and this is a little bit where the
03:33:23 6 rubber hits the road. You heard Samsung's counsel talk
03:33:27 7 about Maxell reading in the word "subset." We're doing no
03:33:37 8 such thing. The word "subset" is nowhere in there. It's
03:33:40 9 the last limitation -- the plain language of the last
03:33:43 10 limitation. We adhere to that claim language as far as our
03:33:46 11 infringement theory.

03:33:51 12 For example, in Theory No. 1, the images on the
03:33:54 13 right-hand side in the movie mode, the second reproduction
03:33:57 14 mode, includes all of the images in the highlight reel, the
03:34:00 15 first mode on the left, but it also includes additional
03:34:04 16 images.

03:34:07 17 Under Theory 2 for the S23 Ultra, the images in
03:34:13 18 the movie mode, which is now the first reproduction mode,
03:34:15 19 are a subset of the total number of images in the slide
03:34:18 20 show mode, the second reproduction mode. The second
03:34:22 21 reproduction mode has everything in the movie plus
03:34:24 22 additional image information consistent with the claim
03:34:27 23 limitation highlighted in green. And, again,
03:34:30 24 Dr. Balakrishnan provided similar examples in his report
03:34:34 25 for the S23 representative product.

03:34:35 1 Moving to Slide 16, this is Claim 12. This is
03:34:39 2 only relating to the S23 Ultra representative accused
03:34:44 3 product which has three reproducing modes. I've reproduced
03:34:49 4 some exemplary screenshots here. The movie in the middle
03:34:52 5 at 2 minutes and 15 seconds is shorter than the third
03:34:55 6 reproduction mode. The slide show on the right, a
03:34:58 7 continuous loop. And the first reproduction mode, the
03:35:00 8 highlight reel, minute 49 on the left, is shorter than the
03:35:05 9 movie in the middle.

03:35:06 10 So now that we've shown -- Maxell has proven
03:35:18 11 infringement for Claims 11 and 12, what are Samsung's
03:35:22 12 arguments? Well, Samsung's arguments for the reproducing
03:35:25 13 modes issue for Claims 11 and 12 should be rejected as they
03:35:28 14 both improperly read out a claim limitation, and they read
03:35:33 15 in a non-existent claim limitation.

03:35:37 16 Samsung's arguments are contrary to long-standing
03:35:40 17 Supreme Court and Federal Circuit precedent, as shown on
03:35:43 18 Slide 17.

03:35:43 19 Samsung's first argument relates to its expert,
03:35:50 20 Dr. Kia, reading out the last limitation of Claim 11. This
03:35:54 21 is highlighted in yellow and bolded.

03:35:57 22 Specifically, Dr. Kia testified in his deposition
03:36:00 23 that a user would have to use the exact same set of
03:36:06 24 pictures in the first and second and third reproducing
03:36:10 25 modes, the highlight reel, movie, and slide show theories

that Maxell has set forth. This, again, is wrong as a matter of fact and law.

First, to the extent Samsung is asserting that the claims are limited to a single photograph or image, that's wrong. Dr. Kia agrees that the claims are not limited to a single photograph. Moreover, Maxell's infringement theory accurately follows the law of antecedent basis, as explained in detail on Pages 7 to 8 of Maxell's opposition.

Second, there is simply no support in the claims or specification for Dr. Kia's interpretation that the claims require the same set of photographs. Again, Maxell is not injecting the word "subset" into the claims at all. The bolded language -- highlighted in yellow and bolded, it requires that the second mode include everything in the first mode and additional image information, not reproduced under the first mode. That's the plain language. The second mode has more image information than the first mode.

And, again, nowhere does the claims say -- we heard Samsung's counsel, I think, state that the claims somehow require all of the images in there. The word "all" is nowhere in the claims at all.

In sum, Dr. Kia's reading out of the last limitation of Claim 11 violates both the Warner-Jenkinson and Callicrate cases cited to on Slide 17.

Samsung's second argument for this issue relates

03:37:57 1 to its expert, Dr. Kia, attempting to read in a
03:38:00 2 non-existent limitation into Claim 11 in violation of
03:38:05 3 Liebel-Flarsheim cited on Slide 17. Specifically, Dr. Kia
03:38:12 4 says that the images from the auto updating album to the --
03:38:16 5 the source, the area, used to create a movie, highlight
03:38:23 6 reel, or slide show, are not the same image information
03:38:26 7 because the, quote, source of the image is not the same.

03:38:29 8 But Samsung and Dr. Kia are wrong again. The word
03:38:34 9 "source" does not appear anywhere in the '848 patent, let
03:38:38 10 alone the claims. And it is telling that when pressed in
03:38:45 11 his deposition, Dr. Kia pointed to the portion of the '848
03:38:49 12 patent specification relating to video segmentation as
03:38:53 13 alleged support for his same source opinions.

03:38:57 14 And you heard Samsung's counsel go to that same
03:39:01 15 well today. It was Samsung's Slide No. 18 where Samsung's
03:39:06 16 counsel mentioned the embodiment, talking about the express
03:39:09 17 modes and how that's the -- the different parts of the
03:39:12 18 video, and he said, oh, it's the same video.

03:39:16 19 But that video segmentation discussion is a mere
03:39:20 20 embodiment, and it would be equally improper to read that
03:39:23 21 into the claims, as well, particularly when Claims 8, 11,
03:39:29 22 and 12 are silent as to any mention of video.

03:39:31 23 However, even if Dr. Kia's erroneous same source
03:39:39 24 requirement is read into the claims, a reasonable jury
03:39:42 25 could still find that the images come from the same source.

03:39:47 1 And I use source in quotes, Your Honor. And that's the
03:39:50 2 auto updating album, as shown on Slide 21. Specifically a
03:39:54 3 reasonable juror could look and see that the same -- the
03:39:57 4 same exact images of Hawah used in each of the first,
03:40:01 5 second, and third reproducing modes come from the auto
03:40:08 6 updating album source.

03:40:08 7 This is confirmed by Maxell's expert,
03:40:12 8 Dr. Balakrishnan. In fact, the parties' experts agree on
03:40:15 9 this very point.

03:40:17 10 Dr. Balakrishnan, as shown on Slide 22 in his
03:40:21 11 deposition, confirm that the same images used in movie,
03:40:25 12 highlight reel, or slide show modes are found in the auto
03:40:28 13 updating album. And Dr. Kia confirmed through realtime
03:40:33 14 testing of the representative accused products that this is
03:40:37 15 precisely how the S23 and S23 Ultra representative products
03:40:42 16 operate.

03:40:42 17 I cited to Dr. Kia's deposition transcript at the
03:40:48 18 bottom of Slide 22, Page 129, Line 8, through Page 138,
03:40:54 19 Line 2. I encourage Your Honor to read that because he
03:41:00 20 confirms that even under his erroneous interpretation, the
03:41:05 21 accused products meet the claim language.

03:41:08 22 And that deposition testimony, Your Honor, is
03:41:12 23 fatal to Samsung's non-infringement arguments as to Claim
03:41:17 24 11 and 12.

03:41:17 25 As with the first issue, the Court should reject

1 Samsung's arguments regarding the reproducing modes issue,
2 which highlight numerous factual disputes between the two
3 experts and rely on improper claim interpretations.

4 Finally, as to the third issue relating to the
5 video image data, Maxell did include a similar picture. As
6 shown in Samsung's presentation and its expert report,
7 there's a frame or a bounding box around a person's face.
8 You either go to take a picture, the frame appears around
9 the user's face, the user can depress the white soft button
10 icon and -- but what is in dispute is what may happen when
11 and how long that white button icon is pressed for.

12 And just to be clear, Your Honor, even in the
13 photo mode and in selfie mode, as you -- as -- when people
14 take pictures, when people are moving their phone around,
15 it's not a static image. There's still video image data
16 that is being at least interpreted from the video -- the
17 sensors on the phone.

18 Dr. Balakrishnan was -- again, Samsung cited some
19 testimony. We think Dr. Balakrishnan's testimony was a
20 little bit more equivocal. But, again, that's an area for
21 cross-examination. Dr. Balakrishnan said it could become
22 video data. It could become a photo. It depends how it's
23 saved.

24 And this is precisely the point that Samsung's
25 attorney breezed past when I asked Dr. Kia in his

03:43:01 1 deposition to test the phones and to depress the soft
03:43:04 2 button, the white icon. Even in the photo mode, after he
03:43:08 3 confirmed that he was taking a selfie and had the frame box
03:43:13 4 around his face, he depressed the white button for about
03:43:17 5 five seconds, and then he checked in the gallery app where
03:43:20 6 all the videos and photos are stored, and he confirmed that
03:43:23 7 when he depressed the white button icon for about five
03:43:27 8 seconds, it resulted in about a three-second video,
03:43:33 9 constituting video image data.

03:43:34 10 And, again, at a minimum, there are material
03:43:38 11 issues of fact that preclude granting Samsung's summary
03:43:42 12 judgment motion for non-infringement as to Claim Element
03:43:46 13 84[e].

03:43:47 14 And with that, Your Honor, does Your Honor have
03:43:49 15 any questions?

03:43:50 16 THE COURT: I do not.

03:43:51 17 MR. LINDINGER: Thank you.

03:44:01 18 MR. JAY: Just a few points, Your Honor.

03:44:15 19 There is no factual dispute -- I'm going to talk
03:44:18 20 about the first issue with the no first setting mode.

03:44:22 21 There is no -- no factual issue, as Mr. Lindinger
03:44:31 22 did not dispute that when the second setting modes take
03:44:34 23 place -- or that a person is registered under the second
03:44:37 24 setting modes prior to the first setting mode taking place.

03:44:40 25 You also heard Mr. Lindinger say that -- first

03:44:47 1 setting mode, a picture is associated with a person. We
03:44:49 2 agree. We see that right here. We don't dispute that.
03:44:52 3 Mr. Lindinger is correct.

03:44:54 4 But that's not what the claim requires. The claim
03:44:58 5 requires that in the first setting mode when a new
03:45:01 6 photograph is taken, that that new photograph can be used
03:45:05 7 to newly register a specific person, and that does not
03:45:08 8 happen. We did not hear or see anything today showing that
03:45:11 9 that happens in anything that Maxell is pointing to as the
03:45:15 10 first setting mode.

03:45:15 11 On Slide 6 of Maxell's slide deck, they talk about
03:45:22 12 how the picture is taken in the camera application whereas
03:45:25 13 they had said that, well, for the second setting mode, that
03:45:29 14 starts in the gallery application. Where these modes start
03:45:32 15 doesn't matter. There's nothing in the claims about that.
03:45:34 16 If there's different source code, it doesn't matter. What
03:45:38 17 matters is whether or not someone is registered as part of
03:45:42 18 the first setting mode when a new photograph is taken.
03:45:45 19 That does not happen.

