

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

138 EAST LCD ADVANCEMENTS LIMITED,
Patent Owner.

IPR2024-00959
Patent 7,428,082 B2

Record of Oral Hearing
Held: September 30, 2025

Before KRISTEN L. DROESCH, GEORGE R. HOSKINS, and
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ROBERT K. HIGH, ESQ.
KEVIN D. RODKEY, ESQ.
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
271 17th Street, NW
Suite 1400
Atlanta, Georgia 30363-6209
404-653-6564
robert.high@finnegan.com
kevin.rodkey@finnegan.com

ON BEHALF OF THE PATENT OWNER:

SAMUEL J. LaROQUE, ESQ.
DERRICK K. CARMAN, ESQ.
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, Minnesota 55402
slaroque@robinskaplan.com
dcarman@robinskaplan.com

The above-entitled matter came on for hearing Tuesday, September 30, 2025, commencing at 11:00 a.m. EDT, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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

11:00 a.m.

JUDGE DROESCH: All right. Good morning, everybody. We're convened here for oral arguments for IPR2024-00959, challenging the claims of Patent No. 7,428,082.

My name is Judge Droesch. Joining me remotely for this hearing are Judge Hoskins and Judge Kaiser.

Let's get started with appearances for both parties and for those who will be arguing today, including any LEAP practitioners. It doesn't look like we have any. And if anyone is attending in person or remote meeting today and will not be speaking, please identify them as well.

So counsel --

THE COURT REPORTER: This is Charles. Your mic is loud, Judge.

JUDGE DROESCH: All right, thank you.

Can everybody in the room hear me? Okay, all right. Do I need to do this again? No? Okay, if everybody heard me well enough.

All right. So Counsel for Petitioner, will you please make your appearances?

MR. HIGH: This is Robert High, on behalf of Petitioner. Joining me today is Co-Counsel Kevin Rodkey. Also with me today is a representative from Google, Emily Chen.

JUDGE DROESCH: Thank you.

Counsel for Patent Owner?

1 MR. LaROQUE: Sam LaRoque, Robins Kaplan, on behalf of the
2 Patent Owner. With me is Co-Counsel Derrick Carman, also of Robins
3 Kaplan.

4 And I have two client representatives from 138 East with me. I have
5 Boaz Brickman and Steve Shin.

6 JUDGE DROESCH: Great, thank you. All right.

7 Following the hearing, make sure that you stick around for the court
8 reporter to make sure the spelling of your names are accurate, in addition to
9 ensuring accuracy of any terms, references, or case citations that will be
10 discussed today.

11 All right. So per the order regarding oral hearing, Petitioner is allotted
12 60 minutes for its presentation. Petitioner will go first. Petitioner may
13 reserve some of its time for rebuttal, but that may not exceed 30 minutes.

14 Following Petitioner's presentation, Patent Owner will make their
15 presentation. Patent Owner will also have 60 minutes and may reserve some
16 of its time for sur-rebuttal, as well, to respond to Petitioner's rebuttal
17 arguments. And again, that will not exceed 30 minutes.

18 And then, a couple of quick reminders. To aid in the preparation of
19 the hearing transcript, make sure that you do your best to identify your
20 demonstrative slides by the slide numbers.

21 Your arguments should be limited to only those arguments that were
22 previously presented in your briefs. Please make it clear which challenges
23 and claims you are addressing at all times.

24 We ask all the parties to hold any objections regarding any of your
25 opposing counsel's arguments until your time at the podium.

1 Counsel for Petitioner, would you like to reserve some of your time
2 for rebuttal?

3 MR. HIGH: We'd like to reserve 15 minutes.

4 JUDGE DROESCH: Fifteen minutes, okay. Great.

5 Counsel for Patent Owner, would you like to reserve any time for
6 rebuttal as well?

7 MR. LaROQUE: Yes. We'll also reserve 15 minutes.

8 JUDGE DROESCH: Thank you.

9 I'm going to try to maintain the clock here. And I'll try to give a five-
10 minute warning.

11 Counsel for Petitioner, you may begin your presentation when you are
12 ready. Okay.

13 MR. HIGH: Okay, good morning again. My name is Robert High, on
14 behalf of the Petitioner.

15 Jumping into slide 2 now, the patent that we're discussing here is US
16 Patent No. 7,428,082. It's titled Update Control of Image Processing
17 Control Data. It was originally assigned to Seiko Epson Corporation.

18 What this patent is essentially all about is to try to make sure that the
19 image that is captured with a camera looks the same when it is either
20 displayed on a separate display device or printed with a printer. These
21 different devices, they have different parameters and different processing
22 conditions that affect the way that the image looks.

23 So an image that is taken with a camera might look different when it's
24 sent to a printer if you don't account for those differences. For example, one
25 of those ways that they might differ is the color space in which they operate
26 in.

1 This is essentially how the device reflects the color of a digital pixel.
2 And if you don't account for those differences when you send an image from
3 one device to another, the image might not look exactly the same on the
4 second device.

5 And so the way that the '082 patent deals with that is with an image
6 file. The image file includes image data as well as these processing
7 conditions, which the patent refers to as image processing control data.

8 And when the image file is sent from a camera to another device, like
9 a printer, the processing parameters will tell the printer how it should
10 process the image so that when it prints the image, it will essentially look the
11 way the photographer wanted when that photographer took the picture,
12 looked at the screen on the camera, and saw that they liked it and wanted to
13 print it.

14 Jumping to slide 3 now. The '082 patent discloses two ways that this
15 image file can generally be sent from a camera to a printer, for example.
16 One way is depicted on the left here in Figure 1, where the image file goes
17 directly from a camera, in blue, to a printer, in green.

18 Another way, on the right in Figure 14, the image file goes from a
19 camera, colored in blue, to a personal computer, colored in pink, and then
20 from the personal computer to the printer, colored in green.

21 Also discussed in the '082 patent, here you have these
22 communications that are happening with a server, which in each of these
23 figures is colored in red. And what these communications do is it allows
24 either the camera or the personal computer to download additional
25 processing parameters that it can then store in the image file and send it to
26 the printer.

1 That's going to be a lot of what you'll hear today as that's a big dispute
2 between the parties. And the reason why is because one of our prior art
3 references -- turning to slide 4 now -- is a reference called Kuwata. This is
4 Exhibit 1005.

5 It was also originally assigned to Seiko Epson Corporation, like the
6 '082 patent. So you'll see a lot of similarities between the '082 patent and the
7 Kuwata reference.

8 Similar to the '082 patent, it discusses a camera that creates an image
9 file. And that image file includes processing parameters.

10 You'll see on the top right, paragraph 89, it says that these processing
11 parameters can be information that can be set as preset control information
12 to match the output device that outputs the image data in an image file.

13 It could be processing parameters optimized for each manufacturer of
14 printer or it can be general-use processing parameters that are used fairly
15 often, such as brightness, sharpness, et cetera.

16 So these preset processing parameters are presented to a user at their
17 camera. And when they make a selection and then take a picture, those
18 preset processing parameters are stored in an image file automatically. And
19 then when that image file is sent to a printer, the printer will process the
20 image according to those processing parameters.

21 And so you'll see in the figure on the left here, in Figure 4, it has a
22 similar structure in the sense that the image file can get to the printer either
23 directly from the camera, in blue, or it can go from the camera to a personal
24 computer, in pink, and then to the printer, in green.

1 On slide 5 here, you see a flow diagram of the processing that happens
2 at a printer that receives an image file, both in the '082 patent on the left and
3 in Kuwata on the right.

4 If you go through each of these, you'll see that they parallel each other
5 very closely, essentially doing the same steps, in order, by considering these
6 processing parameters that are stored in the image file and going through
7 until they eventually print it. From the point that the image file gets to the
8 printer, the '082 patent and Kuwata are treating these image files essentially
9 the same.

10 So slide 6 now, we have the independent claim 1 from the '082 patent.
11 And this claim relates to an image-related data generator. The main
12 embodiment in the '082 patent is that's just a digital camera.

13 And the disputed limitation here that I'll be focusing on here is what
14 I'll call the camera-server update limitation. This is the only disputed
15 limitation.

16 It relates to a storage manager on the digital camera that will update
17 the camera with processing parameters based on specification data that
18 specifies the image processing control data to be updated.

19 And so for this claim, we have two separate grounds. We have one
20 ground based on a combination of Kuwata and Fisher, and then we have
21 another combination based on Kuwata, Fisher, and Ohga.

22 So slide 7 now is a summary of the prior art reference Fisher, which is
23 Exhibit 1006. Fisher discloses a digital camera that can communicate with a
24 server and download files that are stored on the server.

25 And so you'll see this excerpt from paragraph 55 on the top right
26 saying that a manufacturer can create these files. This is a broad term.

1 These ancillary data files that Fisher talks about can be, essentially, any type
2 of file that facilitates the efficient use of the camera.

3 And so these files are created by a manufacturer, stored on a server,
4 and made available to the camera. The camera establishes a communication
5 with the server, and then the camera has what Fisher refers to as an ancillary
6 data module.

7 And within that module, there's a download manager. That download
8 manager will responsively identify which of the available files on the server
9 it wants to download.

10 That file gets downloaded onto the camera. And then the data module
11 will then store it into the camera, update the camera so that the user of the
12 camera can use it.

13 JUDGE HOSKINS: Mr. High?

14 MR. HIGH: Yes.

15 JUDGE HOSKINS: This is Judge Hoskins. Would you agree that
16 Fisher does not disclose that this ancillary data can be specifically image
17 processing control data, which is the claim term here?

18 I appreciate that the ancillary data can be many kinds of things when
19 you read Fisher, but I'm wondering, is there a disclosure in Fisher that
20 corresponds directly to that claim term?

21 MR. HIGH: So I suppose -- well, just to start off, we're not relying on
22 Fisher's ancillary data files to be the image processing control data. That's
23 coming from Kuwata in our combination.

24 The ancillary data files in Fisher, however, are fairly broadly defined.
25 Some of the examples that they give are overlay files that can be combined
26 with the image data.

