

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

MAXELL, LTD.,
Patent Owner

IPR2024-00906 (Patent 11,445,241 B2)
IPR2024-00907 (Patent 10,129,590 C1)¹

Record of Oral Hearing
Held: September 25, 2025

Before KEVIN C. TROCK, JOHN A. HUDALLA, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

¹ Although oral arguments were heard in a single hearing, the cases are not consolidated or joined.

IPR2024-00906 (Patent 11,445,241 B2)
IPR2024-00907 (Patent 10,129,590 C1)

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September 25, 2025, commencing at 1:00 PM Eastern Time, at the
U.S. Patent and Trademark Office Headquarters, 600 Dulany
Street, Alexandria, Virginia.

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

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3 JUDGE HUDALLA: Okay. Good afternoon. We're
4 here for the consolidated hearing in IPR2024-00906 and -00907. I
5 want start first with appearances. Who do we have today from
6 Petitioner?

7 JUDGE TROCK: Sorry. This is Judge Trock. I cannot
8 hear you unless you speak into the microphone and the green light
9 is on.

10 MR. ERICKSON: Thank you, Your Honor. The green
11 light was not on. It is now. Thanks. Brian Erickson with DLA
12 Piper representing the Samsung Petitioners. With me at Counsel
13 table is backup Counsel Roshan Bhattarai also from DLA Piper.
14 And observing today we have Matt Bathon from Samsung and Jim
15 Heintz also from DLA Piper.

16 JUDGE HUDALLA: Welcome to you all. Mr.
17 Erickson, are you going to be presenting today?

18 MR. ERICKSON: Yes, Your Honor.

19 JUDGE HUDALLA: Okay. Great. And who do we
20 have from Patent Owner?

21 MR. SIDDIQUI: Good afternoon, Your Honors. Saqib
22 Siddiqui representing Patent Owner Maxell Limited. With me I
23 have my colleague Sora Ko and Mr. Rob Pluta. I will be
24 presenting today. If there are some procedural questions or

1 something of another nature, then I may have to defer to my
2 colleague Mr. Pluta.

3 JUDGE HUDALLA: Okay. Great. Well, thank you all
4 for attending today. Each side is going to have 90 minutes to
5 argue today. Petitioner is going to go first and may reserve
6 rebuttal time. And Patent Owner goes second and may reserve a
7 brief surrebuttal. I want to remind the parties that this hearing is
8 open to the public I believe there's a public line. So please do not
9 discuss any confidential information while we're online here.
10 Although I don't think there is a protective order in this case, we
11 wouldn't have to worry about that as much.

12 And for the benefit of Judges Trock and Laney who are
13 remote today, if you could just always refer to the slide numbers
14 that you're on, that would be really helpful. It's also helpful to us
15 on the back end when we review the trial transcript. So I think
16 that's all I have to start. So Mr. Erickson, would you like to
17 reserve some rebuttal time?

18 MR. ERICKSON: Yes, Your Honor. I would like to
19 reserve 35 minutes of rebuttal time.

20 JUDGE HUDALLA: Okay. You can begin whenever
21 you're ready, sir.

22 MR. ERICKSON: May it please the Board. The
23 hearing today involves IPRs 2024-906 and -907. Throughout the
24 presentation Petitioner's slide supports today as the -906 and -907
25 IPR. We have a number of issues to cover today as shown by

1 Slide 2, the Table of Contents. I'll start by briefly addressing the
2 issues related to the three publications, the N93, the Bluetooth
3 specification, and the 3GPP specification. The evidence related to
4 the publications of these documents include several internet
5 archive declarations and the Wikipedia history itself. Moving to
6 Slide 6, the N93 was publicly available and accessible on Nokia's
7 website as evidenced by the Declaration of Affidavit of Mr. Frank-
8 White. You'll notice this declaration or affidavit addresses the
9 PDF itself locked in HTML page as Patent Owner incorrectly
10 argues in its papers. Moving forward to Slide 8. We see here the
11 internet archive capture from October 15th, 2007. This is of the
12 Wikipedia page for the N93 product. This is a page maintained by
13 the public. So the public was clearly aware of the existence of this
14 N93 username, and a link was added to the Wikipedia page no
15 later than October 15th, 2007.

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

18 MR. ERICKSON: Yes, Your Honor.

19 JUDGE TROCK: Would you please remind me of what
20 the critical date is in this case?

21 MR. ERICKSON: November 28th, 2007.

22 JUDGE TROCK: Thank you.

23 MR. ERICKSON: Moving forward to Slide 9. That's
24 not the only evidence we have. We also have evidence from
25 Wikipedia itself. So Wikipedia publicly as the public can change

1 it. They maintain a change log like a source code repository so the
2 editors can go in and back out changes. So every change to every
3 Wikipedia page is saved. So you can go on Wikipedia and go to
4 the history of the page and find prior versions. You can see on the
5 12th of October 2007, and the 18th of August 2007, that same
6 URL, that same link was available on the Wikipedia page. Dr.
7 Creusere in his declaration walked through both methods of
8 accessing the N93 user manual both from the archive, internet
9 archive version and the Wikipedia version as shown on Slide 10.

10 JUDGE HUDALLA: Mr. Erickson?

11 MR. ERICKSON: Yes, Your Honor.

12 MR. HUDALLA: Can I ask you about that particular
13 point that we're walking through the ways to get to these
14 references? Was that -- that was done in 2025, right? It wasn't
15 done at the time of these alleged Wikipedia entries back in
16 whatever 2007 or whatever?

17 MR. ERICKSON: That's correct. Dr. Creusere did that
18 in 2025, yes.

19 MR. HUDALLA: So why should we look at that as
20 evidence of public accessibility back at that time?

21 MR. ERICKSON: Each of the pages that have been
22 referenced are pages that have been archived by the internet
23 archive at the relevant time. Declarations and affidavits, I'm sorry,
24 from the internet archive establish the foundation for that evidence.
25 I think that the fact that those links are live and are linked to each

1 other is certainly relevant evidence, and in the absence of any other
2 evidence, certainly carries the burden of proof or preponderance
3 evidence more likely than not that these documents were there and
4 available to be accessed in this manner at the time.

5 MR. HUDALLA: Okay. I'll keep listening. Thank you.

6 MR. ERICKSON: Moving to Slide 11. Again, this is
7 2025, to Your Honor's point. At Patent Owner's expert deposition,
8 he was able to navigate through these archived links and confirmed
9 that the PDF was the actual PDF that was attached to the affidavit
10 in the internet archive. We also explored an additional archive
11 page. You can see on Slide 12 that we went to the archive page
12 dated July 14th, 2011, and username was still available -- it was
13 captured by the archive as of the date of July 14, 2011. So with
14 respect to this user manual, I think, beyond a reasonable doubt
15 perhaps, but certainly more than a preponderance of the evidence
16 that this was publicly available and publicly accessible before the
17 relevant date of November 28th, 2007.

18 JUDGE LANEY: Other than the cross-examination
19 testimony, do you have direct testimony on walking through the
20 steps from your own expert or no?

21 MR. ERICKSON: Yes, Your Honor. That was Dr.
22 Creusere's original declaration and his supplemental declaration
23 that we have on Slide 10, Supplemental Declaration Exhibit 1058.
24 I don't have the cites, but in his original declaration he did visit the
25 internet archive webpage that is supported by the declaration

1 affidavit from the internet archive.

2 JUDGE LANEY: Okay. So you're relying on both that
3 and the cross-examination testimony of Patent Owner's expert?

4 MR. ERICKSON: Yes, Your Honor. All three sources
5 of evidence, I would say. The affidavit and the internet archive
6 itself, that he said it was there and that that link was there, and then
7 our expert and, of course, the cross-examination of Patent Owner's
8 expert also was secured.

9 JUDGE LANEY: So is it correct that the archive not
10 only captures the webpage as it existed then, it captures the
11 underlying material that's linked to that webpage?

12 MR. ERICKSON: Your Honor, it's -- it captures -- I
13 would say it captures whatever -- the evidence is that it captures
14 whatever the affidavit from the internet archive says was captured.
15 So in this instance, Your Honor, the affidavit goes to this URL
16 that's shown on Slide 6 and a PDF at that location. So with respect
17 to the evidence available today, Your Honor, this affidavit for this
18 URL is, I would say, directed to the PDF file. And of course the
19 PDF -- printout of the PDF is attached as an exhibit to that
20 affidavit so --

21 JUDGE LANEY: (CROSSTALK) --

22 MR. ERICKSON: Yes, Your Honor.

23 JUDGE LANEY: I mean this sounds like a yes to the
24 question then. So you're saying that the archive authenticated that
25 this webpage using their system, they recorded this webpage as

1 well -- at that time that they said they recorded it, that's indicated
2 on that document. And that at that time they also recorded the
3 document that was linked by that webpage.

4 MR. ERICKSON: Yes, Your Honor.

5 JUDGE LANEY: Okay.

6 MR. ERICKSON: If there are no more questions about
7 the N93, I'll move on to the Bluetooth specification. Move to
8 Slide 13, the Affidavit from Mr. Frank-White here addresses
9 specifically a zip file and he attaches the contents of that archived
10 zip file to the back of his affidavit. That is the Bluetooth
11 specification.

12 And just for the record, Your Honor, Exhibit 1007 is
13 extremely large, it includes the affidavit, it includes all of these
14 documents behind it. And what we did was we excerpted the
15 relevant document out and duplicated it for -- as a separate exhibit.
16 So Exhibits 1010, 1015, for example, so that we could use those
17 individually. But the original source of that is all Exhibit 1007
18 attached to the affidavit.

19 Here, the affidavit addresses to Your Honor's point the
20 archive all the way down to that zip file level and then he prints
21 out what's in that zip file and attaches it to the affidavit. The
22 subsequent affidavit from Ms. Zeif from the internet archive is
23 related to surrounding pages, Your Honor. And these are HTML
24 pages. And this is in response to Patent Owner's objection it
25 wasn't publicly accessible. You see we have the home page in the

1 upper left and you can navigate through clicking to learn Bluetooth
2 technology, specification documents, and then there's a --

3 JUDGE LANEY: I'm sorry, Counsel. I hate to interrupt
4 you, but you have to identify the slide you're referring to.

5 MR. ERICKSON: Thank you, Your Honor. Slide 16.
6 These are the pages that have been archived and are subject in Ms.
7 Zeif's affidavit. They were all archived on February 24th, 2006.
8 And they walk through the progression of links that a person
9 interested in learning about Bluetooth as indicated by the Bates
10 references where they would go to the Bluetooth website and go to
11 the home page on the upper left and can navigate to find the
12 Bluetooth core specification which is in the lower right image, and
13 that's the Bluetooth specification on the left.

14 JUDGE HUDALLA: Isn't there a difference though
15 between technical accessibility and public accessibility as far as
16 qualifying a reference at prior art?

17 MR. ERICKSON: There is some case law, Your Honor,
18 that for some unusual documents that may be transient or difficult
19 to locate because there's a thesis or something that may have been
20 presented at conference. These documents are -- particularly, this
21 is the Bluetooth specification. This is a Bluetooth website. And
22 these are all affidavits from the internet archive establishing that
23 this is what the Bluetooth website looked like at the time to get to
24 the Bluetooth specification. And have there's, of course, no
25 evidence to contrary. We're talking about preponderance of the

1 evidence, there's no evidence that someone of skill looking for the
2 Bluetooth specification couldn't find Bluetooth specification.

3 JUDGE LANEY: Would this -- the core specification
4 be 2.0 plus EDR that you show on Slide 16?

5 MR. ERICKSON: Yes, Your Honor.

6 JUDGE LANEY: Was that the specification that was
7 accepted or was this part of a working group? Is this part of the
8 process or is this the specification?

9 MR. ERICKSON: This was published, first of all. In
10 this instance, yes, it was a final specification. I believe it was
11 finalized, I believe it's 2004. I can go back to that date. So a
12 couple years before this archive it has be final for a while.

13 JUDGE LANEY: Okay. And you would agree that
14 -- that whether or not the specification is the final versus
15 something that that's iteration may have an impact of whether or
16 not it would be considered publicly accessible. Or is it your
17 position simply, hey, anything that has a hotlink on one of these
18 standard setting bodies' webpages is by definition fair game and
19 publicly accessible?

20 MR. ERICKSON: I don't think there's a bright line rule
21 either way, Your Honor.

22 JUDGE LANEY: Right. We have to look at all the
23 different evidence of what would make it publicly accessible;
24 right? Because indexing isn't necessary. It's an indicator just like
25 -- just because it doesn't have indexing, it may still be publicly

1 accessible.

2 MR. ERICKSON: I agree, Your Honor.

3 JUDGE LANEY: But that it does matter whether or not
4 if something is a final version so that if somebody wants to know
5 is the specification, of course -- especially somebody with an
6 engineering degree and only a year's worth of experience typically
7 they're going to be going to look at the specification that's being
8 adopted or has been adopted and that would be distinguishable
9 between the specification that hasn't necessarily been adopted.

10 MR. ERICKSON: It theoretically could be an issue,
11 Your Honor. But I think -- yes, it theoretically could be an issue.

12 JUDGE LANEY: Okay. It's just --

13 MR. ERICKSON: Yes, Your Honor.

14 JUDGE TROCK: This is Judge Trock. Is there any
15 evidence in this case that the Bluetooth special interest group,
16 which in my understanding, is responsible for making this standard
17 available, treated any interim portions of this standard differently
18 than the final?

19 MR. ERICKSON: No, Your Honor.

20 JUDGE TROCK: Is there any evidence of that here in
21 this case?

22 MR. ERICKSON: No, Your Honor.

23 JUDGE TROCK: All right. So I'm looking at your
24 Exhibit 1014. I believe that's the reference that you're proposing
25 was publicly accessible in this case for Bluetooth radio; is that

1 correct?

2 MR. ERICKSON: Yes, Your Honor.

3 JUDGE TROCK: All right. So on its face, it's got a
4 date of November 4th, 2004. I believe it covers a package version
5 2.0; is that right?

6 MR. ERICKSON: That's correct Your Honor.

7 JUDGE TROCK: All right. So is there any evidence in
8 this case that this was not made publicly available about
9 Bluetooth?

10 MR. ERICKSON: No, Your Honor.

11 JUDGE TROCK: Thank you. Well, is there evidence
12 that it was distributed?

13 MR. ERICKSON: Yes, Your Honor. The internet
14 archive calls the publicly available web and so it only has access to
15 documents that are, in fact, public, at least that they're available.
16 And the evidence that we have shows it certainly would be
17 accessible if someone were looking for it.

18 In other words, Bluetooth is a ubiquitous standard. It's
19 discussed in the base references. It does exist somewhere, right.
20 And so, someone looking for Bluetooth would go to the website.
21 And if they were interested in, you know, rudimentary older
22 versions they could find those. If they were interested in the latest
23 and greatest version, they could find those. And if they wanted to
24 find what's coming next, they could find these.

25 JUDGE LANEY: You said that it was a ubiquitous

1 standard. What evidence do we have that's true as of the time that
2 we're talking about? I mean, I don't dispute that today, but we
3 can't let what we know now infect what we should be looking at
4 then, right. And so what evidence do we have that, in fact, it was
5 as you said ubiquitous back in 2007 that those skilled in the art
6 would know this is where I want to go if I want to learn about
7 Bluetooth.

8 MR. ERICKSON: Well, Your Honor, I would -- I guess
9 the evidence of record would be the references, primary references
10 such as Dua and Tee any file history. The Tee reference has
11 served as the basis for the rejection in the '590 reexamination. It
12 said you could use Bluetooth from a Bluetooth video streaming as
13 basis for the rejection. It was not contested by Patent Owner.
14 Dua, N93, I think, Your Honor, the data points that the Board has
15 that all -- a number of references of record in this proceeding
16 simply refer to Bluetooth, and the way they refer to it would
17 indicate a person of ordinary skill in the art would understand what
18 Bluetooth is.

19 JUDGE LANEY: Okay.

20 JUDGE TROCK: Counsel, this is Judge Trock again.
21 So your Exhibit 1014 bears this date of November 2004. This is
22 three years prior to the critical date, is it not?

23 MR. ERICKSON: Yes, Your Honor.

24 JUDGE TROCK: All right. Thank you. Is it fair to say,
25 Counsel, that Bluetooth was a well-known standard back in

1 November of 2007?

2 MR. ERICKSON: Yes, Your Honor.

3 JUDGE TROCK: Is it also fair to say that any device
4 back in 2007 that wanted to be compliant with Bluetooth would
5 need to have some kind of access to the what the specifications or
6 the standards are to make sure its device would work?

7 MR. ERICKSON: Yes, Your Honor.

8 JUDGE TROCK: And is it fair to say that someone with
9 ordinary skill in the art back in 2007 who was interested in getting
10 a hold of that standard would -- well, maybe I should ask the
11 question this way. The Bluetooth special interest group, that's a
12 standard-setting organization, is it not?

13 MR. ERICKSON: Yes, Your Honor.

14 JUDGE TROCK: Is it fair to say it's a universal
15 standard-setting organization?

16 MR. ERICKSON: I think that's fair, Your Honor.

17 JUDGE TROCK: Is my understanding correct that
18 somebody who wanted to develop a Bluetooth-compliant device in
19 2007 would likely need to know what those specifications are in
20 order for its device to work properly with Bluetooth?

21 MR. ERICKSON: Yes, Your Honor.

22 JUDGE TROCK: Thank you.

23 JUDGE HUDALLA: Can I ask just on a quick follow-
24 up on that, Counsel? We keep talking about how a person of
25 ordinary skill in the art would look at this stuff. Is your expert

1 saying that in the declaration or is there some other testimony
2 saying that in the record? Because I think we earlier talked about a
3 series of step you might take through internet archive pages to find
4 something. But I think that's almost a different issue than, hey, a
5 person of ordinary skill in the art at that time would have known to
6 go to the Bluetooth website to look for these things.

7 MR. ERICKSON: Your Honor, the testimony from
8 Petitioner's expert, particularly for Grounds 2 and 5 with the way
9 the grounds are laid out is that Petitioner's expert and Petitioner's
10 position is that in the independent grounds when the base reference
11 discloses Bluetooth, one of ordinary skill would know that that's in
12 the, for example, unlicensed bands and that it uses a different
13 modulation scheme than the second radio, a GFSK modulation
14 scheme. That's our initial position. And Petitioner's expert is
15 saying, well, if you didn't know what that was and the base
16 reference says use Bluetooth you would go look for -- you would
17 look it up in the Bluetooth specification. And so that's for Grounds
18 2 and 5 in the alternative.

19 JUDGE HUDALLA: So you're basing it on Dua then, I
20 guess. Is that what it is?

21 MR. ERICKSON: On Dua and N93 that both say you
22 have a Bluetooth radio.

23 JUDGE HUDALLA: Okay.

24 MR. ERICKSON: That's not enough on its own to
25 establish the compelling claim limitations and here it's just broadly

1 claimed as a transmission scheme including a set of frequencies
2 and a modulation scheme. That's not claiming specific things.
3 Yes, I think the base reference fairly discloses that. A person of
4 ordinary skill should know what Bluetooth is at this point in time.
5 But if they didn't know they would go look it up.

6 JUDGE HUDALLA: Okay. Thank you.

7 MR. ERICKSON: Moving on to the third document that
8 3GPP spec. Again, the affidavit from the internet archive. This
9 was archived on a publicly available 3GPP website at the link
10 shown and highlighted on Slide 20. Again, it's to the zip file. Mr.
11 Frank-White attached the contents of that zip file to his affidavit.
12 The Patent Owner at times in their papers said, well, there's
13 something different about the version attached to the affidavit
14 versus the version that we're using in Exhibit 1015. That's not the
15 case as confirmed by Patent Owner's expert. That zip file includes
16 two versions. It includes a redline version and a clean version. So
17 we excerpted the clean version out of the affidavit and used that as
18 Exhibit 1015. The Patent Owner's expert confirmed at his
19 deposition that that was an accurate copy of that excerpt. So
20 there's no difference here. Exhibit 1015 part of that zip file,
21 specifically the clean version of that standard.

22 Moving to Slide 22 using the affidavit of Ms. Zeif, we're
23 showing that there are two different ways that a person of ordinary
24 skill in the art interested in 3GPP standards would find the 3GPP
25 specification. You go -- as shown here on Slide 22, you initially

1 start at the 3GPP homepage. There are two links shown in the
2 upper right. There's a specification file server area way to get
3 there, and then there's a second way that we'll go through on the
4 next slide. You click on that first link, you get a list of standards.
5 You go down to the bottom if you're interested in what's the latest
6 and greatest. You can click on Latest Drafts, and it brings you to
7 the page on the lower right where the zip file is located that's the
8 subject of the affidavit. The second way is you don't know the
9 section numbers already. Click on Specifications. You click "go
10 here," and then you have what's in the lower left, a table. And you
11 can see under the "3G" column -- under the "3G" columns you go
12 down to the bottom it says, "Evolved UTRA Aspects." You click
13 on that, and you are led to the table that's in the lower right and
14 that's gives you a nice index, if you will, with the titles of these
15 sections. So if you were interested in the physical layer you can
16 look at the five. If you're interested in the mac layer, you could
17 look at those sections. And if you click on that, you will go to
18 what's on Slide 24 which is the list of the all of the publicly
19 available drafts of this 3GPP standard. Dr. Creusere went through
20 and navigated both ways to show that it can be accessible with
21 using those archived links. Patent Owner's expert at his deposition
22 also went through both ways and confirmed that you could get to
23 the 3GPP using those publicly archived links.

24 JUDGE LANEY: Is there any evidence about the 3GPP
25 body and how well known it would have been to a person of skill,

1 i.e., an engineer with one year of experience? Is this -- I mean,
2 Bluetooth I can say I know much more about. I never heard of this
3 particular organizations in the record or just how ubiquitous of an
4 organization standard-setting body this was in 2007. Is this the
5 only standard? Who on the members of it?

6 MR. ERICKSON: I think that evidence would be
7 implicit during direct, Your Honor. Dua explicitly teaches to
8 implement all of the 3GPP specifications. It's an explicit direction
9 to a person of ordinary skill in the art. So if they didn't
10 immediately know who that was, they would look it up. But I
11 think implicitly, Your Honor, the standards that we're talking about
12 are global cellular phone standards. And their entire mission in
13 life is to make sure the hundreds and hundreds of millions or
14 billions of cellular phones can actually talk to the global networks.
15 And so, I think -- I don't think -- to answer Your Honor's question
16 directly, I don't think it's an explicit statement exactly like that in
17 the record. I think you can infer from all the evidence we have and
18 the lack of any evidence from Patent Owner that it would be
19 impossible for a person of ordinary skill not to know what 3GPP
20 is. That apposition is not in the record at all. I think the fact,
21 again, that all of these references in the intrinsic record like Tee,
22 that Dua, they talk about all the standards. And they use the
23 proper name or they use these standards style classification
24 because they are writing to the audience that should know what
25 these standards are, who these standards bodies are.

1 JUDGE LANEY: Okay. Can we go to your Slide 22
2 And you see where it says at the bottom right where you have, "5
3 December 2006, 09:35," et cetera?

4 MR. ERICKSON: Yes, Your Honor.

5 JUDGE LANEY: How would someone know that's in
6 that zip file? I mean, I know you keep saying broadly. I'm saying
7 specifically. If I'm looking at all these different entries with hot
8 links, how would I know what is specifically in each one of these
9 entries?

10 MR. ERICKSON: Well, the indexing, if you will, Your
11 Honor that's used here is, these are sections. All of these standards
12 are broken up by section. As we saw on Slide 23 where they give
13 you the titles of section, you know, they break the -- kind of like a
14 software stack, they break the standard up into a physical layer a
15 mac layer, all these different aspects of the standard, and they have
16 this numbering scheme. So this is 36.211 and 211 as you see on
17 Slide 23 it's the physical channels and modulations. So if you're
18 interested in physical channels and modulations, you would know
19 that that's what's in there. And, of course, you wouldn't know the
20 contents until you read it. But the titles of the book there. If you
21 want to know what 3GPP is talking about or physical channels and
22 modulation schemes, this is the section that you would be most
23 interested in. If you go inside --

24 JUDGE LANEY: No. Just to be clear, I wouldn't have
25 a clue of what's actually in this section. You're just saying this

1 indicates that it's been grouped into that particular group. I mean,
2 it doesn't tell you anything about what substantively would be
3 disclosed in there beyond just the fact that it's part of the 211.