03:45:46 20 They also talked -- I think it was on Slide 10,
03:45:53 21 Mr. Lindinger talked about Dr. Kia's testimony. The
03:45:59 22 characterization of that testimony is not correct, but our
03:46:04 23 argument isn't based on what Dr. Kia said. Our
03:46:09 24 non-infringement ground is based on what Maxell's expert,
03:46:14 25 Dr. Balakrishnan, what he points to does not meet the

Maxell, Ltd.

EX2037

1 language of the claims. It doesn't matter what Dr. Kia
2 said in his -- in his deposition, where he certainly -- he
3 wasn't saying that any sort of manual or automatic --
4 anything else was required. He's not adding limitations to
5 the claims.

6 What we're saying is look at what Dr. Balakrishnan
7 said, look at what Dr. Balakrishnan points to, and what he
8 points to and what he said cannot meet the first setting
9 mode limitation of Claim 8 and then Claim 84.

10 One other thing. I think on Page -- or, sorry,
11 Slide 11 of Maxell's slide deck, under Maxell's response,
12 they have a number of citations to the specification.
13 Again, we're not looking at the specification. What we
14 have to look at is the claim language. The claim language
15 for Claim 8 and Claim 84 is very clear on what the first
16 setting mode requires, and it is clear that what they're
17 pointing to is merely sorting or assigning a picture that
18 is not merely registering a person.

19 The only other point I wanted to make, Your Honor,
20 on the second argument relating to the reproducing modes,
21 again, Mr. Lindinger was focused on Dr. Kia's testimony,
22 claiming that Dr. Kia is adding in additional limitations.
23 That is not the case. And Mr. Lindinger encouraged you to
24 look at the deposition transcript. I encourage that, as
25 well, because it is not as Mr. Lindinger says it is. But

03:48:08 1 really what matters is that their infringement read does
03:48:12 2 not meet with the express plain language of the claims.

03:48:21 3 Now, Mr. Lindinger said that we're trying to read
03:48:23 4 in something from the specification. That's not the case.
03:48:25 5 The example that I was talking about before with the video
03:48:31 6 image data and the chapters, I wasn't suggesting that any
03:48:33 7 sort of -- any sort of language should be read into the
03:48:35 8 claims. I was showing that language -- or, sorry, showing
03:48:39 9 the example from the specification to show that their
03:48:40 10 claims in their briefs, that our read of the claim that the
03:48:44 11 image information has to be all of the image information,
03:48:49 12 consistent with the law on antecedent basis, that it does,
03:48:51 13 in fact, make sense.

03:48:52 14 They had claimed that it doesn't make sense. It's
03:48:53 15 nonsensical. It does, in fact, make sense, and I showed an
03:48:57 16 example of how that would be the case.

03:48:58 17 Thank you, Your Honor.

03:48:59 18 THE COURT: Thank you, Mr. Jay.

03:49:01 19 MR. LINDINGER: Just one minute, Your Honor.

03:49:03 20 THE COURT: Okay.

03:49:04 21 MR. LINDINGER: Your Honor, I just want to remind
03:49:22 22 the Court on Slide 8 -- for Claim 8, it talks about
03:49:26 23 registering a person -- registering a person as a specific
03:49:29 24 person. That's what the new photo is registered as, Hawah.
03:49:36 25 It's assigned her. It's registering her, and it's

03:49:38 1 registering the new photograph with Hawah in it as that
03:49:41 2 person, that specific person.

03:49:43 3 And, again, on Slide No. 8, you heard Samsung's
03:49:48 4 counsel, Mr. Jay, state that we haven't stated anything to
03:49:52 5 support this or any sort of hook for it. Dr. Balakrishnan
03:49:58 6 stated very clearly in his deposition that Maxell's
03:50:02 7 infringement theories meet the first setting mode, that
03:50:06 8 when the new picture is taken, the deposition citation on
03:50:11 9 Page 8 is for the person tagging feature, but the other
03:50:19 10 citation is to the auto album -- auto updating album at the
03:50:24 11 bottom. Again, in each case, when the new picture is
03:50:27 12 taken, a specific person is registered.

03:50:30 13 Thank you, Your Honor.

03:50:30 14 THE COURT: Thank you, Mr. Lindinger.

03:50:34 15 MR. JAY: Your Honor.

03:50:36 16 THE COURT: It's your motion -- yeah, Mr. Jay, you
03:50:38 17 get the last word.

03:50:39 18 MR. JAY: Again, I heard the same thing from
03:50:42 19 Mr. Lindinger. The photograph is registered. The
03:50:44 20 photograph is registered. That's not what the claim says.
03:50:47 21 The claim says that a specific person needs to be
03:50:49 22 registered, not the photograph. What they're pointing to
03:50:52 23 cannot meet the plain language of Claims 11, 12, and 84.

03:50:57 24 THE COURT: Okay.

03:50:57 25 MR. JAY: Thank you, Your Honor.

03:50:58 1 THE COURT: We have two remaining motions. I
03:51:00 2 think we need to take a break. So we'll be in recess about
03:51:06 3 15 minutes.

03:51:08 4 COURT SECURITY OFFICER: All rise.

03:51:09 5 (Recess.)

03:51:10 6 COURT SECURITY OFFICER: All rise.

03:51:10 7 THE COURT: Please be seated.

04:07:29 8 Okay. Next motion. I think it's the
04:07:41 9 non-infringement on the '241 and '590.

04:07:44 10 Mr. Erickson, you have this one, too.

04:07:48 11 MR. ERICKSON: Yes, Your Honor. And may I
04:07:49 12 approach with some slides?

04:07:51 13 THE COURT: Yes.

04:07:51 14 MR. ERICKSON: Thank you, Your Honor.

04:08:02 15 May I proceed, Your Honor?

04:08:13 16 THE COURT: Yes.

04:08:13 17 MR. ERICKSON: Thank you.

04:08:14 18 Claim 5 is not infringed, Your Honor. The Claim 5
04:08:18 19 requires a compression circuit that compresses video
04:08:21 20 information received from a radio communication circuit.
04:08:24 21 The evidence in the case shows that the Samsung accused
04:08:28 22 products, they receive a precompressed .mp4 file. There's
04:08:34 23 no evidence that they ever compress that file any further.
04:08:38 24 The issue in this case arose because Maxell's
04:08:41 25 expert merely incorporated by reference his opinion for

04:08:44 1 1[e], but 1[e], in shorthand, Your Honor, requires a
04:08:48 2 camera, and then the compression circuit compressing the
04:08:51 3 video from the camera. That's different from 5[d], which
04:08:54 4 requires compressing video from the radio.

04:08:56 5 Skipping forward, Your Honor, to Slide 8, two days
04:09:01 6 after Mr. McNair's deposition, Maxell agreed to withdraw
04:09:07 7 Mr. McNair's opinion with respect to Claim Element 5[d].
04:09:11 8 In opposing the summary judgment motion, Maxell relies on
04:09:15 9 portions of Mr. McNair's withdrawn opinions and the
04:09:17 10 evidence cited therein, specifically three paragraphs, and
04:09:21 11 I'll step briefly through those on the next slides.

04:09:25 12 In Paragraph 318 of Mr. McNair's withdrawn
04:09:29 13 opinions, he discusses Mr. Park's testimony. And you see
04:09:33 14 he discusses it for the fact that it relates to cameras
04:09:36 15 that can capture still and videos that are then compressed
04:09:41 16 to JPEG and .mp4 formats. So according to their expert,
04:09:49 17 Mr. Park's testimony relates to compressing video from a
04:09:53 18 camera, not a radio.

04:09:54 19 Mr. Park's actual testimony, as shown on Slide 11,
04:09:58 20 you can see the question is about recording video
04:10:01 21 functionality.

04:10:02 22 Answer: Yes, there is.

04:10:04 23 Question: So does it follow that the S22 also has
04:10:10 24 a -- can also compress video data?

04:10:12 25 Answer: Yes, I would think it's obviously so.

Maxell, Ltd.

EX2037

04:10:16 1 Nothing in that testimony relates to receiving
04:10:17 2 video by radio, as required by Claim 5.

04:10:19 3 Next slide, 12. This is the second thing they
04:10:24 4 rely on is Paragraph 319 of Mr. McNair's withdrawn opinion.
04:10:29 5 Again, Mr. McNair is addressing Samsung's interrogatory
04:10:32 6 response as it relates to cameras that can capture still
04:10:35 7 and videos that are then compressed. Nothing here relates
04:10:39 8 to videos received by radio.

04:10:40 9 Paragraph 320 of the withdrawn opinion addresses
04:10:44 10 the user manual and that they show cameras that can capture
04:10:49 11 still and videos that are then compressed into .mp4
04:10:55 12 formats. Nothing here relates to receiving videos by
04:10:58 13 radio.

04:10:58 14 In their sur-reply, they doubled down on this
04:11:01 15 particular piece of evidence, Your Honor. It's the only
04:11:04 16 thing they discuss in their sur-reply, and they point to
04:11:06 17 this evidence. As you can see, the manual is talking about
04:11:09 18 camera settings. And under advanced video options to
04:11:13 19 reduce file size, you can record videos in HEVC format to
04:11:19 20 save space. Nothing in here relates to receiving video by
04:11:23 21 radio and what you would do if you received a .mp4 file
04:11:27 22 that's already been compressed. There's no indication, no
04:11:30 23 evidence that there's any circuit in the Samsung device
04:11:32 24 that would then compress that or do anything to that file.

04:11:35 25 They make -- Maxell presents new attorney argument

Maxell, Ltd.

EX2037

04:11:42 1 that there's a compression circuit that can compress any
04:11:45 2 video. There's no evidence of that, no expert opinion, and
04:11:48 3 it's well outside the scope of Maxell's infringement
04:11:50 4 contentions.

04:11:51 5 And in the sur-reply, in Footnote 1, they present
04:11:54 6 a new theory that you could compress .mp4 videos into HEVC
04:12:02 7 format. Again, no evidence, no expert opinion, not within
04:12:04 8 the scope of their infringement contentions.

04:12:06 9 Any questions on Claim 5, Your Honor?

04:12:09 10 THE COURT: No. And I do want to tell you -- I
04:12:10 11 should have warned you at the beginning. You all are down
04:12:13 12 to about seven minutes. So if you want to save time for
04:12:16 13 any rebuttal or the next motion, you should not waste much
04:12:23 14 time.

04:12:24 15 MR. ERICKSON: Thank you, Your Honor.

04:12:24 16 Proceed to Nearby Share.

04:12:27 17 Now, moving on to Claim 1, this is the user
04:12:30 18 indication that was at issue during the claim construction
04:12:32 19 proceedings. It requires a user indication that indicates
04:12:37 20 two things, one to transmit video information; and, two, to
04:12:40 21 use the first radio communication circuit.