1 So in a sense, there is some image processing going on because you've
2 got these files that can then be combined to form a composite image. That
3 combines the image data captured by the camera as well as information from
4 these files.

5 So there is some processing, but the examples that Fisher gives is a
6 little bit different than what Kuwata does, in the sense that none of the
7 examples are specifically talking about things like color correction or
8 gamma correction.

9 Does that answer your question?

10 JUDGE HOSKINS: Yes, it does. Thank you.

11 MR. HIGH: So turning now to Ohga, slide 8. Ohga is Exhibit 1007.
12 Ohga is dealing with what it refers to as color matching. And this is the
13 same type of thing that Kuwata is dealing with in that you've got these input
14 devices and output devices with different ways that it expresses color.

15 And so what Ohga proposes is you've got profiles for the input device,
16 profiles for the output device. They're stored on a server. A personal
17 computer can then access those files, download them, and then process
18 image data based on the input profile and the output profile to make sure that
19 when the image is sent to the output device, it looks as intended.

20 So Ohga discloses that these profiles are associated with the names of
21 the profiles on the server, and the names of the profiles are presented to a
22 user of the personal computer. The user makes a selection, and the
23 corresponding profile is then downloaded from the server onto the personal
24 computer.

25 Slide 9 now is independent claim 7, and this claim deals with what it
26 calls an image-related data editor. The example from the '082 patent there is

1 a personal computer, and the disputed limitation here that I'll be focusing on
2 is what I'll call the PC-server update limitation.

3 This is similar to claim 1, except now, instead of the camera
4 communicating with the server, you've got a personal computer that is
5 acquiring processing parameters based on attribute data from the server.
6 And for this claim, we have one ground based on a combination of Kuwata
7 and Ohga.

8 Also, I'll be talking about independent claim 8. Independent claim 8
9 relates to what it calls an update data transmit apparatus. The example from
10 the '082 patent for this is a server.

11 The only disputed limitation here, which I'll be focusing on, is what
12 I'll call the processing parameters limitation. There's a dispute as to whether
13 Ohga's profiles constitutes processing parameters. And the ground that we
14 have here is a ground based on a combination of Ohga and Kuwata.

15 So to summarize, the issues Patent Owner raised can be boiled down
16 into these three main issues. One, whether the prior art renders obvious the
17 camera-server update limitation in claims 1, 6, and 10. I showed you claim
18 1. There's similar limitations in 6 and 10, and we've got two applicable
19 grounds there.

20 Two, whether Ohga discloses the processing parameters limitation in
21 claims 8 and 10. And I have an asterisk there, as I'll get into later.

22 Patent Owner also raises similar arguments for claim 1, claim 6, and
23 claim 10, but for that, we're not relying on Ohga's profiles as the processing
24 parameters. We're relying on Kuwata. As I'll get into, we believe that's an
25 improper attack on the references individually.

1 And third, whether the prior art renders obvious the PC-server update
2 limitation in claim 7.

3 There are no separate patentability arguments for dependent claims 2
4 through 5.

5 All right, issue 1, now on slide 13. I'm just showing the independent
6 claim 1 here, the camera-server update limitation.

7 It's referring to a storage manager configured to update at least a part
8 of the image processing control data stored in the control data storage based
9 on specification data, which specifies the image processing control data to
10 be updated. There are similar camera-server update limitations in claims 6
11 and 10, as well.

12 What Patent Owner does here is Patent Owner focuses on the Fisher
13 reference and the Ohga reference individually, rather than considering the
14 combination here. And I think the Board's institution decision did a good
15 job of summarizing the arguments.

16 The combination here discusses Kuwata's processing parameters, and
17 Patent Owner doesn't dispute that Kuwata discloses processing parameters
18 and combines it with Fisher to download those from a server based on
19 specification data.

20 The same thing with the combination using Ohga, as well. Rather
21 than considering those arguments as a whole, Patent Owner is attacking
22 these references individually. Case law is clear that that's improper.

23 The question in an obviousness inquiry is whether it would have been
24 obvious to a person of ordinary skill in the art to combine the relevant
25 disclosures of the two references, not whether each individual reference
26 discloses all of the necessary elements, whereas here, the grounds for

1 obviousness are based on a specific combination of references. Arguments
2 that attack the disclosures of the two references individually lack merit.

3 JUDGE HOSKINS: So Mr. High, this is Judge Hoskins again. You
4 do need specification data somewhere in the art. So can you walk us
5 through where you're getting that from your combination of Kuwata and
6 Fisher?

7 MR. HIGH: Yes. So for the combination of Kuwata and Fisher,
8 Fisher is disclosing these ancillary data files. I'm showing it on slide 15
9 here. These ancillary data files are stored on a server.

10 Now, Fisher then has an ancillary data module. And this ancillary
11 data module can access, select, download, analyze, and store the various
12 ancillary data files from the server. That's from paragraph 37, here on the
13 bottom left.

14 And so what Fisher is disclosing is that the download manager will
15 responsibly identify and store the downloaded ancillary data files into
16 memory 116 of the camera.

17 So you've got these data communications happening, and Fisher is
18 saying that these are bi-directional communications. Fisher has an input-
19 output interface, calls it bi-directional communications with a server.

20 The download manager is responsibly identifying which file it wants
21 to download from the server. That file is then downloaded into Fisher's
22 camera and stored into the storage.

23 And so the specification data is the specification data that Fisher uses
24 to tell the server, give me this file that you have stored that's available for me
25 to download. The server then will send that file back based on that
26 responsive identification.

1 Fisher goes into this in paragraph 57 as well. I'll point you to the
2 exact language.

3 So Fisher is discussing this download procedure. And it's saying that,
4 in one example, the files are made available. The system user may
5 interactively view, manipulate, select, and download the files, and that the
6 ancillary data module will use appropriate ancillary data file download
7 procedures.

8 So what does Fisher say about these ancillary data files? It says that
9 these ancillary data files are comprised of descriptors and the data for the file
10 itself.

11 And the descriptors are defined very broadly. The descriptors are in
12 paragraph 53. They may include any appropriate information related to a
13 corresponding set of data.

14 One of the examples it gives on how these descriptors are used is that,
15 after the file is downloaded, the download manager will then use the
16 descriptors to identify information about the files and then categorize them,
17 store them appropriately, update the menus, et cetera.

18 And so reading these disclosures together, you've got Fisher with a
19 download manager within the ancillary data module responsively identifying
20 a file that's stored on the server. We have Fisher also describing these broad
21 descriptors as being any information related to the files, and the server is
22 presenting the available files to the user of the camera.

23 And so what we've argued in our petition, and I think what we've
24 shown with support from our expert here, as shown in paragraph 107 on
25 slide 16, is that these descriptors are -- it would have been obvious to use
26 these descriptors of the file to download the processing parameters in our

1 combination, which correspond to what is disclosed in Kuwata as the
2 processing parameters for a particular combination of camera and printer.

3 We have our expert, Dr. Stevenson, in paragraph 107, saying that this
4 would have been obvious, that a person of ordinary skill in the art would
5 have been motivated to identify the selected preset conditions to be updated
6 based on Fisher's disclosure of descriptors that are associated with a
7 respective set of data in our combination that corresponds to the processing
8 parameters.

9 And that, towards the bottom, a person of ordinary skill in the art
10 would have only needed to apply conventional network communication
11 techniques to provide a data source, such as an internet server, with the
12 descriptor of the preset conditions for the desired camera-printer pair to
13 receive those conditions in response.

14 So in our combination, we've got a descriptor for the processing
15 parameters of a camera-printer pair. And that's informed based on Fisher's
16 disclosures of downloading files and its disclosures of descriptors that are
17 used to relay information about the files.

18 To return now to slide 15, I just wanted to point out. In Fisher, it
19 discusses these manufacturers creating these files and making them available
20 on a server. This is paragraph 55.

21 Kuwata, in paragraphs 75 and 77, discusses the camera manufacturers
22 desirably identifying the processing parameters for a particular combination
23 of camera and printer. And Kuwata describes this as a difficult process. It
24 says this is largely found through a trial-and-error process. It's described as
25 laborious.

1 So what Kuwata does is that the manufacturer identifies the optimum
2 processing parameters, stores them in memory -- this is paragraph 77 -- and
3 allows the users of the camera to then select a printer, say, and have the
4 processing parameters associated with that printer automatically populated
5 to the image file.

6 Fisher allows that to expand to a broader set of printers. It says that
7 these manufacturers can now make these files available on a server. And the
8 camera, if it doesn't have the file already, can go out and download it.

9 So now we have these camera manufacturers. They can identify
10 processing parameters for additional printers, make them available on the
11 internet. And a user of the camera, if it's not already downloaded, can go out
12 and download that.

13 In slide 17, we have our alternative combination here discussing
14 Kuwata, Fisher, and Ohga.

15 And to Your Honor's question, I don't believe that Patent Owner, with
16 this combination, is disputing that Ohga is disclosing a form of specification
17 data. They're just disputing that the specification data is specification data
18 that specifies image processing control data.

19 In our combination, however, we're combining Kuwata, Fisher, and
20 Ohga so that, like in Ohga where these profiles are associated with a name,
21 the user can select a name, and that specification data allows them to
22 download the corresponding profile onto their personal computer, in our
23 combination, the processing parameters for a camera-printer pair will have
24 corresponding specification data.

25 When presented to the user on their camera, they can select, and the
26 specification data will identify that selection to the server so that the

1 corresponding processing parameters can be downloaded. And that meets
2 every limitation of the claim.

3 For motivation to combine, we have testimony from both experts that
4 supports this. I alluded to this earlier.

5 JUDGE HOSKINS: Mr. High?

6 MR. HIGH: Yes.

7 JUDGE HOSKINS: I'm sorry for interrupting. Before you move on
8 to motivation for the Ohga ground, I understand that in your combination,
9 you're relying principally on Kuwata for the image processing control data,
10 but it would help if Ohga does actually have image processing control data
11 as opposed to some other data.

