

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC.,
Patent Owner.

IPR2024-01084
Patent 10,649,578 B1

Record of Oral Hearing
Held: November 5, 2025

Before JAMESON LEE, JEFFREY S. SMITH, and SHARON FENICK,
Administrative Patent Judges.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

DAVID L. HOLT, ESQ.
W. KARL RENNER, ESQ.
Fish & Richardson, P.C.
1000 Maine Avenue SW
Suite 1000
Washington, D.C. 20024
(202) 783-5070
david.holt@fr.com
renner@fr.com

ON BEHALF OF THE PATENT OWNER:

EAGLE ROBINSON, ESQ.
Norton Rose Fulbright US LLP
98 San Jacinto Boulevard
Suite 1100
Austin, TX 78701
(512) 474-5201
eagle.robinson@nortonrosefulbright.com

The above-entitled matter came on for hearing on Wednesday,
November 5, 2025, commencing at 10:00 a.m.

P R O C E E D I N G S

- - - - -

JUDGE SMITH: Welcome to the Patent Trial and Appeal Board. My name is Jeffrey Smith. With me in person is Judge Jameson Lee, and by video is Judge Sharon Fenick. We are here this afternoon for IPR2024-01084, U.S. Patent Number 10,649,578.

Each party will have 60 minutes total to present its case. Petitioner will present first, and Patent Owner may respond. Petitioner may reserve rebuttal time of no more than half of its total argument time. Patent Owner may also reserve rebuttal time of no more than half of its total argument time.

Petitioner, please state your name and the names of those who are here with you both in person and remotely.

MR. HOLT: Yes, Your Honor. David Holt on behalf of Petitioner, Apple. I'm joined by lead counsel Karl Renner, who may offer remarks. And here from Apple as an observer is Andrew Stein.

JUDGE SMITH: Thank you. Petitioner, do you wish to reserve time for rebuttal?

MR. HOLT: Yes, Your Honor. I'd like to reserve 25 minutes.

JUDGE SMITH: Thank you. Patent Owner, please state your name and the names of those here with you, both in person and remotely.

MR. ROBINSON: Good afternoon, Your Honor. Eagle Robinson here for Patent Owner. Just myself.

JUDGE SMITH: Thank you. Patent Owner, do you wish to reserve time for rebuttal?

MR. ROBINSON: Fifteen minutes, please.

1 JUDGE SMITH: Thank you. We ask the parties to mute their
2 microphones unless you are speaking. We have your slides on our
3 computers and we can follow along with you. Also, when you are
4 discussing a slide, please identify the slide by page number so that we can
5 follow along during the hearing and again when we read the transcript.

6 Petitioner, you may present your case when you're ready.

7 MR. HOLT: Thank you for bearing with us in this doubleheader
8 today, Your Honors. Again, may it please the Board, my name is David
9 Holt on behalf of Petitioner, Apple, and I'm joined by Karl Renner, who may
10 provide remarks.

11 If you'll turn to Slide 2, you'll see that we'll be discussing three
12 issues today. The first two issues relate to the independent claims, and the
13 third issue relates to a small subset of the challenged dependent claims.

14 On Slide 4 are the grounds. There are two obviousness grounds
15 against each of the challenged claims. The first is based on Shiplacoff, and
16 the second is based on a combination of Shiplacoff and Nan. Issue 1 relates
17 to Ground 1, and Issue 2 relates to Ground 2. Both issues, though, relate to
18 the same claim limitations.

19 And if you'll turn to Slide 6, you'll see the Independent Claim 1. In
20 general, this claim recites various transitions between different user
21 interfaces. On the left, the claim starts at a home screen that includes an
22 icon associated with an application. A first input by a first contact on the
23 icon is detected, and this results in replacing the home screen with the user
24 interface of the application associated with the icon.

25 There are no arguments that the grounds of the petition recite these
26 limitations on the left. Rather, the arguments center on the highlighted

1 limitations at right, which generally relate to two possible transitions from
2 the application user interface based on detecting a second input. In blue,
3 there is a determination whether the second input by the user includes a
4 movement parameter that is above a movement threshold. In purple, when
5 the movement parameter of the second input is above the threshold, one user
6 interface is displayed. This user interface has a portion of the application
7 user interface reduced in size. In red, when the movement parameter of the
8 second input is below the threshold, a different user interface is displayed,
9 you return to the home screen.

10 And, with that, we'll jump directly into the first issue. So, if you'll
11 turn to Slide 10, please. Here we see three of the figures from Shiplacoff.
12 Shiplacoff describes systems and methods relating to the management of
13 active applications and the navigation between them on a mobile device.
14 Shiplacoff relies on a card metaphor to facilitate this application
15 management, where active applications or activities are displayed and
16 interacted with as if they were cards. Users interact with these cards to
17 launch, terminate, and reorder applications.

18 We see here a few of the various display modes taught by
19 Shiplacoff. On the left is the launcher screen, which is the claimed home
20 screen. It shows a number of application icons associated with applications
21 available to a user on the mobile device. A user can, for example, tap on one
22 of the icons to launch an instance of that associated application.

23 In the center is full-screen mode. In this interface, one active
24 application occupies substantially the entire display screen. And at right is
25 card mode. And this is a good illustration of the card metaphor that
26 Shiplacoff uses. Here, multiple different active applications are shown at

1 once, as if they were a series of cards, and a user can navigate between them
2 to select one of the applications, reorder the applications, or terminate one of
3 the applications.

4 There's no argument that these various display modes meet the
5 various display steps included in the independent claims. There is no
6 argument that Shiplacoff teaches various mechanisms for transitioning
7 between these various display modes. And there is no argument that
8 Shiplacoff's system would not be configured in some way to transition from
9 any one of these modes to any of the other modes, including from full screen
10 to launcher.

11 The narrow question at issue here is, what mechanism would a
12 POSITA configure the device to use to navigate between the modes? And
13 Shiplacoff provides an answer to that. If you'll turn to Slide 11, you'll see
14 that Shiplacoff has an entire section titled "Switching Among Modes," in
15 which it describes mechanisms that may be used to transition between the
16 various display modes.