04:12:42 22 There are three accused functionalities: Nearby
04:12:45 23 Share, Link Share, and Bluetooth File Share.

04:12:50 24 For Nearby Share, Mr. McNair identifies two
04:12:53 25 different user indications. First, as shown in Paragraph

04:12:57 1 563 on the left where the user indicates the Quick Share
04:13:01 2 application and then Paragraph 564 on the right where the
04:13:03 3 user indicates the target device, in this case, Brittany's
04:13:07 4 S23 phone.

04:13:08 5 The first indication, Paragraph 563, at his
04:13:12 6 deposition, he conceded that this is just the first step.
04:13:15 7 You see his answer: This is the first step to selecting
04:13:21 8 Quick Share. So this by itself is not indicating the radio
04:13:25 9 communication circuit.

04:13:25 10 So everyone agrees that the indication here in
04:13:27 11 Paragraph 563 of selecting Quick Share is not the claimed
04:13:33 12 indication because it doesn't indicate the radio.

04:13:34 13 Now, what this actually does, Your Honor, is
04:13:37 14 undisputed. What this causes -- it doesn't indicate any
04:13:40 15 radio at all. What it causes is it causes the Bluetooth
04:13:44 16 radio to search for nearby devices.

04:13:47 17 So when you select Quick Share, the phone will
04:13:50 18 start looking around with the Bluetooth radio to see who is
04:13:53 19 around you, and that leads to the next screen.

04:13:55 20 The next screen, which is the second identified
04:13:58 21 user indication at Paragraph 564, and you see it found one
04:14:03 22 nearby device. There's a lot of discussion in the briefing
04:14:05 23 about Nearby Share, the terminology, Nearby Share versus
04:14:09 24 Link Share. If Your Honor looks at the phone, you'll see
04:14:11 25 right above the finger, it says: Share to nearby Galaxy

04:14:16 1 devices. That's Nearby Share.

04:14:17 2 If you look below the finger where the other icons
04:14:21 3 are, it says: Share as link. That's Link Share.

04:14:25 4 All right. So the Bluetooth radio found one
04:14:30 5 nearby device. It's Brittany's phone. And so this user
04:14:34 6 indication, the user has indicated send something to
04:14:36 7 Brittany's phone. That does not indicate a radio circuit,
04:14:41 8 Your Honor.

04:14:41 9 We asked him at his deposition, and he said:
04:14:43 10 Well, that indicates the WiFi circuit.

04:14:45 11 Plainly, it does not. The user does not
04:14:47 12 provide -- by saying indicating that they want to send a
04:14:50 13 video to Brittany's S23 phone does not indicate which radio
04:14:54 14 communication circuit should be used.

04:14:56 15 Paragraph 568 of his expert report really
04:15:00 16 encapsulates this, Your Honor. Those are Mr. McNair's own
04:15:03 17 words.

04:15:04 18 He says: My testing shows that when a user
04:15:08 19 indication for transmitting via Quick Share to an external
04:15:12 20 device is provided, comma -- just look at that phrase, Your
04:15:15 21 Honor, that's the cause -- a user indication for
04:15:18 22 transmitting via Quick Share to an external device is
04:15:22 23 provided. That's Brittany's S23 phone.

04:15:26 24 The effect, the controller does, in fact, assign a
04:15:30 25 WiFi circuit.

04:15:31 1 So we have cause and effect. But there's no
04:15:33 2 indication here. The user doesn't actually indicate the
04:15:36 3 radio. They're going back to the cause and effect argument
04:15:39 4 that this Court rejected as part of the Markman process.

04:15:42 5 On Slide 23, we have an excerpt from their
04:15:46 6 argument -- the transcript, I'm sorry, from the Markman
04:15:48 7 hearing. And they were arguing that you just need a user
04:15:51 8 indication, and then you need the controller to assign the
04:15:54 9 connection. The two are linked. It's cause and effect.

04:15:57 10 The Court addressed that in its claim construction
04:15:59 11 order in agreeing with Samsung's interpretation that the
04:16:02 12 user must indicate the first radio communication circuit.
04:16:05 13 That's not done here for Nearby Share. All you do is you
04:16:08 14 indicate Quick Share. There's no radio indicated there.
04:16:11 15 It causes a Bluetooth radio to search for devices. And
04:16:14 16 then the user indicates to go to Brittany's phone. There's
04:16:18 17 no indication of a radio there. What it causes is that a
04:16:21 18 WiFi radio be assigned.

04:16:23 19 Moving on to Link Share. I know I only have a few
04:16:26 20 moments left, Your Honor, but Link Share, again, if you
04:16:30 21 look at Slide 29, there's Nearby Sharing settings, and
04:16:34 22 there's share as link settings. The use WiFi only setting
04:16:38 23 is under share as link only.

04:16:40 24 Moving forward to Slide 34, these are the user
04:16:47 25 indications identified by Mr. McNair. On the left, you

04:16:51 1 have the use WiFi only, which is for share as link. We
04:16:54 2 have selecting Quick Share, which we've already covered
04:16:58 3 which he concedes doesn't indicate a radio. And then we
04:17:02 4 have the Nearby Share, Brittany's -- selecting Brittany's
04:17:05 5 S23 phone. He never opines about those links underneath
04:17:07 6 the Link Share.

04:17:07 7 Backing up a slide to Slide 32, this is the
04:17:10 8 testimony at his deposition. We asked him -- it's not in
04:17:13 9 his report, so we asked him at the deposition: What about
04:17:18 10 share using QR code?

04:17:19 11 And he said: I don't believe I expressed an
04:17:21 12 opinion about that.

04:17:22 13 Which is true.

04:17:23 14 And then he also answered why. He said: Because
04:17:26 15 I didn't test it.

04:17:26 16 And then we asked him about the other icon: Share
04:17:29 17 in an app, what about that?

04:17:31 18 And answer -- same answer. He has no opinion
04:17:35 19 about these Quick Share links.

04:17:37 20 So, Your Honor, he has not provided any
04:17:39 21 identification of any user indications that would even
04:17:42 22 cause a Link Share to occur, much less explain how they
04:17:46 23 indicate both transmit a video and a first radio.

04:17:51 24 THE COURT: Thank you.

04:17:51 25 MR. ERICKSON: Thank you, Your Honor.

04:18:00 1 MR. SIDDIQUI: Your Honor, I'm going to work
04:18:23 2 backwards, so recency is primacy. I like that from
04:18:32 3 Mr. Nese.

04:18:34 4 So starting with Quick Share cloud. So the
04:18:34 5 terminology that Mr. McNair used in his report is different
04:18:38 6 from the terminology that came about in Dr. Buehrer's
04:18:41 7 report.

04:18:41 8 So Mr. McNair -- Mr. Erickson said that he did not
04:18:45 9 provide any opinion on what they call Link Share, but
04:18:48 10 Mr. McNair did explain this at his deposition and clarified
04:18:51 11 it that earlier in the testimony, you asked me about Quick
04:18:57 12 Share link, and I hadn't expressed an opinion about that
04:19:00 13 because I referred to that throughout my report to cloud,
04:19:06 14 using the cloud.

04:19:06 15 So we're talking about the same thing, but using
04:19:08 16 the different terminology.

04:19:10 17 So Mr. McNair does have an opinion about using
04:19:13 18 Quick Share while at cloud, which is Link Share. So let's
04:19:19 19 get that correct -- corrected.

04:19:21 20 And then with respect to Mr. McNair saying that --
04:19:27 21 Mr. Erickson said that the step of selecting Quick Share
04:19:30 22 was not a user indication, in the same transcript, just the
04:19:34 23 next question over, for -- on -- the portion that
04:19:38 24 Mr. Erickson cites is on Page 75 where they were discussing
04:19:42 25 Paragraph 563 of his opinion.

04:19:45 1 When you turn to Paragraph 654, next paragraph of
04:19:51 2 Mr. McNair's opinion, he explains: Well, it is indicating
04:19:53 3 to use Quick Share, and this is will be the first radio
04:19:57 4 communication circuit that is being selected.

04:19:59 5 So Mr. McNair did opine in his report that when
04:20:02 6 you select Quick Share, you select WiFi circuit.

04:20:32 7 THE COURT: Mr. Siddiqui, I gave Mr. Erickson the
04:20:34 8 benefit of the doubt because he was running out of time.
04:20:38 9 But you've got plenty of time, so could you slow down for
04:20:41 10 me a little bit?

04:20:41 11 MR. SIDDIQUI: Yes, of course. Of course.

04:20:43 12 THE COURT: Thank you.

04:20:43 13 MR. SIDDIQUI: All right. Perfect. I like that.

04:20:45 14 So let's talk about Quick Share then. What we
04:20:55 15 have here is -- here's how S22 works. When a user wants
04:20:56 16 to share their video, which is transmit video -- and so
04:21:02 17 the Court's construction said that in order for you to
04:21:07 18 provide a user indication according to the claim element,
04:21:10 19 you need to meet two requirements, to transmit video
04:21:13 20 information and to use the first radio communication
04:21:16 21 circuit in making the transmission when indicating to use
04:21:22 22 the particular radio.

04:21:22 23 So what we have here is the -- there was never any
04:21:27 24 discussion of cause and effect in the Markman. That was
04:21:30 25 rejected. Neither the Markman order nor any briefing has

04:21:37 1 talked about cause and effect. What we had at Markman
04:21:40 2 is -- Your Honor clarified and said when you have a user
04:21:41 3 indication, you need to indicate to transmit video for a
04:21:45 4 particular radio communication circuit.

04:21:46 5 That's exactly what we have here. When a user
04:21:49 6 selects share on -- on their video, this pops up -- the
04:21:53 7 share options pop up. One of the options is Quick Share,
04:21:58 8 and the other option is Bluetooth File Share. So these
04:22:02 9 logos pop up. Now the user has a choice to indicate which
04:22:06 10 one of these two options they're going to use to
04:22:09 11 transmit -- that is, share the video.

04:22:12 12 Now -- skip over that.

04:22:20 13 This is -- maybe this transcript of the
04:22:23 14 deposition -- engineer was sealed, so this was Samsung's
04:22:26 15 CBI.

04:22:26 16 The next slide, Your Honor, is Samsung
04:22:29 17 confidential information, but I don't think there's anybody
04:22:31 18 here that's -- so we should be okay.

04:22:35 19 So the Samsung engineer testified, and Samsung's
04:22:41 20 expert testified that Quick Share uses only WiFi. So the
04:22:47 21 only circuit that Quick Share can use is WiFi radio
04:22:51 22 communication circuit. That is what Dr. Buehrer said.

04:22:54 23 Also, Samsung's engineer, Choi -- Mr. (sic) Choi
04:23:00 24 says: Quick Share can -- so Quick Share always uses WiFi
04:23:06 25 to transfer the file?

04:23:07 1 His answer was: Yes.