12 And one of Patent Owner's arguments, as I understand it, is that those
13 profiles, the input profile and the output profile in Ohga, are not image
14 processing control data. I'm wondering whether you agree with Patent
15 Owner on that.

16 MR. HIGH: We do not agree with Patent Owner. The testimony
17 from their own expert supports these profiles being image processing control
18 data.

19 I'll jump ahead now to slide -- I'll start with slide 25. These are
20 disclosures from Ohga. So Ohga is discussing these profiles.

21 I mentioned earlier there's a profile associated with an input device
22 and a profile associated with an output device. That output device could be
23 a monitor. It could be a printer.

24 And then it also has software, which it refers to as a CMM program,
25 that does this color matching. It's this image processing. Ohga says that this

1 software, it executes color matching for the image data on the basis of the
2 input profile and monitor profile, or in the case of a printer, a printer profile.

3 And so what it's saying is the CMM needs these profiles to figure out,
4 okay, I've got image data. It was captured by a camera in a certain color
5 space, or the camera has certain characteristics for color, and I want to give
6 it to this output device.

7 I need to know information about these two devices so that I can
8 figure out how to do these transformations. The profiles have the data that
9 tell this software how to do that processing.

10 On the left here, column 3, lines 48 to 65, we get some insight into
11 what kind of information is stored in Ohga's profiles.

12 In one of these examples, it says for part 2, at the very bottom, the
13 user is prompted to input or designate color space characteristics, i.e., the
14 XYZ values of RGB primary colors, gamma coefficient, and XYZ value of
15 white point. And a monitor profile is created based on these data.

16 That is characteristics about the color of one of these devices that
17 informs the program how it needs to process the color data of the image to
18 make sure that the colors match when it's sent to a separate device.

19 So we have the declaration of Patent Owner's own expert here. This is
20 his summary of what Ohga's profiles are doing. In the middle of the
21 paragraph, he says:

22 These profiles contain detailed color characterization data that
23 describe how a specific device reproduces or captures color relative to a
24 device-independent color space and that these modules, these color
25 management modules, are the software components that perform the color
26 transformations based on the profiles.

1 When the color data, like images, moves between devices -- in his
2 example, he says from a camera to a monitor to a printer -- this software
3 uses the source and the destination profiles to calculate the necessary color
4 transformations. And so this is data that tells this software how to do the
5 image processing.

6 JUDGE HOSKINS: And that's on your slide 26, correct?

7 MR. HIGH: Yes. Thank you for the reminder. That's on slide 26.

8 And jumping back to slide 24 now, we know that that is enough to
9 constitute these processing parameters, these image processing control data,
10 because the '082 patent essentially discusses the same thing.

11 One of the examples of the image processing steps that it discloses
12 happens at the printer is that the printer has software on it that converts the
13 color space from one color space to another. So in this example, there's two
14 different types of RGB color spaces, and it wants to convert it to XYZ.

15 What the '082 patent says to do is, okay, we're going to put the color
16 space that identifies -- we're going to put a color space parameter that
17 identifies the color space where the image data is defined, the color space
18 that the camera used to capture the image. We're going to put that
19 information into our image file.

20 That image file is then sent to the printer. The printer looks at that.
21 And here on the bottom right, it's talking about these processing steps. The
22 process depends on the color space in which the image is defined.

23 It looks at that value and says, okay, if it's sRGB -- that's the first line,
24 or I guess the second line in the cropped image on the left -- the printer will
25 use Matrix TM1 to process the image data. If it's NTSC, then the printer

1 will use Matrix TM2. And so that information tells the printer what kind of
2 processing it needs to do, the same thing as Ohga's profiles.

3 It's saying, here's information about the characteristics of the input
4 device. Here's information about the characteristics of the output device.
5 The XYZ values of the primary colors, gamma coefficient, et cetera, color
6 space characteristics. And that information is what tells the program how to
7 do this color transformation. That discussion of the '082 patent was on slide
8 24.

9 So going back to the combination of Kuwata, Fisher, and Ohga, we
10 have specification data in our combination. That specification data specifies
11 the processing parameters for the camera-printer pair to download, but we
12 also have Ohga expressly disclosing that its specification data, which
13 specifies a profile to download, that those profiles are also image processing
14 control data.

15 And so there is a disclosure in the prior art of specification data that
16 specifies image processing control data. We're simply using that in this
17 combination to specify what kind of processing parameters are downloaded.

18 So now to slide 18. We have expert testimony from both experts that
19 support the motivation of why you would want to do this, combining
20 Kuwata and Fisher and Kuwata, Fisher, and Ohga. One example on the left
21 here from Petitioner's expert comes from paragraph 108 of his declaration.

22 He says that it would be obvious to do this to update and manage the
23 preset conditions stored on the camera to account for printers not stored in
24 the camera's memory, like new printers developed after a camera is sold, or
25 updates to the optimum preset conditions for printing identified by the
26 manufacturer.

1 And continuing later in the paragraph, he says that this predictably
2 improves Kuwata's camera to facilitate adding new files corresponding to
3 the preset conditions or new or updated modes in Kuwata's camera.

4 And on the right, we have an excerpt of deposition testimony from the
5 Patent Owner's expert, Dr. Papanikolopoulos. He was asked, so if users of a
6 camera bought a new printer a year after they bought their camera, and that
7 printer didn't exist at the time they bought their camera, the users of that
8 camera would have to perform the laborious process of identifying the
9 correct output control information of that printer on their own?

10 In response, he said, in fact, given the closed structure of this
11 ecosystem at that time, it is very likely that they wouldn't have been able to
12 do this alone, especially if you consider that you need to fiddle with the
13 software, which was not open-source.

14 And so what he's saying is, if a user buys a camera and then a year
15 later, they buy a camera -- a year later, they buy a printer, and that printer's
16 processing parameters are not stored on their camera, they can't print to their
17 new printer without the optimum processing parameters.

18 What our expert is saying is, you would want to be able to allow users
19 of a camera to update their camera to account for new printers, to account
20 for updated processing parameters for old printers, to download new modes,
21 so that your camera isn't out of date the second you buy it.

22 Now, Patent Owner makes this argument that Kuwata teaches away
23 from doing this because it purportedly discloses a self-contained camera.
24 They don't actually have a disclosure from Kuwata that describes it as a self-
25 contained camera. All they have is silence, and the law is clear that that's
26 not enough for teaching away.

1 In re Fulton says that mere disclosure of more than one alternative
2 does not constitute teaching away from any of these alternatives because
3 such disclosure does not criticize, discredit, or otherwise discourage the
4 solution claimed.

5 Allergan says that a motivation to combine may be implicit in the
6 prior art -- silence does not imply teaching away. And all that Patent Owner
7 has here is silence from Kuwata.

8 It's disclosing the benefits to having these optimum processing
9 parameters for a printer on the camera, and it's disclosing the manufacturers
10 identifying those. And it's disclosing the manufacturers storing them, at
11 least initially, on the camera, but it doesn't say anything about what happens
12 later on.

13 What our expert is showing is that you would want to be able to
14 update the camera so that you can have these additional processing
15 parameters. And this is slide 19.

16 I'll jump ahead now to claim 8. We touched on this, but I'll just recap.
17 So claim 8 is the independent claim from the perspective of the server.
18 Patent Owner's dispute here focuses on the processing parameters limitation,
19 whether these profiles constitute processing parameters.

20 If you agree with me that those profiles are processing parameters,
21 that they tell the program how to do the image processing, to do that color
22 matching, then that processing parameters limitation is met.

23 JUDGE HOSKINS: So you're talking about Ohga in that regard,
24 right?

25 MR. HIGH: Yes, Your Honor. This is for Ohga in combination with
26 Kuwata for claim 8, and then just Ohga by itself for independent claim 9. So

1 for independent claim 8, we do rely on the profiles for the processing
2 parameters in the limitation.

3 I wanted to just highlight some of the arguments that the Patent
4 Owner raises against these profiles being processing parameters.

5 So on slide 27, we point out that one of the arguments that Patent
6 Owner raises is that the processing parameters include: software instructions
7 for execution by a printer or other output device that actually control
8 processing of the accompanying image data.

9 That argument is not supported by the '082 patent. And in fact, that
10 argument reads out the embodiments that are described in the '082 patent.

11 So on this slide in Figure 5B, these are some of the examples that the
12 '082 patent gives for what these processing parameters could be. And they
13 have a certain value, a gamma value of 2.2, a color space of NTSC.

14 These are just parameters to control the image processing that are
15 recorded in the image file. These aren't software instructions that physically
16 are doing the processing of the image data. These are parameter values that
17 are fed into the printer's printer driver that is executed by the printer CPU,
18 and it's got the information on how to process the image data based on these
19 values.

20 The profiles in Ohga are doing the same thing here. They're giving
21 these characteristics of the input device and the output device. They're fed
22 into the software in Ohga, the CMM program, and the software then takes
23 those inputs and processes the image data accordingly.

24 On slide 28, we point out that Patent Owner also argues that the
25 profiles do not meet the processing parameter limitation because they are

1 specific to individual input and output devices. Again, this argument also
2 reads out embodiments from the specification.

3 One of the examples the '082 patent gives is a gamma value. That's
4 one type of processing parameter. And the '082 patent describes this as a
5 gamma value of the camera.

6 It says that, the gamma value used for the gamma correction is
7 included in the control data as information representing the characteristics of
8 the digital still camera 10. So this is the same type of information that's
9 found in Ohga's profiles.

10 And I'll go back to slide 25 and direct you to the bottom of the
11 passage on the left, where it says that the user is prompted to input or
12 designate color space characteristics. One of those is the gamma coefficient.

13 So there actually is overlap in what kind of data is in the image
14 processing control data in the '082 patent and what kind of data is in these
15 profiles in Ohga.