17 One of the mechanisms Shiplacoff teaches for switching between
18 modes is entering gestures. On Slide 12, Shiplacoff provides some examples
19 of those gestures. Examples of gestures that might transition between modes
20 are swipes up, swipes down, or multi-finger gestures like a pinch. However,
21 Shiplacoff is at pains to make clear that these are just examples, and they're
22 not intended to limit a POSITA in their choice of the gestures or transitions.
23 In fact, as we see at the bottom of this excerpt highlighted, other gestures
24 can be used for mode changes. And Shiplacoff teaches that its device is
25 capable of detecting and distinguishing between even more gestures.

26 As Dr. Terveen notes at the top of Slide 13, Shiplacoff teaches that

1 its system is capable of recognizing and distinguishing between, at least,
2 tapping, double-tapping, dragging, tapping and holding, flicking, swiping
3 up, swiping down, and multi-finger gestures. At bottom, Shiplacoff tells us
4 a POSITA would know to choose freely amongst the various mechanisms
5 available for transitioning between display modes. In other words, some
6 form of any of these gestures could be utilized to transition between modes.

7 JUDGE SMITH: I'm curious. What's the difference between
8 dragging and flicking?

9 MR. HOLT: So, it depends on the context in which dragging is
10 used here. Dragging generally relates to an actual dragging of a user
11 interface object on the display. So, you would touch down and then you
12 would move your finger while still in contact with the display, and you'd be
13 dragging what is displayed. Whereas, a flick is just the gesture; it doesn't
14 necessarily involve moving that particular, or any particular, user interface
15 object.

16 JUDGE SMITH: Okay.

17 MR. HOLT: Turning to Slide 14, we see one example described in
18 Shiplacoff. Here, Shiplacoff describes a swipe-up gesture, beginning in
19 gesture area 102 and extending onto screen 101, that transitions, for
20 example, between full-screen mode and card mode. This is one of the two
21 claimed display transitions. A contact with a movement parameter causes
22 the display to transition from the application interface to an interface in
23 which the application interface is reduced in size. That's the card we see.

24 So, what are we left with? We can see that on Slide 16. The
25 question is, what would trigger a transition from full-screen mode back to
26 the launcher or home screen? And to recap very briefly, there's no dispute

1 that a swipe up starting in the gesture area transitions from full-screen mode
2 to card mode, as we see in blue at the top. The narrow dispute here is
3 whether it would have been obvious to use a gesture with a different, lesser
4 movement parameter, such as a tap or flick, to transition from full-screen
5 mode to launcher mode.

6 Of course it would have been. If you're already taking Shiplacoff's
7 suggestion and using a swipe up to transition from full-screen mode to card
8 mode, you'd need to pick another distinguishable gesture to transition from
9 full screen to launcher. On Slide 17, we're reminded that Shiplacoff itself
10 teaches that other gestures can be used for mode changes.

11 So, what other gesture would a POSITA use? On Slide 19, we see
12 that Apple's expert, Dr. Terveen, explained that at least one way to
13 differentiate between the gestures used for these mode switches is using
14 gestures with different movement parameters. If a swipe up is a gesture that
15 performs one transition, Shiplacoff describes at least two examples of other
16 gestures with different movement parameters that a POSITA could pick for a
17 different transition, a short and quick flick or a tap.

18 The petition does not rise or fall on these specific examples,
19 though. Rather, the key is that a POSITA would have found it obvious to
20 vary at least one of the known parameters of gestures, like the magnitude of
21 movement, in designating a different gesture for the transition from full-
22 screen mode to the launcher screen.

23 Smith does not directly confront this general proposition about
24 how a POSITA would have selected different gestures for available mode
25 transitions. Rather, Smith hones in on the specific flick and tap examples,
26 and argues that a POSITA either wouldn't utilize them or they wouldn't meet

1 the claim language. This alone is fatal, though, because the petition clearly
2 was not limited to those examples. Yet, even assuming it were, Smith's
3 argument about the flick and tap examples fail.

4 First, Smith argues that a POSITA would not use a flick gesture for
5 the transition because it would have been assigned to another function in
6 full-screen mode, which is scrolling in the application. For support, Smith
7 looks to a reference called Duarte-992, which is incorporated by reference
8 into Shiplacoff.

9 If you turn to Slide 20, you'll see Smith misunderstands Duarte-
10 992, as well as the petition's obviousness argument. On this slide, we have
11 an excerpt from Duarte-992, and in this section Duarte is describing a drag-
12 scroll gesture and a flick gesture that each allow a user to scroll within the
13 current display. This description actually supports Apple's obviousness
14 arguments for a number of reasons.

15 First, contrary to Smith's arguments in the POR, Duarte actually
16 describes the drag-scroll and flick gestures as two related but distinct
17 gestures with different outcomes. For a drag-scroll, a user touches down on
18 the screen and immediately begins moving their finger a certain direction,
19 stops the movement, and lifts their finger off the screen. Duarte explains
20 that the resulting amount of scrolling on the screen is proportional to the
21 distance a user's finger moved during the gesture. This is effectively, for
22 what it's worth, the same concept as the swipe-up gesture; it's just on the
23 screen 101.

24 On the other hand, for a flick gesture, a user touches down on the
25 screen, immediately begins moving their finger a certain distance, and lifts
26 their finger from the screen while it's still in motion. For a flick gesture, the

1 amount of scrolling on the screen is proportional to both the speed and the
2 distance of the finger during the gesture.

3 While the difference between a drag-scroll and a flick is subtle,
4 Duarte-992 and, by implication, Shiplacoff, describes that its system is
5 configured to be able to differentiate between these two gestures.