04:23:09 2 Has that always been the case for Quick Share
04:23:12 3 application?

04:23:13 4 Yes.

04:23:13 5 So what we -- what we have here is Samsung
04:23:19 6 documents, Samsung engineer, Samsung expert saying when a
04:23:25 7 user indicates to use Quick Share out of the two options
04:23:29 8 that are displayed, Quick Share or Bluetooth, the only
04:23:33 9 circuit used is WiFi.

04:23:38 10 And so the dispute here is whether when a user
04:23:43 11 indicates to use Quick Share, are they -- are they
04:23:46 12 indicating to use WiFi? And Mr. McNair testifies: Yes,
04:23:50 13 because that's the only option available. When you use
04:23:54 14 Quick Share, you will specifically indicate to use WiFi to
04:23:58 15 transfer the file.

04:23:58 16 And so that is why summary judgment is not
04:24:03 17 warranted. In fact, a reasonable jury looking at the
04:24:07 18 evidence of the user manual, the testimony of Samsung's
04:24:12 19 engineer can conclude that indicating to select Quick Share
04:24:16 20 meets the Court's limitation -- meets the Court's
04:24:18 21 construction and meets the plain and ordinary meaning of
04:24:21 22 the claim.

04:24:21 23 Now, second part, and that is what -- that is
04:24:27 24 what -- all of that evidence is what Mr. McNair testifies
04:24:30 25 to and explains in his report that when the user indicates

04:24:34 1 to share a video via Quick Share, the user is also
04:24:39 2 indicating to use WiFi circuit by selecting the -- by
04:24:42 3 selecting Quick Share because that is the default circuit
04:24:46 4 used in Quick Share, as explained by Samsung's engineer.

04:24:50 5 That is one functionality -- one accused
04:24:54 6 functionality, and that's why summary judgment for that
04:24:58 7 particular functionality should be denied.

04:25:00 8 Second, we talk about Quick Share, Link Share,
04:25:06 9 this is --

04:25:06 10 THE COURT: I'm confused about the difference. So
04:25:08 11 is Link Share --

04:25:09 12 MR. SIDDIQUI: Sorry.

04:25:10 13 THE COURT: -- Link Share -- is Quick Share/Link
04:25:16 14 Share in the cloud?

04:25:16 15 MR. SIDDIQUI: Yes. So Quick Share has -- Quick
04:25:19 16 Share has two flavors.

04:25:20 17 THE COURT: Okay.

04:25:20 18 MR. SIDDIQUI: And Mr. McNair actually addressed
04:25:22 19 them together.

04:25:22 20 One -- one flavor Quick Share is Quick Share via
04:25:30 21 Nearby.

04:25:30 22 THE COURT: Okay.

04:25:30 23 MR. SIDDIQUI: Via Nearby.

04:25:30 24 THE COURT: Okay.

04:25:33 25 MR. SIDDIQUI: Okay? What that does is the only

04:25:35 1 option Quick Share can use is the WiFi circuit.

04:25:37 2 THE COURT: So is -- so you're saying use WiFi
04:25:40 3 only applies to -- to Nearby Share?

04:25:44 4 MR. SIDDIQUI: No, what I'm -- what I'm saying is
04:25:48 5 for Nearby Share, the only option available, no matter what
04:25:51 6 the default, is always WiFi.

04:25:53 7 THE COURT: Okay.

04:25:53 8 MR. SIDDIQUI: You can't change it. No one can
04:25:56 9 change it.

04:25:57 10 So when the user indicates to use Quick Share, the
04:26:00 11 connection assigned will always be to WiFi.

04:26:03 12 THE COURT: Uh-huh.

04:26:03 13 MR. SIDDIQUI: So when the user indicates to
04:26:06 14 select Quick Share, the user is -- it is Mr. McNair's
04:26:09 15 opinion the user is indicating to use WiFi. And then
04:26:13 16 the -- and then the radio transfer goes over Quick Share --
04:26:17 17 over WiFi to the other device.

04:26:19 18 So that's Quick Share/Nearby Share.

04:26:24 19 That's one subset of issue and subset of
04:26:27 20 infringement, so that's -- that should be denied.

04:26:29 21 The second one, Your Honor, is Quick Share over
04:26:32 22 cloud. And this is what they call it, Link Share. Our
04:26:36 23 expert has used the word "over cloud" because that's what
04:26:40 24 happens where the link goes.

04:26:41 25 That one, Your Honor, is when the user can provide

04:26:45 1 an additional indication. So there, before selecting Quick
04:26:52 2 Share, the user can also provide use WiFi only. They can
04:26:57 3 click and say for this particular thing, use WiFi only.

04:27:01 4 So as you see on the screen, the user can provide
04:27:04 5 one or more indications saying for Quick Share over cloud,
04:27:09 6 please only use WiFi. You select use WiFi only, and then
04:27:13 7 you come to the same screen as shown earlier, and you
04:27:17 8 select Quick Share to send a video.

04:27:20 9 So you have another case of infringement. As
04:27:25 10 testified by Mr. McNair, you can use WiFi only. By
04:27:29 11 selecting it, you provide an indication.

04:27:32 12 THE COURT: So would you only do this for Link
04:27:35 13 Share?

04:27:35 14 MR. SIDDIQUI: Correct.

04:27:35 15 THE COURT: Not Nearby Share?

04:27:38 16 MR. SIDDIQUI: Correct, not Nearby Share.

04:27:39 17 And then when you do that, that's when you have
04:27:43 18 another -- another option, another flavor, another
04:27:47 19 infringement under Mr. McNair's opinion where the video --
04:27:51 20 you are indicating to select a specific circuit, you select
04:27:56 21 Quick Share, and the file goes over video, so it's
04:27:59 22 transmitted.

04:27:59 23 So that's why summary judgment is -- should be
04:28:01 24 denied for this particular read, as well.

04:28:04 25 They argue that Mr. McNair doesn't -- their main

04:28:09 1 argument or rebuttal point here was that Mr. McNair didn't
04:28:12 2 provide an opinion on it, and that's why I started this
04:28:14 3 presentation with he did. He just referred to it as
04:28:17 4 transmitting over cloud.

04:28:18 5 Now, Your Honor, is the third infringement, and
04:28:26 6 this is Bluetooth File Share. So this is -- now we're back
04:28:31 7 to the -- we're back to the original screen where we had
04:28:34 8 Quick Share and Bluetooth. We had two options, correct?
04:28:36 9 And so now -- now the user is going to indicate, hey, I'm
04:28:41 10 going to use Bluetooth. I want to use Bluetooth to
04:28:45 11 transfer the files.

04:28:46 12 So you specifically use Bluetooth, and
04:28:52 13 Mr. McNair -- this is very important because Mr. McNair
04:28:54 14 has -- has provided a lot of tests between the S22 and
04:29:01 15 Galaxy Book S22 video going to S23, S22 video going to
04:29:08 16 Motorola phone. None of these testings were rebutted.

04:29:12 17 Dr. Buehrer said that he -- he did not test S22
04:29:17 18 with S23. He did not test S22 with Motorola. He did not
04:29:22 19 test S22 with Samsung laptop.

04:29:24 20 So that alone should be ground for -- for summary
04:29:31 21 judgment denial because Dr. -- Mr. McNair has submitted all
04:29:35 22 these tests showing how Bluetooth File Share is used to
04:29:40 23 indicate Bluetooth to transfer the video file.

04:29:42 24 Second, we have the user guide of Samsung that
04:29:51 25 says in order for you, user, to use Bluetooth File Share,

04:29:56 1 if you want to transfer the video over Bluetooth, you can
04:30:03 2 tap Bluetooth and select a device to transfer the image to.

04:30:07 3 So the user guide itself is saying in order for
04:30:12 4 you to select Bluetooth File Share, you, the user, can
04:30:18 5 indicate to select Bluetooth and transfer the file. That
04:30:21 6 meets Your Honor's claim construction.

04:30:22 7 The same thing we see in multiple -- multiple
04:30:26 8 Samsung documents where you have Bluetooth answer page. It
04:30:31 9 says using your phone, navigate to the file you'd like to
04:30:36 10 share, select it, then tap share, then tap Bluetooth, and
04:30:40 11 then that's how the user indication claim element is met.

04:30:43 12 So relying on all of this evidence, Mr. McNair
04:30:49 13 concluded that all of this supports his opinion that the
04:30:53 14 claim element is met.

04:30:54 15 Moreover, Samsung's own expert, Dr. Buehrer,
04:31:00 16 says -- admits -- he says: In Bluetooth File Share, when
04:31:06 17 you -- when the user selects Bluetooth File Share, a
04:31:09 18 connection is established -- established, and then when
04:31:13 19 source code is executed, the existing Bluetooth connection
04:31:17 20 for transmitting the video file is used, and the video file
04:31:22 21 will be transmitted over the existing Bluetooth connection.

04:31:24 22 So, again, what we have here is the user has
04:31:27 23 selected Bluetooth. At that time the connection is
04:31:31 24 assigned, and the video file is transferred.

04:31:34 25 Your Honor, they cite to a dog -- a case called

04:31:40 1 DoggyPhone versus Tomofun, where they say that the claim
04:31:45 2 element is not met. this case shows that indicating to use
04:31:50 3 Bluetooth does not mean that the file is being transferred
04:31:54 4 because there's some intervening events or some -- the
04:31:58 5 source code is executed and things like that, and you have
04:32:00 6 to receive a receive code from the receiving device. But
04:32:03 7 DoggyPhone specifically required or recited in its claim
04:32:09 8 begins transmission, that you need to have the act of
04:32:12 9 beginning a process.

04:32:12 10 Here Claim Element 1[j], all it says is when you
04:32:17 11 provide an indication from a user, the controller assigns a
04:32:22 12 connection for transmitting. And that's exactly what
04:32:24 13 happens here. For Bluetooth File Share, Quick Share,
04:32:29 14 you -- when you indicate to use Bluetooth File Share, a
04:32:33 15 connection is assigned for Bluetooth. When you indicate to
04:32:36 16 use Quick Share, a connection is assigned or WiFi to
04:32:40 17 share -- to transmit the two -- for transmitting.

04:32:42 18 And the case that's really sort of -- you know,
04:32:52 19 rebuts their argument about causal relationship is the
04:32:55 20 Optis Wireless versus Huawei Device case from the Eastern
04:32:59 21 District of Texas. There, Huawei was arguing something
04:33:01 22 similar for a claim limitation called "in response to."
04:33:05 23 And there, the Court explained that "in response to" or
04:33:11 24 when, for example, here just means that there's a causal
04:33:13 25 relationship. It does not require a negative limitation

04:33:18 1 that it -- not in response to the occurrence of any
04:33:23 2 intermediate action or determination.