16 JUDGE HOSKINS: So Mr. High?

17 JUDGE DROESCH: Sorry, do you have a question?

18 JUDGE HOSKINS: Yes. I'm just wondering about the ICC profile
19 document that Patent Owner gives us as Exhibit 2004, which is, I think, one
20 of the things that's going on in Ohga.

21 I take it from what you just kind of walked us through that there are
22 really no disputes about what that white paper discloses. The only dispute,
23 as I understand it, is whether what it discloses satisfies the claim terms in
24 claim 1 or claim 8.

25 And your view is that those ICC color profiles do, for all the reasons
26 that you just walked us through?

1 MR. HIGH: I think that's right. I think that this white paper, it was
2 written after the priority date in 2004. And so there are some disclosures in
3 there that I think are consistent with how Ohga's profiles are used.

4 There might be some additional disclosures that talk about more
5 forward-looking things on how these profiles could also be used in different
6 ways. I'm not sure that that's necessarily pertinent to the combination, but I
7 think, in general, the white paper is supporting this argument here.

8 For example, on page 3 of that white paper, and this is Exhibit 2004
9 on page 3, it says the basic way in which these ICC profiles are typically
10 used to achieve color reproduction is by combining a source profile with a
11 destination profile to enable input device data to be transformed to give the
12 required color on output.

13 So I think that is consistent with what Ohga is saying, that you have
14 an input profile fed into a CMM and an output profile fed into a CMM
15 program. And based on the information in those profiles, the software
16 knows how to process the image data to transform it so that it can exhibit the
17 right color characteristics on its output.

18 JUDGE DROESCH: Counsel, I just wanted to give you a warning
19 that you have about two minutes left.

20 MR. HIGH: I will jump ahead to independent claim 7, which is issue
21 number 3. I just wanted to point out here that this is the independent claim -
22 - and I'm looking at slide 30 here -- that is from the perspective of the
23 personal computer communicating with the server.

24 For this PC-server update limitation, turning to slide 31 now, we're
25 still relying on Kuwata as our primary reference. Now we're combining it
26 with Ohga, but we're shifting to focus on the portion of Kuwata's disclosures

1 that discuss the image file being transferred from the camera to the personal
2 computer.

3 And it discloses that this personal computer can have a program on it
4 that can add processing parameters to the image file and send it to the
5 printer.

6 So what we're relying on here in our combination is that now we have
7 a personal computer that is receiving an image file. And if it doesn't have
8 the processing parameters for that camera-printer combination already stored
9 on it, it would want to download it.

10 So we show from a combination with Ohga that the user of the camera
11 could specify what the camera is and what the printer is it wants to use. That
12 information is added to the image file and sent to the personal computer.

13 Now you have the personal computer in view of Ohga using that
14 attribute data to go out and download the processing parameters for that
15 combination of camera and printer, add it to the image file, and send it to the
16 printer.

17 With that, I'll reserve the remainder of my time for rebuttal.

18 JUDGE DROESCH: Thank you, Counsel.

19 MR. LaROQUE: All right. Well, good morning, Your Honors. My
20 name is Sam LaRoque. Again, I represent Patent Owner, 138 East LCD
21 Advancements Limited.

22 This morning I will show why Petitioner has failed to meet its burden
23 to prove unpatentability of the challenged claims of the '082 patent.

24 And in particular, I will show that for each of the six grounds, five of
25 which are obviousness grounds and one of which is an anticipation ground,
26 there is at least one claim limitation, one limitation of the '082 patent claims,

1 that is missing from Petitioner's 103 combinations and from its 102
2 reference, Ohga.

3 I will also explain why for the obviousness grounds, which is five of
4 the six, Petitioner has failed to show that a person of ordinary skill in the art
5 would have been motivated to combine the references that Petitioner raises
6 and would have done so with a reasonable expectation of success.

7 I will jump right in and start with Ground 1, which is Kuwata in view
8 of Fisher. And as we get into claim 1, I just want to remind the Board and
9 provide a little bit more context for claim 1 here. I just want to remind the
10 Board what the problem addressed by the '082 patent is. It's, in our view, a
11 little bit different than the way that Petitioner framed it.

12 So the problem -- and this is at pages 2 to 4 of Patent Owner's
13 Response; that's Paper 13 -- the problem that the '082 patent is really
14 addressed to is fixing a problem in the prior art that required control data,
15 some sort of image processing, filtering, things of that nature, to be
16 embedded with each image, to actually be a part of the image itself. This
17 requirement limited flexibility in updating that control information, for
18 example.

19 So what did the '082 inventors do to address this? They came up with
20 the idea of storing the image processing control data separately from the
21 image data in a control data storage module and relating it to the image data.

22 For example, it could be done on the camera or an external device, but
23 the key was the claim of updating that control data based on specification
24 data identifying the control data to be updated. And that's reflected in this
25 limitation of claim 1.

1 It's a storage manager. It updates at least a part of the image
2 processing control data. And it does so based on specification data, a
3 particular type of data which specifies the image processing control data to
4 be updated.

5 The practical benefit of this was that new modes, new imaging modes
6 that could be set by the photographer -- sunsets, portrait, landscape; those
7 are examples given in the '082 patent -- could be added later without having
8 to redesign the camera, that those could be stored in a separate location from
9 the images. They could be added, could be updated. You could update
10 those settings later on.

11 That's really what's reflected here, certainly described in the preferred
12 embodiment and reflected in this claim language, specification data which
13 specifies the image processing control data to be updated.

14 JUDGE HOSKINS: Mr. LaRoque?

15 MR. LaROQUE: Yes, sir.

16 JUDGE HOSKINS: I'm looking at Figure 3 of the '082 patent. I'm
17 wondering if you can get that in front of you.

18 MR. LaROQUE: I sure can. All right, I have Figure 3.

19 JUDGE HOSKINS: Thank you. If I'm following what you just said
20 correctly, the separateness part of your argument is we've got the image data
21 coming from the generator 31 on the left-hand side of the figure, and that's
22 separate, then this box storage module 32 in the top-central part of the
23 figure, right?

24 MR. LaROQUE: That's correct.

25 JUDGE HOSKINS: Eventually, that gets put into one file, at the very
26 bottom of the figure where it's got the image file kind of going off of the

1 rectangle. At that point, that image file there at the bottom has both of those
2 datas, right?

3 MR. LaROQUE: That's right. They are related by the image file
4 generator.

5 JUDGE HOSKINS: Thank you. And just one more follow-up
6 question to make sure I've got the mapping correct in my head.

7 MR. LaROQUE: Sure.

8 JUDGE HOSKINS: In the storage module -- it seems to me the
9 biggest issue between the parties is specification data, so I want to make sure
10 I follow where specification data is in this figure. And I think it's the
11 identification data storage module 34. That's where the specification data is.

12 And then on the left-hand side, the control data storage module 33,
13 that's where your image processing control data -- that's the claim term in
14 claim 1, anyway -- that's where that data resides. Do I have that correct?

15 MR. LaROQUE: Yes, you have that correct. I would just add that the
16 specification data can be in the identification data storage modules, in those
17 embodiments where the specification data is this identification data. But
18 that is then accessed and used by the storage manager, which is 35, to get the
19 updated image processing control data.

20 What you said is absolutely correct. I'm just adding a little bit more
21 context for how that specification data is used.

22 JUDGE HOSKINS: Okay, yes. Thank you.

23 MR. LaROQUE: You're welcome. So Kuwata is directed to
24 processing image data to obtain an optimal output in view of a particular
25 chosen output device, like a particular printer. And Kuwata is chiefly

1 concerned with optimization of image data on different output devices. It
2 could be different printers, for instance.

3 Kuwata repeatedly describes the advantages of not looking off the
4 camera to update these settings, these optimizations for outputs to a
5 particular printer.

6 As Kuwata explains it, we let the camera manufacturer -- the DSC is
7 the digital still camera -- we let the camera manufacturer put all of the
8 necessary information on the camera to match a particular camera with a
9 particular printer.

10 Kuwata explains that the DSC manufacturer is best suited to identify
11 these optimal processing settings by observing the results of the camera
12 when used with a particular printer. So there's no teaching in Kuwata of
13 updating the control data based on specification data.

14 And certainly, the parties don't dispute that. We agree that that is the
15 limitation that's missing from Kuwata, but I would just point out that that's
16 really the opposite of the '082 patent. Kuwata is emphasizing its
17 permanence and stand-alone use, whereas the '082 patent is directed to
18 updating based on specification data.

19 JUDGE HOSKINS: So help me understand that. I don't understand
20 how those two things are different or particularly incompatible.

21 MR. LaROQUE: Well, what I would say is that Kuwata is really
22 emphasizing the importance of having the camera manufacturer do all the
23 work and store that information about the optimum settings for the camera to
24 print to a particular printer. Do all that work, go through that, quote-
25 unquote, laborious process of figuring out those optimal settings and storing
26 that on the camera so that the photographer never has to worry about that.

1 The '082 patent emphasizes the importance of being able to update
2 these processing modes, like the portrait mode, for example, sunset, things
3 like that.

4 And so the '082 is really directed to looking off-camera for updates,
5 whereas Kuwata emphasizes that the camera manufacturer does everything
6 in advance and keeps it on the camera. So there's no need to look off the
7 camera in Kuwata.

8 Does that answer your question, Judge Hoskins?

9 JUDGE HOSKINS: Thank you.

10 MR. LaROQUE: Okay. So Dr. Papanikolopoulos, Patent Owner's
11 expert, distilled this further in his declaration. As he explains, Kuwata
12 emphasizes storing all of the information about these DSC-printer pairs
13 directly on the camera.

14 And he describes the advantages of that, that it enables stand-alone
15 printing without external dependencies. So as I say, this is really the key
16 teaching of Kuwata.

17 So recognizing that these teachings of looking off-camera are missing
18 from Kuwata, Petitioner brings in Fisher in an attempt to fill this gap. And
19 Fisher is really about managing downloads of ancillary data files, as you've
20 already heard.

21 The examples given in Fisher of these ancillary data files are things
22 like templates and image backgrounds. They're fairly basic data that you
23 might combine with an image to add a background or something like that.