4 MR. ERICKSON: Well, I think there's more than that,
5 Your Honor. I think -- what I'm trying to describe is that this title
6 is substantive, right. It does tell you that for the -- this 3GPP
7 standard if you want to know physical channels and modulation
8 schemes, if that's the aspect you're interested in -- these are the
9 chapter titles of the book, Your Honor. And so, you know, if you
10 wanted to know the intro or the prologue or, you know, just
11 substantive chapter headings, they've broken up the standard into
12 its chapter. So give me the chapter title so that by subject matter if
13 you're interested in transmission schemes physical level, this is the
14 chapter you would be interested in. So if you want to know are
15 they using QAM or QPSK or OFDM or something else, if that's
16 what you're interested in, this is where you'd go look to find it. If
17 you're interested in how the headers of the mac pack, it's how
18 you're going to address another device, how you're going to
19 address the base station, you would look at the mac layer chapter.
20 If you were interested in the error protocols, you would look at the
21 ECC Checking chapter. So that's how the standards, all of them,
22 are organized in this one example.

23 JUDGE TROCK: Counsel, this is Judge Trock. So
24 going back then to 2007, a person of ordinary skill in the art as the
25 parties have defined it here working in this field, would it be fair to

1 say that they would understand what "evolved universal terrestrial
2 radio access" would be?

3 MR. ERICKSON: Yes, Your Honor.

4 JUDGE TROCK: And that physical channels and
5 modulation, they would understand those terms as well?

6 MR. ERICKSON: Yes, Your Honor.

7 JUDGE TROCK: I have another question. And this has
8 to do with your radio map. So I hate to do this to you, but your
9 Slide 34 in your petition maps four different radio circuits; correct?

10 MR. ERICKSON: Yes, Your Honor.

11 JUDGE TROCK: All right. So let's just take your
12 mapping for A, Claims 1, 4 through 6, 8 through 14, et cetera.
13 Your first circuit is Bluetooth. You discussed that. Your second
14 circuit is UMTS. My understanding is that UMTS is Universal
15 Mobile Telecom Systems. That's the 3G standard; is that correct?

16 MR. ERICKSON: Yes, Your Honor.

17 JUDGE TROCK: All right. And then your next one is
18 GSM, that's Global Systems for Mobile Communications. That's
19 the 2G standard?

20 MR. ERICKSON: Yes, Your Honor.

21 JUDGE TROCK: All right. So my question goes to
22 UMTS and GSM. The reference you're using for this from the
23 3GPP technical spec, Exhibit 1015, does that impact both your
24 UMTS and your GSM mapping or just the UMTS?

25 MR. ERICKSON: Just the UMTS, Your Honor.

1 JUDGE TROCK: All right. So it doesn't affect the 2G
2 standard here?

3 MR. ERICKSON: Correct, Your Honor.

4 JUDGE TROCK: Okay. Thank you.

5 MR. ERICKSON: You'll notice that this kind of
6 shorthand way of referring to these what I would call classes of
7 standards, we don't specify a version of Bluetooth or UMTS or
8 GSM. And I would actually like to go to the petition where this is
9 defined, and I'll use the -906 petition as an example. And if you
10 go to page 22 of the -906 petition this is where they address the
11 second radio and what the --

12 JUDGE TROCK: I'm sorry. Could you repeat that?
13 What page?

14 MR. ERICKSON: Page 22 of the petition which is
15 paper 3 in the -906 IPR.

16 JUDGE TROCK: Okay.

17 MR. ERICKSON: Moving it to display here locally.
18 You can see is an example. In Limitation 1b which begins by
19 discussing the first radio actually, you see a list of various
20 Bluetooth modulation schemes. And there are, of course, various
21 versions of Bluetooth and they're enhanced over time. And then
22 we get down to moving the scroll onto page 23, we introduce the
23 Dua reference. And you see the first sentence there is, "Dua also
24 discloses that cellular phone includes UMTS transceiver by
25 disclosing a 3G radio that is fully compliant with all worldwide

1 3GPP standards and provides additional implementation details."
2 And if you go down to the first sentence of the next paragraph,
3 "Dua's disclosure of a radio to support all worldwide 3GPP and
4 3GPP2 standards inherently discloses to POSITA a UMTS radio
5 using UMTS modulation schemes, QPSK, and two different QAM
6 plan modulations." And then you see the very first thing we cite
7 after that sentence is the 3GPP spec which on its face is UMTS as
8 shown on page 2, and it as QPSK, 16 QAM, 64 QAM, and on page
9 15 OFDM. And so, in response to Your Honor's questions, you
10 know, Bluetooth is that, if you will, radio for first radio, but it's all
11 versions of Bluetooth and UMTS it's fairly -- everything taught by
12 3GPP all the standards plural related to UMTS which is everything
13 there. And as we saw as we navigated through the 3GPP website
14 under 3G, we have this 3GPP specification. So it certainly
15 changed over time. The teams of the 3GPP organization about the
16 different types of things you could have in there changed over
17 time. But this is how it's introduced and defined in the petition.
18 So I wanted to clarify that. Same thing with GSM, Your Honor.
19 You know, GSM was added to over time. It was enhanced with,
20 for example, edge. So the N93 actually says, "EGSM" because it
21 has edge added to GSM. I just wanted to make that clear for the
22 record, Your Honor.

23 So if there are no other questions on publications, I'll
24 move through the limitations. So the first limitation 1a is the first
25 radio discussed as the Bluetooth Slide 36. On the left Bluetooth

1 for N93 and Dua. On the right, we have the Bluetooth spec which
2 is, again, as we talked about the alternative that if one of ordinary
3 skill didn't know what Bluetooth was already, we have the
4 Bluetooth specification that explains the modulation schemes and
5 frequencies. And remember, we have the teaching in Dua
6 highlighted in the middle of that. The explicit teaching is support
7 is the widest array of communication protocols. So that's applied
8 to Bluetooth, that would certainly include at least all these
9 advanced modulation schemes that were already in the finalized
10 standard three years before the date. Moving to Slide 37, there
11 doesn't seem to be any dispute anymore that at least GFSK would
12 have been required. I think Patent Owner still may dispute these
13 more advanced forms of modulation. But there's no dispute of
14 GFSK and that's sufficient for the independent claims. Moving to
15 Slide 38, we have a second radio off of the independent claim. It's
16 claimed broadly. You just need to have a different frequency
17 transmission scheme, different frequency, and different
18 modulation. Moving to Slide 39, we have the Nokia N93
19 discussing 3G vis-à-vis the licensed radios. Bluetooth is, of
20 course, in the unlicensed band. The licensed bands for cellular
21 providers will be different. An example here is UMTS in the 2100
22 band. Dua again teaching all the 3GPP standards. If a one of
23 ordinary skill for some reason didn't know this already, they would
24 go to the 3GPP website, they would find the teachings there from
25 3GPP and the types of modulations that could be used. Now,

1 again similar to Bluetooth for the independent claim, I enough, I
2 think -- I think there's no longer a dispute that at least QPSK is
3 required. That's shown on Slide 40. Patent Owner's expert
4 conceding that UMTS includes QPSK. Patent Owner's expert
5 preferred to use a different 3GPP specification. That's fine. Dua
6 teaches do them all. They used -- he used Exhibit 2036 which says
7 UMTS includes QPSK as well as additional things. So at least
8 this, I believe, is undisputed.

9 Moving to the third radio. As we discussed one of the
10 mappings of the third radio is Wi-Fi. And I'm starting with
11 Mapping B because I think there's fewer issues in dispute here for
12 Wi-Fi. Nokia N93 on the left discloses Wi-Fi in the 2.5 gigahertz
13 band using the BNG standards. Dua on the right discloses those
14 and additionally discloses standard 80211A and M which includes
15 the gigahertz band as well.

16 JUDGE HUDALLA: Counsel, can I ask you a
17 question?

18 MR. ERICKSON: Yes.

19 JUDGE HUDALLA: The fact that you're trying to
20 connect these references in the main -- the primary references to
21 3GPP or Bluetooth to certain types of modulation, I want to ask
22 you a question about that. They believe, Patent Owner is arguing
23 that you are relying on inherency theory. Is that true?

24 MR. ERICKSON: We have several theories in the
25 petition, Your Honor. They start with what would be known to

1 one with ordinary skill in the art, there's an inherency argument,
2 and then right after that is the, in the alternative it would have been
3 obvious to combine a primary reference with the other references.
4 So we do have an inherency argument in there. But immediately
5 after that, if you look, there's always a sentence right after that this
6 says, "In the alternative, it would have been obvious to combine."

7 JUDGE HUDALLA: I guess you're also -- you said
8 basically obviousness on top of that is a third way of doing it?

9 MR. ERICKSON: That's correct, Your Honor.

10 JUDGE HUDALLA: What's your best argument for
11 that then?

12 MR. ERICKSON: So for -- that for Grounds 2 and 5.
13 So that's the, if you will, the alternative obviousness argument is
14 that when you have a base reference -- and remember, we were
15 talking about specific teachings and specific base references, not
16 just in the abstract. And in this instance, what we have is a very
17 specific teaching from Dua, in particular, to use -- implement
18 everything by -- I'm sorry -- by 3GPP standard. And so, when it
19 comes to modulation schemes, there are just these known
20 modulation schemes. You can tell from the disclosure in the
21 challenge patent itself is a -- I believe it's a single sentence there
22 where they say, "Well, if you want, you can use OFDM." And we
23 go to -- jumping forward in the slide deck to -- here's an example,
24 Your Honor, Slide 118. This is what I was referring to. You can
25 see on the lower portion of this slide there's an excerpt from the

1 petition that, "In the alternative the modulation schemes would
2 have been obvious based on the knowledge of a POSITA as
3 evidenced by those same references." That's for Grounds 2 and 5
4 where we combined the base reference with the secondary
5 reference. And in this particular instance, which I think is the most
6 hotly disputed issue for modulation schemes, the independent
7 reference says -- I'm sorry -- the primary reference says use a
8 3GPP standards. It is certainly is going to include UMTS, the
9 3GPP spec that we rely on, on its face. Shown here on Slide 119,
10 it says it's for UMTS. And it lists -- I'm sorry -- evolved UTRA
11 and it lists OFDM as one of the possible modulation schemes. So
12 taking those two references in combination, Your Honor, a base
13 reference saying you should have a cellular reference that does
14 what 3GPP is publishing. 3GPP is always saying there are certain
15 modulation schemes you can use. All right. And the claim is
16 extremely broad. If you go back to the claim language -- and it's
17 dependent Claims 15 and 18. Your Honor, the independent claim
18 just says use these different modulation scheme than the other
19 radio, very basic, heavily broad. You get down to these dependent
20 claims, and they're just kind of ticking through the known
21 modulation schemes. There's nothing special about how they are
22 claimed. They're not merely claiming a particular type of OFDM.
23 There are many, many patents out there on very specific, very
24 complex ways to implement OFDM. But that's not this claim.
25 This claim is just, hey, you know, one of the modulation schemes

1 out here OFDM. If you want to use OFDM, use it. So telling that
2 to a person of ordinary skill in the art and you have a base
3 reference that says do what 3GPP is thinking. And you have 3GPP
4 publishing, hey, we're thinking about using these modulation
5 schemes. At that point a third party can't run to the patent office
6 and say, "I've got an idea. Let's use OFDM." If you have actual
7 contribution to make because you have a special way of using
8 OFDM, you think you've invented a new type of OFDM, okay
9 maybe. And you draw a claim to at hybrid or that specialized
10 OFDM, perhaps. But on this record if you have a base reference
11 that says do what 3GPP says, and 3GPP is already listed out in
12 those modulation schemes, it's too late to try to get claimed as
13 fraud.

14 JUDGE LANEY: Okay. So you've answered -- excuse
15 me. You've answered with respect to the 2 and 5 grounds. What
16 about 3 where you just have Dua and Herle together? Like, what
17 would your answer be there? What's your best way of getting to
18 those modulation schemes?

19 MR. ERICKSON: Yes, Your Honor. So for -- certainly
20 for a ground -- for the independent claim, I believe everyone
21 agrees that at least QPSK is inherent. In other words, if you're
22 going to have 3G evolve, you would have to have QPSK. And
23 similarly, Bluetooth, and the most basic Bluetooth, if you're going
24 to have Bluetooth at all any version of the Bluetooth, you're going
25 to have GFSK. And the independent claims just require that they

1 be different. So I think from an inherency ground, I don't think
2 there can be any dispute that one of ordinary skill looking at that
3 would say, "I know I've got a licensed cellular band. It's using
4 different modulation schemes than an unlicensed Bluetooth radio."

5 JUDGE HUDALLA: So I think Patent Owner's
6 argument here in that very area that you are is that just because it
7 says Bluetooth, you know, Bluetooth might be intended for
8 modulation schemes potentially or something. Why would I pick
9 this particular one?

10 MR. ERICKSON: Well, yes, Your Honor. And the
11 point being in this instance, for the independent claims it doesn't
12 really matter which one you pick. All you need to know is that
13 they have some differences. They have a different scheme. I
14 know it's a different permutation or a different collection for at
15 least one modulation type and that's different. So for the
16 independent claim I think it's not really that hotly disputed. I think
17 when you get to these dependent claims that are actually
18 identifying types of modulation, the starting point is Dua's
19 teaching for in the short range under Bluetooth and Wi-Fi to
20 support as many protocols as you can. So you can have as many
21 options to communicate as you can with other target places. That
22 teaching would tell you, okay this is talking about using the bells
23 and whistles. And one of ordinary skill would know what the
24 available bells and whistles were. So the next time we get into
25 versioning issue of Bluetooth 1 or 2 or 2 plus EDR, Dua's explicit

1 teaching to do as much as you can, says okay, we should
2 implement the more advanced modulation schemes.

3 JUDGE HUDALLA: So you're still left with a list of
4 them, and you have inherency argument. So, again, aren't you
5 required to show us that you have to pick this one out of a list of
6 potential modulation schemes to get to these dependent claims?

7 MR. ERICKSON: I think, Your Honor, yes. We do
8 have to show -- if inherency only we would need to show that the
9 identified modulation scheme is required. I think it's paired with
10 Dua's teaching of what's your base reference is telling you. What's
11 inherent in what the base reference is telling you. If the base
12 reference only said use a form of Bluetooth, I maybe they might
13 have a stronger argument. But when the base reference says, you
14 know, to all the bells and whistles, essentially, that's -- you're
15 starting from a different point. I think when you tell one of
16 ordinary skill, "I want you to do a full implementation of
17 everything you can think of in Bluetooth," I think inherency is a lot
18 -- is a closer call there because then using more advanced types of
19 modulation schemes I think are arguably -- I don't want to belabor
20 the point, Your Honor. I think the stronger point is obviousness.
21 That the pointers there from Dua, the explicit teaching to do that,
22 gets us to the obviousness, which is Grounds 2 and 5. They fall
23 short on Ground 3 for some of these dependent claims that I can
24 understand.

25 JUDGE HUDALLA: Okay. Thank you, Counsel.

1 JUDGE LANEY: But you're saying the inherency
2 argument within the independent claims is stronger because it's not
3 -- just by having a Bluetooth you're necessarily going to have that
4 modulation scheme, et cetera?

5 MR. ERICKSON: Correct, Your Honor.

6 JUDGE LANEY: Is that right?

7 MR. ERICKSON: Yes.

8 JUDGE LANEY: Okay.

9 MR. ERICKSON: You know inherently you're going to
10 have a different modulation scheme for your cellular and
11 Bluetooth radios.

12 All right. Moving back to the third radio. We were
13 discussing Wi-Fi and N93 and Dua disclose Wi-Fi radio. Patent
14 Owner's main argument is that 80211A is not enabled, that's just
15 not credible. How Dua teaches you can an 80211A radio, that one
16 -- and then final. I think over eight years at this point is certainly
17 enabled. This is the first time Patent Owner starts making this
18 argument that well commercially certain people didn't watch it for
19 a certain amount of times. That's not the relevant test for what's
20 obvious or what's enabled. You have 80211A known industry-
21 standard radios as Dr. Creusere explains in his declaration on Slide
22 44. I'm sorry, Judge Trock. And this is an 8-year-old type of
23 radio.

24 JUDGE LANEY: Just for the record. When you say 8-
25 year old you're saying 8-year old prior to the critical date?

1 MR. ERICKSON: Correct, Your Honor. I believe it's
2 1999.

3 JUDGE LANEY: Yeah. I just want to make sure the
4 record is clear.

5 MR. ERICKSON: Thank you, Your Honor. Now, we
6 have an issue with how many radios do you have and how the
7 circuitry is separated or combined. And for the Wi-Fi radios, this
8 is on Slide 45, for Grounds 2 and 5 we have the Desai reference
9 that teaches while you're either going to implement them as
10 separate radio communication circuits or combined radio
11 communication circuit. And I don't think this disputed for Wi-Fi
12 mapping. It is disputed for the cellular route mapping, which I'll
13 move to now. Mapping A, the third radio is the GSM radio. You
14 have Nokia disclosing GSM, the EGSM of edge, and then you
15 have Dua disclosing GSM on the right. Patent Owner really
16 strenuously argues that these would not be separate. It wouldn't be
17 separately controlled by the CPU. That argument fails on a couple
18 levels. First, in the petition we tried to call this out, to flag it to
19 engage the Patent Owner and they didn't. They set forth a very
20 broad construction here that they don't need to be separate. We
21 have a dependent claim that actually requires that the first third
22 radio communication circuit be implemented as a combined
23 circuit. The Patent Owner didn't engage on claim construction
24 issue. But now they've argued in some respects that, you know,
25 the 2G and 3G radios would be implemented as a single radio and

1 the CPU couldn't control them separately. The evidence, however,
2 from 2012 that they cite --again, in hindsight -- in 2012 they said
3 well they would be combined. But, of course, on the very next
4 page as shown on Slide 48, the very next page is what they rely on
5 says that, well. The early stuff would use two discrete radio
6 chipsets. So again, Your Honor, I don't think the Board needs to
7 engage on this claim construction issue with respect to what is it
8 -- how separate or combined they need to be because the petition
9 covered a lot of that, whether they needed to be separate or
10 combined. The secondary references for the cellular radios,
11 Rooyen, said they could be separate or combined, 2G or 3G radios.
12 There's a Slide 51 that shows a nice diagram of Rooyen with
13 separate chipsets to do each. And so, I think it's a factual matter
14 that fails.

15 Fourth radio, moving forward to Slide 55. That's from
16 Dua that the NFC chip. There's Mapping A for NFC, Mapping B
17 uses NFC or GSM. For the Dua-based Grounds 1 and 2, we're
18 starting -- I'm sorry. The Dua-based Grounds 3 through 5 we start
19 with an NFC chip. For the Grounds 1 and 2, they start with an
20 NFC -- I'm sorry -- start with the N93. Dua teaches to add an NFC
21 chip to a smartphone. Patent Owner's main argument, again, that
22 is it's not enabled as shown on Slide 57. That's not credible. As
23 Dua explains in paragraph 53 and 54 and as disclaimed by Dr.
24 Creusere, this is a well-standardized technology. You can see the
25 list of the standards there in the last sentence at the bottom. This

1 allows for your cell phone to act as an electronic key or wallet.
2 There's lots of reasons why you'd want to have an NFC chip. It's
3 well standardized by then. The fact that certain companies didn't
4 actually launch products with them until later is not a relevant
5 inquiry.

6 Moving forward to Slide -- we have several slides now
7 that I'll skip over because they're undisputed limitations. I move
8 forward now to Slide 64 and the controller limitation. There's two
9 types of control claimed to be independent claims. There's what I
10 would call broad type of control that's required for the second,
11 third and fourth radios, and the very specific type of control
12 required for the first radio that we'll get to into the later limitation.
13 Of this has broad full limitation 1g in the '241 patent and 1h the
14 '590 patent. Scroll down to Slide 65, N93, of course, is a user
15 manual. It's at a high level. It would have been obvious to
16 implement it as shown by Dua with the CPU and discrete radios
17 and such. Moving to Slide 67, Dua explicitly discloses that the
18 CPU, the controller, and the combination is going to be controlling
19 assignment for all the relevant radios. I will walk through a couple
20 of examples very quickly. On Slide 68, let's start with the NFC
21 radio. Its user presses the activation button in the upper right and
22 that sends a signal to the CPU. The CPU controls assignment of
23 the NFC radio which is down in the lower right-hand corner. It
24 goes out and interrogates the target device to figure out what type
25 of media it supports, what type of radio it has. That comes back

1 into the NFC radio, it goes back to the CPU. The CPU looks at the
2 types of radios and the types of media and then it will assign
3 connection to the appropriate radio whether that's Bluetooth or Wi-
4 Fi or whatever it is. That's the improved Dua method of
5 establishing Bluetooth Wi-Fi and other such radio connections. So
6 clearly the CPU in is controlling assignment.

7 The second example on Slide 69, this is where the user
8 -- there's a keyboard input device. It's in the lower left, it's
9 highlighted there. The user can navigate through menus and select
10 a device profile that's stored in the memory. All the user's
11 commands are going into the CPU. It's running a program in
12 memory, and then the CPU does what it's told and assigns the
13 appropriate radio. And the last example, Slide 70, there's normal
14 Bluetooth session setup procedure. In Ground 3 that relies solely
15 Dua and Herle rely on the fact that one of ordinary skill knows
16 what a normal Bluetooth session setup procedure is. For the other
17 grounds in combination with N93 we say, you know, the N93
18 actually discloses one. So to the extent a person of ordinary skill
19 in the art would know that they would use it as disclosed in N93.

20 The Patent Owner's arguments are primarily directed to
21 the cellular radios, and in a combination it's clear that the user's
22 manual configurations as taught by at least Nokia and N93 where
23 the user can tell the device, "I want to use GSM," or "I want to use
24 3G, UMTS," or "I want you to pick" dual mode. So these, again,
25 would be inputs from the keyboard. They go to the CPU and tell

1 the CPU, "I want to use 3G," or "I want to use GSM," and the CPU
2 has to control that. If the CPU doesn't, it'll just die on the vine, and
3 it won't happen. So whether the radios are discrete and they are
4 separate as taught by Rooyen, or the CPU controls them by
5 sending a separate signal to one saying "You're it," or whether
6 they're combined and CPU sends a signal to the combined radio
7 that says, you know, "Use 3G or use 2G," the controller there is
8 controlling assignment for the radios.

9 JUDGE HUDALLA: Just so I'm clear on that, one of
10 the arguments Patent Owner makes is this one versus two radios.
11 What is your -- it sounds like you're saying you have both covered.
12 Is that what it is?

13 MR. ERICKSON: We have both covered, Your Honor.
14 I mean, we invited discussion on claim construction, they didn't
15 take it up. So we covered a lot of -- and I think we're fine.

16 JUDGE TROCK: This is Judge Trock. So do we need
17 to do that kind of construction here?

18 MR. ERICKSON: No, Your Honor.

19 JUDGE LANEY: When you say you invited it, I didn't
20 see you do a claim construction. I saw you make a statement of
21 what circuit was to be construed. But I didn't see any analysis to
22 justify that construction. You're referred to previously, right?

23 MR. ERICKSON: Yes, Your Honor. I think it's fair to
24 say we didn't offer a formal construction. I think we did offer
25 some analysis. We pointed to the dependent claim saying the

1 dependent claim says these two enumerated radio communication
2 circuits should be implemented as a combined circuit. And we use
3 that as the basis to say this should be, I would say, not limited. So
4 I take Your Honor's point well that we didn't propose a formal
5 construction. I don't think the Board needs to perform a formal
6 construction. We just had to cover it both ways. We were waiting
7 for the -- the Patent Owner wanted to come forward with a narrow
8 construction similar to video, Your Honor. We said video doesn't
9 need construction. But we thought they might help in arguing that
10 video had to be streaming or had to get high bandwidth or had to
11 be something special that separated it from just any other data. So
12 we flagged that and said video doesn't need to be high resolution
13 or streaming or anything like that. They didn't engage on that to
14 say it needed to be construed narrowly. So we don't think any
15 construction is necessary on video either, Your Honor.

16 JUDGE HUDALLA: Mr. Erickson, you're at the end of
17 your 55 minutes. You can keep going into your rebuttal time if
18 you like.

19 MR. ERICKSON: I would like to do so if I may. Thank
20 you, Your Honor.

21 Moving forward to the next slide. There are many
22 examples in the slides here in discussion of the petition of the
23 controller controlling, but I'll move forward to the next limitation
24 which is the use -- what we call the user indication limitation,
25 limitation 1i in the '241 patent 1j in the '590 patent. This is what I

1 alluded to earlier.