04:33:24 3 So what we have here -- over there was the claim
04:33:28 4 required "in response to" the first -- when you dial --
04:33:31 5 when you dial a phone call -- a second phone call dialing a
04:33:34 6 phone number, the question was, there are intervening
04:33:38 7 events, like whether the phone lines are connected, whether
04:33:41 8 the phone company switch is working, whether the first
04:33:44 9 phone is powered on. And the idea that they were saying
04:33:48 10 is, well, under Huawei's construction, it would exclude all
04:33:51 11 of that.

04:33:52 12 And so that's what they're arguing now that
04:33:54 13 there's -- just having a causal relationship doesn't mean
04:33:56 14 the Court's construction of "when or in response to," just
04:33:59 15 because there may be intervening events.

04:34:02 16 But there's -- but the whole interaction is you
04:34:05 17 select Bluetooth File Share, and the file is transferred
04:34:09 18 over Bluetooth. The connection is assigned in response to
04:34:12 19 that user indication.

04:34:13 20 So, Your Honor, with that, I would submit that all
04:34:17 21 three functionalities infringe. There's clear factual
04:34:22 22 disputes. And Mr. McNair should be allowed to present all
04:34:25 23 the evidence, which is user manuals, engineering testimony,
04:34:29 24 testing to show that summary judgment is not warranted.

04:34:32 25 THE COURT: Thank you, Mr. Siddiqui.

04:34:34 1 Mr. Erickson, you've got a couple minutes left.

04:34:37 2 MR. ERICKSON: Thank you, Your Honor.

04:34:59 3 Briefly on Quick Share/Link Share, they are
04:35:03 4 separate applications, as has been discussed. When
04:35:08 5 selecting the initial Quick Share button, you don't know
04:35:12 6 which one you're going to select. Are you going to select
04:35:12 7 Nearby Share, or are you going to share as link.

04:35:14 8 So that initial Quick Share button obviously is
04:35:17 9 not determinative of anything, as Mr. McNair testified at
04:35:20 10 his deposition.

04:35:21 11 Moving very briefly to Bluetooth, Mr. McNair did
04:35:27 12 not analyze what happened after his two indications. So
04:35:30 13 you select Bluetooth. You select the target phone. He
04:35:33 14 acknowledged sometimes you'll use WiFi, sometimes you'll
04:35:36 15 use Bluetooth. He didn't look into why. He just stopped.
04:35:40 16 He said: Well, sometimes you use Bluetooth, and that's
04:35:42 17 enough.

04:35:43 18 So he didn't actually parse to look at the code to
04:35:45 19 figure out when the exact assignment occurs. In his expert
04:35:50 20 report, he says: Even if there are additional steps,
04:35:53 21 you're capable of at least using Bluetooth.

04:35:55 22 Dr. Buehrer actually looked at the code, and he
04:35:58 23 found that when the -- they wait to figure out what it will
04:36:03 24 assign for the purpose of transmitting video. It's not
04:36:07 25 just any assignment, Your Honor. It uses the Bluetooth

04:36:09 1 radio first to find nearby devices, and then to send the
04:36:12 2 control message, which is the invitation. And then the
04:36:15 3 receiver, if the receiver accepts, they'll send it back --
04:36:19 4 the accept message back by Bluetooth.

04:36:22 5 What the phone will assign for the purpose of
04:36:25 6 transmitting the video, the claimed purpose, Your Honor,
04:36:30 7 what the phone will assign, which radio it will assign,
04:36:31 8 WiFi or Bluetooth, depends on what's in that accept
04:36:34 9 message. So it doesn't -- it hasn't determined which radio
04:36:37 10 to use until it gets that accept message, and it could be
04:36:37 11 WiFi or Bluetooth.

04:36:38 12 The claim itself -- DoggyPhone is right on point.
04:36:43 13 The claim here requires "when." It's the assignment. The
04:36:47 14 assignment must happen "when" the user indication is
04:36:52 15 received. That doesn't happen here. Just like in
04:36:55 16 DoggyPhone, it talks about beginning a transmission. Here
04:36:58 17 we have to have an assignment when and in response to the
04:37:02 18 indication. That indication -- the identified indications
04:37:05 19 are way too far upstream. What's relevant is the accept
04:37:09 20 message. The accept message says which radio to assign for
04:37:12 21 the purpose of transmitting video, which is the claim
04:37:16 22 requirement.

04:37:16 23 Finally, Your Honor, Sierra Wireless, a decision
04:37:21 24 out of the Federal Circuit, it issued in -- March 10th, is
04:37:25 25 right on point, as well. There, you had to stop a timer

04:37:29 1 when a data block was received. And in the prior art,
04:37:32 2 there was a second step. There was a data block was
04:37:35 3 received, and then it was reordered, and then the timer was
04:37:38 4 stopped.

04:37:38 5 The Federal Circuit actually reversed the Patent
04:37:42 6 Office and said that prior art does not practice the "when"
04:37:44 7 limitation because there was an intervening step.
04:37:47 8 Similar -- exactly -- well, the same as this claim. It
04:37:49 9 says: When the indication received, the radio must be
04:37:52 10 assigned. That doesn't happen here. It's assigned when
04:37:55 11 the accept message is received.

04:37:56 12 Thank you, Your Honor.

04:37:57 13 THE COURT: Okay. Thank you.

04:37:58 14 Anything further?

04:37:59 15 MR. SIDDIQUI: Just 30 seconds, Your Honor.

04:38:04 16 They cannot dispute for Quick Share or Bluetooth
04:38:11 17 Share. But for the user indicating to use Bluetooth File
04:38:15 18 Share, the connection to Bluetooth is not assigned. But
04:38:19 19 for the user indicating to select Quick Share, the
04:38:22 20 connection to the WiFi is not assigned.

04:38:24 21 And so Mr. McNair should be able to express those
04:38:27 22 opinions using the evidence to the jury, and these are
04:38:31 23 factual disputes that need to be resolved.

04:38:32 24 THE COURT: All right.

04:38:33 25 MR. SIDDIQUI: Thank you, Your Honor.

04:38:33 1 THE COURT: Very good.

04:38:34 2 Okay. The last motion is the 101 motion, and I
04:38:40 3 don't know who was set to argue that. You all are out of
04:38:43 4 time. But I'll give you three or four minutes to do an
04:38:47 5 overview, if you want to do that. I would like a copy of
04:38:50 6 your slides if you -- if you have slides on the 101 motion.

04:38:54 7 MR. FOWLER: We do, Your Honor. This is Mark
04:39:00 8 Fowler.

04:39:00 9 Your Honor, thank you for indulging us.

04:39:18 10 Your Honor, with the limited time I have, I'd like
04:39:20 11 to just focus on two things. There's six slides here,
04:39:27 12 right? There's Alice Step 1, Alice Step 2. We'll defer on
04:39:33 13 the papers to Alice Step 2.

04:39:35 14 I would like to defer on the papers to the '161
04:39:35 15 patent.

04:39:35 16 There are three patents, the '815 patent, the
04:39:44 17 '757, and the '161.

04:39:44 18 So if I could -- if you'd give me just a few
04:39:45 19 minutes to address Alice Step 1 as to two of the patents.
04:39:46 20 I'll try to do this as quickly as possible. Skip through
04:39:51 21 most of the slides.

04:39:52 22 '815 patent. The short version here -- the very
04:39:58 23 short version here is the Federal Circuit has spoken four
04:40:00 24 times in 2024, four times, these two cases on Slide 7 and
04:40:04 25 the two cases on Slide 8. And what these cases -- two of

Maxell, Ltd.

EX2037

04:40:08 1 which have to do with essentially playlists, just like this
04:40:13 2 case. The '815 patent is playlists. And what they stand
04:40:16 3 for is the proposition, as is stated here in the Mobile
04:40:22 4 Acuity slide on Page 8, is as we have now frequently held,
04:40:28 5 claims reciting generalized steps of collecting, analyzing,
04:40:28 6 presenting information using nothing other than
04:40:30 7 conventional operations of generic computer components are
04:40:34 8 directed to abstract ideas. That's the '815 patent is
04:40:38 9 collecting and managing information using traditional
04:40:44 10 components.

04:40:45 11 So on Slide 9 -- this is the one I'd like to focus
04:40:49 12 on, Your Honor -- Slide 9 is the abstract idea is managing
04:40:54 13 and displaying stored video playlist information. That's
04:40:58 14 in the upper left.

04:40:59 15 On the right, Your Honor has already partially
04:41:02 16 addressed this issue. In the claim construction order, you
04:41:04 17 said -- the Court said: The patent teaches a method of
04:41:07 18 allowing the user to manipulate the display sequence on its
04:41:10 19 device and select and manage arbitrary playlists. That is
04:41:16 20 almost like an exemplary statement of what an arbitrary --
04:41:18 21 or rather an abstract idea is under those four 2024
04:41:23 22 decisions. If you have data, you're just organizing it,
04:41:28 23 including two cases that deal with playlists, it's right on
04:41:28 24 point.

04:41:29 25 The abstract -- I won't read it because we're

04:41:32 1 short on time, but it basically says the same thing. And
04:41:34 2 then there was an IPR -- actually two IPRs being filed on
04:41:38 3 this -- in this case on this patent. And Maxell itself,
04:41:40 4 look how it characterized this. Hierarchical management
04:41:43 5 interface with different areas and classifications.

04:41:46 6 The TLI case, which I'll leave it to you to read
04:41:49 7 the parenthetical, but it's basically saying if you take
04:41:52 8 digital images, which is this case, the patent is video,
04:41:55 9 and you organize it and you attach associations with it,
04:41:59 10 classification data, then it's a -- it's an abstract idea.
04:42:03 11 That's the case here.

04:42:03 12 Very quickly on Slide 10, Data Engine is their big
04:42:09 13 case. As you know under Step 1, what the Federal Circuit
04:42:12 14 often does is to say let's find the most analogous case.
04:42:17 15 This is their case.

04:42:18 16 And what they do for Claim 12 in Data -- Data
04:42:22 17 Engine is that had to do with -- that had to do with
04:42:28 18 spreadsheets. And the Federal Circuit said: Well, this
04:42:31 19 one tab is very unique. The design of the tab itself is
04:42:36 20 very unique.

04:42:36 21 They rely on that. But what they ignore is the
04:42:40 22 Federal Circuit found that Claim 1 was abstract because it
04:42:42 23 used only generic identifiers.

04:42:44 24 But look what we have here on Point 2 on Slide 10.
04:42:48 25 The things that are recited here are areas, characters,

04:42:51 1 thumbnails, and groups without requiring any particular
04:42:55 2 format. So their best case supports finding this to be
04:42:58 3 abstract.

04:42:58 4 I don't have the time, so I won't go through this.

04:43:02 5 But on Slide 12, if the Court wants to look at it,
04:43:05 6 in their brief, they give some excuses as to why this is
04:43:08 7 not an abstract idea. I go through each one of those on
04:43:13 8 this slide and explain why the Federal Circuit says those
04:43:15 9 are not valid reasons to take it out of abstract.