24 There are two major shortcomings with Fisher. The first is that
25 Fisher, as I will explain, does not teach specification data at all. So the

1 combination of Fisher and Kuwata does not teach specification data, or
2 specification data that specifies image processing control data to be updated.

3 And the second shortcoming of Fisher is that, as Dr.
4 Papanikolopoulos, Patent Owner's expert, describes in testimony that's gone
5 un rebutted by Petitioner's expert, a person of ordinary skill in the art in 2002
6 would not have been motivated to modify Kuwata, to look for information
7 off the camera, and would not have had a reasonable expectation of success
8 in doing so. I will describe both of these problems.

9 Let me start by addressing the first point -- I'm on slide 8 now -- that
10 Fisher does not teach specification data at all. So the combination is also
11 missing that limitation.

12 You heard Petitioner allege that Fisher teaches these descriptors
13 which describe the ancillary data files. And Petitioner's expert, Dr.
14 Stevenson, points to these descriptors, and only these descriptors, as being
15 the specification data in Fisher.

16 But there is no disclosure in Fisher, nowhere, of using descriptors to
17 identify and obtain image processing control data. And that's what
18 specification data has to do. That's what the claim recites, specification data
19 that specifies image processing control data to be updated, and neither
20 Petitioner nor its expert have pointed to any disclosure of that.

21 In fact, as explained by Dr. Papanikolopoulos, these descriptors are
22 stored separately from the download manager. There is no suggestion in
23 Fisher that they are used in any way to get these ancillary data files.

24 Here are the annotated images that Dr. Papanikolopoulos prepared to
25 illustrate the separation between the descriptors and the process of

1 downloading data in Fisher. Figure 4 on the left shows various areas of
2 memory in Fisher's system.

3 There are two distinct ones shown here. There is the -- I'm on slide 9
4 -- there is the ancillary data module 416, and there are the ancillary data files
5 418. If we zoom in, as Dr. Papanikolopoulos does, on the ancillary data
6 module, we see there the download manager.

7 Fisher describes the download manager in very general terms. It
8 describes it as preferably coordinating, accessing, selecting -- I'm on slide 10
9 -- downloading, analyzing, and storing of various types of ancillary data
10 files, but it doesn't say anything here about descriptors.

11 There's no suggestion that the download manager uses descriptors in
12 any way for these downloads, no suggestion that the download manager
13 relies on them, the only thing that Petitioner points to, Petitioner or its expert
14 points to, as specification data in the process of downloading ancillary data
15 files.

16 So moving on to slide 11, where are the descriptors in Fisher? Well,
17 as shown in annotated Figure 4, the descriptors are stored in a separate block
18 from the download manager. They're located in the ancillary data files
19 themselves.

20 And that's shown here in Figure 7 on the right-hand side. Figure 7
21 shows that an ancillary data file has two parts. It has the data itself, and it
22 has the associated descriptor that describes the data.

23 So there are two points that I want to make here with respect to these
24 descriptors. The first is that they're stored separately from the download
25 manager. There's no connection in Fisher between the download manager
26 and the descriptors.

1 But the second is that they're actually in the ancillary data file itself, as
2 taught by Fisher. And there's no disclosure in Fisher of a descriptor existing
3 independently of the ancillary data file.

4 So to argue, as Petitioner and its expert do, that a person of ordinary
5 skill in the art would have understood that a descriptor could be used to
6 specify files for downloading from off the camera is -- well, it goes too far,
7 because what Fisher actually describes is the descriptor already in the
8 ancillary data file.

9 So how can you use information that's in a file on the camera to
10 specify information, to describe information off the camera? And Petitioner
11 does not describe how that could be done.

12 JUDGE HOSKINS: Mr. LaRoque?

13 MR. LaROQUE: Yes.

14 JUDGE HOSKINS: So are you saying that in claim 1, the
15 specification data has to be separate from the image processing control data?

16 MR. LaROQUE: The specification data is separate from the image
17 processing control data because the image processing control data is -- the
18 claim requires that the specification data specifies the image processing
19 control data to be updated. So the specification data is what goes up.

20 Now, it doesn't necessarily have to go off the camera in claim 1, but it
21 goes up to say, to specify, this is the data, the image processing control data
22 that I want updated.

23 And all Fisher teaches is storing the descriptor with the image
24 processing control data, the ancillary data itself. So there's no --

25 JUDGE HOSKINS: I have a follow-up question for you, just to
26 interrupt.

1 MR. LaROQUE: Sure. No, not a problem.

2 JUDGE HOSKINS: I'm looking at column 2 of the '082 patent. I'm
3 wondering if you can pull that up.

4 MR. LaROQUE: Yes, I have it.

5 JUDGE HOSKINS: And I'm looking at the beginning of line 3 in
6 column 2. It says, the specification data specifies the image processing
7 control data to be updated, which is kind of what you were just talking
8 about.

9 MR. LaROQUE: Right.

10 JUDGE HOSKINS: And then it says, and the image processing
11 control data itself can be used as the specification data.

12 So doesn't that tell us that they don't have to be this separate attribute
13 that you were just walking us through in order for the one to identify the
14 other?

15 MR. LaROQUE: So as Patent Owner interprets the specification data
16 being image processing control data, that's telling us that you can get the
17 updated image processing control data by sending, for example, old image
18 processing control data and saying, this is the image processing control data
19 that I want to update.

20 You don't have to do it that way. You could use -- there are other
21 claims that are directed to identification data, which could be separate from
22 the image processing control data.

23 All this is really saying is that the image processing control data could
24 be the specification data, but it's still being used to specify that you want to
25 update that image processing control data.

1 So it still needs to be used to communicate that there's image
2 processing control data that you want to update. And Fisher does not
3 disclose that.

4 JUDGE HOSKINS: Fisher does update its ancillary data, correct?

5 MR. LaROQUE: Fisher does describe retrieving additional ancillary
6 data files, but Fisher describes doing that --

7 JUDGE HOSKINS: How does it do that without somehow
8 identifying the ancillary data that's to be updated?

9 MR. LaROQUE: Fisher really doesn't say, and it's not in the record.
10 All we know is that the download manager gets these files.

11 There's no disclosure of how Fisher does it, but there's certainly no
12 disclosure of Fisher doing it using descriptors. And that is the only example
13 that Petitioner and Petitioner's expert point to as to how to get these ancillary
14 data files.

15 JUDGE HOSKINS: Okay, thank you.

16 MR. LaROQUE: You're welcome. All right. So actually further, I
17 think, to your point, Judge Hoskins, in Petitioner's Reply, Petitioner points to
18 some additional disclosures in Fisher that Petitioner suggests disclose using
19 descriptors as specification data.

20 And specifically, those are paragraphs 23, 53. This is slide 13,
21 quoting directly from Petitioner's Reply here, at paragraphs 23, 53, 57, and
22 59.

23 Moving on to slide 14, we see that these disclosures come from all
24 over the reference, all over Fisher. There's really no coherent disclosure in
25 Fisher of using the descriptors to obtain additional ancillary data files.

1 We can look in a little bit more detail at what some of these are, but
2 generally paragraph 23 is just giving examples of ancillary data files, what
3 they might do, describes downloading them in very general terms, nothing
4 about descriptors or how downloading is done.

5 Paragraph 53 is interesting. It describes the embodiment of Figure 7
6 that we were already looking at that shows the ancillary data files as
7 including descriptors. And it gives some examples of what the descriptors
8 might do.

9 One of them is using descriptors to analyze already-downloaded
10 ancillary data files to update camera menus, but there's no disclosure of
11 using descriptors to identify additional ancillary data files to go out and get.
12 That is, for using them as specification data to specify image processing
13 control data to update.

14 And likewise, 57 and 59 -- I'm now on slide 16; and this, of course, is
15 in the papers as well -- paragraph 57 just describes online management
16 procedures as depicted in Fisher's Figure 8. There's no disclosure there of
17 descriptors.

18 And paragraph 59 describes how the ancillary data module analyzes
19 descriptors -- for example, to assign already-downloaded ancillary data files
20 to appropriate categories -- but again, no disclosure of using them to update
21 any kind of image processing control data.

22 So to summarize with respect to that first point, in Fisher, the
23 descriptors and the download manager are separate. There's no teaching of
24 updating the ancillary data files on the camera based on descriptors.

25 So there's no teaching of using descriptors as specification data to
26 specify image processing control data for updating as claim 1 of the '082

1 patent requires. It's not in Kuwata, it's not in Fisher, so the combination
2 doesn't supply that limitation either.

3 So moving on to slide 17, I'd like to address again Dr.
4 Papanikolopoulos' unrebutted testimony, testimony that's gone unrebutted by
5 Petitioner's expert, that a person of ordinary skill in the art would not have
6 been motivated to maintain Kuwata -- I'm sorry -- to modify Kuwata in view
7 of Fisher and would not have done so with a reasonable expectation of
8 success.

9 The key here really is hindsight, that in 2025, we're very accustomed
10 to being able to, for example, go to the app store, download updates. We're
11 very accustomed to being able to print, for example, from our phones and so
12 on.

13 As Dr. Papanikolopoulos explains in his declaration, the situation was
14 very, very different. In 2002, printer drivers were very complex. It was
15 very difficult to achieve compatibility with new printers, for a camera, for
16 example, to be compatible, to be able to communicate with a printer and to
17 be able to print images.

18 Fisher doesn't need drivers. The examples that Fisher gives are, as I
19 said earlier, these fairly simple data files, these ancillary data files. They're
20 just things like templates and backgrounds. So Fisher doesn't have to deal
21 with any compatibility issues with different output devices.

22 And Kuwata doesn't teach dealing with compatibility issues either,
23 after a rise in compatibility issues, because according to Kuwata, the DSC
24 manufacturer does everything, figures all of this out ahead of time, figures
25 out those combinations, stores the settings on the camera. So there's no need
26 to look elsewhere.