2 JUDGE LANEY: This is Slide 82?

3 MR. ERICKSON: Slide 82. Thank you, Your Honor.

4 This is the more specific type of control that's claimed in the
5 independent claims. It was added during prosecution to overcome
6 the Tee reference. Starting with Slide 83, this is the N93 teaching
7 the user indication for Bluetooth. The user can tell the phone to
8 turn it on or turn it off, whether to make it visible, and whether to
9 -- you know, for security purposes or power purposes. And then
10 specifically to send video out of the gallery, you can go into the
11 gallery, select an image or a video, say "send via Bluetooth." If
12 you're already paired with the device, select that device, it starts
13 sending. If not, you have to pair, find, and then it'll send. So here
14 in this 2007 version of Bluetooth, you know, that's it. That's what
15 this teaches a person of ordinary skill in the art, the user as
16 indicated to send video via the Bluetooth radio and that's what
17 happens. Or assigns the video -- assigns the Bluetooth radio sign
18 -- to send that video by Bluetooth. Dua doesn't go into the detail
19 of that. It says use the normal Bluetooth procedures. If one of
20 ordinary skill doesn't know what that was, they would go look for
21 it in the art and they would find it in the N93.

22 On Slide 85, Dr. Creusere discusses the different
23 motivations to combine Dua with the normal user indications on
24 the N93. Slide 86, he discusses, you know, let the -- allowing the
25 user to manually control the radio, let's them control power,

1 security issues. On the right, I want to point out also that both Dua
2 and N93 talk about transmitting video for storage for later
3 playback. So this is a, you know, send the file type functionality.
4 And so this is a very good reason why, Slide 86 paragraph 250 of
5 Dr. Creusere's declaration, all would want to include this Bluetooth
6 functionality specific from N93 into the Dua reference.

7 Moving forward to Slide 88, Patent Owner's primary
8 argument against this is that, well, Dua prefers first its improved
9 user indication, which is true. It does. That's one of the things
10 Due believes he invented and why he was filing this patent. But he
11 does acknowledge that if the devices don't support that because,
12 for example, they don't have an NFC chip, then we would still
13 need to support the normal Bluetooth discovery process and
14 session set up. And that's why you would be motivated to include
15 the manual process of the N93, another reason.

16 Moving forward to Slide 89 we have what we refer to as
17 the while and simultaneous limitations. Moving forward to Slide
18 90, this is the disclosure in N93 about the N93 serving as a
19 modem. You're connected by Bluetooth to your PC and then your
20 cellular radio to the internet.

21 JUDGE LANEY: So since we're at this particular
22 element, could you address alleged inconsistencies between the
23 positions you're taking here and ones you are in trial. As I
24 understand Patent Owner's position, in the litigation you were
25 trying to use -- you're trying to get around stipulations. And your

1 trial attorney argued that Nokia's phone does not disclose 1k. And
2 I'm just curious if you could address that.

3 MR. ERICKSON: Your Honor, the Patent Owner had
4 incredibly high burden to show on summary judgment that these
5 are materially identical. In other words, that one is not better than
6 the other. And we agree that the products as far as the standalone
7 anticipatory reference are a better reference. You see on Slide 133
8 we have the excerpt from the manual that the Patent Owner was
9 using in their summary judgment motion to say the manual is just
10 as good as the product. And so, you see there's nothing in that
11 manual that says the word "video." And to a juror, that's really
12 important. Now, again there's nothing special about video. We
13 talked about that briefly for claim construction. And here you've
14 got series of modems for whatever internet data you're using. And
15 so, we believe that --

16 JUDGE LANEY: I thought the testimony from the trial
17 attorney was that the manual doesn't disclose 1k. So I guess -- and
18 what I hear you saying is, no, that's not really what he said. But
19 the transcript is what the transcript says.

20 MR. ERICKSON: All of those comments as we laid out
21 in our opposition, Your Honor, all those comments are prefaced by
22 saying he's responding to what Patent Owner presented. You
23 know, we're opposing that motion for summary judgment and you
24 see as you look at the entirety of those comments Patent Owner
25 excerpted the first sentence. There's a paragraph in that answer,

1 and they took the first sentence out. And what the first sentence
2 was, was, "As you see in the slide, the evidence they cite doesn't
3 say how to use the word -- use the word 'video.'" And I think it's
4 fair to say, Your Honor, that all of those statements while they may
5 seem sweeping in isolation, if you look at them in context he's
6 rebutting their evidence. But I don't --

7 JUDGE LANEY: Just so I make sure I understand. So
8 what you're saying is, when he says the manual doesn't disclose
9 limitation 1k, he's saying the manual as represented by the Patent
10 Owner. Is that what you're contending?

11 MR. ERICKSON: That's correct, Your Honor. That's
12 correct, Your Honor. So this passage certainly doesn't use the
13 word "video." And as you can see, the evidence we had at trial, we
14 have the Bluetooth file share while you're surfing the web, and
15 you can actually see the oscilloscope that actually has the
16 simultaneous transmission. You have the GSM signal using its
17 modulation scheme in its frequency band on the left and the
18 oscilloscope. You have the Bluetooth signals over there on the
19 right. And you can see -- the image is small -- if you look at the
20 actual attachment in motion you can see that the progress bar is
21 going at the same time. This is a much better reference for a juror,
22 to show to a jury. To show surfing the web while you're
23 transmitting a Bluetooth file with oscilloscope showing it
24 simultaneous. That's the proper way to show it.

25 JUDGE LANEY: I appreciate that. Now, you can go

1 back to where you were on.

2 MR. ERICKSON: Thank you, Your Honor. Slide 91
3 gets back to what we were just discussing, Your Honor. Dr.
4 Creusere walked through not just that passage but other passages
5 to conclude that one of ordinary skill would have understood what
6 the N93 discloses. I don't want to belabor this point because we
7 never stand only on the N93, right. The N93 is always used in
8 combination with Dua. So it certainly would have been obvious to
9 support the simultaneous exchange even under Patent Owner's
10 narrow construction that might require instantaneous packet
11 transfer because that's what Dua says.

12 Moving forward to Slide 95, we have an enormous
13 amount of examples on Dua as simultaneous transmissions. One
14 example here is on the right side of Figure 10. We have User B
15 and he's receiving -- he's communicating with the internet through
16 his 3G radio and his cell tower and he's relaying video audio to his
17 TV. I don't think there's any dispute that they're simultaneous
18 there. The main issue with plaintiff is that they disagree whether
19 Bluetooth could be that short-range radio to stream video. Another
20 example is shown on Slide 96. It's all over the place. Slide 97, I
21 mean, we couldn't even fit all the references on the slide. Some of
22 the best ones are at Paragraphs 195, 196 in Dua. At any rate, the
23 main dispute, I believe, is whether or not Bluetooth could be on the
24 radios. And that's really explicitly what Dua explicitly teaches.
25 And I'll direct the Board to Paragraph 196 of Dua, is that Dua

1 either lets the user pick or it has this improved facility of asking
2 the target device, "What radio do you want?" And it will use
3 whichever radio is requested. And then they're showing in Figure
4 7 the very first one is Bluetooth. And so, what Dua teaches is we
5 will send the media you what you want to send using the radio you
6 want to send. All right. That's what it teaches. Now, the
7 examples, yes, they enumerate certain examples of all these
8 permutations in the spec, but the teaching for a person of ordinary
9 skill in the art of Dua is that do what the user says or what this
10 improved method says of picking the radio.

11 Slide 99, this is in the petition. Bluetooth itself has a
12 streaming video distribution protocol. So not only can you use
13 Bluetooth to stream video. All again, no engagement on the claim
14 construction issue of whether video is special and needs some kind
15 high resolution or a super broad bandwidth. The Terai reference
16 cited here on Slide 99 talking about streaming video the Tee
17 reference that we talked about that was used to reject the '590
18 claims said Bluetooth -- high-speed Bluetooth video streaming.
19 That's no complaint by Patent Owner during re-examination that
20 that's somehow not enabled. Moving forward to Slide 100, even
21 the evidence that Patent Owner's expert relied on, these are these
22 papers saying, hey, we can do it better. Every one of them
23 concedes that you could do video streaming something over
24 Bluetooth. They just didn't like the quality. And they talk on
25 excerpted here on Slide 100, talks about MPEG-4 being an ideal

1 compression technique that meets the requirements of the
2 Bluetooth data bandwidth. It says MPEG-4 is good enough. Well,
3 you go back and look at Dua and that Figure 7, I know it's really
4 small. If you look down at the bottom, MPEG-4 is one of the
5 compression files. So even the evidence that the Patent Owner
6 cites saying, "No, no, no, no. It wouldn't be Bluetooth," shows that
7 it could be Bluetooth and particularly if you use MPEG-4. Could
8 be better? I mean, ask -- of course, we're always looking for
9 higher or greater bandwidth. Assumes we'll get greater bandwidth,
10 they come out with 4K or 8K or high definition and the cycle
11 continues. But there's, again, no engagement on construction
12 video certainly knowing that Bluetooth could stream video
13 uncontested in the file history. Patent Owner's arguments are
14 without merit.

15 JUDGE LANEY: How do you respond to Patent
16 Owner's argument that Dua and Nokia phone are just two
17 completely different things and you wouldn't be taking this
18 Frankenstein combinations that you're suggesting?

19 MR. ERICKSON: Patent Owner -- it really all comes
20 down to the different ways of presenting bodily incorporation,
21 Your Honor. They get there a couple of different ways. They use
22 the "specialized" label, right. They say "specialized," like
23 somehow frozen and one of ordinary skill can't tinker with it.
24 They continually slip into a product comparison. They denigrate
25 product itself saying, "Oh, it's unstable." There's a warranty and a

1 user manual that tells parents when they buy this and give it to
2 their kids, don't let their kids take it apart. It would be a bad idea.
3 There's no warranty on a publication. Warranties are for products.
4 And the teachings here is that you teach -- if you have a
5 smartphone, you teach it a way to do these things. Of course, the
6 manual doesn't teach the inner details because it's a user manual
7 and it's a perfect fit for Dua. Dua is also multimedia, multi-radio
8 cellphone. It's a perfect match. And the only complaint about Dua
9 is it's too specialized. Dua is the opposite of specialized. Dua is
10 -- you have NFC radio to communicate with other target devices to
11 use the radios, only standard radios, that you might want to use.
12 And so I guess Patent Owner considers its own patent less special
13 because it considers its disclosures sufficient because, I guess,
14 their patent is less special. The prior art is less special and
15 therefore can't be modified. All of it is just a different way of
16 arguing bodily incorporation, which is incorrect, Your Honor.

17 JUDGE LANEY: Okay.

18 MR. ERICKSON: The software limitation is a very
19 good example of that, Your Honor. If we go to, going to -- starting
20 at Slide 101 it shows the limitation. Slide 102, there's no dispute
21 Herle teaches substance of the limitation. The only dispute is,
22 again, whether our references are too specialized and frozen that
23 they can't be modified. Actually, the Herle combination is a perfect
24 fit with the N93. Both N93 and Dua say their software is
25 updatable. And this is Slide 103. The N93 at the top talks about

1 downloading new software while browsing, so we have over the
2 air updates and downloads. You can update or repair an
3 application. To Your Honor's question about consistent
4 arguments, this was our argument in the litigation. In the litigation
5 we had N93 as the anticipatory reference because you could update
6 the operating system. But those words "operating system" are not
7 in the user manual. So here in this IPR we've combined it with
8 Herle. All right. Same with Dua. Dua says you can update your
9 software, but it really doesn't have the words "operating system,"
10 and so we combine it with Herle. All of Patent Owner's reported
11 concerns about the frozen nature and specialized nature of N93,
12 they were attacking the product saying the product -- it was this
13 product can be viewed as the product is unstable. Again, they're
14 going after the product not the references.

15 Moving forward to Slide 107, Herle years earlier knew
16 this problem. They knew the cellphones' bandwidth has tighter
17 bandwidth concerns, less processing power, less memory. So they
18 came up with the solution, this small delta file. Small delta files
19 just fixing a small bug or a small patch or a small update. You
20 don't have to do the whole operating system. Just download that
21 small file, you can solve all the problems related to the instability
22 or bandwidth for resources, computing resources. And if you look
23 at the bottom of Slide 107, the first thing you do, that's the number
24 one, that's the first thing the problem does once it's downloaded the
25 update is it does a cryptographic secure check. So did I get this

1 filed correctly? Is it secure? Is it the right thing? Is it malware?
2 They've addressed all the Patent Owner's concerns. Herle thought
3 of it years ago.

4 Again, it's all about incorporation. In the reply pages 14
5 to 17 we address every one of Patent Owner's concerns to show
6 how Herle solves them. And Slide 111, this is what I referred to
7 before, Your Honor. Single sentence in the specification of the
8 patent. It says, "Hey, if you happen to get an update to your
9 operating system, just do it." That's the only disclosure here. And
10 I'm not criticizing the patent, Your Honor. Patents often do to not
11 -- in fact, I think the Federal Circuit said preferably do not go into
12 detail about what is already known. That's what it does here. It's
13 already known. If you get an update, an operating system update,
14 just do it. And it can be that succinct because Herle is out there
15 already. So the purported inventors here didn't need to go into
16 detail because it was already known within the skill of one with
17 ordinary skill in the art.

18 The case law on Slide 112, not addressed by Patent
19 Owner, Ex Parte Lang, in fact, it's appropriate to assume -- that's
20 almost a presumption there -- assume that anyone desiring to
21 perform the claimed function would know how to do so unless
22 there's something in the spec that indicates that maybe there's a
23 problem.

24 JUDGE LANEY: Can I -- real quick. I just want to try
25 and crystalize this in my head. Would it be a fair description of

1 one of -- at least the Petitioner's argument is basically the Nokia
2 phone on one level discloses that it can accomplish everything
3 that's accomplished by the independent claims. You bring in the
4 other references to show more specifically how it's accomplishing
5 those specific things on a level of detail that is more representative
6 of the claim language describing what it's accomplishing.

7 MR. ERICKSON: Yes, Your Honor.

8 JUDGE LANEY: Okay.

9 MR. ERICKSON: I think, you know, if we had
10 unlimited words maybe we would try to show N93 as completely
11 disclosing a lot of these limitations by itself. But, you know, we
12 combined it with Dua there for a reason because we thought they
13 might be arguing these things. You know, one already skilled in
14 the art knows Dua's a smartphone, it's going to have a CPU. It's
15 going to have these radio communication circuits. But it was just a
16 sordid and cut-right combination of Dua.

17 JUDGE LANEY: In the litigation is the Nokia phone
18 trying to be relied upon as a 102(b) reference?

19 MR. ERICKSON: Yes, Your Honor.

20 JUDGE LANEY: Okay.

21 MR. ERICKSON: I would say it was in the Texas
22 litigation, but we won it on summary judgment of non-
23 infringement.

24 JUDGE LANEY: Okay. Yeah.

25 MR. ERICKSON: Yeah. So it was because you can

1 update the operating system. We could show all of this. We had
2 the schematics of the product, and we had a lot more evidence
3 about the product itself.

4 JUDGE LANEY: Right. Okay.

5 MR. ERICKSON: Just very quickly, Your Honor,
6 dependent Claim 12 and 18, again, this is one of those modulation
7 schemes. Again, it's the same thing, Your Honor. The patent just
8 says, hey, if you want to do plan, do plan. Doesn't teach anything
9 there. 3GPP was already all over that. It was already published.
10 It's too late at this point. What they point to for this claim and the
11 OFDM claim, which it begins at Slide 118, which we've already
12 gone through. You know, these claims were very, very broad.
13 Just, hey, use this known type of modulation. 3GPP is already
14 published and that was thought of. It's too late at that point. All of
15 their arguments go to when things were lost, when they were
16 commercialized. They argue that, "Well, we didn't have enough
17 cell towers implementing it yet, so you wouldn't have put it in your
18 product." That's not the right analysis. You have a base reference
19 that says, do what 3GPP is telling you to do and 3GPP has already
20 said, here are modulation schemes we can use. That's it. You need
21 a more narrow claim if you're going to try to -- you can't come to
22 the patent office at that point and say I've got an idea let's use plan
23 or let's use OFDM. That idea is out there it's been published by
24 very standards organization that the base reference told you to go
25 to find the modulation schemes.

1 Your Honor, I see I probably only have 15 minutes left,
2 so I'll reserve the rest for rebuttal unless there are any other
3 questions right now.

4 JUDGE LANEY: Just one quick question. Do you see
5 any wiggle room between the -906 and -907? I'm trying to find
6 -- is there any claim that the arguments are substantively or
7 significantly different for any of the claims where one could
8 survive and the other one not, as far as differences in the
9 arguments and evidence from your position?

10 MR. ERICKSON: I don't think so, Your Honor. I think
11 the only possibility -- I think the answer to your question is no. I
12 would just point the Board to the beginning of Slide 126. There is
13 a receiving claim, Claim 5. It's a method claim. I think the Patent
14 Owners kind of bounced between I think method and apparatus a
15 lot when it suits them to say that, "Well, you know the capability
16 may be there, but you really need to disclose the method in the
17 reference." We do have actually one method of receiving claim. I
18 believe Claim 5 in '590 is slightly different. That's addressed
19 separately in the briefs. I don't see in Patent Owner's slide. I was
20 going to skip it in the interest of time, but I'll direct Your Honor to
21 that. I think that might be the only possibility.

22 JUDGE LANEY: Okay thank you.

23 MR. ERICKSON: Thank you.

24 JUDGE HUDALLA: Okay. Thank you. Why don't we
25 take a ten-minute break. This is going to be a long session. So

1 we'll go off the record right now. Thank you.

2 (Whereupon, the above-entitled matter went off the
3 record at 12:21 p.m. and resumed at 12:31 p.m.)

4 JUDGE HUDALLA: We'll have a presentation now
5 from Mr. Siddiqui. I hope I'm saying that right.

6 MR. SIDDIQUI: Yes, Your Honor.

7 JUDGE HUDALLA: Okay. Would you like to reserve
8 some time for surrebuttal?

9 MR. SIDDIQUI: Twenty maybe minutes, please.

10 JUDGE HUDALLA: Twenty minutes? Okay. And you
11 may begin whenever you're ready.

12 MR. SIDDIQUI: Good afternoon, Your Honors. May it
13 please the Board. I will begin at Slide 113. Try to keep it in the
14 same order as Petitioner. It starts specifically with public
15 accessibility. And so, what we have is as Your Honors mentioned,
16 we have to judge everything based on person with ordinary skill in
17 the art. What we have here is someone with a bachelor's degree of
18 electrical engineering and one year experience in wireless
19 communications. There's no evidence in the record that this
20 person knows about Bluetooth, Wi-Fi, cellular, NFC, its
21 modulation schemes, all in the standards universe. And so that is a
22 very critical inquiry. And so, this person has a general experience
23 in electrical engineering undergrad and just some experience -- one
24 year experience in wireless communication.

25 JUDGE LANEY: Doesn't the prior art, the Dua

1 reference and the Nokia. I'm just -- let's take Dua. Doesn't it
2 establish that, in fact, the skilled artisan does know about these
3 things, Bluetooth, 3G?

4 MR. SIDDIQUI: So Your Honor, we'll get to that in a
5 minute specifically with the specific radios that the Petitioners
6 -- so it's important with respect to the radios that the Petitioner has
7 not with the specific things that --

8 JUDGE LANEY: I asked you a different -- my question
9 is just more general. My question is, doesn't Dua establish that a
10 skilled artisan is aware of at least Bluetooth and 3G?

11 MR. SIDDIQUI: A skilled artisan would be aware of
12 generally Bluetooth or general certain portions of 3GPP at that
13 time.

14 JUDGE LANEY: Okay.

15 MR. SIDDIQUI: And so --

16 JUDGE LANEY: That's it. I just was asking.

17 MR. SIDDIQUI: Sure. So talking about public
18 accessibility, the key -- I will cite 114 -- is a work is not publicly
19 accessible if the only person who knows how to find it are the ones
20 what created it. And so, you need to establish -- or Petitioner
21 needs to establish would this POSITA be able to go find the N93
22 user manual and Exhibit 1014 the 3GPP spec with the kind of
23 evidence that Petitioner has submitted. And so what we see, Your
24 Honor, is the Wayback Machine -- if indulge me -- Exhibit -- the
25 declaration from Petitioner is the Wayback Machine. And so what

1 we see as always for public accessibility they have it backwards.

2 They've never established why someone would be
3 looking for N93 or Exhibit 1014. Or they say, all right. I have
4 N93 and so I have this link. And now I'm going to show you
5 backwards how to generate this thing. How you go through
6 multiple steps, multiple things today, and go and find this page.
7 There's no evidence that someone in 2007 at that relevant time
8 more specifically POSITA would be going and finding those
9 specific links. Now, we have very specific links that they've
10 shown on their website for 3GPP, as you already noticed, many,
11 many, many different numbers.

12 JUDGE LANEY: Can I ask a quick question? Does
13 Patent Owner dispute that the N93 product was out for sale at the
14 relevant time?

15 MR. SIDDIQUI: Your Honor, I'm not sure if that's in
16 their record. I don't recall off the top of my head if it's in dispute
17 or not. Because we were talking about the publication itself.

18 JUDGE LANEY: Well, this goes directly to that,
19 doesn't it? I mean, if this product is public, out in the public
20 domain, then wouldn't that in and of itself be evidence of a reason
21 why a skilled artisan would want to locate the user manual for that
22 product?

23 MR. SIDDIQUI: Well, it would depend on how many
24 versions of that products were out there. What version has specific
25 components. For example, some versions at that time, for

1 example, an iPhone did not have UMTS. iPhone was only
2 available on 2G. So then we wouldn't know if the user -- if this
3 particular user manual, if there are multiple versions out there for
4 the product, if the user would have the N93 if they would be able
5 to go find this specific user manual that would have this teachings.
6 So that's why there's unfortunately no evidence there. With respect
7 to the declaration, I'd like to call on Exhibit --

8 JUDGE TROCK: This is Judge Trock. Do you have
9 Dua in front of you? It's Exhibit 1008.

10 MR. SIDDIQUI: I'm sorry, Your Honor. Exhibit 1008
11 you said?

12 JUDGE TROCK: Yes. It's Dua.

13 MR. SIDDIQUI: Sure. Sure. Can I pull it real quick?

14 JUDGE TROCK: I can ask you the question and maybe
15 one of your colleagues can assist you with this. But I just want to
16 go back to a point that Judge Laney was making. I'm looking at
17 Paragraph 69 of Dua, and it says, "In accordance with the preferred
18 embodiment of the invention media player 100 is fully compliant
19 with 3GPP and 3GPP-2 standards." And so it's talking about the
20 Third Generation Partnership Project. And the third Generation
21 Partnership Project 2. It's disclosing this to people that are of
22 ordinary skill in the art in this technology. And so, how can you
23 then say that this is not evidence that people of ordinary skill
24 would know that this exists?

25 MR. SIDDIQUI: So Your Honor, 3GPP in the realm of

1 Dua at that time was UMTS; correct? And so --

2 JUDGE TROCK: I'm sorry. You tell me.

3 MR. SIDDIQUI: My apologies, Your Honor. My
4 apologies, Your Honor. I meant 3GPP at that time we'd have to
5 see the state of the art. What did this POSITA know? This
6 POSITA that's looking at Dua, he knows 3GPP is there reading a
7 Dua. In 3GPP does he know the specific 36 document to go
8 specifically to search for that?

9 JUDGE TROCK: Well, but he knows it's called the
10 Third Generation Partnership Project. I take it in 2007 the internet
11 was working at that time, was it not?

12 MR. SIDDIQUI: Yes, Your Honor.

13 JUDGE TROCK: So are you telling me that someone of
14 ordinary skill in the art could not type in Third Generation
15 Partnership Project and find whatever it is they were publishing on
16 the Internet? Is that your position?

17 MR. SIDDIQUI: No. The position is that Petitioner
18 -- that Petitioner has specifically mapped the radios to UMGS for
19 all their mappings, and Exhibit 1015 that they rely on is not
20 directed to UMTS. Exhibit 1015 --

21 JUDGE TROCK: Okay. But that's not my question.
22 My question goes back to what Judge Laney was talking about.
23 You're challenging their references, specifically the Nokia N93
24 user guide which is Exhibit 1010, the Bluetooth system
25 specification, which is Exhibit 1014, and the 3GPP TS technical

1 specification for 36.211, which is Exhibit 1015.

2 And Judge Laney asked you a very cogent question.

3 Wouldn't someone of ordinary skill in the art reading Dua be
4 informed that these technologies exist? And so I'm pointing you
5 specifically to Paragraph 69 in Dua which describes the Third
6 Generation Partnership Project and its relationship to 3GPP. And
7 I'm asking you the question, if somebody of ordinary skill in the
8 art was reading Dua at that time, wouldn't they be apprised of what
9 the Third Generation Partnership Project is? And if they wanted
10 and were interested in learning more about it, wouldn't they be able
11 to type that into the Internet and go to whatever website was
12 available at that time?