6 Second, it's clear from these teachings that Duarte is able to
7 determine and utilize both distance and speed in determining how a gesture
8 affects the user interface. This ability to differentiate gestures and account
9 for distance and speed supports Apple's obviousness arguments. Notably,
10 both of the gestures we described here on Slide 20 that result in scrolling are
11 gestures performed completely within screen 101.

12 In other words, a user touches down within screen 101 and lifts off
13 while their finger is still in contact with screen 101. This is shown, for
14 example, in Figure 4H that's referenced at the top of this section of Duarte.
15 However, recall that the swipe-up gesture Shiplacoff teaches for
16 transitioning between full-screen mode and card mode starts in the gesture
17 area 102. That's what distinguishes the mode transitioning gesture from
18 other swipes. The same holds true for a flick.

19 If you turn back to Slide 19, you'll notice that the petition argued it
20 would have been obvious to use a gesture with a different movement
21 parameter to transition from full-screen mode to launcher screen. Nothing is
22 said here, or elsewhere, about changing the starting position of the gesture.
23 Changing a swipe up that starts in gesture area 102 and continues into the
24 screen, for example, alters the distance and speed of the gesture, and the
25 flick would be a different distance and speed that also starts in gesture area
26 102. Even if a flick starts in the screen 101, like the one described by

1 Duarte, and that would scroll the user interface of an application, a flick that
2 starts in gesture area 102 is distinguishable, given its distinct starting
3 location.

4 I'll pause there.

5 JUDGE SMITH : So, you're saying that the same gesture could be
6 used on the screen to perform different functions depending on the location
7 of the gesture?

8 MR. HOLT: Yes, Your Honor.

9 JUDGE SMITH: And the evidence that you're relying on is your
10 expert's testimony?

11 MR. HOLT: It's also Shiplacoff. For example, Shiplacoff itself
12 talks about the swipe-up gesture starting in the gesture area being a mode
13 transition. But as we just saw in Duarte-992, a very similar swipe-up
14 gesture, if it starts on screen 101, scrolls.

15 JUDGE SMITH: Okay, I see.

16 MR. HOLT: Another example we talked about in the reply is on
17 slide -- apologies, Your Honors, just going to find the slide quickly. Slide
18 18. So, on Slide 18, Shiplacoff teaches that a tap gesture, for example, can
19 have a number of different possible outcomes on this user interface, 6E. I
20 tap on the card 103, highlighted in blue -- I'm sorry, 301A, highlighted in
21 blue, would cause that card to become a full-screen mode. And so you'd
22 transition from card mode back to full-screen mode. A tap on one of the
23 icons down in the quick launch bar that's highlighted in green would launch
24 an instance of that application. And if you see at the bottom, in paragraph
25 126, if you were to tap the space around the cards, you actually would
26 switch from card mode to shuffle mode.

1 JUDGE SMITH: I see.

2 MR. HOLT: So we have one gesture type, a tap, having at least
3 three different possible outcomes on this one user interface depending on the
4 location at which it's used.

5 All right. If you'll turn to Slide 22. Use of the gesture area 102 is
6 just one of the mechanisms described by Shiplacoff and Duarte-992 for
7 altering the function associated with a type of gesture. Here, in addition to
8 the gesture area, Duarte also describes a modifier key, akin to a shift key on
9 a standard computer keyboard, that can be pressed in order to change the
10 function associated with a gesture.

11 JUDGE SMITH: Say that again, please?

12 MR. HOLT: This is the bottom clip from Duarte-992 on Slide 22.

13 JUDGE SMITH: Okay, I see. Thank you.

14 MR. HOLT: And this was highlighted in the reply at pages 14
15 through 15, and the point of highlighting this is that Duarte-992, in addition
16 to Shiplacoff, provided a number of mechanisms by which a user or
17 POSITA could configure the system to differentiate between instances of the
18 same type of contact. So, for example, if you held the shift key down, it
19 would have a different outcome than if you weren't holding the shift key
20 down.

21 JUDGE SMITH: Just out of curiosity, when a user is in full-screen
22 mode, what gesture does Shiplacoff disclose using to go from full-screen
23 mode to launch mode?

24 MR. HOLT: It does not provide an example of that specific
25 transition.

26 JUDGE SMITH: I see. Okay.

1 MR. HOLT: So it's a question of how you would do it, and we're
2 arguing it would have been obvious to use --

3 JUDGE SMITH: Shiplacoff just says you can use gestures.

4 MR. HOLT: Agreed.

5 JUDGE SMITH: And then he discloses a bunch of gestures.

6 MR. HOLT: Yes, Your Honor.

7 JUDGE SMITH: Okay. Okay, thank you.

8 MR. HOLT: That's effectively the basis of Ground 1 for these two
9 limitations -- or three limitations that we saw in Claim 1. You have two
10 possible gestures. Starting in gesture area 102, a swipe up that's explicitly
11 taught by Shiplacoff that transitions from the full screen to the card mode,
12 and, again, the teachings of Shiplacoff rendering obvious that you would
13 utilize a different gesture like one of the other disclosed gestures, a flick, a
14 tap, to transition from full-screen mode back to the launcher screen.

15 JUDGE SMITH: One of Patent Owner's arguments is that the
16 other gestures is a genus, which is insufficient to teach the species of using a
17 tap or a flick. So, you have this genus of gestures, and then you want the
18 species of flick. How do you go from a bunch of gestures to the flick?

19 MR. HOLT: The argument we're making, Your Honor, is that
20 Shiplacoff gives an explicit example where the transition -- there is one
21 transition for a swipe up, and that transition is from full-screen mode to card
22 mode. If you wanted to transition to any of the other screens, you'd have to
23 use a different gesture. And so the point is, you could select -- a POSITA
24 could select any of the gestures disclosed, but at least two of those gestures
25 meet the claim language.

26 JUDGE SMITH: And the number of gestures you listed in one of

1 your slides, I forgot which slide, you had your expert testify -- I think it's
2 Slide 13?