1 As Dr. Papanikolopoulos --

2 JUDGE HOSKINS: Mr. LaRoque?

3 MR. LaROQUE: Yes, sir.

4 JUDGE HOSKINS: Before we move away from that slide, do you
5 have any -- I understand you have testimony from your expert witness. Do
6 you have any contemporaneous documentary evidence talking about the
7 difficulty of printer driver updates in the pertinent time frame?

8 MR. LaROQUE: What I have, Judge Hoskins, again coming from Dr.
9 Papanikolopoulos is he describes, and it's described in Patent Owner's
10 Response as well, some of the solutions that came later. One of the
11 solutions that came later is, for example, HP, Hewlett Packard, came up with
12 a universal printer driver.

13 And there is in Dr. Papanikolopoulos' declaration -- I believe it's in
14 paragraph 66 -- there is an URL which you can see that that driver, it's a
15 document from 2007 describing the capabilities of HP's universal printer
16 driver.

17 So this was one of the early solutions to these compatibility issues, but
18 that post-dates the '082 patent by five years because we have a 2002 priority
19 date.

20 JUDGE HOSKINS: Thank you. So then the other thing, I think, one
21 of the things Petitioner kind of responds with is that accommodation doesn't
22 require updating printer drivers. It requires modifying what's going on at the
23 camera, maybe at the computer, whatever is sending the data to the printer to
24 be printed.

25 So what's your reply to that?

1 MR. LaROQUE: My reply to that is that, in order for that to even be
2 an issue in the first place, you have to get the combination working. You
3 have to get the camera communicating with the printer in order for those
4 updated settings to be meaningful.

5 And as Dr. Papanikolopoulos explains, that was extremely difficult to
6 do. Whether you were updating the driver to account for new print
7 functionality or new settings on the camera -- again, this is paragraph 65 to
8 67 of Dr. Papanikolopoulos' declaration -- whether it was adding new
9 functionality or adding a new printer altogether, that was very difficult to do
10 in 2002.

11 It sounds easy to us standing here today, but of course, we have to
12 avoid hindsight. We have to put ourselves in the shoes of a person of
13 ordinary skill in the art in 2002.

14 JUDGE HOSKINS: Thank you.

15 MR. LaROQUE: As Dr. Papanikolopoulos also explains, Kuwata and
16 Fisher are really concerned with different problems. And part of avoiding
17 hindsight is considering these references as a whole, each individual
18 reference as a whole.

19 Kuwata, as I said earlier, is really concerned with this kind of stand-
20 alone permanence, with printing using direct uploads without having to look
21 off-camera. Fisher is addressed to a very different problem.

22 Fisher is addressed to scalability. Fisher talks about the issues with
23 image data taking up a lot of space. And so off-loading some of those
24 additional files to an external server, for example, that's very different than
25 the problem that Kuwata is directed to, which is keeping the settings for
26 these DSC-printer pairs. Fisher is really not concerned with printing at all.

1 So again, that goes to the motivation piece, but I already discussed the
2 reasonable expectation of success piece, which is rooted in these difficulties
3 with printer drivers.

4 In the interest of time, I'm going to move ahead to Ground 2 because I
5 want to spend some time talking about Ohga.

6 So recognizing this issue of the missing limitation for Ground 2,
7 Petitioner adds Ohga to the Kuwata-Fisher combination. And Ohga, as
8 Petitioner explained on some level, is concerned with matching of colors
9 between a specific input device and a specific output device.

10 Color matching is an older technology. It really just means ensuring
11 that the colors in an image that are created with one device are accurately
12 reproduced at another device. So colors on a camera, for example, are
13 accurately reproduced on a printer or a monitor.

14 And a conventional, actually very well-understood way of doing color
15 matching in 2002 was by following the ICC specifications; again, ICC being
16 the International Color Consortium. And that, ICC, is really the backdrop of
17 Ohga.

18 Ohga is concerned with, actually, a very narrow application of how to
19 use these profiles. It's specifically concerned with optimizing server load,
20 but as I'll explain, Ohga also fails to fill in this missing limitation of
21 specification data that specifies image processing control data to be updated.

22 I just want to share how Petitioner frames using Ohga and frame it in
23 Petitioner's own words. As Petitioner says, if Patent Owner argues or the
24 Board finds that Kuwata and Fisher do not render obvious updating based on
25 specification data which specifies the image processing control data to be

1 updated, then a person of ordinary skill in the art would have found this
2 obvious in further view of Ohga.

3 So Petitioner is really bringing in Ohga here as a backstop to the
4 Kuwata-Fisher combination, should that combination fail to supply the
5 limitation based on specification data which specifies the image processing
6 control data to be updated.

7 JUDGE HOSKINS: You were just talking about your slide 23; is that
8 correct?

9 MR. LaROQUE: Yes, we were on 23. Yes.

10 JUDGE HOSKINS: Thank you.

11 MR. LaROQUE: I'm moving ahead now to 24, pointing out that
12 Petitioner's only evidence of specification data in Ohga is specification data
13 for an ICC input profile and specification data for an ICC output profile.

14 As I'll explain, Petitioner fails to identify any teaching in the Kuwata-
15 Fisher-Ohga combination of the actual claim limitation specification data,
16 this particular kind of data that specifies the image processing control data to
17 be updated.

18 And as I'll also show, Petitioner fails to meet its burden to show that a
19 person of ordinary skill in the art would have combined these three
20 references to arrive at that limitation.

21 Circling back to some questions, Judge Hoskins, that you asked
22 during Petitioner's argument, I want to start by talking about what it means,
23 the image processing control data, and why these ICC profiles are not -- why
24 a person of ordinary skill in the art would have understood that these ICC
25 profiles are not image processing control data.

1 So no dispute. Petitioner points to information used to retrieve input
2 and output profiles as the specification data for the Kuwata-Fisher-Ohga
3 combination. No dispute that Ohga teaches -- I'm on slide 25 -- that Ohga
4 teaches that its input and output profiles comply with ICC specifications.

5 So let's talk a little bit more about what that means. And moving on
6 to slide 26, here is that white paper, Exhibit 2004, that was discussed briefly
7 during Petitioner's argument.

8 It's not prior art. It was published in December 2004. So it does post-
9 date the patent, but as Dr. Papanikolopoulos explains, it is helpful in
10 understanding what a person of ordinary skill in the art would have
11 understood Ohga to teach. And Petitioner has not disputed this.

12 The ICC itself makes clear that ICC profiles describe how a device
13 reproduces color relative to a device-independent color space.

14 That's a very important term, with respect to a device-independent
15 color space, because that tells us that the ICC profile is just that. It's a
16 profile. It's a definition or a set of definitions, but these definitions do not
17 themselves perform or control image processing.

18 Now, actually, I can clarify that a little bit more with Dr.
19 Papanikolopoulos' declaration where he explains -- now I'm on slide 27 --
20 that these ICC profiles describe certain color properties of the input and
21 output devices, but they are device-specific.

22 So the information in the profile is independent of the image, as Dr.
23 Papanikolopoulos explains. It does not in any way specify how to process
24 the image data so as to have some different appearance at another device.

1 I want to contrast that -- now I'm on slide 29 -- with what the '082
2 patent describes as image processing control data in a preferred embodiment.
3 And that is PIM or PIM parameters, print image matching.

4 Patent Owner has never taken the position that image processing
5 control data is limited to PIM, but certainly PIM is an example of image
6 processing control data. So it's useful to look at how PIM is used, as
7 described in the '082 patent, and how that differs from what you would have
8 in the ICC profile.

9 I think what's key here is that the PIM data is not device-specific. So
10 how is the PIM data set? The PIM data is set when the user, as described in
11 the '082 patent, when the user selects a processing mode.

12 I spoke earlier about those different processing modes that the '082
13 patent describes: sunset, portrait, landscape. We're probably familiar now
14 with fiddling around with different settings on our phones, for example,
15 when we take pictures, that those different settings can achieve different
16 goals that the photographer is interested in, certain outputs.

17 So in sunset, for example, you might boost some of the background
18 tones. In portrait, you're going to blur the background.

19 The reason this is important is that these PIM parameters are set
20 according to the photographer's desires, according to the output effect that
21 the photographer wants to achieve. They are not properties. They are
22 settings.

23 So whereas the ICC profiles, those parameters in the ICC profile just
24 describe properties of an input or an output device independent of what
25 effect the photographer is trying to achieve. The PIM is a setting that is tied

1 to the particular effect, the particular processing, that the photographer wants
2 to carry out.

3 Maybe a simpler way of putting this is that the ICC profile, those
4 settings, those parameters are really descriptive. They describe the device.
5 They are specific to the input or the output device, whereas the PIM
6 parameters in the '082 patent are prescriptive. They prescribe how the
7 photographer wants the image to come out.

8 So that's the key distinction, that the PIM parameters are going to
9 really control the processing of the image because they go to what that final
10 output from the printer that the photographer desires is going to be, whereas
11 the ICC profiles are totally independent of that. They are strictly dependent
12 on the input. They strictly describe the input device or the output device.

13 So that's the first problem with this Ohga-Fisher-Kuwata combination.
14 The problem is that nothing in that combination discloses image processing -
15 - I'm sorry -- discloses specification data that specifies image processing
16 control data to be updated.

17 But the other problem is, we still have the issue of combining. Now
18 we have a three-reference combination. We have Kuwata, Fisher, and Ohga.
19 And we still have the issue of showing why a person of ordinary skill in the
20 art would have been motivated to combine these references and would have
21 done so with a reasonable expectation of success.

22 As Dr. Papanikolopoulos explains, that would not have been the case.
23 Again, Ohga is directed to this very narrow problem of alleviating server
24 load in this very simple color matching routine.

25 And neither Fisher nor Ohga has any disclosure, any discussion of
26 how you would add new print functionality to Kuwata, to get at what

1 Petitioner says is what the Kuwata-Fisher-Ohga combination would be,
2 which is to look off-camera for these new DSC-printer presets.

3 So none of these references explain how to solve these problems,
4 these compatibility issues that I talked about earlier that were a significant
5 problem in 2002, as Dr. Papanikolopoulos describes.