13 MR. SIDDIQUI: Yes, Your Honor. They'd go to
14 3GPP's website.

15 JUDGE TROCK: That's the question I'm asking.

16 MR. SIDDIQUI: Yes, Your Honor.

17 JUDGE TROCK: All I need for a response. Thank you.

18 MR. SIDDIQUI: Yes, Your Honor. That's correct. And
19 so, with respect to the N93, what's really important is to look at the
20 evidence that's here, and the only evidence they provide of public
21 accessibility is the Wayback Machine; correct? And the Wayback
22 Machine declaration that Petitioner has up there it specifically says
23 in the declaration that, "The date indicated in the URL applies to
24 the preserved instance but not necessarily to any other files linked
25 therein."

1 The Petitioner was up there and says that it also applies
2 to the file therein, but that's not what the declaration says. That's
3 in the case of a page construed by primary HTML file and other
4 separate files, e.g., files with images and whatever design, et
5 cetera. The other files would have their own links and may not
6 have been archived on the same dates. And so that's an important
7 piece to consider when you're looking at the Wayback Machine.
8 Or the underlying links, which is the specific 1015 links that they
9 provide, the N93 links that they provide.

10 Were these links even operable? In fact, in Paper
11 Number 16, which is Petitioner's paper on page 5 they themselves
12 admit Nokia's website, the user guide page was inoperable link to
13 the PDF of N93. And so, what we're looking at is evidence -- the
14 only evidence is in the record which is the declaration for that
15 machine and their own Paper Number 16 at page 5 that says
16 certain links were inoperable. So whether these links were
17 working for instance of time, how long is still not established.
18 And so, that's one of the critical inquiries here.

19 JUDGE LANEY: Okay. When you say "still not
20 established," I mean, it seems like what you're -- I understand what
21 you're arguing. And so you're taking a shot and you're trying to
22 reduce some of the credibility or weight that should be attributed
23 to the evidence that Petitioner has cited. Okay. I understand that.
24 But what evidence -- what of anything do you have, Patent Owner,
25 that would suggest the underlying thing that you're trying to say

1 about it is, in fact, true? In other words, that it wasn't available.

2 That maybe it was only accessible for the standards.

3 At that time, it was only accessible to people who were
4 members. There's some restriction on accessibility or any of that
5 kind of stuff. What evidence, direct evidence or even
6 circumstantial evidence, does Patent Owner have to support the
7 contrary? I understand what you're saying. You've raised some
8 issues we have to think about as far as going towards the
9 credibility, the weight of what Petitioner's provided. But does
10 Patent Owner have that provides weight on its own side to prove
11 his own point?

12 MR. SIDDIQUI: Your Honor, the fact that the link was
13 inoperable which is their own admission, that the link to the user
14 guide was inoperable as one point in time.

15 JUDGE LANEY: Okay. Anything else?

16 MR. SIDDIQUI: And then with respect to 1015, the fact
17 that the 3GPP website had all these different generic descriptions
18 of sections. So there's no evidence that a POSITA looking at this
19 Dua or looking at N93 would specifically go to that specific
20 section.

21 JUDGE TROCK: Counsel, this is Judge Trock. Just to
22 jump in. Do you disagree with Petitioner's Counsel that somebody
23 of ordinary skill in the art would understand the meanings of the
24 terms that are in those chapter headings? And if you do disagree
25 with them, what evidence do you have that a person of ordinary

1 skill in the art not understand those chapter headings on the 3GPP
2 website? Or is this just attorney argument?

3 MR. SIDDIQUI: No, Your Honor. We have specific
4 evidence with respect to evolved UTRA issue, Exhibit 1015. And
5 so we have our expert declaration from Mr. McNair specifically
6 saying that that specific Exhibit 1015 was specifically directed to
7 LTE at that time. It was -- it has not been subject to approval
8 process as it says on page 1, and it is only used for future
9 development. And so, this is Version 0. And this specific exhibit,
10 the POSITA looking at Dua or looking at N93 with the Petitioner's
11 reading of UMTS circuits would not have been looking for this.

12 JUDGE TROCK: That wasn't my question. My
13 question was whether or not they would understand the words that
14 are used in those chapter headings on the 3GPP website? Or if it
15 was just beyond their comprehension? Or is this just outside the
16 scope of their ability? Because that's the point, right? You're
17 telling me they've got all these chapter headings on there and they
18 wouldn't be able to know what's inside of them. But I'm talking
19 about what's the description on each one of those links. It strikes
20 me that someone of the level of skill that the two of you have
21 agreed upon would understand those technical terms. And if you
22 believe that they wouldn't, then what evidence do you have that
23 they wouldn't?

24 MR. SIDDIQUI: The Patent Owner's declarant Patent
25 Owner's expert Mr. McNair lays out in his declaration, and I'll give

1 you the cite, specifically that a POSITA at time would not know
2 the specifics -- would not know that he would have specific
3 standards that include individuals. And people work in standard-
4 setting organizations that would know how to arrive to these
5 specific sections or who can navigate to the specific files and
6 things like that on the 3GPP website, and wouldn't -- just a
7 generalist who knows the entirety of the universe of 3GPP website.

8 JUDGE TROCK: Okay. But that's not the question.

9 MR. SIDDIQUI: I'm sorry.

10 JUDGE TROCK: You have a cite to that?

11 MR. SIDDIQUI: Yeah. I will get that to, Your Honor.

12 I have it turned down but I can't seem to find that.

13 JUDGE TROCK: You can give it to us later. Judge

14 Laney had a question.

15 MR. SIDDIQUI: Sure.

16 JUDGE LANEY: Is that really the issue though? I
17 mean, isn't the issue simply whether or not a person of skill who is
18 interested would have access and could find this document? And
19 to Judge Trock's point, if they're interested, didn't Petitioner point
20 to headings that would allow that person to navigate to whatever
21 specifications they would want to look at, in particular, the one
22 that's relevant to 36.211?

23 MR. SIDDIQUI: That's the -- the missing gap, Your
24 Honor, is looking at Dua and N93. Would that POSITA be
25 entrusted in finding that section specifically or understanding that

1 section? That's -- I do not believe that's been established that the
2 POSITA at that time would know to get to that if he's looking at a
3 UMTA system.

4 JUDGE LANEY: So explain that a little bit more for
5 me because I don't think I'm understanding what you're saying.

6 MR. SIDDIQUI: Let me -- if Your Honors would
7 indulge me, let me address this head-on with respect to claim
8 elements 1a and 1b. I think it comes a little -- so real quick, Your
9 Honors. I am at Slide 13. And here is where we are. We are at
10 these mappings; correct. For each of these mappings Petitioner as
11 found a UTMA circuit of the second circuit. When we go to claim
12 elements 1a and 1b, this goes the obviousness, this goes to the
13 inherency, this goes to public accessibility. They say UMTS
14 circuit is the second circuit. That's the record. That's what they've
15 said repeatedly. And they say, all right, if you need to find their
16 modulations schemes, you need to go to Exhibit 1015. The
17 POSITA would know to go to Exhibit 1015 to find the modulation
18 schemes, that's Petitioner's grounds.

19 The problem is Exhibit 1015 is not for UMTS, it is Series
20 36. Series 36 is for LTE, not UMTS. UMTS is Series 25. And so,
21 why would a POSITA whether it's for obviousness or inherency,
22 go on an LTE which isn't even there yet? In 2007, LTE isn't even
23 deployed yet. There's no phones -- we're at -- iPhones are 2G.
24 There's no phones out there with LTE. Why would a POSITA,
25 person of ordinary skill -- an electrical engineer with one-year

1 background go into 3GPP specifically dig for 36.211 which is a
2 preliminary working paper which is not even there for
3 implementation to find these modulation schemes? They would
4 instead go to Section 25. That's what for UMTS. And so that's
5 why the problem is and disconnect is.

6 JUDGE LANEY: Just so I understand what I think
7 you're saying, is because of the way they're mapping it and they're
8 saying for the second radio they're relying on UMTS and in order
9 to support UMTS they're citing Exhibit 1015. And your point is,
10 while 1014 may have the verbiage they want, when a person of
11 skill in the art is looking to understand UMTS, they're not going to
12 be looking to, to Judge Trock's point, that particular descriptor on
13 the website at the 3GPP. In other words, they're not going to be
14 looking for that specific specification.

15 MR. SIDDIQUI: Correct, Your Honor. They're not
16 going to be looking at that heading evolve UTRA. Evolved UTRA
17 is LTE. It's 4G technology. They're going to be looking at 3G
18 technology. That's UMTS. That's Section 25. They cannot here
19 and dispute that Section 36 of 3GPP applies to LTE. LTE was in
20 its infancy. There is no base stations deployed. This POSITA
21 that's fresh out of undergrad with one year of experience would not
22 be looking for LTE stuff.

23 JUDGE LANEY: That -- is that can we -- I mean,
24 obviously this all blends together, but when we're asked the
25 question as far as whether or not it's publicly available, that

1 specific question, is the analysis you're saying right now and we're
2 talking about, is that really that damaging or undermines whether
3 or not it is publicly accessible? I mean, because what you're
4 saying is in this specific instance and the way they're specifically
5 building their unpatentability argument in this way they wouldn't
6 have gone to look at it. But I think I'd like to hear your position on
7 whether or not patent -- I mean, whether or not it's publicly
8 available, is that specific? Or is patent -- I mean, public
9 availability were generic in that we're simply supposed to ask, as
10 says in many cases, whether or not an interested, skilled artisan
11 would be able to locate and find the document if they wanted?

12 MR. SIDDIQUI: Your Honor, the question is if
13 someone was looking for LTE specifications, they would have
14 been able to find it. It would have been publicly accessible to that
15 individual because they would know -- I mean, we don't know if
16 this person knows. There's no evidence saying this POSITA with
17 one year experience in wireless communications as a general
18 would know about LTE at that time and the specific standards.
19 Because remember this is Version 0. This is just -- they're just
20 starting out talking about it -- about this 4G project.

21 JUDGE TROCK: This is Judge Trock. Sorry to
22 interrupt. So are you essentially arguing that this is the wrong
23 document?

24 MR. SIDDIQUI: Correct.

25 JUDGE TROCK: This is not a document that someone

1 with ordinary skill in the art would be looking for if they were
2 interested in UMTS. Is that your argument?

3 MR. SIDDIQUI: Correct. Exhibit --

4 JUDGE TROCK: This has nothing to do with it and it's
5 just the wrong publication.

6 MR. SIDDIQUI: Correct. It's on the face -- it's on the
7 face. It says Evolved UTRA. Evolved UTRA is 4G technology.
8 It's on the -- page 5 it says, "LTE physical general description
9 UMTS does not appear in any of the sections, frame structures, all
10 of the Exhibit 2017 expert declaration paragraph 360 through 367
11 specifically explained how this is discovered in the LTE package
12 structure," the infancy of it. The modulation schemes, everything
13 is for LTE here.

14 JUDGE HUDALLA: Could you repeat those paragraph
15 numbers again?

16 MR. SIDDIQUI: Sure. Exhibit 2017, paragraph 360 to
17 367 and Paper Number 31 at 21 to 22. So this Exhibit 1015 that
18 they point to -- and you know if it becomes clear why they pointed
19 to Exhibit 1015, because of the later dependence on OFDM
20 because UMTS does not disclose OFDM. So they were
21 -- Petitioner was trying to go find a specification that has the other
22 modulation schemes and OFDM. And that's what they found, and
23 they made a mistake. It's very clear that Series 36 applies to LTE.
24 Series 25 applies to UMTS in 3GPP projects.

25 JUDGE TROCK: This is Judge Trock again. So

1 perhaps we're talking about apples and oranges here. And this
2 goes to Judge Laney's point. We've got these publications that you
3 have challenged with respect to public accessibility. The Nokia
4 phone specification, the Bluetooth specification, and the 3GPP
5 specification on the one hand. You're arguing that someone of
6 ordinary skill in the art would not be able to find these exercising
7 reasonable diligence because they have not provided sufficient
8 evidence to show that they're publicly accessible. Correct?

9 MR. SIDDIQUI: Yes, Your Honor.

10 JUDGE TROCK: All right. Then on the other hand, we
11 have radio mapping which you show in paragraph -- your Slide 13
12 with respect to Petitioner's mapping. And they say with respect to
13 your claims, for example, Claim 1 in which you recite three
14 different radios, they are now mapping the first circuit being
15 Bluetooth and I believe I heard Petitioner's Counsel say that's all
16 Bluetooth that was available during that time period. And then
17 they say UMTS. That's all of UMTS that was available during that
18 time period. And with respect to GSM, that's all of GSM that was
19 available during that time period. So are we kind of talking about
20 apples and oranges here? Because this Slide 13 in which you've
21 got mapping here, that doesn't say Exhibit 1015. That doesn't say
22 3GPP-TS 36.211. That says UMTS. That's something different.
23 And so, it sounds like somebody is conflating these things and
24 that's not helpful for us. Because we, I think I agree with Judge
25 Laney here, on the one hand we have to decide whether or not

1 those publications were publicly accessible because you've
2 challenged their public accessibility. But on the other hand, these
3 radio mappings have to do with your claims, and the way your
4 claims are written and whether or not the prior art discloses these
5 or makes these obvious. And those are the radios they're picking.
6 So they're not picking specific references and sticking them in
7 there. So maybe that's the problem we have here, is that we are
8 mixing apples and oranges and it's not quite clear. My
9 understanding is that UMTS is a universal mobile telecom system,
10 not necessarily 3GPP-TS 36.211 version 0.2.1, which is their
11 Exhibit 1015. So is that the problem we've got here, that there's a
12 conflation going on between two different things that are being
13 proved here?

14 MR. SIDDIQUI: So Your Honor, the conflation is that
15 they're trying to present evidence here of Exhibit 1015 as a UMTS
16 data when it is LT stat. And so with respect to Your Honor's
17 question about public accessibility, the missing link is for Exhibit
18 1015 specifically, would a person of skill in the art at that time be
19 aware of this Version 0 and go and find it specifically for Evolved
20 UTRA. And that -- just off that heading. And so that's the issue
21 with Exhibit 1015 in particular.

22 JUDGE TROCK: I guess that's where I'm a little bit
23 confused. Is that the law? I mean, you have cases about prior art
24 references that are in far-way lands, but they're indexed and they're
25 proven to be properly put into a library, properly indexed, properly

1 available on the system and I don't think there's any evidence in
2 those cases that a skilled artisan was actually aware of that
3 document or that reference. What the evidence showed was the
4 fact this it was properly made available in a way that is accessible.
5 And you seem to be making an argument not so much that this isn't
6 Exhibit 1015 or any of the exhibits quite frankly that you're
7 challenging whether or not they're prior art. I don't see how you're
8 establishing that they weren't publicly accessible and that a skilled
9 artisan exercising reasonable care couldn't access them.

10 MR. SIDDIQUI: So, Your Honor, the evidence in the
11 record is links for Wayback Machine. And so we don't have any
12 evidence that those links were available for a continuous period of
13 time. We don't have the declaration from Wayback Machine says
14 that the underlying PDF files or the underlying files with those
15 links. So one Nokia N93 is a PDF file, the 1015 is a doc zip file.

16 JUDGE TROCK: You do have -- see, this is where I
17 want to push back a little bit. You do have evidence that they were
18 available. You do have evidence. Now, whether or not it's
19 specifically -- the argument you're making, I understand and that
20 does go towards credibility and weight and those kinds of things.
21 And so, I understand what you're saying on those points. And
22 when I've asked you what's your counter-argument of that
23 evidence or your counter-evidence that may have some weight, so
24 far what you've identified is the fact that there is, in fact, in the
25 record evidence that one of the links didn't work. So that -- if you

1 have anything else that supports that.

2 MR. SIDDIQUI: Not for the N93, Your Honor. For
3 Exhibit 1015 we have Mr. McNair's declaration that states that a
4 person of -- a POSITA that we have defined here would not know
5 about this specific standard, would not be able to navigate to this
6 specific standard because there was special -- it required more
7 knowledge. It would be an advanced person working standard-
8 setting organization.

9 JUDGE TROCK: Judge Trock here. So your expert's
10 testimony is that somebody of ordinary skill in the art as the two
11 parties have defined it, is not sufficiently skilled, nor would that
12 person be interested in trying to find this Exhibit 1015. Is that his
13 testimony?

14 MR. SIDDIQUI: Correct, Your Honor. Now, I would
15 like to address now claim elements 1a and 1b, Your Honors. For
16 all the grounds, specifically when we -- there's a lot of discussion
17 about inherency or about business. Which specific -- so 1a and 1b
18 required the first radio communication circuit and the secondary
19 communication circuit to have different transmission schemes that
20 have different modulation schemes. So what they do is they go
21 find two for Bluetooth, they go find two Bluetooth standards and
22 for UMTS they go 2 LTE standards, Exhibit 1015, and say here is
23 an assortment that you can pick from. Okay. The problem
24 becomes is they themselves have identified multiple modulation
25 schemes. And so the claim requires different. First and second

1 needs to be different. There's no evidence in the record that says
2 the POSITA will for transmission -- again, it could download,
3 uplink, transmission is a reception. That's what the claim requires,
4 transmission tradition schemes. There's no evidence in the record
5 that says a POSITA would specifically pick one of these three for
6 Bluetooth and the other one for UMTS. For example, what if the
7 --

8 JUDGE HUDALLA: Just for purposes of the record,
9 we're at Slide 21 that you're talking about.

10 MR. SIDDIQUI: Correct. What if the POSITA takes
11 DPSK and QPSK? For Bluetooth, do QPSK and for UMTS,
12 DPSK. Now, do we have different modulation schemes? And so,
13 that's one of things that's missing from claim elements 1a and 1b
14 across the grounds. When you talk about inherency or
15 obviousness, why would a POSITA go and pick separate ones,
16 different ones?

17 JUDGE TROCK: Counsel, this is Judge Trock. Let's
18 just take, for instance, that your argument is correct. What you're
19 arguing, I believe, is that one combination would not fulfill the
20 requirements of your claim limitation 1a and 1b; is that correct?

21 MR. SIDDIQUI: Correct.

22 JUDGE TROCK: Are there other combinations that
23 would?

24 MR. SIDDIQUI: Yes. If the --

25 JUDGE TROCK: Then that's the answer -- then that

1 solves our problem then, doesn't it?

2 MR. SIDDIQUI: But we don't have any -- would the
3 POSITA --

4 JUDGE TROCK: Hold on a second. What? Is there
5 evidence that they're not aware of the schemes? They're not aware
6 of the different modulation schemes and they're not aware of the
7 different frequency bands?

8 MR. SIDDIQUI: Your Honor --

9 JUDGE TROCK: Because one combination of what's
10 disclosed in the art would not satisfy your claim elements or claim
11 limitations 1a and 1b, doesn't preclude other combinations that
12 would. Is that correct?

13 MR. SIDDIQUI: Why would the POSITA --

14 JUDGE TROCK: That's not a question of why. It's
15 whether they would.

16 MR. SIDDIQUI: Your Honor, there's no evidence in the
17 record that says that a POSITA would pick -- would not pick the
18 same ones.

19 JUDGE TROCK: Well, if it's disclosed and is available
20 and they're aware of it, there's only a limited number of
21 combinations. Is that correct?

22 MR. SIDDIQUI: The claim specifically inquires
23 transmission -- for transmission. What if these are for --

24 JUDGE TROCK: No. It says, "transmission frequency
25 band." 1a says, "first transmission frequency band."

1 MR. SIDDIQUI: Implementing a first transmission
2 scheme having a first modulation scheme.

3 JUDGE TROCK: Right. So you've got -- I agree with
4 you. You're weighing 1b, talking about a first modulation scheme
5 and a second modulation scheme, your first transmission
6 frequency band and a second transmission frequency band. And I
7 believe your argument is, because of the ones that are disclosed,
8 that particular combination on your Slide 21 would not work. My
9 question to you is, are there other combinations that are disclosed
10 that would work?

11 MR. SIDDIQUI: If there was evidence that a POSITA
12 would be motivated or would arrive at that combination.

13 JUDGE LANEY: Well, no, no. Wait a second. Your
14 argument is that it wouldn't work. Not about motivation, wouldn't
15 work. So my question is, would other combinations work? This
16 the antithesis of your argument. So let's not move over to
17 motivation, let's stick with this. Is there a disclosed combination
18 that would work?

19 MR. SIDDIQUI: Petitioner argues that combination is
20 obvious or inherent for these particular references. The Dua and
21 N93 don't disclose any modulation schemes. Petitioner then does
22 not provide any evidence of why going into the LTE specification
23 or the Bluetooth specification a POSITA would arrive at a
24 combination to use two different modulation schemes. It just
25 -- I'm sorry.

1 JUDGE LANEY: So what I understand you saying is,
2 for Bluetooth and UMTS they can have -- they can have the same
3 modulation scheme, and they can use the same frequencies.

4 MR. SIDDIQUI: Correct.

5 JUDGE LANEY: Okay. Well --

6 MR. SIDDIQUI: Your Honor, just one thing. We're not
7 disputing the frequency bands.

8 JUDGE LANEY: Okay. So the modulation scheme.
9 So you're saying that they both use the same modulation scheme.

10 MR. SIDDIQUI: The claim requires them to be
11 different but --

12 JUDGE LANEY: No. I know what the claim says. But
13 you're saying the evidence -- you're just saying that they can be -- a
14 skilled artisan would understand they can be the same.

15 MR. SIDDIQUI: Correct.

16 JUDGE LANEY: And what you're saying is that the
17 Petitioner has not done is established why they would use different
18 schemes.

19 MR. SIDDIQUI: Correct, Your Honor.

20 JUDGE LANEY: So looking at your -- they rely on
21 Bluetooth and UMTS, but then I guess on page 21, the Slide 21
22 -- let me get to it real quick. You're saying UMTS -- are you
23 saying -- are you saying Bluetooth can be QAM, QPSK?

24 MR. SIDDIQUI: No, Your Honor. They're saying
25 Bluetooth -- these are on Slide 21 on the top is an excerpt from

1 their petition.

2 JUDGE LANEY: Right.

3 MR. SIDDIQUI: And they're saying that Bluetooth
4 could use one of these three and UMTS could use one of these
5 two.

6 JUDGE LANEY: Correct. And those are different.
7 Those are different modulation schemes.

8 MR. SIDDIQUI: Available.

9 JUDGE LANEY: Okay. Those are different modulation
10 schemes. Right?

11 MR. SIDDIQUI: There could be a different
12 combination possible. Correct.

13 JUDGE LANEY: Wait a minute -- you're jumping
14 down the road, I think. Well, I'm missing something, so that's why
15 I want to clarify. I mean, are you saying that GFSK and QPSK
16 could be the same modulation scheme?

17 MR. SIDDIQUI: No, Your Honor.

18 JUDGE LANEY: Okay. They're different modulation
19 schemes.

20 MR. SIDDIQUI: Correct, Your Honor.

21 JUDGE LANEY: Okay. And your point is that
22 Bluetooth and UMTS have available to them two of the -- they
23 both could be using the same modulation schemes. In other words
24 -- and I don't know if this is technically correct -- but they both
25 could be using QPSK.

1 MR. SIDDIQUI: Correct, Your Honor.

2 JUDGE LANEY: And you're saying that Petitioner
3 hasn't established that you would use different modulation
4 schemes.

5 MR. SIDDIQUI: Correct, Your Honor.

6 JUDGE LANEY: And I think to Judge Trock's point is,
7 but they have established you have a limited realm of potential
8 modulation schemes. What's wrong with the Petitioner simply
9 picking out modulation schemes that were known for Bluetooth,
10 modulation schemes that were known or UMTS that are, in fact,
11 different? Why wouldn't that be inherently disclosed by the
12 references by the very fact that they disclosed different modulation
13 schemes for them?

14 MR. SIDDIQUI: Because it's not necessary. They
15 could implement one of these combinations. A POSITA could go
16 in and implement one of these. They don't have to necessarily pick
17 these different ones.

18 JUDGE LANEY: Okay. And I think to Petitioner's
19 credit, he said he didn't want to belabor this particular inherency
20 point. He said and, I guess, somewhat implicitly conceded that
21 obviousness was a stronger case.

22 MR. SIDDIQUI: So that -- I'm sorry, Your Honor.

23 JUDGE LANEY: No, no. That's it. I'm just -- maybe
24 that's where the most fruit is.

25 MR. SIDDIQUI: So our response to obviousness would

1 be that there's no evidence that their expert set forth saying that
2 specifically I would not pick the same ones.