3 MR. HOLT: Yes, I'll go there right now, Your Honor.

4 JUDGE SMITH: Is this a complete list of gestures in Shiplacoff?

5 MR. HOLT: This is the list of named gestures in Shiplacoff. We
6 pulled the list of named gestures in Shiplacoff. Yes, Your Honor.

7 JUDGE SMITH: So, see, you have six or seven gestures named in
8 Shiplacoff.

9 MR. HOLT: Yes, Your Honor.

10 JUDGE SMITH: And one of those named gestures is flicking.
11 And so picking this one gesture out of a genus of, let's say, seven gestures,
12 why would that be sufficient to sustain an obvious conclusion?

13 MR. HOLT: Well, first off, I think that's a very limited number of
14 possibilities that a POSITA could choose between. But, again, at heart, it's
15 not that we're selecting at random a gesture, necessarily; it's that we are
16 trying to figure out how to do something explicitly described in Shiplacoff,
17 which is these transitions. And there's no argument you'd want to be able to
18 go from full-screen mode back to the launcher screen. And so you have to
19 have some mechanism. A POSITA's got to choose. And there's no specific
20 example in Shiplacoff, so we're not even changing Shiplacoff; we're simply
21 saying a POSITA would have to select some gesture in order to make that
22 transition that's not explicitly talked about. And it stands to reason that that
23 gesture would have been one of these various gestures. And the flick or
24 even the tap would have been a different gesture from the swipe-up and
25 could be distinguished. And through that distinction, you would be able to
26 determine which of the two or more user interfaces to transition between.

1 JUDGE SMITH: Okay, thank you.

2 MR. HOLT: So, I'll turn now to Issue 2, which is with respect to
3 Ground 2. And we can go to Slide 31. Ground 2 is a combination of
4 Shiplacoff and Nan. And Nan's teachings perfectly compliment what we've
5 just been talking about with respect to distinguishing between gestures.

6 As we see on Slide 31, Nan describes edge gestures for
7 transitioning between different user interfaces, the same functionality at
8 issue in Shiplacoff's mode changes. Nan's edge gestures begin at or near an
9 edge of the display. So, there's a figure of this in Nan. It's a small region
10 that basically borders the whole screen, that if you gesture starts in that little
11 border area, your gesture's going to have a different functionality than if it
12 were somewhere else inside of the screen away from those edges.

13 JUDGE SMITH: Okay.

14 MR. HOLT: Given the starting location within this edge region,
15 the gestures have different functions than the same gestures that start away
16 from the edge. And Nan is able to distinguish between the edge gestures to
17 determine which of different user interfaces to display for each of the
18 gestures. And that's what we see shown in the simple process diagram at
19 Figure 8 at left on Slide 31.

20 As shown on Slide 32, Nan describes that its device is able to
21 distinguish between gestures based on a number of characteristics, including
22 the final or intermediate length, the number of fingers used, the speed of the
23 gesture, or a combination of these. And Nan provides a clear example that
24 relates directly to distinguishing between a swipe up and a short flick, like
25 we were discussing with respect to Shiplacoff.

26 In the example shown at bottom, Nan's device presents one user

1 interface when an edge gesture travels a relatively short distance, and
2 presents another user interface when the edge gesture travels a relatively
3 long distance.

4 JUDGE SMITH: This is at Slide 32?

5 MR. HOLT: Yes, Your Honor. It's at the bottom.

6 JUDGE SMITH: I see, okay.

7 MR. HOLT: So, the first example is in green, and that is it's
8 selecting the user interface; there, in this particular case, an application
9 selection interface, as a result of a short, single-finger gesture from the edge.
10 And, alternatively, a system control interface in this example, a different
11 user interface, is displayed in response to a relatively long, single-finger
12 gesture that again begins in the edge.

13 JUDGE FENICK: This is Judge Fenick. Is this part that you've
14 excerpted here on Slide 32, the second part from column 9, is that discussed
15 in the petition? The relatively short, relatively long gestures?

16 MR. HOLT: We cited to that section in an example, Your Honor,
17 in the petition. I don't believe that there was an explicit discussion of that
18 example in the petition. Rather, it was a broader discussion of Figure 8 as
19 disclosing the ability to distinguish between edge gestures in order to select
20 a user interface, which, again, is exactly what we're talking about with
21 respect to the claims, and we were seeing in Shiplacoff. This example we
22 highlighted in the reply primarily to show that Nan gives an example that
23 directly hits the claim language.

24 JUDGE FENICK: So, are you relying on the "relatively short,"
25 "relatively long"? Or just that the distinction between -- does Nan teach a
26 distinction between two gestures other than that?

1 MR. HOLT: It does talk about distinction between gestures other
2 than that, but let me go to -- excuse me. If you're in the petition, this would
3 be page 46 and 47. There's a second sentence of this section which is
4 addressing both of the limitations at issue here. "To the extent Patent Owner
5 argues that Shiplacoff does not disclose and render obvious a movement
6 threshold and related features, such as when the second input is detected to
7 include the movement parameter that is above the movement threshold, the
8 edge gestures used in the SNC system render these features obvious."

9 So what we were relying upon was, specifically, Nan's ability to
10 distinguish based on the length of a gesture. Again, we had cited to that
11 example, but not explicitly discussed it in the petition.

12 JUDGE SMITH: It looks like on page 43 of the petition, also, you
13 say that Shiplacoff's system can implement gestures such as Nan's gestures.
14 And then, on page 46, like you said, you cited to your expert's testimony
15 from paragraph 87, and your expert there was citing to column 7, which you
16 have highlighted for us. So, it looks like the petition itself cites to this. It
17 says you can use -- it says that, to the extent there's no movement -- I think
18 that was one of Patent Owner's arguments was that Shiplacoff doesn't have
19 this movement threshold, detecting movement from the gesture region to the
20 screen region. So you're saying you're relying on Nan to show that
21 movement threshold was known in the art?

22 MR. HOLT: Yes, Your Honor.

23 JUDGE SMITH: And then you cited this column 7. So, the idea
24 that Patent Owner is making -- saying that this is untimely, can you speak to
25 why you think this is timely? To explicitly call out, like you did in Slide 32,
26 the cited portion of Nan from your petition and from the expert's testimony.