6 So to recap Ground 2, we still have the missing element using the
7 specification data -- I'm now on slide 33 -- of using the specification data to
8 update at least a part of the image processing control data. We don't have
9 that in the Kuwata-Fisher-Ohga combination.

10 Moving on to slide 34, in any case, Ohga does nothing to fix the
11 problem, Dr. Papanikolopoulos explains, with combining these references
12 that a person of ordinary skill in the art would have had, these difficulties in
13 figuring out how to add this new print functionality.

14 In the interest of time, I'm going to skip ahead to Ground 4, which is
15 as to claim 8. For Ground 4, that is Ohga as the primary reference. I'm now
16 at slide 39. That is Ohga as the primary reference in view of Kuwata, now
17 the secondary reference.

18 The key claim limitation here for claim 8 is the update storage -- I'm
19 sorry -- the update data storage module. And I'm now on slide 40.

20 So whereas in claim 1, we were looking, for example, at the camera
21 and the camera looking for updated settings, in claim 8, we're now on the
22 server side. We're on the side of the module that stores the image processing
23 control data that can then be fed back to the camera to update that image
24 processing control data.

25 The key point here is that there is really no dispute that this update
26 data storage module needs to store image processing control data. So it's an

1 update data storage module for storing in advance update data for image
2 processing control data, to update image processing control data.

3 And that update data has to be associated with at least one of the
4 image processing control data and, another option, identification data to
5 identify the image processing control data. But either way, you either have
6 to have the image processing control data that specifies what to update or
7 something separate that identifies the image processing control data.

8 As Dr. Papanikolopoulos points out, Petitioner's expert, Dr.
9 Stevenson, only points to identification data, so-called identification data, in
10 his mapping for this claim. And the only thing that he points to as
11 identification data is the names of the devices, the names of the input and
12 output devices.

13 Well, the names of the input and output devices are not image
14 processing control data. They're just names. And they don't specify or
15 describe image processing control data either because they're just the names
16 of the devices. They're not even the names of the profiles. They're just the
17 names of the devices.

18 And then, of course, we have the secondary problem, which is, for the
19 reasons that I explained earlier, these profiles, these input and output
20 profiles, are not image processing control data. They are simply information
21 that describes an input device or an output device.

22 So we have two problems, two shortcomings with claim 8 where
23 Petitioner fails to meet its burden.

24 Petitioner has two grounds for claim 9. Ground 5 is a 102 ground, and
25 Ground 6 is a 103 ground.

1 Claim 9 is very similar to claim 8. The key difference is that there's
2 no recitation in claim 9 of an input-output device -- I'm sorry -- of an image
3 output device, like a printer, but claim 9 still is on the side of that server and
4 recites providing update data associated with at least one of the image
5 processing control data and identification data to identify the image
6 processing control data.

7 The same problem here. Petitioner's expert only points to the names
8 of the devices, says that these are the identification data, but they are neither
9 image processing control data nor do they identify image processing control
10 data, because they are just the names of the devices.

11 Given that I have about two minutes left, I will circle back briefly to
12 claim 7. I apologize for jumping around. I'm now on slide 35, which is
13 Ground 3, Kuwata in view of Ohga as to claim 7.

14 This claim, as Petitioner explained, is directed to an image-related
15 data editor, but we still have this issue. We have this key limitation, which
16 is the attribute data.

17 And what does the attribute data have to be? As is clear from the first
18 element, it has to include at least one of image processing control data to
19 control image processing. Or it can also be identification data to identify the
20 image processing control data, but we've already discussed that these
21 profiles are not image processing control data.

22 If you look at what Petitioner's expert actually says, as framed by Dr.
23 Papanikolopoulos, Petitioner's expert only identifies as the attribute data --
24 I'm sorry -- only identifies the names of the devices as the attribute data.
25 Those are neither image processing control data nor identification data to
26 identify the image processing control data.

1 So at the risk of sounding like a broken record, again, we don't have
2 any identification here of image processing control data or something that
3 identifies image processing control data.

4 So to briefly conclude, Petitioner's Ground 1 fails. There is no
5 teaching of updating based on specification data in Ground 1.

6 Ground 2 fails, as well, for the same reasons. Again, no updating
7 based on specification data. Included in that is that those ICC profiles are
8 not image processing control data, so there can't be updating of the image
9 processing control data based on specification data.

10 Grounds 3 through 6 fail for similar reasons. We're missing the
11 update identification requirements. In addition to that, for all grounds, as
12 Patent Owner and its expert point out, Petitioner has failed to identify a
13 motivation to combine and show a reasonable expectation of success.

14 Thank you.

15 MR. HIGH: Unless Your Honors prefer, I will start just by jumping
16 in with claim 8, with the limitation that Patent Owner pointed out, the update
17 data being associated with at least one of the image processing control data
18 and identification data to identify the image processing control data.

19 I want to direct Your Honors' attention to Ohga. I'm on slide 25 of
20 Petitioner's demonstratives. And this is on the left, from column 3.

21 So in kind of the middle section that starts with number 1, it states that
22 a plurality of pieces of information, for example, names or symbols of
23 monitor profiles prepared in the server are presented to the server, and the
24 monitor profile selected by the user is downloaded from the server. The
25 profile names presented to the user and the profiles on the server are
26 associated with each other in advance.

1 So just going back to the claim language on slide 23 here, the update
2 data being associated with at least one of the image processing control data
3 and the identification data to identify the image processing control data,
4 Ohga meets that limitation here.

5 It says that the names that identify the profile are associated with the
6 profile on the server so that when the user is presented the names of the
7 profile and selects, identifies which one they want to download, that selected
8 profile is then downloaded.

9 I want to turn back now to Patent Owner's framing of the '082 patent.
10 And specifically, they're talking about the '082 patent was really focused on
11 these embedded image processing parameters.

12 If that's the case, Kuwata is disclosing the same solution as the '082
13 patent. Kuwata has these preset conditions that are stored separately from
14 the image data. Kuwata says that when an image is captured, the image data
15 is stored in a memory card.

16 And then depending upon when the user selects those processing
17 parameters, either before or after, those processing parameters, which are
18 stored in the memory of the control circuit, are then added to the memory
19 card in a single image file. So it's disclosing that same thing as the '082
20 patent.

21 Now, the Patent Owner also tries to frame the '082 patent as focused
22 on these modes. And the '082 patent does disclose different modes, but
23 those modes aren't distinguishable from these processing parameters for
24 printer-camera pairs.

25 In fact, if you look at the '082 patent in column 4, and specifically in
26 the paragraph that starts on column 4, line 28, it says that the server

1 transmits the update data corresponding to the type of image-output device,
2 thereby implementing appropriate image processing according to such type.

3 By way of example, a user of a new type of printer can easily acquire
4 the image processing control data corresponding to such a new type. The
5 maker of the printer can also easily provide the image processing control
6 data for such a new type.

7 So these disclosures in Kuwata and the processing parameters
8 associated with a particular printer are very much pertinent to the disclosures
9 of the '082 patent. Claim 1 is just disclosing image processing control data.
10 It's not saying it has to be certain types of control.

11 Just to further make that point, if you look at Figure 7 of the '082
12 patent, Figure 7 gives an example of some of these modes that Patent Owner
13 was referring to. You've got standard, portrait, landscape, sunset.

14 When one of these is selected on the camera, nothing different
15 happens versus when a particular printer is selected in terms of what
16 happens on the camera. All that means is if you select standard, then those
17 corresponding parameter values are added to an image file.

18 It's the same thing as if you select a printer. In Kuwata, for example,
19 the corresponding processing parameters for that printer are added to an
20 image file. The camera itself in the '082 patent does not process the image
21 file according to any of these modes.

22 They're just sets of parameter values that when they're sent to a printer
23 or another output device will achieve the desired effect. And Kuwata is
24 disclosing a similar type of use in its camera as well.

1 In one of the examples, if you recall earlier, in paragraph 89, where it
2 specifically says, the output conditions can be general-use output conditions
3 that are used fairly often, such as brightness, sharpness.

4 So it's the same types of things. You're adding these processing
5 parameters for a desired effect into an image file, and then those processing
6 parameters are sent to a printer.

7 Now, Patent Owner also spent some time talking about the supposed
8 incompatibility between the combination in Kuwata and Fisher. One of the
9 arguments that they raised is, well, there's no disclosure of how you would
10 do this. We disagree.

11 So Kuwata is saying that you've got these processing parameters
12 stored on the camera. They're presented in a menu. The user can make a
13 selection, and the parameter values associated with that selection is then
14 added to the image file. So if you select a printer -- and this is in paragraph
15 83 -- the parameter values associated with that printer are automatically
16 added to the image file.

17 Fisher is disclosing updating menus to account for new ancillary data
18 files. So in the combination, Fisher is very much describing what you
19 should do to allow a user to select a new printer.

20 So in Kuwata, say you've got printer A, B, and C already in that menu.
21 In the combination, you go out and you download the processing parameters
22 for printer D.

23 Fisher teaches you how to update that menu, just to add a selection for
24 printer D. And if you select printer D, then the processing parameters for
25 that printer are added to your image file whenever you take that picture.

1 Patent Owner also raises some reasonable expectation of success
2 arguments based on supposed issues with printer drivers at the time. There
3 are no contemporaneous disclosures that are in the record besides the Patent
4 Owner's expert here, and the Patent Owner's expert misconstrued Kuwata
5 and what it discloses.

6 One thing that Patent Owner cites its expert to say that, well, Kuwata
7 discloses only a single printer driver already stored on the camera. And in
8 fact, the portion of Kuwata I cite it to says that the printer driver is actually
9 on the printer. And that makes sense because when a user of Kuwata's
10 camera selects that printer, then the processing parameters associated with
11 that printer are automatically added to the image file and then sent to the
12 printer.

13 So there is no need for this printer driver, this separate printer driver,
14 to be downloaded to the camera. And that's actually one of the benefits that
15 Kuwata says with its image file being sent to the printer. It says in
16 paragraph 118, the printing conditions of printer 24 are set based on output
17 control information.