3 JUDGE LANEY: Well, is that required?

4 MR. SIDDIQUI: Well, there needs to be some sort of
5 rationale. You can't just list here's all the options and you can go
6 pick one.

7 JUDGE LANEY: I think Judge Trock gave you the
8 rationale that's presented by their evidence which is, they've
9 identified a finite number of modulation schemes, and they just
10 simply picked from those known available modulation schemes a
11 combination that happens to be different. I mean, I guess why is
12 that -- why would that be improper? Why isn't that enough?

13 MR. SIDDIQUI: Why would a -- so why would a
14 -- how is their obviousness supported when they're claiming to
15 have LTE, Exhibit 1015, to say, these are the modulation schemes
16 available for UMTS? That's their evidence. Their evidence is this
17 3GPP specification that's directed to LTE for modulation schemes
18 implemented in UMTS. That just doesn't make any sense.

19 JUDGE LANEY: I'm not -- there may be something
20 there. I'm not following. There's something -- I'm missing
21 something in a way that you say it with emphasis you really
22 believe it, so I feel like I'm missing something. So I want to find
23 out what it is I'm missing in your argument.

24 MR. SIDDIQUI: Let's make it really clear. Let's make
25 it explicitly clear. As Petitioner was saying about Claims 5 and 11,

1 specific modulation schemes are spelled out. So claim or section
2 -- I'm sorry -- 21 and 15. This claim, Claim 21 for '590 and 15 of
3 '241 require that the second radio communication circuit which
4 they identify as UMTS, and third radio communication circuit,
5 which they've mapped to Wi-Fi, must conduct modulation for
6 OFDM. Their mapping is for all the Grounds for UMTS for these
7 claims. In their petition -- this is on Slide 9 -- in their petition,
8 they plan to repeatedly UMTS users form QPSK. That's on page 9
9 of their petitions from both proceedings. Then on page -- then we
10 have on their petition on page 22, look, UMTS modulation
11 schemes are QPSK, QAM, 16 QAM, 64 QAM. Okay. No OFDM,
12 no mention about OFDM being used for UMTS. This is in their
13 petition. This is again on page 22 of their petition. UMTS
14 modulation schemes are QPSK, QAM and two kinds of QAM. No
15 OFDM. For Claim 21 and 15 this is in their petition for pages 50
16 and 45 for claim -- they refer back to these mappings of UMTS
17 where they identify QAM and QPSK. Now, they go to Exhibit
18 1015, and they say look Exhibit 1015 shows OFDM. So it would
19 obvious to a person of ordinary skill in the art to put in OFDM and
20 UMTS, that just won't work. Why would a person make the
21 UMTS circuit 3G technology into 4G LTE? That was not their
22 mapping. They never mapped the second circuit to LTE because
23 LTE wasn't around. And so, when they go and repeatedly point to
24 Exhibit 1015, as evidence of modulation schemes for UMTS,
25 they're wrong.

1 JUDGE HUDALLA: Does that argument you've been
2 talking about only pertain to those dependent Claims 21 and 15?

3 MR. SIDDIQUI: It pertains 21 and 15 the strongest.
4 And these leads back into Claim 1 when they were just discussing
5 where they were referring to Exhibit 1015 to show evidence of
6 what would be the modulation scheme for UMTS. What would be
7 necessary or obvious in UMTS. Even though the Claim 1, Your
8 Honor -- the Claim 1 does not require specific modulation scheme,
9 but they requires 1a and 1b to be different modulation scheme.
10 And so, the evidence they point to for second modulation scheme
11 to support their ground for Ground 1B is Exhibit 1015, and that is
12 a LTE standard.

13 JUDGE HUDALLA: Okay. I think I understand your
14 point. I hope Patent Owner addresses that.

15 MR. SIDDIQUI: Sure. Evolved UTRA --

16 JUDGE HUDALLA: Petitioner, excuse me.

17 MR. SIDDIQUI: Yes. Evolved UTRA is LTE. There's
18 a lot of evidence in the record that's listed on Slide 95, Exhibit
19 2017 paragraph 194, Patent Owner's Response 55 to 57. Exhibit
20 2026 they say OFDM was associated with LTE not with UMTS.
21 LTE and UMTS are worlds apart. UMTS does not use OFDM.
22 UMTS uses CDMA core division multiple access. They're
23 completely different systems. What's in -- you have specific
24 modulators and demodulators for OFDM.

25 JUDGE LANEY: So in short, what you're saying is as

1 far as that 21 or when it says UMTS and QAM and PSEK.

2 MR. SIDDIQUI: QPSK.

3 JUDGE LANEY: Yeah. QPSK, I think what I hear you

4 saying is in order to get QPSK they're relying on Exhibit 1015.

5 But your point is, but that exhibit's not talking about UMTS. So

6 how can they be making that connection because their evidence

7 doesn't make that connection.

8 MR. SIDDIQUI: Right.

9 JUDGE LANEY: I see. Okay.

10 MR. SIDDIQUI: Sorry for --

11 JUDGE LANEY: No, no, no. I'm just. I think finally

12 -- I think I understand.

13 MR. SIDDIQUI: And just to be clear the scope of this

14 document this 3GPP 36, Series 36, Series 36 is LTE. Series 25 is

15 -- I can't emphasize this point enough. Series 25 is UMTS.

16 There's evidence in the -- in Mr. McNair's declaration on that

17 point. The scope -- it says, "The present document describes the

18 physical channels for Evolved UTRA." Evolved UTRA, is again,

19 LTE. Now, they make a lot -- they understand this mistake they

20 just don't acknowledge it. They come up and he starts talking

21 about Evolved UTRA and UTRA and all these other technologies.

22 But that was not in their petition. Their petition was UMTS. You

23 will note when they were talking up here, they kept saying, "3GPP

24 is everything. 3GPP is everything." Their mapping for circuit 32

25 was not 3GPP, their mapping was UMTS. And so, with 3GPP you

1 have a whole other organization working on UMTS, a whole other
2 set of -- was working on LTE. It just won't be obvious to put
3 OFDM into the N93 or Dua into UMTS circuit. It just wouldn't
4 work. There's no expectation of --

5 JUDGE LANEY: Is there a separate specification for
6 UMTS?

7 MR. SIDDIQUI: Yes, Your Honor. The specification is
8 20 -- Exhibit 2026.

9 JUDGE LANEY: Okay.

10 MR. SIDDIQUI: And that doesn't mention OFDM.
11 They do point to -- just so we're clear -- just so I don't want to sit
12 down without making this. They do point to -- there's a word,
13 keyword on page 2 of this specification that says UMTS on page 1,
14 on Exhibit 1015. But that keyword has nothing to do with the
15 scope of the document. The scope of the document specifically
16 says and the package structures and everything is that present
17 document describes physical channels for Evolved UTRA. And
18 UMTS does not appear anywhere else in this standard.

19 JUDGE LANEY: Where is UMTS on 1015? Just so I
20 -- I just want to put my --

21 MR. SIDDIQUI: Sure. Your Honor, on page 2 under
22 key words.

23 JUDGE LANEY: And are you saying page 2 from the
24 exhibit for page 2 of the document itself?

25 MR. SIDDIQUI: On both, Your Honor. So it happens

1 on two pages. So basically page 2 of Exhibit 1015 exhibit right on
2 the top it says, "Key Words UMTS."

3 JUDGE LANEY: Oh, I see what you're saying. Okay.
4 Perfect. Thanks.

5 MR. SIDDIQUI: But Mr. McNair has gone through in
6 great detail in his opinion on this explaining how the package
7 structures within this and the modulation schemes and how it was
8 done known to the unknown today, not back, but now. That
9 OFDM is used for LTE, not for UMTS.

10 JUDGE LANEY: Why would key word -- why
11 wouldn't "UMTS" be a key word?

12 MR. SIDDIQUI: Because it's a 0 -- it's a Version 0, so
13 they're building upon what was there before. So UMTS came
14 before LTE, so they're building upon that.

15 JUDGE LANEY: Okay.

16 MR. SIDDIQUI: Again, infancy. Regarding the
17 infancy of LTE. So all the word was at that time is UMTS. And
18 LTE is just, they are just starting to talk about it. So with respect
19 to that, Your Honor, this is very important for Claims 15 and 21.
20 There's just no evidence that OFDM would be used in UMTS.
21 Let's make sure to hold Petitioner to their UMTS theory, because
22 that's all they have disclosed. And now when they start using
23 loose language as UTRAN and all of that other words, that is not
24 what they have -- what they have set forth. And why it's more
25 important is, a POSITA wouldn't. A POSITA wouldn't put OFDM

1 in a UMTS circuit because --

2 JUDGE LANEY: Do you have evidence of what
3 modulation scheme UMTS uses?

4 MR. SIDDIQUI: Yes. Your Honor, it's in Exhibit 2026.
5 It's -- I believe it's --

6 JUDGE LANEY: Is it GFSK or --

7 MR. SIDDIQUI: No. I believe is QAM. It's QPSK and
8 QAM. The petition says it itself on page 23. Your Honor, maybe
9 I misspoke Exhibit 2036. I don't know if I misspoke.

10 JUDGE LANEY: You said 2026. You're saying 36?

11 MR. SIDDIQUI: 2036.

12 JUDGE LANEY: 2036. Okay. So then you're saying
13 UMTS does use a different -- I mean, is this semantics thing?
14 Because it sounds like what you just said is UMTS does use the
15 QAM modulation scheme.

16 MR. SIDDIQUI: Correct. UMTS can use one of QAM
17 or QPSK.

18 JUDGE LANEY: Okay.

19 MR. SIDDIQUI: But not OFDM.

20 JUDGE LANEY: But not what?

21 MR. SIDDIQUI: OFDM.

22 JUDGE LANEY: So then, isn't UMTS still a different
23 modulation scheme than the Bluetooth?

24 MR. SIDDIQUI: Are we going back? Okay. So let's
25 go -- so with respect to -- let me --

1 JUDGE LANEY: No, I understand -- I understand the
2 argument you're making about there's not a connection between
3 1015 and UMTS.

4 MR. SIDDIQUI: Yes. Yes.

5 JUDGE LANEY: Are you going back to the public
6 availability or why a skilled artisan would be looking

7 MR. SIDDIQUI: No. No.

8 JUDGE LANEY: So we're looking at first and second
9 modulation schemes and their difference.

10 MR. SIDDIQUI: Yes. Correct.

11 JUDGE LANEY: And so, UMTS is a different -- oh, but
12 your point is, 1015 is not UMTS.

13 MR. SIDDIQUI: That's what they rely on. No.

14 JUDGE LANEY: But 1015 is, you're saying LTE?

15 MR. SIDDIQUI: Correct, Your Honor.

16 JUDGE TROCK: This is Judge Trock. Your Exhibit
17 2036 that you pointed us to this is the UMTS specification, I
18 believe, you said it was?

19 MR. SIDDIQUI: Correct, Your Honor.

20 JUDGE TROCK: That's before the critical date, is it
21 not? It says October 2007.

22 MR. SIDDIQUI: Correct, Your Honor.

23 JUDGE TROCK: Okay. Thank you.

24 MR. SIDDIQUI: So Your Honor going back to claim
25 elements 1a and 1b, the only -- Your Honors may dispute with this,

1 but the only contention there is, there's two. UMTS it is correct
2 that it is possible for UMTS to have one of QAM and QPSK. It is
3 correct that Bluetooth has the option of using one of GFSK,
4 QPSK, and DPSK. It is possible for a POSITA to somehow arrive
5 to the specific combination that Petitioners assert. But there's no
6 evidence presented that a POSITA would arrive to that looking at
7 Exhibit 1015, because that's what they point to.

8 JUDGE LANEY: And that's because Exhibit 1015 has
9 nothing to do with UMTS?

10 MR. SIDDIQUI: Correct, Your Honor.

11 JUDGE HUDALLA: I was looking at the petition. I
12 guess the only hope they have in there is this -- for UMTS as to
13 Exhibit 1015 is this citation to page 2, the key words you
14 mentioned earlier.

15 MR. SIDDIQUI: Yes. Correct. Correct, Your Honor.
16 Another thing that -- just -- my colleague makes a good point is
17 just so we're clear, Exhibit 1015 is also not part of the standard. It
18 was -- even for LTE, it was still subject to approval process, and it
19 says specifically, it shall not be implemented on its face. And so
20 when they talk about using this to implement, they say the
21 implementation details are missing from the -- they say from Dua.
22 They say implementation details are missing. And they pull 1015
23 to fill the gap for implementation details. So POSITA looking at
24 this 1015 will say it's not -- will not look at that. Moving ahead,
25 Your Honors --

1 JUDGE HUDALLA: Can I ask one last question about
2 that? Say we agree with you on this whole idea that they picked
3 the wrong standard for UMTS. Is that case dispositive?

4 MR. SIDDIQUI: I believe so. I believe so. Because
5 they're whole obviousness framework is dependent on Exhibit
6 1015.

7 JUDGE HUDALLA: Well say, what about for -- I think
8 they have a Dua Ground that doesn't go into the 3GPP.

9 MR. SIDDIQUI: Yes. For Dua, Dua says use 3GPP.
10 But even for Dua they don't -- Dua itself doesn't have specific
11 modulation schemes, so they have to go find them in 3GPP. And I
12 don't know if they -- top of my head, I don't know if they actually
13 rely on Exhibit 1015 there also. I really like this side fact about
14 Ground 1, and I can check that on break and come back. But I
15 think even for Dua, they point to -- for modulation schemes they
16 point to Exhibit 1015. Just for back up. So when they say, Dua
17 just goes to 3GPP, and they come to this 3GPP document. They
18 explicitly -- because remember this document, they don't explicitly
19 include as part of their Grounds 1 or 2, per se. They refer to it as
20 just showing inherency or obviousness.

21 JUDGE HUDALLA: I see.

22 MR. SIDDIQUI: The next specific elements, Your
23 Honor -- and maybe for brevity of time 1h, 1g and 11 and 5, I
24 understand that claim -- independent Claim 1 does not require four
25 circuits. I understand that. But, you know, the argument I'm going

1 to make about the controller assigning a connection specifically
2 applies independent claim and also to the dependent Claims 11 and
3 5 because there's four circuits and they're required to be controlled
4 by controller. They rely on -- they admit that the N93 does not
5 disclose an internal circuitry. They admit that it does not disclose
6 the CPU controlling these four circuits. And they rely on Dua's
7 CPU. They rely on Dua's CPU 109, which I admit is connected to
8 network receiver, short-range hand receiver.

9 JUDGE LANEY: What slide are you on?

10 MR. SIDDIQUI: I'm sorry. Slide 24. I know you've
11 had to remind me several times and sorry for the remote judges
12 also. Apologies. I'm on Slide 24. But with respect to claim
13 language goes specific -- more specific to the controller controlling
14 just controlling, the claims require the controller controlling
15 assignment of a connection to these each of these first, second,
16 third, and fourth circuits. And this is where the point also comes
17 more clear about this. They say we have not -- we have waived or
18 not argued about separate circuits -- or separate cellular circuits.
19 That they could be combined. That's not the issue. We're not
20 disputing that they cannot be combined. It's okay. The UMTS and
21 GSM may be combined in one component. We have to look at
22 how Dua does it. Dua discloses one network transceiver 105. In
23 their modification, this POSITA that is implementing all these
24 circuits in Dua, they would put GSM and UMTS within this one
25 network transceiver. Okay. And now, again, Dua doesn't

1 explicitly say that I'm going to put two in one. It doesn't say that.
2 It just says you can go and use multiple 3GPP standards, multiple
3 options to do it in. It never says use it to implement four circuits at
4 the same time. It never says that. It says you have an option to
5 limit wide area of circuits, wide area of protocols is the right
6 language. Now, you've arrived at Dua, and you are putting GSM
7 and UMTS within one transceiver. The question becomes, if you
8 have one transceiver with both of these, is there evidence that the
9 controller is assigning connection to both of those circuits? That's
10 is the missing link. Because we asked their expert at deposition,
11 "Do you determine -- do you determine assignment at the moment
12 when a device establishes a connection with a specific network?"
13 And he said, "I haven't identified the exact point of assignment in
14 the product." This is in Exhibit 2030, page 28, lines 6 to 29. And
15 so, we're left with what is actually -- if their expert hasn't even
16 identified the point of assignment, what is performing the function
17 to assign the connection? This is a fatal flaw because the claim
18 specifically requires a controller to control assignment of the
19 connection. And --

20 JUDGE LANEY: I appreciate this line. I just -- let me
21 let you finish first. So you finish your point then.

22 MR. SIDDIQUI: And then when asked further, it says
23 -- we asked, "When do you think it could be assigned." He says,
24 "It could be assigned at the point which the process determines
25 which rate it's going to use. It could be allocating the radio and

1 then allocating the radio frequencies." And so, these are some
2 examples he gave. But what we have missing now is no evidence
3 in Dua or N93 that the CPU 109 that's connected to this -- I agree
4 that it's connected -- would be able to determine the rate or allocate
5 the radio or assign a connection at a specific point in time to both
6 of these circuits. Because it's possible that there's internal
7 baseband processor -- and this the evidence on Slide 31. The
8 doctor -- Mr. McNair points to also that baseband processors could
9 be used to essentially assign these connections, not the CPU. So
10 we have a Patent Owner's response on page 20. And so, what we
11 have missing when you stuff four circuits into Dua is any teaching
12 -- because their expert doesn't provide -- says he has never done
13 the analysis of what point assignment occurs. So any teaching
14 where you have all these circuits, is the CPU element actually, in
15 fact, assigning connection to a transceiver that has two circuits in
16 one port. Is it obvious? It's hindsight driven. There's no reason
17 why a baseband processor could not be assigning a connection to
18 one and controller to another. This -- all we know is the CPU
19 forms some -- forms some sort of control. We don't know if it's
20 controlling assigning the connection.

21 JUDGE LANEY: Where are the -- I'm sorry to
22 interrupt.

23 JUDGE TROCK: This is Judge Trock. Isn't the
24 relevant inquiry what someone of ordinary skill in the art would
25 understand reading Dua?

1 MR. SIDDIQUI: Yes, Your Honor.

2 JUDGE TROCK: Does it have to be specifically
3 taught? Does it have to be -- have a circuit there and it's all laid
4 out it shows you all the connections inside the CPU so that you
5 would understand exactly how all these elements were put
6 together, and which connections were made and how they all
7 operated? Is that necessary?

8 MR. SIDDIQUI: Well, if Dua was disclosing multiple
9 radios then -- sorry -- the claim specifically requires the controller
10 assigning connections for four videos, three to four. That's what
11 the claim's requirements are. And so, even if the specific circuitry
12 is not required, you're required to show what the claim shows, and
13 at what point is the connection assigned. Their expert didn't
14 analyze that. And so, Dua says have a CPU and you have a CPU
15 connected with these two -- the single transceiver and a short range
16 transceiver. Now, you're bringing in two additional circuits.
17 You're bring GSM --

18 JUDGE LANEY: Sorry. There's also a RFID tag reader
19 there.

20 MR. SIDDIQUI: Yes. So that's is the third circuit.

21 JUDGE LANEY: That's the third radio, right?

22 MR. SIDDIQUI: Sure. You're bringing a fourth circuit.
23 They stuff the fourth circuit into -- first of all, you take the first
24 entrance, stuff the fourth circuit into single transceiver. No
25 analysis why a POSITA would want to do it. No analysis why it

1 wouldn't attack memory space, operating system, all that. Just go
2 ahead and stuff it in there. Okay. You already have UMTS, go
3 ahead and put GSM in there too. Okay. So that's the first logical
4 leap. And this is this POSITA, this engineer fresh out of
5 engineering school, one year of wireless experience is now going
6 and adding GSM and UMTS circuit into this Dua. Okay. Now,
7 you reprogramming the CPU to say, "You know what? Do this.
8 Specifically assign connections through the CPU assign
9 connections with both of these and the other two circuits as well."
10 Not just communicate with them, not just select something, but
11 specifically assign the connection. And so, there's a lot of logical
12 leaps for all these steps here. Our POSITA is a busy man. He's
13 having to do a lot of different things.

14 JUDGE LANEY: So is an underlying point you're
15 making is there's a significant distinction between supporting four
16 different things and actually assigning the connection of four
17 different things?

18 MR. SIDDIQUI: Yes. Yes, Your Honor. And, Judge
19 Laney, I think I feel like you were about to ask where in the
20 specification. Should we talk about controller assigning
21 connection?

22 JUDGE LANEY: Yeah. Just for -- how -- give us the
23 preferred embodiment. I just want to know how clear it explains
24 it.

25 MR. SIDDIQUI: Sure. Your Honor, we have not put

1 examples on column 7, line 59 to column 8, line 6. It specifically
2 talks about you have a modem connected to a transmission
3 assignment controller 1001, and interface circuit 133. And you
4 have a controller 132 sending signals to transmission assignment
5 controller. That is when it will assign the connection to these
6 modems by doing one of these three or four things. By providing a
7 variable setting for modulation or demodulation access, so it could
8 change the modulation schemes by changing the frequency of that
9 and saying, "I'm going to give you this frequency back. And I'm
10 going to give you, the operator, this frequency back." We have
11 -- it could change the number of carriers, and it could change the
12 distribution of transmission rates for each modem. So it could
13 have one modem use more transmission and the other one less, so
14 this is all on column 7, line 59 through column 8, line 6.

15 JUDGE LANEY: Well, if you have -- just out of
16 curiosity, if we were to buy -- hypothetically, we were to be
17 persuaded that a skilled artisan would have considered a
18 modification in which you included all four different schemes and
19 frequencies and stuff. What would be the use of those if you
20 weren't able to control their assignment?

21 MR. SIDDIQUI: Your Honor, they could be self-
22 controlling. So we've seen the N93. You can turn UMTS off, and
23 you can switch over to another radio, right.

24 JUDGE LANEY: Right.

25 MR. SIDDIQUI: And so -- and then -- and then, the

1 modem itself, the CPU -- the modem itself, not the controller
2 would be able to assign the connection.

3 JUDGE LANEY: I see what you're saying. This goes
4 back to the user -- yeah, okay.

5 MR. SIDDIQUI: And it's more -- the cause becomes a
6 little more critical in the later limitation of user indication, so you
7 have to assign a connection in response to the user indication.

8 JUDGE LANEY: Yeah.

9 MR. SIDDIQUI: And so, and I know my time is
10 running a little low. What we have here, the problem is -- I
11 probably go a little for Your Honors -- but we have is just a lot of
12 inferences and a lot of redesigning of circuitry and a lot of
13 programming adding, operating system updates, adding
14 modulation schemes, adding circuits, half the modulation scheme
15 this way, half the controller work this way. And so, at some point
16 the inferences or the conclusory statements at some point I believe
17 at least -- I respectfully submit this, and I don't mean this in a
18 negative way -- kind of start pointing towards non-obviousness.
19 And so, if I -- in another -- sorry. Another example of this -- I
20 have more slides that I need here -- is 1011. This is Slide 32,
21 Exhibit 1011 and it specifically points to Figure 3d that shows you
22 have a baseband processor that comes in that controls one of the
23 circuits and the controller does something and the connection
24 breaks. And so that's why they have to, they're limited by Dua
25 CPU. They have to make CPU do everything because that's what

1 the claim requires, including assigning a connection in response to
2 a user indication. So going forward a little bit, I'm going to skip
3 ahead a little bit.

4 JUDGE HUDALLA: I want to follow-up, Mr. Siddiqui,
5 on what you said. I understand you to have argued that, you know,
6 they're adding on multiple references, that sort of thing. Do you
7 have any specific arguments in your papers disputing the rationale
8 for combining any of these?

9 MR. SIDDIQUI: Yes, Your Honor. Specifically for
10 N93, we've pointed to the user publication specifically saying we
11 don't enhance. It teaches away from enhancing -- hold on. We
12 have a lot of -- the N93 reference itself says don't -- only use
13 enhancements approved by Nokia. It says unauthorized antennas,
14 modifications or attachment could damage the device. It says,
15 "Wireless devices may be susceptible to interference." And then
16 further on it says, "Only install software specifically designed for
17 your Nokia device." So they've dismissed this --

18 JUDGE TROCK: Counsel, this is Judge Trock. Wasn't
19 that what Petitioner was arguing that you're always going back to
20 the device and the teachings of the publication. Don't do this to
21 the device because that could cause a problem. Don't give the
22 device to your children because that could be a problem. Don't
23 throw away the batteries. That's their argument, right? You keep
24 going to the device and how you can't modify the device, as
25 opposed to, what are the teachings of the publications and the

1 knowledge of a person with ordinary skill in the art?