1 MR. HOLT: The examples that I believe were -- excuse me, Your
2 Honor --

3 JUDGE SMITH: On Slide 32, the short and long gesture
4 examples.

5 MR. HOLT: Yes, which is column 9.

6 JUDGE SMITH: Column 7. I think it's column 7.

7 MR. HOLT: Is it column 7?

8 JUDGE SMITH: Let me see. It's column 7, it looks like line 38 to
9 44.

10 MR. HOLT: Yes, Your Honor. Sorry, I'm just confirming. I
11 would note, Your Honors, that in the application of the combination to
12 limitations [1i] through [1k], there are citations to column 7, lines 9 through
13 55, both for support of the first sentence, which is about utilizing length,
14 speed, hold time, for a number of inputs to execute a change. And so that
15 section that was cited as support for that includes the example.

16 And, again, the final sentence, "moreover, consistent with
17 Shiplacoff's swipe-up gesture, it would have been obvious and a simple
18 matter of design choice for the edge gesture to include a movement in the
19 upward direction such that there is movement from an edge of the display to
20 a distance across the display." And there is, again, a citation to column 7
21 lines 9 through 55, which include those examples.

22 JUDGE SMITH: I see.

23 MR. HOLT: But what I would say, Your Honor, even beyond
24 there being a citation to those examples, these examples aren't intended to
25 change the ground that was described in the petition. They're simply
26 confirmatory examples. They are clearly showing that the Nan system and

1 its gesture handler has the capabilities that we said would have been obvious
2 to incorporate into Shiplacoff.

3 So, the true part of the obviousness argument is that Shiplacoff
4 teaches you want to be able to transition between different display modes
5 based on gestures, and gives a few examples, but doesn't do much beyond
6 those examples. Nan fills in the details by specifically talking about
7 methods for utilizing edge gestures to transition between user interfaces.

8 JUDGE SMITH: So you're saying Shiplacoff already has this; this
9 is just making explicit what's already implicit. And mainly that the way they
10 determine from short and long gestures is through the movement threshold.

11 MR. HOLT: Yes, Your Honor.

12 JUDGE SMITH: Which you explicitly wrote about in the petition.

13 MR. HOLT: Yes, Your Honor.

14 JUDGE SMITH: Okay. So it's not really a modification as much
15 as kind of filling in the gaps? Is it a modification? Let me ask it that way.

16 MR. HOLT: I think we would say, Your Honor, no, that
17 Shiplacoff, frankly, likely has this functionality, but the Shiplacoff reference
18 doesn't call it out in as clear as detail as Nan does. And so Nan is filling in
19 gaps, but to the extent that this isn't what Shiplacoff does, then, yes, it would
20 require a modification to include the gesture handler from Nan, which we
21 talk about in the combination section.

22 JUDGE SMITH: Okay. And there were some arguments, too,
23 from Patent Owner about using Nan's gesture handler would render
24 Shiplacoff inoperable. Can you speak to that?

25 MR. HOLT: As best I understand that, Your Honor, the argument
26 is that, because Shiplacoff has the gesture area 102, that adding the edge area

1 from Nan would effectively cause gesture area gestures to interfere with that
2 edge. But that's not the combination. The combination, as described in the
3 petition, is that you would utilize the edge gestures to transition in ways that
4 Shiplacoff speaks of.

5 And when you look at Nan, like Shiplacoff, Nan talks about its
6 edge area either being at the edge of the screen, or even slightly beyond the
7 edge of the screen, just like the gesture area 102 in Shiplacoff. And
8 Shiplacoff doesn't actually require a gesture area. It can have an area within
9 the screen itself, because at that time -- Your Honors probably recall using a
10 Palm device. The Shiplacoff reference was by Palm, I think, originally.
11 And while Shiplacoff talks about a gesture area, which would basically be a
12 part of the bezel around the screen that would be able to basically have touch
13 sensitivity, it doesn't say that that's required. And that's what we talked
14 about in the reply.

15 So, if you didn't have the gesture area 102, you'd effectively
16 replace it with the edge gesture area of Nan. Or you would utilize the
17 teachings of Nan with respect to edge gestures, but that edge area would be
18 the gesture area 102. So, these are not incompatible teachings. Both of
19 them talk about devices that have touch sensitivity in the bezel area or just
20 on the screen.

21 JUDGE SMITH: Okay. Thank you.

22 MR. HOLT: Mm-hmm. Let's see. I think that was it for Issue
23 Number 2. And, unless there are additional questions, I'll move onto Issue
24 Number 3. And you can turn to Slide 38 to start this discussion.

25 Smith argues that the petition does not address how the flick
26 gesture meets Dependent Claims 2 and 3, as well as their counterpart

1 dependent claims of the other dependent claims. We see Claims 2 and 3 on
2 Slide 39. Each of Claims 2 and 3 relate to characteristics of the second
3 contact. Claim 2 relates to the starting position of the gesture and Claim 3
4 relates to the direction. There's no argument that Shiplacoff's swipe-up
5 gesture meets these claims. The only question is, would the flick?

6 And, as we talked about earlier, the petition's position with respect
7 to selection of a different gesture of the swipe up is that you would select a
8 gesture with a different movement parameter, like a flick or tap. The
9 movement parameter -- that is, the distance moved -- is what changes. So, to
10 the extent that the swipe up meets these claims, so, too, would the flick, for
11 the same reasons.

12 Any questions about that? Okay, thank you. I'll reserve the rest of
13 my time.

14 JUDGE SMITH: Thank you. Patent Owner, can you remind me
15 how much time you want?

16 MR. ROBINSON: Fifteen minutes, please, Your Honor.

17 JUDGE SMITH: For rebuttal? So, 45 minutes for right now,
18 right?

19 MR. ROBINSON: Yes.

20 JUDGE SMITH: Okay. Okay, you may begin when ready.

21 MR. ROBINSON: I think what stood out to me the most about
22 Petitioner's presentation here today is how little it referred to what was
23 actually cited in the petition.