04:43:18 10 I don't have time to deal with most of this.

04:43:22 11 Your Honor, can I briefly do the same thing for
04:43:24 12 the '757 patent, or have I worn out my welcome?

04:43:31 13 THE COURT: Briefly. Briefly.

04:43:32 14 MR. FOWLER: Okay. Let's do the '757 patent, so
04:43:34 15 that's Slide 16.

04:43:35 16 So here what we have is we have the two camera
04:43:38 17 device. This is the front and back camera patent. And
04:43:41 18 nobody disputes that cameras were long known or, like,
04:43:45 19 phones were well known to have two cameras. Nobody
04:43:48 20 disputes that you could trigger camera pictures by either
04:43:51 21 pressing on them with a button or using voice activation or
04:43:55 22 that you could delay voice activation in order to allow
04:44:00 23 somebody to get set, for example.

04:44:03 24 The idea that -- allegedly novel idea behind this
04:44:06 25 patent is that you're going to have a longer delay period

04:44:10 1 for a voice-activated photo than for a touch-activated
04:44:14 2 photo. And the whole idea behind that is somebody saying
04:44:17 3 take a picture, and then while they're saying that, they
04:44:20 4 don't want their mouth moving, right? So is that an
04:44:23 5 abstract idea? You bet.

04:44:24 6 The most analogous case is Yu. The Yu case is on
04:44:28 7 Slide 17. We addressed this in our briefs, so I won't
04:44:31 8 repeat that.

04:44:32 9 But the main thing to take away from Yu on
04:44:35 10 Slide 18 is that Claim 1 here in this case recites an
04:44:41 11 abstract result. The result is that the standby time of
04:44:46 12 the voice-activated camera is longer than the standby time
04:44:50 13 of the touch-activated camera.

04:44:52 14 Okay. And as in Claim 1, and like Yu, the
04:44:55 15 claim -- the claim itself, and you can't go to the spec for
04:44:58 16 Step 1, it has to be in the claim. We cite a couple of
04:45:01 17 cases for that earlier in the deck. Claim 1 doesn't tell
04:45:04 18 you how to do that. It's just a result. And the cases are
04:45:09 19 very clear that if you're just reciting a result that's an
04:45:13 20 abstract notion, then it's an abstract idea.

04:45:16 21 Now, again, they cite a case which actually ends
04:45:23 22 up proving our point, and this is Slide 19. The TecSec
04:45:28 23 case in 2020, they rely on that for -- in support of their
04:45:31 24 specific class of device argument. And just to cut this
04:45:34 25 short, they say: Well, this isn't a specific environment

04:45:38 1 dealing with a specific problem.

04:45:40 2 And TecSec says, well, okay, if you've got -- in
04:45:43 3 that case it was unique to computer networks, and is it
04:45:49 4 claiming an actual functionality or just a result?

04:45:52 5 So, you know, is it in a specific context and is
04:45:56 6 it -- that's computer. Is it specific to computers, and
04:46:00 7 does it actually tell you how to do it, or is it only a
04:46:03 8 result?

04:46:03 9 Well, what do we have here, Your Honor? Here, the
04:46:08 10 problem is that people are moving their mouths while you're
04:46:12 11 taking a selfie, for example, or a group photo. But
04:46:16 12 anybody in this courtroom who's ever taken a group photo of
04:46:20 13 their family or friends or co-workers or whatever, knows
04:46:22 14 that if you just take the picture without any warning, if
04:46:24 15 you don't say 1, 2, 3, or get ready, somebody in that photo
04:46:29 16 might be moving their head or moving their mouth. So this
04:46:33 17 problem of somebody moving their mouth before a photo is
04:46:36 18 taken goes all the way back to the beginning of
04:46:39 19 photography.

04:46:39 20 So that is not -- that is not something new.
04:46:41 21 That's the kind of abstract idea that the Federal Circuit
04:46:43 22 says all of the time this is not something unique to
04:46:47 23 computers.

04:46:47 24 When I was a young guy and I had my 12 pictures
04:46:51 25 and my Instamatics going around, you know, to Yosemite with

04:46:55 1 my family, that was the problem then, it's a problem now.

04:47:00 2 They didn't have computers then.

04:47:01 3 Claim 1, dealing with the second part of TecSec,

04:47:04 4 it doesn't tell you how to fix that problem. It only

04:47:07 5 dictates the result that the camera causes a delay. And,

04:47:11 6 again, cutting this short, looking at Slide 20 at the

04:47:13 7 bottom, look at the language. This is the relevant

04:47:16 8 language at Point 3: Control such that a first standby

04:47:21 9 time of a case where the first camera is enabled and the

04:47:24 10 second camera is disabled is longer than a standby time of

04:47:29 11 a case where the second camera is enabled and the first

04:47:32 12 camera is disabled.

04:47:33 13 That tells you the result. Doesn't tell you how

04:47:35 14 to get there. There's no technology. Nothing specific.

04:47:36 15 That's in contrast to the other case they cite, Contour,

04:47:39 16 where the Federal Circuit, as you see in Point 1, found

04:47:43 17 that there was specific technology built into the claim.

04:47:47 18 So, Your Honor, that's probably way too fast. I

04:47:50 19 apologize to the court reporter. But that's my -- that's

04:47:52 20 my Reader's Digest version of Alice Step 1 for these two

04:47:59 21 patents.

04:47:59 22 If you have any questions, I'd be happy to address

04:48:01 23 it.

04:48:02 24 THE COURT: No. Thank you. Thank you very much,

04:48:04 25 Mr. Fowler.

04:48:06 1 MR. SIDDIQUI: Your Honor, starting with the '815
04:48:22 2 patent, so the claims of the '815 patent are not just
04:48:25 3 directed to simply providing and presenting and organizing
04:48:30 4 data. They are tied to specific graphical user interface
04:48:36 5 elements for linking portions of audio/video data
04:48:40 6 together, managing the arbitrary playlist, which was a
04:48:44 7 problem facing conventional devices at that time, as they
04:48:49 8 develop these high efficiency coding techniques in 2024
04:48:54 9 that allowed for more storage, more manipulation of
04:49:03 10 audio/video visual.

04:49:04 11 And why that's important -- and I'm reading from
04:49:05 12 the slide because that's straight from the patent itself,
04:49:07 13 '815, Column 1, 63 to 65, and Column 3, Lines 2 to 4.

04:49:14 14 And why that's important is because this is --
04:49:16 15 we're talking about 2024. We're talking about when we had
04:49:20 16 videos from -- like, coming in DVDs. We didn't have
04:49:25 17 computers managing playlists. We had -- memory was more
04:49:31 18 precious.

04:49:31 19 And so right at that time, there was a problem
04:49:37 20 arising -- specifically as memory was becoming more easily
04:49:41 21 available, as video was being more easily -- highly
04:49:47 22 efficiently being stored, you had to have a specific
04:49:48 23 problem arising in the realm of computer technology where
04:49:51 24 you had to be able to manage video data on your computer in
04:49:55 25 a more presentable, more easier, more quicker, more

04:49:59 1 efficient manner. So that's where the claimed invention of
04:50:05 2 the '815 arises.

04:50:06 3 But before we get to the '815, there's something
04:50:14 4 important to address here -- before we get to the actual
04:50:17 5 merits of Step 1, and our briefing addresses this. Just
04:50:17 6 like Samsung ran out of time today, they ran out of pages
04:50:17 7 to address this in their motions.

04:50:21 8 And so all they addressed was Claim 1 of the '815
04:50:25 9 patent for the 101 motion. What we have to understand is
04:50:29 10 it's their burden to establish representativeness. And so
04:50:34 11 Samsung only substantively addresses Claim 1 in its motion.
04:50:38 12 Claims 8, 21, 24, 27 are not -- are only given a cursory
04:50:44 13 analysis.

04:50:46 14 And in -- and it's -- if Defendants have not met
04:50:49 15 their burden of showing that the argued claims are
04:50:55 16 representative of all claims, simply providing conclusory
04:50:58 17 statements that the argued claims are substantially and
04:51:02 18 substantively similar to the other claims without providing
04:51:05 19 any further reasoning will not suffice. This is CXT versus
04:51:11 20 Acad., case on Slide No. 5, Your Honor.

04:51:15 21 And why that is important is you -- just look at
04:51:17 22 the differences between Claim 1 and Claim 21. Claim 21 has
04:51:21 23 additional limitations requiring and -- management of
04:51:26 24 multiple playlists for multiple user profiles. It in
04:51:26 25 addition addresses a different problem arising in the realm

04:51:35 1 of computer technologies, which is now you have multiple
04:51:38 2 users with multiple playlists, and how do you organize
04:51:42 3 their data, and how do you present different user
04:51:46 4 interfaces and more complex graphical user interface
04:51:50 5 elements?

04:51:51 6 And then in addition, you have the process of
04:51:54 7 decrypting and receiving encrypted content. There was a
04:51:58 8 lot of discussion about decryption and encryption during
04:52:03 9 Markman. And so that's all tied to Claim 21. None of that
04:52:06 10 has been addressed in their 101 motion.

04:52:08 11 And what's more stark is they actually filed
04:52:10 12 separate IPRs. Mr. Fowler just references that there's two
04:52:14 13 IPRs on this patent. They file a separate IPR for the
04:52:19 14 latter claims where they have to use additional prior art.

04:52:25 15 For Claim 21, they use different prior art,
04:52:28 16 Candelore. In addition, they use different combinations.
04:52:32 17 That shows Claim 1 is not representative of claims -- the
04:52:38 18 other claims and specifically not representative of
04:52:42 19 Claim 21.

04:52:42 20 So as a threshold matter, Samsung's expert fails
04:52:46 21 to explain how Claim 1 is representative of these other
04:52:47 22 claims.

04:52:48 23 And they, in their motion, have failed to
04:52:53 24 establish that their analysis or their motion has anything
04:52:56 25 to do with Claims 8, 21, 24, and 27 because they did not

04:53:00 1 address them. They just addressed Claim 1.

04:53:02 2 So for that particular reason, Samsung's motion
04:53:06 3 must be denied, relying on Mobile Acuity versus Blippar,
04:53:17 4 110 F.4th 1280. It's the patent challenger's burden to
04:53:18 5 prove that one claim is representative of the other.

04:53:20 6 And so as is, the motion needs to be denied for
04:53:24 7 those claims.

04:53:24 8 Coming to the merits of Claim 1 -- Claim 1 and 1
04:53:30 9 alone. Because none of their arguments discusses the user
04:53:35 10 profile arguments specifically for the other claims is that
04:53:41 11 in Claim 1, what we are talking about is a solution to a
04:53:47 12 problem specifically arising in the realm of computer
04:53:50 13 networks. And what we've seen courts hold is focused on
04:53:54 14 better user interfacing with computer itself, it improves
04:53:59 15 the capabilities that overcomes input limitations.