2 MR. SIDDIQUI: Your Honor, so I was listening, and I
3 knew you were going to ask this question, so I have their petition
4 ready. So on their petition on page 11, that's their rationale for
5 obviousness. They say, they say N93 includes -- the whole reason
6 they say is N93 teachings -- this is on pages 11 to 13 of their
7 petition. "N93 teaching was related to a cell phone with Dua's
8 teachings of internal hardware implementation detail of such a
9 phone. N93 includes integrated circuits. And N93 teaches its
10 phone with and -- so the whole -- the reason they say you're right
11 in this combination and the reason their rationale and motivation to
12 combine these two arrived at this device. Why the obvious -- you
13 have these modulation schemes. Why would it be obvious to have
14 four updates? They are the ones -- a POSITA would have known
15 -- so this is on page 14 -- POSITA would have known radios like
16 those in the N93 were capable of simultaneously transmitting in
17 the unlicensed and cellular bands. So set forth first that the reason
18 for obviousness for all of these is to do the right -- you want phone
19 that has all these features. So they started there.

20 JUDGE LANEY: But Counsel, there's no dispute here
21 that the N93 reference describes the cellular phone, is there?

22 MR. SIDDIQUI: No, there isn't.

23 JUDGE LANEY: Okay. So then I don't understand
24 how that precludes it from being used to teach what it teaches.

25 MR. SIDDIQUI: It teaches not to enhance it. It teaches

1 not to use --

2 JUDGE LANEY: The phone. It teaches the phone.

3 That particular device. Like, this is Nokia's device don't be -- don't

4 mess around with the device. Don't let your kids play with it.

5 Don't give it to your dog. Whatever it says the document still

6 teaches what the document teaches.

7 MR. SIDDIQUI: The document teaches to -- sorry.

8 JUDGE LANEY: I understand what you're saying. But

9 just because the document is referring to the device doesn't mean

10 that someone of ordinary skill in the art can't use the document for

11 everything that it teaches.

12 MR. SIDDIQUI: Your Honor, respectfully, the

13 document teaches not to enhance it. So this is --

14 JUDGE LANEY: Not to enhance the device.

15 MR. SIDDIQUI: If we are -- we have --

16 JUDGE LANEY: But that's not a prohibition to people

17 of ordinary skill not to learn from what we're teaching you and not

18 use those teachings to go and do something else. That's how your

19 trying to argue it.

20 MR. SIDDIQUI: We are limited to the four corners of

21 the document and not about products. And so, the four corners of

22 the document and they are arguing modify this N93 publication.

23 The N93 publication says don't add antennas. The N93 publication

24 says only use the licensed software. So POSITA looking at that, is

25 it our contention, that a POSITA looking at that would not be

1 motivated and consider these as teaching away.

2 JUDGE LANEY: So is it your contention -- let me back
3 up on this because I feel like from my question with Petitioner
4 -- Petitioner is actually saying that Nokia at least part of their
5 argument is that the Nokia phone discloses all the -- it already does
6 everything that's recited. It's just they're using the other evidence
7 to show how it's doing it, is one of their arguments at least.

8 MR. SIDDIQUI: Nokia does not teach -- Your Honor,
9 Nokia does not teach updating their operating systems. They rely
10 on that. They rely on -- Nokia does not teach simultaneous
11 communication. They bring in -- they sort of infer it. So we
12 -- there's a lot of disputes on what Nokia teaches.

13 JUDGE LANEY: Okay. And then you go to those
14 things that you point to, and I think to Judge Trock's point, they
15 don't really tell a skilled artisan not to do those things, they tell my
16 kids, my wife, my -- the public at large not to do these things. And
17 you're asking us to interpret that a person of skill in the art is going
18 to be looking at that through the same lens that the general public
19 would and I'm not -- I mean, what would your response be to the
20 fact that I'm not particularly sold by that?

21 MR. SIDDIQUI: Your Honor, I respect your opinion.
22 What we're having to do is, if we also have to -- this puzzle that we
23 have to solve is we have this engineer doing all of this that's one
24 year out of engineering school. Does he have the capability to put
25 all these radios with all these antennas to mitigate these issues of

1 interference and all that in the way that Petitioner wants it to be
2 done?

3 JUDGE LANEY: And that's a salient point. That's
4 fruitful, right, if you can establish those points. But what exactly
5 does your expert -- other than him just proclaiming that that skilled
6 in the art can't do it, he doesn't really go into a whole lot of depth
7 or meat for me grab onto to say, "Yeah, you're right. Somebody,
8 this skilled artisan, can't make this combination." And if I'm
9 missing something, here's the opportunity. I want you to point it
10 out to me. But my problem is, yes, he says that, and yes, I respect
11 him. He's got -- he's a very qualified person, but Petitioner also
12 brings somebody who I respect, who's very qualified who says
13 differently. And so what do -- and again this goes back to weight
14 and persuasiveness. What more meat do you have than just simply
15 your expert saying, "This guy who's an engineering student one
16 year out can't do it"?

17 MR. SIDDIQUI: Your Honor, even today Samsung
18 cannot dispute that at Samsung there's specific engineers working
19 on just Bluetooth. Specific engineers just working on NFC.
20 Specific engineers that just work on cellular technology. There are
21 -- even today, in -- there are specialists that are able to know about
22 that specific technology.

23 JUDGE LANEY: And where is your evidence
24 supporting that that these are very the distinct, isolated
25 technologies such that this, like you say, an engineering student

1 with one year worth of experience, I mean, it doesn't -- couldn't
2 possibly have all these different abilities.

3 MR. SIDDIQUI: Your Honor, they haven't pointed to
4 that they work, and it's their burden. And I don't think --

5 JUDGE LANEY: Right. But they've got a prior art.
6 That's the problem. See from our perspective, right -- from our
7 perspective they've got these references that say they can do it.
8 They say -- they make -- grant it, like in all cases, there has to be
9 some connection between the evidence. But they've presented
10 evidence with some connections. What I'm looking from you is,
11 what evidence do you have to sever that connection? I understand
12 and you're raising good points that we have to think about as far as
13 going to the weight and the strength and whether or not they carry
14 their burden. What I'm looking for you is, instead of just telling
15 me why, give me some more meat. What is the evidence that
16 really shows these breaks that you're highlighting that we want to
17 think more about to see if they support? But do you have evidence
18 that shows the breakage?

19 MR. SIDDIQUI: Yes. Your Honor, Mr. McNair in his
20 expert declaration provided a description of the state of the art. He
21 described what the state of the art was at that time. He explained
22 what the phones were going at that time. He explained how all
23 their updates were not done at that time. He's identified
24 deficiencies their updates. He identified problems in Bluetooth
25 interference and Bluetooth not being used for streaming video. He

1 identified specific issues of interference. When you combine all of
2 these circuits on top of each other, there's interference issues.
3 There's memory constraints. And so this is all in Mr. McNair's
4 declaration. That's the meat. And so --

5 JUDGE LANEY: So that's the background. So I should
6 look for that as far as that's the background. Does he now take that
7 background and mold it to establish this tool to break the
8 connection that the Petitioner writes about, or do I need to make
9 the inference based off of the background and your argument? Am
10 I supposed to make that connection?

11 MR. SIDDIQUI: No, Your Honor. This was the crux of
12 Mr. McNair's declaration when he talked about enablement issues.
13 He said it's -- this is why the prior art was not enabling to be able
14 to -- for this POSITA -- for this specific POSITA to be able to go
15 and make all these changes while mitigating for all these
16 coexisting issues, interference. So he specifically also talks about
17 issues, interference with NFC and Bluetooth. So there are very
18 specific points that he makes.

19 JUDGE LANEY: And how do we use the enablement
20 since we can't decide enablement? I understand as far as it has to
21 be enabling. I guess where -- how would you recommend us if we
22 were going to route? How do we use that?

23 MR. SIDDIQUI: Exactly like Your Honor suggested.
24 Would this POSITA have enough tools, skill set to be able to make
25 all of these modifications and still have a reasonable expectation of

1 success for obviousness? If it's not, if the prior art is not enabling,
2 Dua says use one of these areas of computer. It never says use
3 four of these specific circuits that they want to use, UMTS,
4 Bluetooth, NFC, and Wi-Fi.

5 JUDGE LANEY: And does he -- does your expert -- it
6 doesn't jump out at me. I'm going to go back and look at that this
7 much closer. But does your -- because my recollection is, yes, he
8 says these things about non-enabling. He says these things about it
9 wouldn't work, right. He says that. Now, I'm backed up against
10 the circuit wall that basically in a general sense says that I have to
11 presume the prior art enables what it teaches. Okay. So now
12 we've got -- there's some gaps there. But does your expert -- what
13 would you best point me to as far as evidence as to not just him
14 saying it, but why it is at that time the skilled artisan wouldn't be
15 able to do it. I mean, what is it uniquely about the fact that he has
16 an electrical engineering degree, one year of experience, looking at
17 what they've provided. What are the obstacles that that person
18 would not have the capabilities to overcome?

19 MR. SIDDIQUI: I think specifically this comes to a
20 head for claim elements 1k and 1j, where our expert specifically
21 explained how Bluetooth video would not make sense in Dua
22 because of all the articles he pointed to underlying evidence that
23 says Bluetooth was not good for video. And this -- real quick, I
24 will talk about Slide -- this section real quick is this simultaneous
25 limitation.

1 JUDGE LANEY: Slide 48?

2 MR. SIDDIQUI: Slide 48. And so, this -- I would like
3 to preface this by explaining Mr. McNair talks about why
4 Bluetooth was not use -- would not make sense to use for video in
5 Dua, in particular. And he provides underlying evidence in
6 articles, and he talks interference. So that's there in his declaration.
7 Now, with respect to Petitioner -- and, Your Honor, I know this is
8 important. The Petitioner did -- they went beyond what they were
9 saying in district court. They did say specifically when talking
10 about 1k. Because remember why they were arguing this. They
11 were arguing because we were moving against them for preclusion
12 of this violation of the Sotera stipulation because they had said
13 here we're not going to use the N93 at the district court. And so,
14 wanted to use N93 device, but they wanted to use the N93 user
15 manual here. And so, we said they are double dipping. And so,
16 they have to specifically say what's deficient in the user manual,
17 and that's background of this. And they tried to minimize it saying
18 that we were just commenting to their slides. But the testimony
19 says what the testimony says. And the testimony says they have
20 said -- we haven't shown anything in the user manual that says you
21 could transmit video at the same time as connected to the internet.
22 It's just not there. And you will note -- and then, also, this is for
23 the simultaneous limitation. So that first breaking point. They
24 themselves admitted in this report that N93 does not disclose
25 simultaneously using video and connected to the internet. Then

1 we have -- going forward, we have also we need the controller to
2 be controlling these two circuits to perform this simultaneous
3 communication.

4 JUDGE LANEY: Before you move to 49, just go back
5 to 48. I mean, just to Petitioner's points. I mean, Petitioner points
6 out the fact that you will not see the word "video" in that
7 paragraph. And so to their point was, that it's not as explicit. I
8 mean, how do you respond that that? I mean, respond directly
9 -- instead of pointing out making the argument, I'd like to respond
10 directly to what Petitioner is saying. Because what Petitioner is
11 saying is that the evidence that we're looking on -- in other words,
12 it doesn't say the word "video," whereas if I have a phone it says
13 the word "video" through pictures, right. And that's what I
14 understand Petitioner's point is.

15 MR. SIDDIQUI: But if you look at the last sentence on
16 this page, it directly addresses their point. Petitioner could have
17 stopped at -- it's just, they haven't. "They haven't cited to anything
18 in the user manual that says you could transmit video at the same
19 time as connecting to the internet here." They go further. "It's just
20 not there." Okay. That's talking about the user manual. It's just
21 not there. But then they go further. "If it were there, presumably
22 they would have showed it to you, but they did not." So they are
23 saying if it were there -- if the N93 did show transmitting video
24 simultaneously while connected to the internet we would have
25 shown them. So they went further than just saying, you know, that

1 this was on their slide and that -- so they're trying to change this
2 now. That's what's the transcript is pretty clear. They went
3 beyond what Mr. -- what Petitioner said today in the district court.
4 Now, with that backdrop, with that admission, we are left when
5 they said. This is -- I'm coming to Dua. I'm coming to Your
6 Honor's point again. But with respect the N93, their theory is, you
7 use the N93 as a modem to connect to the internet such as -- as a
8 modem and that establishes simultaneous communications. That's
9 it. That's their theory. What does -- they have a slide that has the
10 same excerpt I have. All this excerpt says is, use your device as a
11 modem to connect to the internet such as -- internet services such
12 as internet. It doesn't say, when you're doing this, also use your
13 Bluetooth to send video. And you could do both functions could
14 be true at the same time. That's an inference they draw. And so
15 "simultaneously" is missing here for N93 in particular. But where
16 it comes even more clearer is for Dua. Now, they point to Dua.
17 They point to Dua and they say, look, it's - and just use all these
18 words. It states the word "simultaneous" all over the place, right.
19 Let's talk about Figure 10 and 11. That's what they want to talk
20 about. They point to this and say, look, a user could be using
21 Bluetooth to transmit -- a user could have a media pair, it could use
22 Bluetooth to get video camera -- video from a video camera and
23 then transmit it over -- transmit over it cellular -- a wireless
24 cellular network to this other device, right. That's Figure 10 and
25 11. Look at what Dua is saying when they talk -- when they point

1 to these figures. Paragraph 190 says, "You could have a media
2 pair 108 capturing a video feed from an external video recording
3 device and transmitting the same video while a cellular network."
4 The claim requires transmission while the first circuit, not second.
5 So when you're transmitting the video by a cellular network, why
6 would you use Bluetooth?

7 JUDGE LANEY: So say that again? I hear your point.
8 Just one more -- crystallize it a little -- say the same thing but
9 differently for me.

10 MR. SIDDIQUI: So Dua when they talk about Dua
11 using a media player to do simultaneous limitations, they are now
12 embedded with the circuit that they've done, right.

13 JUDGE LANEY: Okay.

14 MR. SIDDIQUI: They need the first circuit to be
15 Bluetooth. Now they're stuck. So what they're saying is media
16 player of Dua would use Bluetooth to transmit video streaming, to
17 do video streaming to a TV. Okay. They have to because that's
18 what the claim requires.

19 JUDGE LANEY: Right.

20 MR. SIDDIQUI: But Dua never says use Bluetooth. In
21 these passages in anywhere specifically, Dua never says use
22 Bluetooth for video streaming to connect to a TV. Or use
23 Bluetooth to send video while internet. Okay. If Dua has -- if a
24 POSITA looking at Dua, right, looking at Dua and he says, look
25 you could use wider area of these radios, right.

1 JUDGE LANEY: Right.

2 MR. SIDDIQUI: Why would he use Bluetooth for video
3 when he has Wi-Fi available? Why would he use video for
4 Bluetooth when you have cellular network available? He would
5 use one of those options. But they're stuck using Bluetooth
6 because that's what they're circuit mapping and modulation
7 schemes and all of that requires. And so, this is where Mr. McNair
8 specifically pointed to why you would not use Bluetooth for
9 streaming video. In fact, Dua itself at Paragraph 190 says, you
10 transmit the video while a cellular network. So you would use
11 -- for transmission, you would use a cellular network.

12 JUDGE LANEY: I see what you're saying. Okay.

13 MR. SIDDIQUI: And by the way, from these passages
14 of Figure 10 and 11, the word "simultaneous" never appears. They
15 made up this scenario that it's using this -- it's receiving this, and
16 then it's also simultaneously connecting to the internet. They've
17 added a specific circuit to this particular environment. I agree.
18 Dua says you can have all these other circuits. Okay. But it never
19 specifically says, use these circuits in this scenario. That's what
20 they say. And I would definitely invite Your Honors to look at
21 their slide where they point to "simultaneously" again and again.

22 JUDGE TROCK: This is Judge Trock. Is a reference
23 required to specifically explain a person of ordinary skill in the art
24 what they should do?

25 MR. SIDDIQUI: Yeah. It should be obvious. I mean, it

1 could either be inferred or obvious.

2 JUDGE TROCK: It sounds like that's your argument,
3 because Dua doesn't specifically say to use Bluetooth to transmit
4 video that someone of ordinary skill in the art wouldn't understand
5 to do that.

6 MR. SIDDIQUI: No.

7 JUDGE TROCK: Why does the motivation have to
8 specifically come out of Dua?

9 MR. SIDDIQUI: Because their scenario is you have
10 -- in order to meet the claim, they have not -- one circuit of
11 Bluetooth, another UMTS. And one -- and those two things need
12 to be working at the same time according to the claim while they're
13 simultaneously. Correct? And so it has to work at this
14 simultaneously. Now, why would a POSITA -- remember, we're
15 in obviousness. We're not taking this POSITA there. Why would
16 a POSITA pick Bluetooth to do video instead of cellular or instead
17 of Wi-Fi? So that's where the gap is. They're saying Dua says use
18 a media pair to stream video.

19 JUDGE LANEY: So how do we -- I hear your point.
20 But how do we as the judges deal with the case law that says, look,
21 just because something might not be as good, doesn't mean that a
22 skilled artisan wouldn't still make the combination. Because he
23 knows it can be done, right. He knows that the Bluetooth can do
24 it. So what you're saying as I understand it is, look all this -- a
25 skilled artisan knows all these other ways or better ways. That's

1 the way they would do it. They would do it the way that's going to
2 get the most efficient best result. But our guidance isn't
3 necessarily limited like that. Yes, we take into a factor, and we
4 have to balance all this stuff. But just simply the fact that one's
5 better -- a better way to do it doesn't tell us that the proposed
6 combination and the reason they say it is not sufficient. Is not
7 sufficient to be a preponderance of the evidence.

8 MR. SIDDIQUI: Dua itself is saying transmit the video
9 via cellular network.

10 JUDGE LANEY: Okay.

11 MR. SIDDIQUI: And so, why would a POSITA use
12 Bluetooth to transmit video over cellular network? What's the
13 rationale? What's the expectation of success? And also, back to a
14 TV? To a television in 2007?

15 JUDGE LANEY: I mean, I hear your point. I guess I'm
16 --

17 MR. SIDDIQUI: I mean, I guess --

18 JUDGE LANEY: Can you answer the hard question on
19 the opposite though? Do you agree that a skilled artisan would
20 recognize that you could do it? So I understand obviousness isn't
21 just what could be done. There must be a reason of why you do it.
22 But we have to -- we're dancing all around this line in this case,
23 right. And so, I'm asking you, do you at least concede that a
24 skilled artisan would recognize that you could do that? It's just
25 now the next stage is why would you?

1 MR. SIDDIQUI: You could. Yes, Your Honor, you
2 could use Bluetooth to send video. But would you -- the Board
3 requires more than that.

4 JUDGE LANEY: Right.

5 MR. SIDDIQUI: Use Bluetooth to send videos while or
6 simultaneously connected to the internet with the first circuit
7 which they say is UMTS. So would you do that simultaneously? I
8 don't know. There's no explanation the device -- these devices
9 would work

10 JUDGE LANEY: Okay. Fair. I understand.

11 JUDGE TROCK: This is Judge Trock. Can I ask this
12 question about the claims? Is there a limitation in the claim that
13 says where it has to be sent?

14 MR. SIDDIQUI: No, Your Honor.

15 JUDGE TROCK: Okay. So it could be another phone?

16 MR. SIDDIQUI: Yes, Your Honor.

17 JUDGE TROCK: It could be someone standing next to
18 me with a phone, and I use Bluetooth just to transmit that video to
19 the phone standing next to me.

20 MR. SIDDIQUI: We use it now.

21 JUDGE TROCK: I understand that.

22 MR. SIDDIQUI: So we're talking --

23 JUDGE TROCK: That's my point. So why wouldn't
24 someone with skill in the art back in 2007 be thinking of that?

25 MR. SIDDIQUI: Well, that's not their job.

1 JUDGE TROCK: I mean, your point is why would they
2 use Bluetooth -- use Bluetooth for video and send it to a cellular
3 network. I'm saying, why not just use Bluetooth as a radio to go to
4 another phone that's standing right next to you? You don't need to
5 go through the cellular network to transmit that. Do you?

6 MR. SIDDIQUI: But that's all that they argue.

7 JUDGE TROCK: I understand your point. But your
8 argument has to do with why someone with ordinary skill in the art
9 would do these things, and I'm trying to ask a question. You seem
10 to be limiting the argument to, what does Dua show us? What
11 does Dua provide? Dua does not say to do this. Due does not say
12 to do that. And so, we have to take a more expansive scope. We
13 have to take a look at all of the art. We have to take a look at what
14 someone of ordinary skill would understand. And the motivations
15 frankly can come from a lot of different places. They don't have to
16 come from the references. You agree, right?

17 MR. SIDDIQUI: Yes, Your Honor.

18 JUDGE TROCK: Okay. It can come from anywhere.
19 It could come from any problem that someone of ordinary skill in
20 the art wants to try to solve that is in this area. Right?

21 MR. SIDDIQUI: There should be evidence in the record
22 though, Your Honor.

23 JUDGE TROCK: I -- believe you me, whatever
24 decision we come to it's going to be based on the evidence in the
25 record. But my point is, is that your argument seems to be that

1 because it's not expressly in the reference, someone of ordinary
2 skill in the art wouldn't be motivated to do this. And I take issue
3 with that argument.

4 MR. SIDDIQUI: No, Your Honor. No, Your Honor.
5 That's not my argument. My argument is they -- without citing
6 what was described in Figure 10 and 11 in Dua, they just came
7 here and showed the Figure and said, look, you could do Bluetooth
8 and simultaneously connect to the internet. And so, my point back
9 to that was, we have to look what the reference itself is teaching.
10 And the reference itself is not teaching to do this simultaneously.
11 The reference itself is not teaching to use Bluetooth to connect to
12 another phone while simultaneously connected to the internet
13 using another radio circuit. In this particular Figure 10 and 11, all
14 it's saying is, you can capture video feed from an external device
15 and transmit it. There's also a question, is this even simultaneous,
16 because it's been -- that's why they make this argument that the
17 word "simultaneous" doesn't really mean simultaneous. It could be
18 -- if you're capturing a video feed from an external recording
19 device and then transmitting this same video, you have to get it
20 first to be able to transmit it. That's Paragraph 190, are you
21 simultaneously doing those things. And so, Judge Trock, in that
22 respect, I'm not saying that there needs to be specifically there.
23 What I'm saying is there's just a lot of missing pieces. And so,
24 sure you can grab a phone with another phone and Bluetooth video
25 with it. That's not what they argue, but let's say you could. Now,

1 do we know that that device can also at the same time connect to
2 the internet using a second radio? And then, do we also know that
3 this particular transaction -- this particular transaction -- the claims
4 are very specific. The controller will control each of these first
5 and second circuits to do that. So is the controller not facilitating
6 this simultaneous connection, the same controller that was
7 controlling four circuits? And so, that's what we are just -- this
8 POSITA is just having to take a lot of inferences.

9 JUDGE LANEY: And controller -- I mean, how would
10 you do it otherwise controller? Or is your point simply being you
11 wouldn't have a controller, you would just have, like, four
12 independent --

13 MR. SIDDIQUI: NFC is a perfect example of that.

14 JUDGE LANEY: -- circuits?

15 MR. SIDDIQUI: NFC's have their own controllers.
16 NFC is a perfect example of that. NFC is sort of -- you know, so
17 you could have -- based on processors -- so the cellular modem
18 would be doing its own assignment of connections. I believe
19 there's evidence Mr. McNair has put evidence that baseband
20 processors would be separate from the controller so the baseband
21 processor would be able to assign the connections to the cellular
22 circuits, GSM and UMTS, which would be then from the
23 controller. Now, the baseband processor would have no business
24 controlling the Wi-Fi or the NFC circuit, right. If the baseband
25 controller is not controlling its cellular circuits, why would it then

1 control the NFC and Wi-Fi? It would be controlled by a different
2 component.

3 JUDGE LANEY: Your expert has evidence in there
4 where he explains that people with skill in the art at this time
5 actually built it without having the controller switch between
6 different circuits.

7 MR. SIDDIQUI: Yes, Your Honor.

8 JUDGE LANEY: Okay.

9 JUDGE HUDALLA: All right, Mr. Siddiqui, you've
10 gone have seven minutes over here. So you restore a little bit of
11 time at the end and give you the last word. And we'll return back
12 to Mr. Erickson.