24 The second contact falling short of the movement criteria is
25 Limitation [1k]. Limitation [1k] is addressed at pages 23 to 24 of the
26 petition. There are just a handful of paragraphs cited on those pages from

1 Shiplacoff. Paragraphs 99 through 102, which all address what happens in
2 the card mode, none of which happen in the full screen or launcher mode.
3 And there is, I believe -- I think it's paragraph 172, but I may be getting that
4 wrong.

5 JUDGE SMITH: 167, I believe.

6 MR. ROBINSON: 167, which is in the shuffle mode, I believe.
7 So, absolutely nothing in Limitation [1k] maps to a gesture that appears in a
8 full-screen mode.

9 JUDGE SMITH: But isn't that because Shiplacoff itself doesn't
10 disclose any gesture that gets you from full-screen mode to launch mode?

11 MR. ROBINSON: Shiplacoff itself does not disclose such a
12 gesture. What Shiplacoff does say in paragraph 124 -- in fact, it leads with it
13 -- is you can press button 103 to move between modes. So there was no
14 need to use an on-screen gesture at all to move from a full-screen mode,
15 where it's optimized to interact with the particular app -- all of these on-
16 screen gestures are optimized to interact with a particular app. You could
17 have just pushed the button 103.

18 But, at base, the petition doesn't set up any of this theory in the
19 way that it's been set up today. It doesn't lead from paragraph 124 that says
20 you can move between gestures in different ways. It says, hey, you've got
21 this swipe-up gesture from 102 to 101, and that is going to move from the
22 full screen to the card, and then it says, oh, hey, there's also this tap or flick
23 gesture in the card mode where you can get rid of cards and you can go back
24 to a launcher screen from the card mode. There's absolutely nothing cited
25 there that would suggest a tap or flick in a full-screen mode.

26 Now, Petitioner's counsel today said, oh, we didn't say that there

1 was a different starting point for that tap or flick. Well, the tap or flick that
2 they mapped had a different starting point. It did not start in the gesture area
3 102. And so it was 100% their burden to say, hey -- if that was their theory,
4 in fact, that a tap or flick starting in the gesture area 102 was going to be the
5 other comparison, it was absolutely incumbent upon them to explain how
6 that tap or flick got to the starting point for their swipe up.

7 The petition just doesn't do that in [1k]. And if you look at the
8 overview of Shiplacoff and the preceding pages before they get into the
9 limitation-by-limitation mapping, it also doesn't point to that paragraph 124
10 explaining sort of, oh, this broad disclosure of different gestures to transition
11 between modes. It's not there. The explanation is not in the petition.

12 And, in fact --

13 JUDGE LEE: This is Judge Lee. I understand it's not in the
14 petition, but they would say, well, they didn't know about your claim
15 construction until the Patent Owner response, so they're entitled to put forth
16 a new mapping.

17 MR. ROBINSON: Your Honor, this is not a good argument for a
18 claim construction. It isn't in the plain language of the claims itself. Again,
19 on Claims 1 and 101, we're talking about computer instructions that are
20 executable for a second contact to take either of two actions depending on
21 whether that single contact meets or it doesn't meet the criteria. And they
22 haven't shown, for the swipe-up gesture, that if it were shorter, it would have
23 achieved a different result. They haven't shown, for the tap or flick, that if it
24 were longer, it would have achieved a different result. They just didn't map
25 it to the claims.

26 JUDGE LEE: But didn't they go, well, we thought different

1 contacts would meet the claim?

2 MR. ROBINSON: I don't think that's a reasonable starting point,
3 Your Honor. The claims explicitly say that we're talking about executable
4 instructions for a contact, the contact. If the contact does one thing, you take
5 a first action; if the contact does another thing, you take another action.
6 How can instructions for a given contact possibly meet that claim language
7 if you're talking about two different contacts in two different contexts that
8 perform two different results based on two different gestures?

9 And, again, to this tap theory that has come in on the reply, I'm
10 surprised they doubled down on it, because earlier in Claim 1 it says that that
11 second contact has a movement. Page 22, I believe it's paragraph 59 of the
12 expert declaration -- page 22 of the petition says specifically that
13 Shiplacoff's tap does not have movement criteria. Their expert says the
14 same thing.

15 And so now, when we've pointed out, hey, that tap doesn't move,
16 they've come back and taken the opposite position: well, all taps have some
17 movement. But even if you look at method Claim 15, we're not just talking
18 about two different contacts that do or do not meet. Even Claim 15, in the
19 context of a method and an electronic device, says in accordance with a
20 determination. It's not enough that one moves farther than the other. There
21 has to be a determination that it either does or does not meet the criteria.
22 And the mapping just isn't there when you look at what they have cited in
23 the petition.

24 JUDGE SMITH: Well, I mean, they did cite, you know, at the
25 beginning of these movement limitations, you know -- [1i] is where it
26 receives the input, so pages 15 and 16 of the petition. They've quoted from

1 Shiplacoff saying that a gesture switches from full-screen mode to card
2 mode or from card mode to shuffle mode or from shuffle mode to grid mode,
3 and then they cited to paragraph 127. And then when they got down to
4 Limitation [1k], in particular, they said, well, the gesture is a flick gesture.
5 So, I mean, why isn't that enough?

6 MR. ROBINSON: Well, what it doesn't say is that the flick
7 gesture would have been differentiated from a swipe-up gesture based on a
8 movement criteria. And I'm paraphrasing the language of the claim there,
9 I'm not trying to --

10 JUDGE SMITH: Right. I understand.

11 MR. ROBINSON: Ultimately, the swipe-up gesture that they've
12 mapped moves from gesture area 102 to 101. And that's exactly what
13 Shiplacoff describes. We know it's a swipe up, because it starts at 102 and
14 moves up to 101. All of the flicks that they map for [1k] are 100% on-
15 screen. There is nothing from gesture area 102 to 101. If they wanted to
16 move those gestures down to 102, they can't do that, they're silent, you
17 know, post-hoc implication. And if you look at the mapping on pages 23 to
18 24 of the petition, it's not there. There's nothing about the start point.
19 There's nothing about that being a common gesture that's differentiated
20 based on the threshold. They just say it's different.