04:54:03 16 And we've seen this in specifically the Data
04:54:08 17 Engines case. And here -- I know Mr. Fowler tried to
04:54:11 18 distinguish it, but on the left is the figure from the Data
04:54:16 19 Engine patent. On the right is the figure from the '815
04:54:19 20 patent. And you can see the Data Engine case, the Court
04:54:23 21 held the tab patents are directed to and claim a method of
04:54:30 22 implementing a notebook-tabbed interface, which allows
04:54:35 23 users to easily navigate through these electronic
04:54:41 24 spreadsheets. That was held as not an abstract idea. That
04:54:41 25 was held as patent-eligible.

04:54:42 1 And so what we have for the '815 patent is
04:54:44 2 directly on point. We have the graphical user interface
04:54:48 3 are specifically there for linking portions of AV data
04:54:52 4 together to manage these arbitrary playlists to be able to
04:54:56 5 easily navigate through these different tabs and playlists.

04:55:03 6 And so that's why Data Engine does apply, and
04:55:06 7 that's why Step 1 -- the most appropriate case is Data
04:55:10 8 Engine and not the cases that they cite to. And the reason
04:55:14 9 for that is we have here the claims that require specific
04:55:19 10 structure GUI elements that paired with a prescribed
04:55:25 11 functionality are directly related to the GUI structures.

04:55:30 12 And so where we get that from is you have in the
04:55:33 13 claim language itself specific areas where you have a first
04:55:37 14 area with specific characters, such as tabs, that
04:55:41 15 facilitate the viewing of groups of thumbnail information.
04:55:48 16 And the user may manipulate the inclusion of the thumbnails
04:55:52 17 in these areas independent of video information, including
04:55:55 18 in other groupings. And the specific problem it's solving
04:55:58 19 is in the field of computer technology at that time to
04:56:01 20 improve computers is to -- the difficulty to manage
04:56:05 21 arbitrary playlists.

04:56:08 22 And this -- this is also supported by the Trading
04:56:14 23 Techs case, which also found that the -- that the -- the
04:56:22 24 claims require a specific structured GUI paired with
04:56:26 25 functionality to be -- to be patent eligible because it

04:56:30 1 identified -- it was directed to dynamically displaying
04:56:35 2 market information and trading information in a particular
04:56:39 3 arranged arrangement. That's what Claim 1 does.

04:56:42 4 THE COURT: Can I ask you, how are the '815 patent
04:56:47 5 claims directed to a unique GUI?

04:56:49 6 MR. SIDDIQUI: Because the -- Your Honor, the
04:56:52 7 claim itself talks about different -- different areas
04:56:58 8 directed to specific -- so in a first area, you have a
04:57:04 9 first character associated with a first group of
04:57:07 10 information. They have specific classification. And then
04:57:10 11 you have a second character associated with a second group
04:57:13 12 of information with second classifications. So you have
04:57:17 13 these different areas where you have different
04:57:20 14 classification and different types of groups of
04:57:22 15 information.

04:57:22 16 In addition, you have a group of video information
04:57:26 17 being -- being stored -- a specific type of group of video
04:57:31 18 information being presented and stored in a particular
04:57:33 19 area. And then you have additional second area where you
04:57:37 20 only have thumbnails being displayed, and then the user is
04:57:40 21 allowed to select a specific group of thumbnails. And, in
04:57:45 22 particular, those thumbnails will allow you to choose or
04:57:48 23 delete or remove certain video contents from a particular
04:57:52 24 area while it remains in the other area. So it's a very
04:57:56 25 specific type of GUI that allows very specific

04:57:59 1 functionality, not just preempts anything.

04:58:01 2 And all we have to do is actually look at their
04:58:04 3 own expert, Dr. Bederson. In the claim construction
04:58:08 4 exercise, he specifically -- this is his -- their expert's
04:58:12 5 testimony about the visual elements being described in the
04:58:16 6 '815 patent. And he says -- Dr. Bederson said: These are
04:58:21 7 complex visual elements that require a multitude of bytes
04:58:26 8 to illustrate their shapes, shades, and additional visual
04:58:30 9 characteristics, all without having specific
04:58:32 10 representations in the standard systems.

04:58:34 11 This is their expert, Dr. Bederson, describing the
04:58:39 12 visual elements of the '815 patent. And they're not
04:58:41 13 specific -- they don't have any specific representation in
04:58:43 14 any standard systems, so saying that -- how they're
04:58:47 15 special.

04:58:47 16 In addition, we know there is no preemption.
04:58:52 17 Their expert, Dr. Kia, explained that there's -- that you
04:58:57 18 can modify the existing source code in the gallery
04:59:01 19 application, and that will lead to non-infringing
04:59:04 20 alternatives.

04:59:05 21 So they specifically -- their expert says that
04:59:07 22 there's no -- shows that there is no preemption occurring
04:59:10 23 by this claim. So that also supports that there is no
04:59:14 24 abstract idea.

04:59:16 25 So in conclusion for Step 1, Your Honor, Data

04:59:24 1 Engine Tech and CXT Systems support -- support that Claim 1
04:59:30 2 is directed to -- not directed -- is directed to a patent
04:59:36 3 eligible idea because the common thread is their GUI
04:59:41 4 elements improving user interactions with the device.

04:59:43 5 The cases that they cite, like Broadband,
04:59:47 6 Bluebonnet, AI Visualize, none of them actually cite to a
04:59:52 7 specific user interface element. They cite to a media --
04:59:56 8 media playlist or transmitting two versions of frames
05:00:00 9 for -- for non-GUI displays. So they're distinguishable.

05:00:07 10 And to also answer your question, Your Honor, your
05:00:10 11 question -- if your question is projected to read to
05:00:14 12 Claim 21, which is -- which, like we said, they haven't
05:00:16 13 addressed, that is even more specific because that is
05:00:18 14 specifically tied to presenting data for a plurality of
05:00:23 15 user profiles. So that goes even more specific and
05:00:26 16 narrower and requires data to be decrypted. And so that's
05:00:32 17 even more technically tied to the different problem.

05:00:32 18 So that's Step 1, Your Honor.

05:00:35 19 With respect to Step 2, the key thing to address
05:00:41 20 there is that the -- this -- the parent of this patent, the
05:00:49 21 '783 patent -- I believe it's 9,384,3 -- 783 (sic) patent.
05:00:56 22 It was addressed by the Central District of California,
05:01:00 23 Maxell versus Fandango. And there, the Court said that
05:01:04 24 similar claims are directed to -- are not directed to
05:01:09 25 routine and conventional because they require displaying

Maxell, Ltd.

EX2037

05:01:13 1 specific display areas that either display groups of video
05:01:16 2 information for a particular classification or thumbnails
05:01:20 3 corresponding to particular video information.

05:01:22 4 So that case in Central District of California,
05:01:25 5 that Court already addressed the Step 2 inquiry for the
05:01:30 6 '815 -- for similar claims, so that's most instructive.

05:01:33 7 And Samsung's briefs mainly cite to -- actually
05:01:42 8 only -- one of them cites to the Windows 95 as evidence of
05:01:48 9 routine and conventional, but that Exhibit Y is untethered
05:01:55 10 to the claim language.

05:01:56 11 They cite to patent publications which Berkheimer
05:01:58 12 said: What is conventional goes beyond what was simply
05:02:02 13 known in the prior art.

05:02:03 14 And then they cite to the evidence from Galaxy S10
05:02:05 15 and iPhone 8, but those products came many years later.
05:02:07 16 This patent has a priority date from 2004, and these
05:02:11 17 products came from 2019 and 2017.

05:02:15 18 So what we do have is Maxell's expert, Dr. Singh,
05:02:24 19 addressing the state of the art. And we have unrebutted
05:02:27 20 testimony from him in citing to TiVo Series 2 and
05:02:33 21 RealPlayer. And he explains that at that time the state of
05:02:39 22 the art was defined by these video players, and they were
05:02:39 23 not displaying similar user interface elements.

05:02:41 24 And so what we have there is a factual dispute on
05:02:44 25 Step 2 between the experts.

1 So that's for the '815 patent, Your Honor.

2 Going forward to the '757 patent, I know

3 Mr. Fowler minimized this patent or tried to minimize it to
4 just the idea of adding a delay, but that's not what this
5 Claim 1 is directed to. The Claim 1 is directed to a
6 specific class of devices in 2013 where it's tied to
7 devices with touchscreens, voice detection, and cameras on
8 both sides.

9 Your Honor has had a lot of discussion about
10 cameras and their sides, but essentially, it's not just a
11 problem arising out of any camera technology like they were
12 alluding in their brief or like they talk about the Yu
13 versus Apple case. But it's a specific problem arising in
14 the realm of device that has the specific structure,
15 including voice detection.

16 And so what we have at that -- it's not just about
17 taking a photo and saying hold on, your -- we need to add
18 the delay, but it's about voice detection in addition. And
19 so what we -- what we know in 2013, Siri was around and
20 other voice assistant was around, but none of them had this
21 ability. That's why we don't see any evidence of 102 prior
22 art with that kind of capability. We see obviousness
23 combinations.

24 And so what we have is a specific problem where
25 voice-activated self-image would catch the user at an --

05:04:29 1 would catch an image of a poor quality. And so what we
05:04:32 2 had -- what we have is a particular type of device that has
05:04:37 3 an audio input for interface, touch display, first camera,
05:04:44 4 second camera, recorder, all of these working together to
05:04:45 5 provide a particular solution tailored to that specific
05:04:48 6 type of device. And so you don't just have a standby time.
05:04:52 7 And as we saw, the claims are very specific. They require
05:04:56 8 specific touch operation, specific voice instruction,
05:05:01 9 enabling and disabling of cameras at specific times. It's
05:05:04 10 not just tied to -- it's not just at a high abstract level
05:05:10 11 tied to some generic idea of introducing a delay, but it's
05:05:13 12 tied to providing a specific problem arising in the realm
05:05:16 13 of these specific classes of devices.

05:05:18 14 And the thing that's really important to
05:05:25 15 distinguish from the Yu versus Apple case, which also has a
05:05:29 16 first and second image camera, is that in that decision,
05:05:32 17 the Court said: Yu does not dispute that the idea and
05:05:37 18 practice of using multiple pictures to enhance each other
05:05:42 19 has been known by photographers over a century.

05:05:45 20 So there, the patent holder did not dispute this
05:05:51 21 fact. And so that's why the Court found Step 1.

05:05:53 22 Here, there's a dispute whether this kind of
05:05:56 23 particular problem or solution was known, and that's why
05:06:00 24 this claim -- the Step 1 is not met, and this claim is
05:06:06 25 patent-eligible.