13 MR. SIDDIQUI: Thank you for your time, Your
14 Honors.

15 JUDGE HUDALLA: Mr. Erickson, you can begin
16 whenever you're ready there.

17 MR. ERICKSON: Thank you, Your Honor. I'd like to
18 start where Counsel left off with Dua. He made a statement that it
19 doesn't simultaneous for Figure that we're talking about. I direct
20 the Board to Paragraph 195 of Dua that I'm displaying locally. But
21 it describes the situation where the User B in the figure on the right
22 that's receiving video from a cell tower. And it says, "He may
23 decide that he wants to watch a video feed on his television for
24 enhanced viewing experience and surround sound. The scenario
25 represented in Figure 10 assumes the television has an integrated

1 RFID module. User B can simply press the RFID activation
2 button and bring the media hotspot in proximity, allow its
3 connectivity between the devices using any number of supportive
4 wireless protocols is automatically established and media the
5 content is automatically transmitted per the steps described in
6 Figure 8A." So this is describing simultaneous. You have a feed,
7 a video feed coming in. The user wants relay it to another device,
8 maybe a cell phone, it could be anything, and would use any one
9 of the radios. And that refers to --

10 JUDGE LANEY: Counsel, what's that paragraph again
11 in Dua?

12 MR. ERICKSON: Paragraph 195 and 196. And I
13 would like to make clear to save time, I was skipping over some
14 words there. But it's describing an incoming feed and he decides
15 he wants to forward it somewhere. This is the simultaneous nature
16 of all disclosures in Dua. Now, any of the radios refers to all of
17 the radios.

18 JUDGE LANEY: Real quick. In particular, what about
19 that is simultaneous?

20 MR. ERICKSON: Because it's describing throughout
21 Dua that this is being relayed at the same. So you can pick your
22 source, it can be stored. In Figure 8A when they talk about what
23 the user is going to do, the user picks the source. He could pick
24 something that's already stored on his phone, he could pick
25 something that's on the internet that's coming in that he's capturing

1 live on his camera phone. So the user picks the source.

2 JUDGE LANEY: So you have to -- I guess I get from
3 your answer, nothing in those paragraphs specifically refers to
4 simultaneous. You're saying I'm supposed to take simultaneous
5 from those paragraphs in the context of Dua as a whole.

6 MR. ERICKSON: Yes, to the second part, Your Honor.
7 But to the first part, I do believe it says it's a video feed, right.
8 This is describing a figure with a video feed, in other words,
9 incoming video. And it says, while you're getting that incoming
10 feed, you decide you want to forward it somewhere. So I believe
11 those two paragraphs, even in isolation, describe an incoming
12 video feed that the user is going to forward to the TV as illustrated
13 in Figure 10. And then -- but the relevant -- the most relevant
14 point is the second point Your Honor made which is in the context
15 the Dua as a whole it's absolutely simultaneous. All right. And
16 then the other point that's relevant, Your Honor, in 196, it says,
17 "any radio." All right. Now, Dua is speaking of a person with
18 ordinary skill in the art. And Dua supposes it can be any of the
19 radios. And any of the radios are as I said before the radios in, for
20 example, Figure 7. And that, of course, includes Bluetooth.

21 Now, I think, Judge Trock, you had a question along
22 these lines, but it seems like the level of disclosure plaintiff is
23 looking for is that to come anywhere close to satisfying plaintiff
24 that Dua would have to walk through every possible type of data
25 and every possible radio and in long form cast doubt on every

1 permutation. That's not how patents are supposed to be written.
2 What Dua says is, whatever radio the user picks or whatever radio,
3 whether it's a cell phone, a small TV, a big TV, whatever radio
4 comes back over that NFC information stream and says, this is the
5 radio I want to use, that's the radio you will use. And Dua
6 explicitly teaches it could be any one of these radios. And, of
7 course, it walks through, and it walks through a couple of
8 examples. It says, here's an example of one of these radios doing
9 one type of data. But the teaching of Dua is that you do whichever
10 radio has been selected either directly by the -- manually by user or
11 by the improved indications. And we know that Bluetooth could
12 be used to stream video. We can discuss the amount of resolution,
13 the quality. Counsel kept saying, "Why would you do that when
14 you could do it a different way?" Well Dua teaches that you don't
15 know. You can't control what the target needs. You can't control
16 radio is in the target device. So you don't get to choose. You can't
17 say, "Sorry target. I want to use a better radio." The target has
18 whatever radio it has, and so that's why Dua says you should
19 support all of those and use whichever one the target supports.

20 JUDGE HUDALLA: And just to refer to the record
21 again, you're on Slides 98 and 99 it seems.

22 MR. ERICKSON: Yes, thank you, Your Honor. 98 has
23 Figure 7 that lists all the radios, and 99 gets into the evidence that
24 Bluetooth was known to be able to stream video.

25 JUDGE LANEY: I think Patent Owner's argument is a

1 little bit different than you represented just a second ago. I think
2 Patent Owner is saying basically, Petitioner is throwing a lot of
3 things at the wall where you have a lot of these parts, and you're
4 asking an awful lot to fill the gaps to bring it all together as
5 claimed. I think that's what they're saying. I don't -- I understand
6 Judge Trock's question, but I think that Patent Owner clarified that
7 he's not saying it has to specifically say it. He's saying, but it has
8 to say enough and there has to be a reason why you're going to
9 combine all these things in a way that's claimed. I mean, I
10 appreciate the argument. I will say it's brief petition is difficult
11 bringing it all together. Can you address his argument with the
12 controller regarding the controller? And I'd like to hear your
13 position on this notion that there's a difference between as you
14 point out on slide -- you just had it up there, I don't know why you
15 changed it -- but whatever slide was just up there 99, 98. Yeah 98
16 where you have -- it supports a lot of different formats, supports a
17 lot of different schemes. But that's different -- or I guess I'm
18 asking as much as it sounds like a statement, I'm asking -- but
19 that's different than what's claimed with regard to having it the
20 schemes and the transmissions.

21 MR. ERICKSON: Okay. I think we're switching
22 between limitations, Your Honor.

23 JUDGE LANEY: We are. Controller is a different
24 limitation than is the second part. Those are two different things.

25 MR. ERICKSON: Yeah. If I could -- and I'm switching

1 to the other slide that address controller. And you recall, there's
2 two different types of control. The kind of broader sense of
3 control for things like cellular radio, where the controller, the CPU
4 just has to be involved in controlling the assignment connection.
5 And the more narrow type of control for the first radio where it has
6 to be user indication and then assignment based on that user
7 indication. The idea of assigning radios, that if you have a CPU
8 that fixes the input output devices, the user has input to the CPU.
9 The CPU then considers that input and then fixes the audio device,
10 whether that's a radio or screen or a speaker. You know, that's all
11 that this limitation is talking about. The controller must assign
12 connection to the radio. The user in the combination could say,
13 "3G network. I want you to use the 3G network." That input goes
14 to the controller. Whether there's a baseband processor between
15 that CPU and the actual radio chipset, Your Honor, is totally
16 irrelevant. The user says, "CPU I want to use 3G connection," the
17 CPU then makes that happen and it assigns a connection to a 3G
18 radio. That's it. That's all that's required there. We're not talking
19 in this particular instance on this limitation about modulation
20 schemes and such. Plaintiff really, I think, conflated those where
21 now they're saying that the CPU has to pick a modulation scheme,
22 the CPU also has to pick frequency, or something like that. That's
23 not in the claim. The CPU just has to control the assignment of a
24 connection of a radio. So when the user says, "CPU, I want you to
25 connect me to the 3G network," and the CPU does that, that's

1 enough regardless of whether it's a baseband processor between it
2 or not.

3 JUDGE LANEY: Is there -- what evidence -- what's
4 your best evidence for that -- the controller controlling assignment
5 of connection of each of the first, second, and third radio
6 communications circuits? I mean, you can have three different
7 circuits without having a controller controlling the assignment,
8 right. I mean, the information can come in, and the computer can
9 decide, this is what I'm dealing with. And so, it petitions -- it talks
10 to the first circuit. And then another time different information
11 comes in and says this is that kind of information. Okay. I'm
12 going to talk to the second circuit. What do you have where you
13 have a controller that's actually assigning which circuit?

14 MR. ERICKSON: Yes, sir. So in Dua we have these
15 inputs. For example, the RFID information comes in and tells the
16 CPU, this target device needs Bluetooth." So the CPU goes to and
17 says, "Bluetooth, you need to handle that transactions," and assigns
18 the connection to Bluetooth. Or the user says, "I only use
19 Bluetooth," and that information goes to the CPU and it assigns
20 Bluetooth radio to the communication, or for a Wi-Fi or whatever
21 the radio is. All of their arguments were really -- they speculate
22 based on these 2012 documents that maybe there could be
23 baseband controller that is also doing other things with these
24 cellular radios. Even if that's true, even if that's true, the CPU is
25 still there to say I've had input either directly from the user or

1 through this RFID tag that says I need to send video to whatever
2 radio or I need to send whatever type of data to whatever radio,
3 and the CPU has to make that happen. There's no way -- if the
4 CPU weren't there, if you pulled it out, that command would die
5 on the vine.

6 JUDGE TROCK: This is Judge Trock. Sorry to
7 interrupt. But can you point to a specific citation in Dua that
8 answers Judge Laney's question? You referred to it. You said Dua
9 has these examples where you're choosing these different radios or
10 the user was choosing them.

11 MR. ERICKSON: Yes, Your Honor.

12 JUDGE TROCK: Can you identify what those are?

13 MR. ERICKSON: Yes, Your Honor. So the Petitioner
14 walks through this at length at pages 31 to 32. That's what these
15 Slides 68, 69, and 70. They go through the three examples. That's
16 where in Dua it actually talks about, for example, pressing RFID
17 button. That tells the CPU, use the NFC radio. The NFC radio
18 comes back and then the CPU will use that device profile to, you
19 know, control -- to create that connection, to cause that connection
20 to occur. Otherwise, nothing would happen. Nothing to would
21 happen. CPU is the only thing that knows when a profile is stored
22 in memory says use Bluetooth, and a user has told me to use
23 Bluetooth.

24 JUDGE LANEY: Do these show assignment from one
25 -- I mean, it has an option, right? It's Got three options and it's

1 assigning to one versus two or three. You're saying --

2 MR. ERICKSON: That's exactly it, Your Honor.

3 JUDGE LANEY: Okay.

4 MR. ERICKSON: That's exactly it. They're just an
5 indication from user or something that says, here's the radio you
6 need to use, and CPU executes on that. That satisfies the
7 limitation.

8 JUDGE TROCK: This is Judge Trock. So this is Dua
9 Paragraphs 123, 160, 215?

10 MR. ERICKSON: Yes, Your Honor.

11 JUDGE HUDALLA: Before we run out of time,
12 Counsel, I just want to you address the 3GPP spec being the wrong
13 spec, I guess, is what Patent Owner says for UMTS.

14 MR. ERICKSON: Your Honor, I'd like to very quickly
15 go to Slide 115. The does hit the limitations -- I think there was a
16 question how it impacts various claims. The petition sets forth that
17 it is an obvious for someone of ordinary skill in the art and this
18 3GPP spec. As we've covered -- as I've covered briefly before, the
19 Patent Owner's expert decided that this 3GPP publication was his
20 UMTS specification and he said that gives us QPSK and QAM.
21 He agreed that UMTS completes QPSK and QAM. So certainly
22 satisfies the independent claim and dependent Claim 12. There
23 was a suggestion by Counsel today that has never before heard that
24 π divided by 4 dash DQPSK was somehow the same as QPSK.
25 There's no argument like that in the record. That was suggested

1 today for the first time.

2 JUDGE LANEY: You're going on to something else.

3 Could you answer his question directly though? I mean, is Exhibit

4 1015 for UMTS or not?

5 MR. ERICKSON: It is, Your Honor. It is.

6 JUDGE LANEY: And what is support do you have for

7 that?

8 MR. ERICKSON: Yes, Your Honor.

9 JUDGE LANEY: The key word doesn't -- doesn't work.

10 MR. ERICKSON: So moving to Slide 119. So as

11 Counsel noted, the words "UMTS" and "LTE" are each in this

12 document one time. At this point in time, remember Patent Owner

13 is using a lot of hindsight here in the opposite way that is usually

14 used. At this point in time, 2006, 2007 this was UMTS. This was

15 Evolved UTRAN, and the "U" stands for "UMTS." Okay. This

16 was an enhancement to UMTS. Shown on Slide 120, this is

17 Evolved UTRA, UTRA, UTRAN. This is UMTS. If you look at

18 the bottom of Slide 120, this is -- remember when we went to find

19 this. A person of ordinary skill sees Dua, Dua says use the 3GPP

20 specifications. He goes to the website, and what does he see. In

21 the 3G column the 36 series Evolved UTRA aspects. At this time,

22 this was an enhancement to UMTS. So this is and this is the

23 declaration of Dr. Creusere saying that yes at this time this was

24 considered part of UMTS.

25 JUDGE LANEY: So this goes -- go ahead.

1 JUDGE TROCK: This is Judge Trock. So I believe I
2 heard Patent Owner's Counsel say that the document is an evolving
3 document. This is based on UMTS. And so I got the impression
4 from what he was saying that this is a further development of it
5 and that what they already had is incorporated into this document
6 and they're changing it and building on it. Now, is that an
7 appropriate understanding, or is this a brand new document with a
8 brand new specification of that has nothing to do with UMTS?

9 MR. ERICKSON: It is UMTS, Your Honor, but is it
10 substantially changed. It is substantially changed. There was a
11 major, major revision at the time. But it was an enhancement to
12 UMTS. It brought along some aspects like QAM and QPSK, and
13 the big add was OFDM.

14 JUDGE TROCK: I guess the question that we would
15 wrestle with then is that, is it so changed that somebody of
16 ordinary skill in the art would not go to this document to find the
17 things that you want to use it for? That's because that's the
18 problem I'm having with this conflation point that I brought up,
19 was that you're mapping these four radios, one of them and UMTS
20 and you've got this document here which your colleague is arguing
21 is LTE. And so there's a disconnect between those two, and I've
22 got to resolve that in my own mind. And so, if this is an evolved
23 document that does have elements of UMTS in it, I guess the
24 question would become would someone of ordinary skill in the art
25 in 2007 want to go to this document for things that they're looking

1 for on UMTS that you're applying to their claims?

2 MR. ERICKSON: Yes, Your Honor.

3 JUDGE TROCK: So that brings up the idea that
4 perhaps this is the wrong document. So if you would address that
5 I'd appreciate it.

6 MR. ERICKSON: Yes, Your Honor. And Counsel did
7 pick up in my opening remarks when you were asking me to go
8 through and look at the -- and discuss the radios that were
9 enumerated, that's why I went back to the petition. Because the
10 petition -- Counsel didn't highlight it, but the petition does have
11 OFDM in there. He talked about QPSK, it does have OFDM in
12 there. Because when we defined UMTS, we said it was the 3G
13 radio that implemented everything taught by 3GPP. And I'm
14 showing us Slide 123 right now, Dua Paragraph 69, it says, "be
15 fully compliant 3GPP." You go there as I just showed, even at the
16 time under the 3G column you have this draft, that taught, hey, we
17 are also going to do these modulations -- or this additional OFDM
18 modulation. If you look at even Tee back in years before was
19 talking about Evolved UTRAN. It's highlighted here on page 123.
20 So this one was something that when Dua teaches to use 3GPP
21 standards, which is what we have labeled UMTS in our petition,
22 that it would include the teaching of this possibility of using in
23 addition to the others the OFDM. And we go back to the claim --

24 JUDGE LANEY: But why would that be in light of the
25 fact that document says expressly that the process -- I mean, it says

1 the present document has not been subject to any approval process
2 by the 3GPP organization pattern and shall not be implemented. I
3 mean, we're talking about an engineer with one year of experience.
4 You're expecting this guy to say, "Well, okay, they're not going to
5 implement it but I am."

6 MR. ERICKSON: Yes, Your Honor. So the issue is, is
7 the concept of using OFDM in a radio obvious or not at that time.
8 To an engineer that says, is there something inventive about using
9 OFDM. Remember, this claim is not about all the other details
10 that need to be worked out in the standard.

11 JUDGE LANEY: Yeah. But the problem that we're
12 -- it's the connection that the Patent Owner brought up. It's the fact
13 that you're using a document you've identified it associated with
14 UMTS, but from all practical purposes, even implicitly, I hear you
15 saying you recognize, well, it's been drastically changed then what
16 really UMTS is. And it's kind of the jumping off point for
17 something different. And then you're asking us to say, well,
18 someone skilled in the art a person with a year's worth of
19 experience is going to make -- is going to seek that out -- that
20 document out and use it to understand how things go together.
21 And I guess I can -- help me with that. Because it seems like a
22 stretch.

23 MR. ERICKSON: He would use it, Your Honor, to
24 know what modulation schemes are possible and obvious.

25 JUDGE LANEY: But does this say it's -- how do we

1 know that it's possible or obvious? Just because a document has it
2 in there --and again, this isn't the implementation. I'm much more
3 with you with the Bluetooth because that's the standard, right. We
4 know that's possible and that's used. This is not that kind of
5 document. This could be just all wild, hey, let's just throw out mad
6 manning, you know. We're throwing out all different kinds of
7 ideas. We don't know if it's going to work. We're just throw
8 -- let's just throw as many different things in here because we're
9 clearly saying we're not relying on this and this is the beginning of
10 a process. In fact, it's version 0.21. I mean, it's early, early on.

11 MR. ERICKSON: So the difference, Your Honor, is the
12 fact that if you had gone to a person with ordinary skill in the art at
13 this point and said -- asked them point blank, you know, "What are
14 the obvious types of modulation schemes to use on a UMTS
15 radio?" And you give them that project, and you're the supervisor
16 of this one-year engineer. You say, "Tell me what other types of
17 modulation schemes are obvious to use in a 3G UMTS system," he
18 would go to this website. He would go to the 3GPP website, he'd
19 go on 3G, he would pull all this up, and he would see these
20 modulation schemes listed. And he'd go back to his boss and say,
21 "Here are the types of modulation scheme we can think about."

22 JUDGE LANEY: And if he came to me with this
23 document and instead of the ones there are actually for UMTS, as
24 his boss, I'd say, "Do it again," because I'm not going to base
25 something off something that's not -- I mean, that hypothetical

1 doesn't help me a whole lot.

2 MR. ERICKSON: Okay. Your Honor, the decision
3 point there do you tell him to build a product based on it? No. But
4 you tell him, "Oh, great idea. Run to the patent office right now
5 and patent it. Go into the patent office and I'll patent it."

6 JUDGE LANEY: I don't know what that has to do with
7 -- I don't think that's what's happening here.

8 MR. ERICKSON: That's the implication here, Your
9 Honor, is that the standard organizations Dua points to is thinking
10 about evolving the UMTS standards to include this additional type
11 of modulation.

12 JUDGE LANEY: Which -- which --

13 MR. ERICKSON: And by the time they published that
14 -- unless you have to tweak on it, unless you have some twist on
15 OFDM, you shouldn't be going to the patent office and trying to
16 patent it.

17 JUDGE LANEY: Okay. Let me ask you this. Let's say
18 hypothetically we don't agree that Exhibit 1015 is properly before
19 us as prior art. What grounds survive?

20 MR. ERICKSON: Yes. Well, if it's not properly before
21 you, I think that knowledge of one of ordinary skill in the art, the
22 declaration of Dr. Creusere, is that these are the known modulation
23 schemes. You can see on Slide 122 this is the Patent Owner's
24 expert and this is the most hotly contested modulation scheme
25 type, OFDM, and look at the admissions on Slide 122 about the

1 knowledge as skilled in the art is at the time of the patent was filed
2 by OFDM. It was known -- in fact my favorite one is the quote at
3 the bottom of the slide where he said even his undergraduates
4 -- even his undergraduates can implement an OFDM system

5 JUDGE LANEY: So you're saying none of the grounds
6 depend upon Exhibit 1015 in the petition?

7 MR. ERICKSON: I believe --

8 JUDGE LANEY: Because obviously you're bound
9 by your petition.

10 MR. ERICKSON: Yes, Your Honor. They are all
11 bound up in both the knowledge of skill -- one of ordinary skill in
12 the art and they pair that with Exhibit 1015. So even if 1015 drops
13 out, it's paired with the knowledge of one of ordinary skill in the
14 art survives including these admissions here of Patent Owner's
15 expert on Slide 122.

16 JUDGE TROCK: This is Judge Trock. I'm sorry to
17 interrupt. You may not like this question, but I'm going to ask it
18 anyway. Patent Owner points us to Exhibit 2036 which is the
19 UMTS specification, 125, 211, version 7.3.0 which is apparently
20 prior art. It's got a date of October 2007. Why didn't you guys use
21 this document? And I'll follow up with a second question. I think
22 his argument is that you picked Exhibit 1015 because it has
23 OFDM.

24 MR. ERICKSON: So there is limited space in the
25 petitions, Your Honor, and we don't think there's any dispute about

1 QAM and QPSK. These are all at the same -- they're literally on
2 the same page next to each other. When you go to the teachings
3 Dua are very expansive, it teaches to go to the 3GPP website, and
4 all of these are right there, and they're all changed over time. This
5 is version 7.3, you know, one of ordinary skill based on the
6 teachings of Dua is going to go to the 3GPP standards website.
7 And, again, all of these are under -- at this time, they're all there
8 under 3G, and under the UMTS standard. And, again, the Evolved
9 UTRA, the "U" is the UMTS. It's the next step of UMTS. And so,
10 all of them are there.

11 JUDGE TROCK: Well, I understand that. But you can
12 see my concern, and I believe Judge Laney's consternation is that
13 this document has UMTS as a title, not just as a search term.

14 MR. ERICKSON: Yes, Your Honor.

15 JUDGE TROCK: And so, it would seem to us just on
16 its face that this would be a more substantial document for to you
17 use when you do your radio mapping for UMTS. And Patent
18 Owner makes the argument—well they picked another document
19 because it's got a disclosure of OFDM and now they're stuck. So
20 you see our concern here?

21 MR. ERICKSON: Well, I think, Your Honor, that we
22 could find the evolution. For example, on Bluetooth we could
23 have picked an earlier version of Bluetooth for one modulation
24 scheme and got it out of the way and picked subsequent versions
25 and have multiple documents. We could have done the same thing

1 with the 3GPP. We could have used this one, we could have used
2 an earlier version of this that may have only had QPSK, and this
3 version has QPSK and QAM. And then, you know, the cutting
4 edge one, still a year before I think the critical date added OFDM.
5 And if we had additional grounds, maybe we could tier many,
6 many more references.

7 JUDGE LANEY: But I think this also ties into the
8 public availability, doesn't it? I mean, doesn't it -- why would a
9 skilled artisan if they're looking up UMTS -- let's say I accept that
10 it was all those documents, all these specifications are available,
11 but why would I accept that a skilled artisan especially one that's a
12 year out of college is going to not look at a specification that are
13 for the specific technology that you're relying on? It would rely on
14 something else that's in its infancy. Why would that be made to
15 -- why is that being available. I mean, why would they -- if we're
16 giving them a certain bit of common sense what you're saying, this
17 guy is smart enough to be able to click through and know where
18 he's going in this -- he knows where he's going in this particular
19 standards body, but yet he's not going to know enough to go to the
20 actual standard for the technology he's looking at? He's going
21 instead go somewhere else for a different technology that's in its
22 infancy, that it has warnings on it or statements saying this is not
23 what you should be following, basically, because it's not
24 implemented?

25 MR. ERICKSON: I think you would do both, Your

1 Honor. I think you would do both.

2 JUDGE LANEY: What evidence do you have that he
3 would?

4 MR. ERICKSON: I'm sorry?

5 JUDGE LANEY: What evidence do you have that he
6 would do both?

7 MR. ERICKSON: Well, because they all -- for
8 example, on Slide 123, you know, Dua, Tee, all these things talk
9 about -- these are talking about draft standards. I mean, Dua is
10 talking about 8211N, right. It wasn't finalized until 2009. People
11 started launching products with it in 2007 because they were tired
12 of waiting. But everyone is interested -- everything is a year or
13 two off. Everybody wants to know what's next. Everybody want
14 to know what is being considered. And what Dua teaches is to be
15 the forward with everything, to do widest breadth of protocols
16 possible. And so, at the point that 3GPP says publish this -- and it
17 isn't something internal. This isn't something secret. They
18 published, you know, we're working on adding OFDM. We're
19 working on adding OFDM. That is something a person of ordinary
20 skill would be interested in.