21 JUDGE LEE: It's Judge Lee. Does the reply try to address this, or
22 did they double down on the original position? Or do they try to cure it by
23 saying, well, even if Patent Owner's right, we've got to have the same
24 starting point; we have it anyway?

25 MR. ROBINSON: I'm going to be perfectly candid. I can't quite
26 tell. I think they -- and I think we saw the same thing today, that Petitioner's

1 Counsel said, oh, this is definitely within the scope of what we said in the
2 petition, but then also maybe, even if it's not, then maybe it's this, or maybe
3 it's that. At the end of the day, it seems like they're sort of trying to straddle
4 the fence between not wanting to admit that they actually taken or are trying
5 to take a different position.

6 And so I don't think that they have clearly taken a different
7 position on that. I think the closest they got was Mr. Holt today saying, we
8 didn't say that there was a different starting point for that tap or flick; we
9 were just supposed to, I guess, infer that it was the same starting point. But I
10 don't think the reply articulates ever any reason that we could have
11 interpreted the petition's mapping of Limitation [1k] to actually articulate
12 that we've got this branch logic in the instructions that's recited in the claim.

13 JUDGE LEE: I didn't find it either. That's why I was asking you
14 whether they had a rebuttal to that.

15 MR. ROBINSON: And, again, tap should be out the window
16 immediately. I mean, the petition, at page 22, explicitly says Shiplacoff's tap
17 doesn't have movement criteria. Paragraph 59 of their expert declaration
18 says exactly the same thing.

19 I'm going to jump straight to Ground 2. I think, fundamentally,
20 that is -- I think that first issue has been explored, unless there are any other
21 questions specifically on Ground 1.

22 So, Ground 2 is the Shiplacoff-Nan combination. Ground 2 largely
23 relies on Ground 1, except where they've now introduced Nan. And they've
24 said Nan has this threshold. In the petition -- let me find the exact pages. I
25 think it's pages 41 through 47, really, is the entirety of it, for Claim 1. They
26 talk about Nan having this -- I think they characterize it as a threshold

1 determination. And they talk about that in some detail for Limitation [1j].

2 But they also explicitly refer to Ground 1. It sets it up as, hey,
3 Ground 1 is Ground 1; Ground 2 is different in the ways that we actually
4 explain to be different. The problem with their mapping is the only
5 modification they actually assert with respect to Shiplacoff is for the first
6 determination of the second contact exceeding the movement criteria. And,
7 again, I'm paraphrasing; I'm not trying to change the meaning here. They
8 never say that they are changing that second contact. They never say that
9 they are doing anything with Limitation [1k].

10 Now, they say -- they put a heading in there, in all fairness. They
11 put a heading in there that says [1j] to [1k]. But when you get down to what
12 they actually say is changing, page 46, the first paragraph under the -- sorry,
13 [1i] to [1k] heading says the edge gesture used in the SNC system that would
14 substitute the swipe-up gesture in Shiplacoff alone.

15 Let's take a minute to look back at what the swipe up gesture in
16 Shiplacoff alone is. That's the contact in [1j] that allegedly moves from full
17 screen to card mode. It starts in gesture area 102. It moves up to screen area
18 101. If you then look to the paragraphs spanning pages 46 and 47, towards
19 the end of that paragraph on page 47 of the petition: consistent with
20 Shiplacoff's swipe-up gesture, it would have been obvious and a simple
21 matter of design choice for the edge gesture to include a movement in the
22 upward direction, such there is movement from an edge of the display, as
23 taught by Nan, to a distance across.

24 The sentence just before that -- so that last sentence, again, gets to
25 that swipe up gesture. The swipe-up gesture mapped to [1j] in Ground 1.
26 The sentence just before that talks about a threshold, but it's, again, talking

1 about in the context of that swipe-up edge gesture from [1j] in Ground 1.
2 Despite repeated references to that swipe-up gesture, which, again, is not the
3 gesture that's mapped to [1k] in Ground 1, there is nothing else there. There
4 is nothing that says, hey, Nan's relatively shorter finger movement -- which
5 is just not in the petition -- relatively shorter finger movement would replace
6 the tap or flick. It's not there. I've searched high and low. It's just not in
7 that explanation.

8 And so, all of these theories that we're dealing with now on reply,
9 they're just not in the petition. And this isn't some claim construction
10 argument that was unforeseen or would be unfair for Petitioner to not be able
11 to change its mapping to meet it. This is, again, the plain language of
12 executable instructions that, for a given contact, with movement, takes one
13 action in one set of circumstances, and another action in another set of
14 circumstances.

15 JUDGE SMITH: But couldn't we read the petition, in page 43,
16 where they say Shiplacoff's system can implement gestures such as Nan's
17 edge gestures? Right? So, they're talking about Nan's edge gestures in the
18 plural on page 43. And then looking at page 46, they're talking about
19 features [1i] and [1k], and again they're citing to the column 7 of Nan where
20 Nan has multiple gestures for switching between user interfaces, and one of
21 those gestures is a short movement and one of them is a long movement.
22 Isn't that enough?

23 MR. ROBINSON: I want to make sure I'm looking at the right
24 place on page 43, Your Honor.

25 JUDGE SMITH: Okay, let me read it to you. It says -- so it's
26 heading 2, Shiplacoff-Nan combination, SNC, and at the end of that

1 sentence, "Shiplacoff's system can implement gestures such as Nan's edge
2 gestures."