18 So it is not necessary for the user to set printing conditions such as
19 type of printing medium, resolution, and printing direction on the printer
20 driver setting screen because there is no printer driver setting screen. You
21 just select the printer, and then the parameters are added to your vibe.

22 Patent Owner also raises this argument, well, you need the printer
23 driver so that the camera can communicate with the printer. Well, let's look
24 at what Kuwata says to do for how the image file is actually sent to the
25 printer in one embodiment. And starts in paragraph 97 of Kuwata, and it
26 walks through an example of image processing by a printer.

1 And in paragraph 99, it says, when storage device parentheses
2 (memory card) 225 is inserted into slot 247, control device 246 parentheses
3 (CPU 30) of printer 24 reads image file from the storage device, temporarily
4 stores the read image in the memory, and then it goes through the process. It
5 extracts those processing parameters and processes accordingly.

6 So Kuwata's camera already has everything that it needs to be able to
7 send that image file to a printer. All it says is, we're going to put this image
8 file in this memory card, in this example. And then when I put this memory
9 card into a slot on the printer, then the printer knows what to do. It starts to
10 process it.

11 So there are no compatibility issues. There are no issues with the
12 printer driver because the printer driver in Kuwata is disclosed as being on
13 the printer itself.

14 The Patent Owner makes this argument like, well, Kuwata, it only has
15 a single printer driver. Well, actually, it discloses several because it
16 discloses that it's compatible with various printers. So each one of those is
17 going to have their own set of software that it uses to process that
18 information.

19 Patent Owner also raises this argument about Kuwata being the self-
20 contained camera. And it says that, well, the point of Kuwata is so that the
21 manufacturers can identify the processing parameters for the printer.

22 Well, in our combination, that's what's happening as well. It just
23 allows the manufacturers to give those identified processing parameters to
24 the users even after they buy the camera.

1 So it's even more convenient for the camera manufacturers because
2 now it's on a server. They can create those optimal processing parameters,
3 store them on a server, and then allow users access.

4 I thought Your Honor, Judge Hoskins, asked a good question about
5 Fisher's camera. The '082 patent did not invent network communications.
6 Our expert here, Dr. Stevenson, says that this is just a matter of conventional
7 network communications.

8 In Fisher, the ancillary data files are initially are stored on a server.
9 Fisher discloses in paragraph 57 that they can be presented, that the files that
10 are available to be downloaded can be presented to the user.

11 The user then makes a selection. The ancillary data module will then
12 responsively identify to the server which one the user selected and
13 downloaded.

14 Petitioner's expert here provides expert testimony -- this is paragraph
15 107 -- that this is just basic network communications. When you have a
16 camera communicating with a server, the files with a descriptor on the
17 server are presented to the user, the descriptor describes what's in the file.

18 The user makes a selection based on the file that it wants to download.
19 That selection will then identify to the server which file it wants to
20 download.

21 Patent Owner has yet to explain how Fisher's camera could download
22 an ancillary data file based on a selection of a file on a server without
23 sending specification data that identifies the file it wants to download.

24 Patent Owner also makes this argument that, well, in Fisher's camera,
25 the files are stored separately from the ancillary data module. That's not an
26 issue.

1 Fisher discloses in multiple places -- paragraph 53 is one of them --
2 that the ancillary data module has access to the other files that are stored in
3 the memory. For example, it downloads the files, and then it stores them in
4 the ancillary data file portion of the camera storage. That's 418 on the
5 camera.

6 And it also updates the menus -- that's 424 -- in the storage. That's in
7 another part of the memory. So this idea that things are stored in different
8 parts of the memory is not a concern that would raise any issues.

9 Unless Your Honors have any questions --

10 JUDGE DROESCH: It does not look like we have any additional
11 questions. Thank you, Counsel.

12 MR. HIGH: Thank you.

13 MR. LaROQUE: All right. Thank you, Your Honors. I'll start at the
14 end, actually, and work my way backwards.

15 So starting with Petitioner's last counter-argument here that the
16 descriptors could be used, could talk across modules, I just want to go back
17 again to who has the burden here.

18 It's not Patent Owner's burden to show that Fisher could get a file, or
19 would not be able to use specification data to download a file, to update
20 image processing control data.

21 It's Petitioner's burden to show that Petitioner teaches or that a person
22 of ordinary skill in the art would understand Fisher to use specification data
23 to specify image processing control data for updating.

24 The only thing that Petitioner or its expert points to as the
25 specification data in the petition is these descriptors. And for the reasons
26 that I already described, Petitioner fails to meet its burden to show that these

1 descriptors can be used to specify image processing control data for
2 updating.

3 Okay. So backing up some more, all right. Let's talk a little bit about
4 these drivers. Kuwata does have several disclosures of what it calls a printer
5 driver.

6 If you look at the context of these -- I think at paragraph 77 of Kuwata
7 and, as Petitioner also identified, paragraph 118 -- all these really are are
8 settings for the printer. I think paper type is one of the examples given, the
9 print direction. They're just settings on the printer.

10 This has nothing to do with compatibility. None of the references that
11 Petitioner relies on has any teaching of how to achieve compatibility with
12 new printers, which was not a trivial task at the time.

13 So none of the art, as I explained in my primary argument, teaches
14 how to remedy these deficiencies. The driver that Kuwata addresses is
15 really just these settings on the printer for an already-existing DSC-printer
16 pair.

17 As to Petitioner's argument that you could just put an image on a
18 memory card, put that on a computer, and that would take care of all the
19 problems, in Patent Owner's Response, we describe, as Dr.
20 Papanikolopoulos does as well, some of the difficulties with page
21 description languages.

22 It still was not a trivial task to print image data that was acquired on a
23 camera to a new printer. That was not an easy thing to do in 2002.

24 So there are still these compatibility issues in Kuwata that are
25 described by Dr. Papanikolopoulos that, again, have really gone un rebutted.

1 There is certainly no expert testimony from Petitioner's expert rebutting
2 them.

3 Let's talk a little bit about image processing control data. I'm going to
4 circle back to that topic. You've heard Petitioner point, for example, to
5 Figure 7 and describe how Figure 7 shows these sets of parameter values.

6 In Petitioner's own words, these are sets of parameter values that will
7 achieve a desired effect. As Petitioner explained it, you can add processing
8 parameters for a desired effect. If you look at Figure 7, you'll see the
9 examples given, again, are portrait, landscape, sunset.

10 This ties directly into what I described earlier, which is that is why
11 these parameters are image processing control data when the ICC profiles
12 are not, because these parameters in the '082 patent are set so as to achieve a
13 desired effect, whereas the ICC profiles are not something that's set by the
14 user.

15 They are just parameters. They are definitional. They are properties.
16 They just describe properties of an input device or an output device, again,
17 relative to a device-independent color space, a theoretical color space,
18 because all they're doing is describing the color properties of a device itself.

19 They have nothing to do with the user's desires, what kind of
20 processing the user wants to accomplish. Contrast that with Figure 7, which
21 is the user selecting on the camera the particular profiles that he or she wants
22 based on the post-processing that they want to achieve.

23 That ties in as well with Petitioner's arguments about Kuwata. Patent
24 Owner doesn't dispute that both Kuwata and the '082 patent have some
25 descriptions of optimal parameters for a particular output device and have
26 some discussion of parameters to achieve desired effects.

1 But in either case, those are parameters that are being set, that are
2 being established by the photographer and not by -- they are not specific to
3 the device. They are not specifically dependent on describing a device, an
4 input or output device, the way the ICC profiles do.

5 Let me look. Petitioner explained when he first came up that Ohga
6 teaches these profile names and presents a list of profile names to the user.
7 Well, those are the names of profiles.

8 Those are different than what Dr. Stevenson, Petitioner's expert,
9 identifies, which is the device names. Not the names of the profiles, but the
10 names of the devices. The name of the device is certainly not image
11 processing control data. Those device names cannot be identification data
12 for identifying image processing control data.

13 Let me just conclude by emphasizing again the issue with the drivers,
14 that when Kuwata talks about drivers or when the '082 patent talks about
15 being able to communicate with given printers, that relationship, that
16 communication has already been established.

17 We're not talking about being able to establish communication with
18 new drivers here. That was the challenge -- with new printers. That was the
19 challenge that a person of ordinary skill in the art would have encountered.
20 Kuwata doesn't have to deal with that.

21 Fisher doesn't have to deal with that. Petitioner referred to different
22 printers in Fisher. Fisher has no teaching of compatibility with new printers
23 or of selecting different printers. Fisher discloses one, and only one, printer.

24 So again, as I said in my chief argument, none of these references,
25 Kuwata, Fisher, or Ohga, has to deal with these compatibility issues, with
26 these issues of adding new printers.

1 And unless Your Honors have any questions, I will leave it at that.

2 JUDGE DROESCH: I don't believe there's any questions. Thank
3 you.

4 MR. LaROQUE: Okay, thank you.

5 JUDGE DROESCH: Thank you, Counsel, both of you, for your
6 presentations today.

7 Before we adjourn, I just want to remind you to stay in the room for a
8 few minutes to answer any questions that the court reporter has.

9 Otherwise, we're adjourned today. Thank you.

10 (Whereupon, the above-entitled matter went off the record at 1:01
11 p.m.)

PETITIONER:

Erika Harmon Arner
Daniel C. Cooley
Kevin D. Rodkey
Robert K. High
Alissa E. Green
Safiya Aguilar
Grace K. Mills

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP

erika.arners@finnegan.com
daniel.cooley@finnegan.com
kevin.rodkey@finnegan.com
robert.high@finnegan.com
alissa.green@finnegan.com
safiya.aguilar@finnegan.com
gracie.mills@finnegan.com

PATENT OWNER:

Cyrus A. Morton
Samuel J. LaRoque
ROBINS KAPLAN LLP
cmorton@robinskaplan.com
slaroque@robinskaplan.com