05:06:07 1 The case that's more applicable here is Contour IP
05:06:13 2 Holding versus GoPro. In that case, the patents related to
05:06:17 3 a portable point of view video cameras mounted in a
05:06:22 4 location that did not permit the user to easily see the
05:06:24 5 camera.

05:06:25 6 There, the Court held because the claims are drawn
05:06:28 7 to a specific means or method that improves the relevant
05:06:33 8 imaging technology, that's why the claims were directed to
05:06:39 9 patent-eligible idea. And that's why we submit, Your
05:06:42 10 Honor, that Step 1 -- for Step 1, Contour IP Holding is the
05:06:49 11 most appropriate case because it is directed to the
05:06:53 12 tailored solution of -- for a problem arising in the class
05:06:54 13 of devices that have such camera arrangements and voice
05:06:57 14 recognition.

05:06:58 15 Coming to Step 2 -- with respect to Step 2, there
05:07:05 16 is a factual dispute between the experts. Dr. Wobbrock
05:07:09 17 explains that at the time of the mention, these devices
05:07:17 18 had certain components, but they lacked the inventive
05:07:20 19 concept of configuring the device such that their automatic
05:07:26 20 standby times for different cameras and different
05:07:27 21 conditions.

05:07:28 22 And as we see in what -- in 2016, this is three
05:07:33 23 years after the -- three years after the priority date of
05:07:37 24 the '757 patent, GSMArena, the -- this is what the industry
05:07:37 25 is saying, GSMArena praised a camera Oppo F1 that was

05:07:37 1 released which explained that while voice will capture an
05:07:49 2 image when you say "cheese," this camera has a nice touch
05:07:54 3 that the later option automatically sets the delay to three
05:07:59 4 seconds so you could then change it to any of the other
05:08:01 5 options.

05:08:03 6 So we have industry -- we have praise or we have
05:08:08 7 evidence that GSMarena -- actually that just publishes and
05:08:12 8 reviews a lot of smartphones -- is explaining three years
05:08:15 9 later that this is an inventive feature. So it -- it
05:08:19 10 provides evidence that these things are not routine and
05:08:23 11 conventional.

05:08:24 12 So Step 2 analysis on Alice also fails.

05:08:27 13 Now, with respect to -- since I have time, we used
05:08:30 14 it wisely -- with respect to the '161 patent --

05:08:32 15 THE COURT: You do only have two minutes,
05:08:34 16 Mr. Siddiqui.

05:08:35 17 MR. SIDDIQUI: Okay. Okay. I was actually just
05:08:37 18 going to talk about one case.

05:08:39 19 With '161, Your Honor, the case that's the most
05:08:43 20 suitable is -- for Step 1 is, Your Honor, the Amdocs case.
05:08:52 21 And the Amdocs case specifically explains why Step 1 does
05:08:57 22 not apply to Claim 6 of the '161 patent. And on the left,
05:09:01 23 Your Honor, is the -- Claim 1 of Amdocs, and it's -- it
05:09:07 24 talks about improving network security just like Claim 6 of
05:09:11 25 the '161 patent. It talks about having a computer code

05:09:14 1 receiving from a first network device. That's very similar
05:09:19 2 to collecting peripheral device information from other --
05:09:23 3 another device.

05:09:23 4 We have computer code for correlating the first
05:09:28 5 network accounting record with another accounting record.
05:09:31 6 That's just like creating chronological lists, storing the
05:09:37 7 home network information, and collating that. And then
05:09:39 8 you have the computer code for enhancing the network
05:09:41 9 account. That's just like performing -- enhancing the
05:09:44 10 security of the home network information for judging in
05:09:49 11 accordance with the collation and making sure the security
05:09:51 12 is enhanced.

05:09:52 13 So, Your Honor, the one case that's most relevant
05:09:54 14 for the '161 patent that's directly applicable to the
05:09:59 15 claims is the Amdocs case.

05:10:01 16 Nothing further, Your Honor.

05:10:02 17 THE COURT: All right. Thank you, Mr. Siddiqui.

05:10:04 18 MR. FOWLER: At the risk of being run out of town,
05:10:07 19 one minute?

05:10:08 20 THE COURT: One minute.

05:10:08 21 MR. FOWLER: Thank you, Your Honor.

05:10:09 22 So I want to focus on the '815, Alice Step 1. I
05:10:13 23 was not trying to distinguish Data Engines. I was
05:10:16 24 embracing it. That's their best case. They showed you a
05:10:19 25 figure from that patent. Remember what happened in that

05:10:21 1 patent is the Federal Circuit said Claim 12 was not
05:10:25 2 abstract because it had some very specific design to a tab.

05:10:30 3 But they found Claim 1 was abstract because like
05:10:34 4 the -- like the thumbnails in the areas here which are just
05:10:38 5 completely non-described, they were abstract.

05:10:40 6 So Data Engine supports our view. Counsel said
05:10:44 7 that was their best case.

05:10:45 8 Trading Tech, they cited that case, but they
05:10:48 9 ignore the fact that in Brumfield, which is on our slides
05:10:52 10 at Page -- Slide -- I'm sure it is, it's -- anyway, it's in
05:10:57 11 our slides. Brumfield said on the same family of patents
05:11:01 12 that was cited in TecSec -- or Trading Tech, Trading Tech
05:11:08 13 said not abstract. Brumfield said abstract because the --
05:11:13 14 the device there was more generic.

05:11:15 15 So just like -- it's just like Data Engines. One
05:11:18 16 was more specific, one was more generic. Here we have
05:11:21 17 generic.

05:11:21 18 The last thing I want to say, Your Honor, is on
05:11:23 19 this representative claim issue, Dr. Kia addresses that at
05:11:27 20 Paragraphs 591 through 593 of his report. And I have to
05:11:32 21 say what counsel said underscores why these are
05:11:34 22 representative.

05:11:35 23 When he pointed to Claim 21 and he said that Claim
05:11:38 24 1 is not representative of 21, what did counsel say?
05:11:42 25 Counsel said: Well, that's because Claim 21 had to do with

05:11:45 1 managing playlists. Well, all I have to say to that is see
05:11:50 2 Bluebonnet and see -- yeah, at least Bluebonnet because
05:11:54 3 that case says if you're managing playlists, it's an
05:11:58 4 abstract idea. So what he's pointing to is he's adding
05:12:01 5 another abstract idea and somehow saying that saved the day
05:12:04 6 for that claim.

05:12:04 7 So I'm sorry, I'm probably talking way too fast,
05:12:07 8 but that's it.

05:12:08 9 THE COURT: Thank you, Mr. Fowler.

05:12:09 10 Mr. Siddiqui, anything else?

05:12:11 11 MR. SIDDIQUI: I think everybody's heard enough
05:12:13 12 from me, Your Honor.

05:12:13 13 THE COURT: All right. Good.

05:12:14 14 MR. SIDDIQUI: So thank you so much for your time.
05:12:16 15 Appreciate it.

05:12:16 16 THE COURT: Yeah, thanks a lot.

05:12:17 17 Thanks a lot to all of you.

05:12:19 18 I would ask that you file your slides on the
05:12:22 19 docket, please, on everything that we covered today.

05:12:30 20 I do want to ask -- I already asked primarily
05:12:33 21 Samsung what its -- what it has in mind, and obviously
05:12:39 22 whatever Maxell wishes to say, I want to hear that, as
05:12:42 23 well.

05:12:42 24 There's a reference to proposed findings of fact
05:12:47 25 and conclusions of law in the pretrial order as to

05:12:53 1 prosecution laches and I guess prosecution history
05:12:58 2 estoppel.

05:12:58 3 I know we'll talk about a whole lot of things when
05:13:03 4 we get to the pretrial conference. But just in
05:13:06 5 anticipation of that, what exactly do you have in mind?
05:13:10 6 When would that bench trial be and what would it involve?

05:13:14 7 MR. FOWLER: At your leisure, Your Honor. But
05:13:16 8 some -- and I'm not saying you should have. We just
05:13:20 9 submitted these. But as you'll see, some of the evidence
05:13:21 10 we cite is like the patents or the prosecution history.
05:13:24 11 Those are things that will be in the record.

05:13:26 12 But also we're going to be relying on some of the
05:13:29 13 testimony that's going to be given during the trial. So
05:13:32 14 when Your Honor does need to decide those issues, which
05:13:35 15 can't go to the jury, it will need to be the benefit of
05:13:38 16 that. So it can't be done before.

05:13:41 17 THE COURT: Right.

05:13:41 18 MR. FOWLER: I don't think it can be done during,
05:13:44 19 but it could be done immediately after or at any other time
05:13:48 20 that's available to the Court.

05:13:49 21 THE COURT: Okay.

05:13:49 22 MR. FOWLER: And I envision that could be, like, a
05:13:52 23 hearing. We can call it a bench trial, but it'd be like
05:13:56 24 this.

05:13:56 25 THE COURT: We're talking about a couple hours?

05:14:02 1 MR. FOWLER: Yeah, yeah.

05:14:02 2 THE COURT: Something along those lines.

05:14:02 3 MR. FOWLER: I'm sorry, I should say yes, yes.

05:14:02 4 THE COURT: I know what you mean.

05:14:02 5 All right. Anybody from Maxell want to address

05:14:04 6 that? I mean, I know we're -- this is all incredibly

05:14:08 7 high-level discussion.

05:14:09 8 MR. CULBERTSON: I think we'll learn more during

05:14:12 9 the course of the trial, but I think, yes, it's absolutely

05:14:16 10 something that will be done afterwards. And I would

05:14:19 11 anticipate nobody's going to be in a huge hurry to do it

05:14:22 12 right at the end of a jury trial.

05:14:24 13 THE COURT: I have yet to come across a bench

05:14:26 14 trial where everyone was jumping up and down to do it at

05:14:29 15 the conclusion of a jury trial.

05:14:31 16 MR. CULBERTSON: So I would anticipate some

05:14:33 17 briefing from the parties and then perhaps a hearing as you

05:14:35 18 described.

05:14:35 19 THE COURT: Okay.

05:14:36 20 MR. CULBERTSON: And, Your Honor, we neglected to

05:14:38 21 hand up our last set of slides. May I hand those up?

05:14:43 22 THE COURT: Okay. Good. Yes. And if you would,

05:14:44 23 as I said, file all of those on the docket, too.

05:14:47 24 Okay. Good. Okay. Excellent.

05:14:51 25 All right. Any questions for me? Anything?

05:14:54 1 I appreciate -- excellent presentations today.
05:14:57 2 Very helpful. I appreciate the briefing and the parties'
05:15:01 3 preparation for today.

05:15:04 4 And I apologize, again, for the interruption that
05:15:06 5 we had. Thanks to all of you. Safe travels.

05:15:11 6 COURT SECURITY OFFICER: All rise.

7 (Hearing concluded at 5:15 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
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2025

5/1/2025
Date