21 JUDGE TROCK: This is Judge Trock. I hear your
22 argument and some of that does resonate to me. You want to be
23 on the cutting edge, right. So if you're a developer and you want
24 to come out with a mobile device that's going to have four radios
25 in it and you're selecting which radios there going to be and you're

1 looking at Dua you're reading it, you're saying, okay, well let's get
2 the latest and the greatest from 3GPP. So I understand that
3 argument. But what I have trouble putting together is this is just
4 another reference. This exhibit 2036 that Patent Owner has put
5 into their record is just an exhibit for UMTS. If you needed
6 something for OFDM, then why don't you just include that? It's
7 not like we haven't taken 4 or 5 or 6 references before and used
8 them. We could do that if the proper motivation is there and you
9 could establish that these were publicly accessible. My concern is
10 what Judge Laney is articulating. Why would someone who wants
11 to build a UMTS device go and pick a specification for LTE and
12 leave this one behind? That's the conundrum I'm faced with here.

13 MR. ERICKSON: Yes, Your Honor. I don't think
14 anybody would leave anything behind. I think what they would be
15 doing is they would be interested in knowing what modulation
16 schemes 3GPP says are contemplated for these things. And so, the
17 most recent one would include old ones and QAM, QPSK and a
18 new one, OFDM.

19 JUDGE LANEY: I take it. I can understand that
20 argument. But then I guess my concern is for your case. Why
21 wouldn't you have included 2036 as one of your references just to
22 make everything easier?

23 MR. ERICKSON: It would just be a redundant -- it
24 would be redundant teaching of the most current latest and
25 greatest.

1 JUDGE LANEY: So is your argument that everything
2 that's in here, Exhibit 2036 is in your Exhibit 1015

3 MR. ERICKSON: No, not everything, Your Honor.

4 JUDGE LANEY: Okay. Is there something missing?

5 MR. ERICKSON: The QAM and QPSK are in both.

6 JUDGE LANEY: Well, isn't it true that the redline
7 shows how much 2036 is chopped out of that, right?

8 MR. ERICKSON: So the redline is I believe is between
9 the previous version of 1015. I don't think it --

10 JUDGE LANEY: But you said this is -- wait hold on
11 now I'm really getting confused. Because you're telling me that
12 1015 is it's natural evolution of UMTS. And we have a redline, so
13 we can kind of see where this evolution going and that redlining
14 doesn't seem to be supporting or saying the same story that you're
15 representing to us. It seems to be an extensive redline basically
16 saying, we're throwing everything out and we're going to start with
17 something new kind of. Yes we obviously know what we know.
18 But this standard isn't that standard. We're not just evolving. And
19 so, can you square that for me? Because I'm concerned that the
20 way you're representing it, the way you're advocating right now
21 isn't completely consistent with what that shows.

22 MR. ERICKSON: Okay. The actual redline I believe
23 Your Honor is referring to the redline in Exhibit 1007, and that's a
24 delta between, I think, a prior version of 1015. My comments as to
25 the addition of OFDM, I think, Your Honor is addressing a

1 different question which was, you know, QPSK and QAM were
2 being carried forward. OFDM is being added. That begs for a lot
3 of questions. I'm not sure which of the two positions that you're
4 discussing.

5 JUDGE LANEY: I've got this redline. Yeah, I've got
6 this redline I've got the 1015 and you're telling me it's just an
7 evolution. But yet then I have 2036, which if it was just an
8 evolution to add OFMD, whatever the acronym is, why wouldn't
9 there just simply be a redline of that document?

10 MR. ERICKSON: So it is -- Your Honor, when you
11 say, "just an evolution," I think in an answer to Judge Trock's
12 questions, you know, I think I'm forthcoming that it was major
13 -- there were some changes. All right. But as far as these
14 modulation schemes, it carries forward two modulation schemes
15 and adds a third. There are I think as we discussed, you know,
16 major changes -- major other changes.

17 JUDGE LANEY: No, I know. But we're trying to make
18 -- look you've got UMTS. And then you rely on a document that's
19 not UMTS. But now you're trying to tell us, "Well, yeah it kind of
20 is UMTS. It's just an evolution of UMTS." And I don't see how
21 that can be based on the record we have. Because it doesn't -- I
22 don't see much connection between 1015 and 2036, and 2036 from
23 at least 3GPP's perspective is clearly the standard for UMTS.

24 MR. ERICKSON: It is. I would say, Your Honor, the
25 3GPP website has -- 3GPP has published many standards for

1 UMTS and many documents for the 3G. As we discussed in my
2 opening remarks, when we looked at the petition and we said it's
3 the multitude of standards, plural, related to 3G and that's the -- we
4 attached the label UMTS to that in the petition. I think it was very
5 clear in the petition that we're talking about this multitude of
6 standards, many versions, and they have these evolutions, some
7 -- I'll put it this way, Your Honor, major evolutions, all right. But
8 that's the word they used. I didn't evolution. I didn't create that.
9 Evolve UTRA, that Evolved UMTS. I don't want to belittle the
10 change. I'm not saying, just evolution. That was their -- 3GPP's
11 word, not mine. But yes, we used UMTS label to refer to those
12 3GPP standards. And there are several others 2036 is one of them.
13 Everyone agrees that at least as foot hold that planned QPSK and
14 one of ordinary skill would understand that. But this is, I think, a
15 legitimate -- at the time in hindsight could come back and say no
16 it's just LTE. Well, at the time it's there in the 3G column with
17 UMTS and Evolved UMTS. A big change, Your Honor, yes. A
18 major evolution, okay. But it is listed there on the website with all
19 the other 3GPP publications, clearly within the scope of Dua's
20 teachings. And at the time prior to -- prior to publication of 1015
21 and prior to its insertion there regarding other 3G stuff on the
22 3GPP website, prior to that, I think Patent Owner may have a case
23 that even though OFDM was so well known it was done by
24 undergraduates that this claim, this dependent claim, are all
25 OFDM. Maybe they could get -- maybe that was patentable. But

1 after 3GPP publishes this evolution even a large one as you point
2 out, Judge Laney, even a very large evolution, and they said, here's
3 where we're going, and they stick it with the other 3G standards,
4 and they say it's UMTS, you know, at that point it's too late to go
5 and patent OFDM at large. I know I'm way over my time.

6 JUDGE HUDALLA: I do have one last very specific
7 question. Judge Laney just asked you a moment ago, if 3GPP
8 dropped out of the case, would grounds survive? And I think you
9 said every ground still survives. I note that Grounds 2 and 5
10 actually added it as an asserted reference. And I find that to be a
11 remarkable statement with that being the case.

12 MR. ERICKSON: That's right, Your Honor. I think I
13 overstated that. I agree with you. I think those grounds would
14 survive depending on the claim, right. So the 3GPP is only used
15 for certain elements. So I think depending on the claim.

16 JUDGE HUDALLA: So you're expecting us to parse
17 through Grounds 2 and 5 to find other dribs and drabs in the record
18 that support statements you made even if the main reference is
19 gone?

20 MR. ERICKSON: No, Your Honor. So for example, if
21 the reference to OFDM is gone -- I'm sorry, if the reference to the
22 3GPP standard is gone, that would obviously impact the dependent
23 claims for the OFDM we were talking about that would have to
24 stand solely on the knowledge of one who is already skilled in the
25 art, which I think part of all the grounds, but I think you're right

1 -- it's listed as part of those grounds. So where it's needed for
2 those grounds, those would be implicated.

3 JUDGE TROCK: This is Judge Trock. So with regard
4 to Grounds 2 and 5 -- and I know this will complicate the answer
5 -- your use of the 3GPP spec is that only for the OFDM limitations
6 on the dependent claims, or are you using it for more than that?

7 MR. ERICKSON: We have used it for more than that,
8 Your Honor. But the evidence of record is not limited to that. So
9 we have used for many of the limitations throughout the grounds,
10 but it's not the only evidence of that -- of those features.

11 JUDGE LANEY: All right. So if we decide that this
12 3GPP is gone, then going back to Judge Hudalla's question, what
13 happens to claims to the Grounds 2 and 5? What claims would
14 survive?

15 MR. ERICKSON: I think everything except Claim 15
16 and 20 were on there, directly to the OFDM in the petition.

17 JUDGE HUDALLA: I find that remarkable if one of
18 your asserted grounds, asserted references goes away that the
19 ground will somehow still survive. I think you're putting the onus
20 on us to find parts of the record.

21 MR. ERICKSON: I think where it's used. So in other
22 words, Your Honor, for example, the Bluetooth specification is
23 still there then obviously the limitations related to the Bluetooth
24 are not impacted. And so, if a particular didn't need it, then -- for
25 example, the independent claims, we have now in the record, you

1 know, agreement or it's uncontested that the for existed that the
2 knowledge of one skilled in the art would know that the UMTS
3 radio includes QPSK and QAM. So we don't need the 3GPP spec
4 for, for example, the independent claims.

5 JUDGE HUDALLA: Let's just say that we don't favor
6 petitions that are caught up in the choose your own adventure style
7 of, you know, rolling out stuff. I mean I understand your position.
8 I don't like it, but I understand your position.

9 MR. ERICKSON: I understand, Your Honor. And I'll
10 just point to the agreement by Patent Owner's expert in the
11 testimony we highlighted today would be sufficient to meet the
12 broader limitations that -- the modulation schemes would just have
13 to be different.

14 JUDGE HUDALLA: Okay. Thank you.

15 MR. SIDDIQUI: I know that Your Honors have
16 indulged us today. Just to pick up where we left off, I had said that
17 all the grounds would fall apart because of the Exhibit 1015, and I
18 had said the reason for that for Dua and Herle where Exhibit 1015
19 is not relied on, petition 860 for claim elements 1b to 1i that talks
20 about the modulation schemes, they for Ground 1. So even for
21 Dua and Herle where 1015 is not explicitly relied on, they refer
22 back to Ground 1 where Exhibit 1015 is relied on to sort of
23 shoulder the limitations.

24 JUDGE HUDALLA: So you're saying that's the hook
25 that would make all the grounds go away?

1 MR. SIDDIQUI: Yes.

2 JUDGE HUDALLA: I see.

3 MR. SIDDIQUI: And so, that -- just real briefly I've
4 heard on the assigning of connection that anything can -- just the
5 controller providing control -- just the controller doing something,
6 the CPU sending command is assigning a connection. I just want
7 to note, on Slides 38 in our submission to the Slide 38 to 40 to
8 Your Honors, we make this point. It is contrary to the position
9 Petitioners argued in the district court. They emphasized this in
10 summary judgment stage and said, you have to actually parse and
11 look the code to figure out when in the exact assignments occurs.
12 And they said, "It's not just any assignment." And the full context,
13 Your Honor, is in our papers. I'm just trying to hit it closely. But
14 the point -- and it's moreover they said because the context is that
15 the Patent Owner's expert had performed tests showing Bluetooth
16 fileshare and showing tests selecting the Bluetooth and going
17 -- and assigning the connection, the file going, and they have
18 moved for summary judgement saying just because you select
19 Bluetooth doesn't show the controller is actually assigning the
20 connection. You have to parse through and look at the code, just
21 the testing doesn't know it. And these papers show their
22 testimony. And they basically said that timing and causal
23 relationship is shown only in the source code of the software
24 executed by the controller to show that assignment. So the
25 controller assigning connection is more specific than just sending a

1 command.

2 JUDGE HUDALLA: You have a claim interpretation on
3 that, right? I mean, there's no -- you're essentially saying we have
4 to find something more for the assignment than what Petitioner has
5 already put forth.

6 MR. SIDDIQUI: No. I would -- sorry, Your Honor. I
7 would argue, we are going to defend our meaning that controller
8 assigning a connection needs to be more than just turning
9 something on. You have to assign a connection. It can't be just
10 you turn the circuit off. You have to -- it needs to connect
11 something. So the assigning of connection in our meaning means
12 more than just turning it on. And then lastly with respect to -- just
13 real quick. I know this point has been -- Evolved UTRA -- and
14 somebody says there's a lot of evidence in the record and a simple
15 -- Petitioner is not being square here with the panel. Evolved
16 UTRA, a simple Google search shows it's 4G. It's not UMTS.
17 And Series 36, the undisputed Series 36, simple search arrested
18 shows it's LTE, Series 25.

19 JUDGE TROCK: I'm sorry, Counsel. This is Judge
20 Trock. You want us to take Google search now and use that as
21 evidence?

22 MR. SIDDIQUI: No. That's why Your Honor --

23 JUDGE TROCK: Okay. If you could restrict your
24 arguments to the record that would be great.

25 MR. SIDDIQUI: Sure. Yes, Your Honor, I apologize.

1 That's why I prefaced comment with saying that there's already
2 evidence in the record. But I will end at the note that to answer
3 Judge Trock's question, why did they not use 2036? They did not
4 because it doesn't use OFDM. Because no UMTS system uses
5 OFDM. It's -- Evolved UTRA is 4G LTE technology. It was
6 completely new technology. UMTS does not use OFDM. Nobody
7 would be motivated to use it.

8 JUDGE TROCK: We can agree, Counsel, that OFDM
9 was well known at the time?

10 MR. SIDDIQUI: Yes, Your Honor.

11 JUDGE LANEY: Tell me -- just explain to me what the
12 connection is. Because were talking it needs to be more than just
13 turning something on.

14 MR. SIDDIQUI: Yes.

15 JUDGE LANEY: Explain to me what that the
16 assignment what you're contending is. The controller assigning
17 the connection. What would you look -- for example, even in your
18 own case but just generally, what are you looking for in order to
19 establish something does or does not assign in the connections?

20 MR. SIDDIQUI: So, Your Honor, the -- we asked this
21 question from Dr. Creusere, and he said it could be when a
22 transmission frequency is allocated. It could be when -- basically
23 making the circuit ready to connect to something. So not just
24 saying, hey, are you on or are you awake. But, hey are you ready
25 to connect to another device? So it has to be able to connect,

1 assigning a connection.

2 JUDGE LANEY: Connect to what? I mean, a
3 connection between what and what? I mean, connection is a
4 connection. So what's a connection of?

5 MR. SIDDIQUI: Radio modems. So these are radios
6 modems, right. These are radio communication circuit. It needs to
7 be able to -- their purpose, their function in life is to connect to
8 other radio modems, to external circuits. Assigning a connection
9 to this radio connection circuit would be able to do -- and in some
10 limitation actually the claim specifically says it. Assign a
11 connection to transmit the radio to another device, right. And so it
12 needs to assign a connection to be able to transmit to an external
13 radio modem.

14 JUDGE TROCK: This is Judge Trock. I think I hear
15 your argument saying that simply powering on the device would
16 not satisfy this.

17 MR. SIDDIQUI: Yes, Your Honor.

18 JUDGE TROCK: Okay. If there's no power to the
19 circuit, is there an assignment?

20 MR. SIDDIQUI: There is no power?

21 JUDGE TROCK: There's no power. My device is off.
22 My phone is off it has no power. Is there an assignment existing?

23 MR. SIDDIQUI: No, Your Honor.

24 JUDGE TROCK: Okay. I power it on. And I look at
25 my phone and all of a sudden I'm connected to Wi-Fi. Has an

1 assignment been made?

2 MR. SIDDIQUI: Assignment by what? So the
3 controller --

4 JUDGE TROCK: Has an assignment to that modem
5 been made?

6 MR. SIDDIQUI: Yes, Your Honor. If that circuit has
7 been allocated.

8 JUDGE TROCK: Comparing the powered off state to
9 the powered on state, has assignment been made to that modem?

10 MR. SIDDIQUI: Yes. To that modem in particular.
11 Yes, Your Honor.

12 JUDGE TROCK: Then powering on the circuit could
13 be sufficient could it not to satisfy an assignment?

14 MR. SIDDIQUI: Not for assigning connection in
15 response to user indication to transmit video information.

16 JUDGE TROCK: Okay. You need to -- we're now
17 limited to one user indication.

18 MR. SIDDIQUI: Correct.

19 JUDGE TROCK: Correct? Okay. So my turning on
20 the power switch on my phone is not a user indication?

21 MR. SIDDIQUI: No, Your Honor.

22 JUDGE TROCK: Really?

23 MR. SIDDIQUI: Correct. It's not an indication to
24 transmit video information. That's what the claim requires.

25 JUDGE TROCK: Okay. So I'm standing there back in

1 2007, and I want to transmit a video to my friends using cellular,
2 and my phone is off, so there's no assignment. I turn the power on
3 to the phone. It connects up to Wi-Fi, and the video gets sent.
4 You're trying to tell me that's not sufficient just because I powered
5 on the phone.

6 MR. SIDDIQUI: Your Honor, there's actually
7 prosecution history here in the reexamination of the '590 patent
8 specifically using intrinsic record that talks about when an
9 assignment occurs. And so that's one --

10 JUDGE TROCK: I'm glad you brought that up because
11 this is the issue about whether the assignment is automatic or not.

12 MR. SIDDIQUI: Correct, Your Honor.

13 JUDGE TROCK: Okay. So what is your position on
14 that now?

15 MR. SIDDIQUI: There's -- actually there is a causal
16 relationship. So you can't just be turn -- you have to have -- when
17 an indication is provided to assign a connection to transmit video,
18 you need to have a causal relationship. And so --

19 JUDGE TROCK: So turning on the phone is not causal
20 enough for you?

21 MR. SIDDIQUI: Correct. Because you can turn on the
22 phone with -- now, we are digging in the subjective state of the
23 mind of the user here, so I'm not -- but turning on the phone just
24 for turning it on, you could turn it off for many purposes. And so I
25 hesitate there a little bit.

1 JUDGE TROCK: If you turn on the phone you'd have
2 just one circuit, is there still an assignment, or is it just a
3 connection to that? Is there a distinction between if I just have one
4 way to communicate, is an assignment still required or is that just a
5 connection? Or in order to have assignment, do you have to have a
6 multiple to choose from?

7 MR. SIDDIQUI: I think if you just have one circuit and
8 you turn your phone on and then at that point that circuit has
9 connected to Wi-Fi and you've provided an indication for the
10 reason to connect it, then perhaps that connection has been
11 assigned.

12 JUDGE TROCK: Okay.

13 JUDGE LANEY: This is the problem I'm having with
14 1i. Because we've got an indication from a user which indicates to
15 transmit video information using this first radio circuit, right.

16 MR. SIDDIQUI: Yes, Your Honor.

17 JUDGE LANEY: So I'm there with my phone, I want to
18 send a video to my friend. It's already connected to Wi-Fi, I tell it
19 to send the video, right. Then you have the controller assigns a
20 connection to the first radio communication circuit. But it's
21 already connected to the first radio circuit. So this is my
22 conundrum here. The indication from the user indicates to
23 transmitting the video information using that circuit. It seems like
24 your 1i, there cannot be -- the circuit cannot be live yet. In other
25 words, the phone can't be connected to Wi-Fi yet. Because your

1 controller has to connect it to that circuit to transmit the video. So
2 this is my conundrum. My phone is turned on, it's already hooked
3 up to Wi-Fi. So now I'm telling it so send a video file.

4 MR. SIDDIQUI: So I think, Your Honor --

5 JUDGE LANEY: And so now your claim says now
6 we're going to do the assignment to the communication circuit, not
7 to pick up the video file and do it, but now I'm going to connect to
8 Wi-Fi. Is that how I'm supposed to read 1i?

9 MR. SIDDIQUI: So, Your Honor, when you turn on the
10 phone and your phone connects to the Wi-Fi, you have assigned a
11 connection to connect to Wi-Fi.

12 JUDGE LANEY: I can agree with you there. Go ahead.

13 MR. SIDDIQUI: Okay. And then the second element
14 is, the claim says assign when an indication from user to transmit
15 video information using the first radio communication circuit.
16 Now you have made an indication to use the circuit to transmit
17 video. So now there's a different kind of connection. Just not
18 simply connecting to Wi-Fi, but now you have to connect to an
19 external device to presumably transmit the video.

20 JUDGE LANEY: So this connection is not some
21 internal process where the connection is the file? This is -- you're
22 talking it's connecting to a modem or something? What is this
23 connection you're referring to.

24 MR. SIDDIQUI: So it would be for the purpose of
25 transmitting the video.

1 JUDGE LANEY: And what connection would that be
2 because I'm already connected to the communication circuit? Am
3 I not?

4 MR. SIDDIQUI: So for example, Your Honor, that's
5 part of why the first circuit blends well with the Bluetooth.
6 Because you're on, but you go into your phone to select Bluetooth
7 fileshare. And so, your phone is on, Bluetooth maybe on maybe
8 off in the background, I'm not sure, but when you go to your phone
9 and say, please -- I'm selecting Bluetooth fileshare to send my
10 video to another device. And so, that point when you select,
11 you've shared your video. And so, that's when you've indicated,
12 listen, can you please send my video out Bluetooth?

13 JUDGE LANEY: And so Bluetooth has already been
14 connected, because that's how Bluetooth works, right? They've got
15 to shake hands ahead of time to be connected. If you're standing
16 there and it's telling you what other Bluetooth devices are in your
17 area, it knows what they are, and if you're connected to them, it's
18 already done that handshake. And so, it sounds like when I read
19 1i, this assignment of a connection has to do with the internal file
20 you want to transmit, not connecting to the communication circuit.
21 It's almost as if the communication circuit is already connected.
22 So that's the trouble I'm having understanding why. What is this
23 assignment of a connection? What is that connection?

24 MR. SIDDIQUI: Your Honor, so even with being
25 specific, let's say I use Bluetooth or backup protocol, there's

1 different layers of connections. You could be connected the Wi-Fi
2 access point to perform certain tasks, but you're not necessarily
3 transmitting video on it. Now, you want to transmit video on it, so
4 you will provide some additional information by exchanging
5 header information, things like that, hey, I'm sending you a video.
6 And so, that's -- the indication is tied to assigning that connection
7 for the video transfer.

8 JUDGE LANEY: Just to add on to what Judge Trock
9 was saying, and to dovetail what you were saying so I can
10 understand. So you can have, for example, Bluetooth. Yes, you
11 have all these handshakes so that my Bluetooth knows all the other
12 Bluetooths that are available, and to a certain extent maybe you
13 could describe that as a connection because I know what's
14 available. But you're saying this is a little bit different where -- but
15 it's not a connection because I'm not communicating, nor am I
16 preparing to communicate anything to it. When I'm actually ready
17 to send Judge Trock's Bluetooth file or data, it's going to reach out
18 to him and say, hey, I'm about to send you a file. Is that a fair -- is
19 that what you're trying to explain when you say the layers or am I
20 out to lunch?

21 MR. SIDDIQUI: No, no, no, Your Honor. Thank you
22 for helping me there. So basically, for example, when you are -- as
23 Judge Trock mentioned, when you are in Bluetooth connected to
24 another device, right, and you paired and you've done the
25 handshaking, so now you are connected to that Bluetooth device

1 for the purpose of being paired together. So your connection was
2 for the purpose of being paired together. So that's the one
3 connection. Now, you have another connection. You're assigning
4 the connection for the purpose of transmitting a video. So you
5 would -- you could -- both could be true, which is the Bluetooth
6 when Bluetooth turned on and you paired and you did handshakes,
7 you assigned a connection for the purposes of pairing. You could
8 see an instance where you've paired with your -- paired with that
9 other device. Let's say you've paired with your handset or another
10 phone, and now your paired. So you assigned a connection, and
11 you were paired. But you know what? You changed your mind
12 and not going to send this video now. So you go on your merry
13 way. So does -- that won't meet the claim because you assigned a
14 connection for just pairing, right. But then later, you know, when
15 you -- when you specifically said, hey, please share my file using
16 Bluetooth and then that all goes over and you assign a connection
17 for video transfer.

18 JUDGE TROCK: This is Judge Trock again. So it's
19 your position then that the controller making a connection with the
20 first radio communication circuit that allows the transmission of
21 the video would satisfy this limitation, any connection that the
22 controller does?

23 MR. SIDDIQUI: Sorry, Your Honor. Just want to
24 clarify. So when an indication for a user to indicate to transmit the
25 video information. So yes. Yes. So Your Honor, when the user

1 provides an indication for transmitting the video and the controller
2 assigns the connection for later -- for purposes of transmitting that
3 video then that would meet the claim.

4 JUDGE LANEY: So any connection at that point would
5 be satisfied with 1i, is that right?

6 MR. SIDDIQUI: Yes, Your Honor.

7 JUDGE LANEY: All right. Thank you.

8 MR. SIDDIQUI: Are there any more questions? All
9 right then. Thank you so much. I really apologize having used so
10 much of your time. Thank you for letting me. I appreciate it.

11 JUDGE LANEY: Thank both parties for being so well
12 prepared and really giving us a lot to wrestle with.

13 JUDGE HUDALLA: Okay. So at this point the case is
14 submitted and I'm going to ask everybody to hold on a second to
15 talk to court reporter. We are adjourned and off the record.

16 (Whereupon, the above-entitled matter went off the
17 record at 5:11 p.m.)