3 MR. ROBINSON: So, no, that's not with particularity. I'll start
4 there. The general statement that a POSITA can incorporate some edge
5 gestures into Shiplacoff does not, in and of itself, say we're going to
6 implement these specific gestures for this specific purpose in this specific
7 place. When you get down to the mapping, it talks about a threshold, but,
8 again, it only talks about that threshold in connection with the swipe-up
9 gesture, which is mapped at [1j] and is not mapped at [1k]. There is
10 nowhere that it says, hey, but if it's below this threshold, we're going to
11 replace it with this other one.

12 JUDGE SMITH: But the particularity would be the cite to column
13 7 on pages 46 and 47, which has the -- that section of Nan has the discussion
14 of the short movement and the long movement, and just using the movement
15 threshold to distinguish between the two. I mean, Petitioner's argument was
16 Nan has this movement threshold that can distinguish between gestures, and
17 then cites to column 7, which has the movement threshold that distinguishes
18 between gestures.

19 MR. ROBINSON: So, I think that may be what Petitioner's theory
20 is today. I don't think that theory is represented in the petition, Your Honor,
21 and here's why. It never actually says -- it just says we're going to determine
22 that an edge gesture has occurred in accordance with Nan. It doesn't say
23 we're going to determine whether an edge gesture is A or B.

24 So, that's an important distinction, because, remember, Ground 1,
25 that is the foundation for this Ground 2 theory, also doesn't ever say that. It
26 also never says, hey, we've got this threshold determination for a given

1 gesture and that's what we're going to use to differentiate between what we
2 do. They don't add that here. Could they have articulated that theory based
3 on Nan? Perhaps, but they didn't do it in the petition, so we have not had a
4 full opportunity to address it.

5 All this says here is that, for that first one, we're going to determine
6 that an edge gesture has occurred based on this: detected user input is above
7 the movement threshold associated with one or more lengths being number
8 of inputs of the edge gesture.

9 Now, that's also important for these dependent claims that specify
10 that an edge gesture has to start at -- paraphrasing again -- some that have to
11 start at the edge, some that have to move up. Remember, this is the swipe-
12 up gesture that moves from Shiplacoff's full screen to Shiplacoff's card
13 mode. If all we're determining is whether an edge gesture has occurred, then
14 the second movement, if it doesn't meet that, it's not going to get there. It's
15 not going to start at an edge, it's not going to necessarily move up.

16 And so, again, just given the fact that they treated these gestures
17 very differently between [1j] and [1k], respectfully, Your Honor, there is not
18 enough in this petition to import a determination, to import instructions that
19 make different decisions based on a single gesture being above or below that
20 movement criteria threshold.

21 I'm inclined to give some time back, unless there are any other
22 questions on this.

23 JUDGE SMITH: No questions.

24 MR. ROBINSON: All right. Thank you, Your Honors.

25 JUDGE SMITH: I think you have a few extra minutes left.

26 MR. HOLT: All right. I'll start with Issue 1, and the idea of

1 newness, somehow. When you look at the petition and the manner in which
2 it maps Limitations [1i], [1j], and [1k], it is clear that we are utilizing the
3 swipe-up gesture in order to be able to transition -- to make one transition.
4 And when you look at [1k] and its usage of the flick gesture, it is not, in any
5 way, saying -- and I invite you to read it -- that that exact flick gesture from
6 that exact part of Shiplacoff is what we're using.

7 What we're saying is this demonstrates that there are other types of
8 gestures with other characteristics, like a flick, that would have rendered
9 obvious the claim language. This isn't a matter of taking an exact gesture
10 from another section of Shiplacoff and applying it exactly how it is there.
11 Because, ultimately, when you look at the conclusion of that section, it is
12 about it being obvious to utilize a gesture with different characteristics,
13 movement characteristics, that can be distinguished from that swipe up.

14 JUDGE SMITH: So, you're talking about the section in the
15 petition that talks about the flick, right?

16 MR. HOLT: Yes, Your Honor.

17 JUDGE SMITH: Pages 23 and 24?

18 MR. HOLT: In truth, Your Honor, I see this as a bit of a "gotcha"
19 issue. I think what we're seeing here is the petition utilized this flick, which,
20 admittedly, is talked about with respect to another mode, and we're being
21 told that because we referenced that section, the only thing we mapped was
22 the flick from that section that has exact characteristics; that it starts in
23 screen 101 and that it has to do with card mode. But that's not what the
24 petition says. The petition utilizes that flick to show that there are other
25 distinguishable gestures to lead to the conclusion that it would have been
26 obvious to utilize a gesture with a different movement parameter.

1 JUDGE SMITH: I think Patent Owner's point is that the petition
2 doesn't explain that the swipe-up and the flick both start from the same
3 place.

4 MR. HOLT: I will say, Your Honor, it doesn't explicitly state that.
5 But, first, I'm not sure that it needs to. And, second, even if it did, again, the
6 petition does talk about how the gesture would have changed, which is the
7 movement parameter, and doesn't talk about changing anything else. And so
8 the assumption would be you'd utilize the same concept as the swipe-up
9 gesture, but with a different movement parameter. And that's what the
10 petition states.

11 JUDGE SMITH: And the other point was that the Shiplacoff
12 swipe-up starts from the gesture area and continues on-screen, whereas the
13 Shiplacoff flick is entirely on the screen. But Shiplacoff is really silent as to
14 the length of any of those gestures. We don't know how long the swipe up
15 is, we don't know how long the flick is in Shiplacoff. This idea that the
16 swipe-up is longer than the flick, where does that come from?

17 MR. HOLT: Apple's expert, Dr. Terveen, utilized the usage of the
18 word "flick" in light of the broader prior art and his knowledge of that prior
19 art and how a POSITA would have interpreted flick, to say that the teaching
20 of flick is indicative of a gesture that would be shorter than that swipe up.
21 And so, this is stemming from the language of the references that would be
22 interpreted by a POSITA.

23 And, again, the ground does not utilize that flick taught by
24 Shiplacoff. The ground is, in light of those and other disclosures in
25 Shiplacoff, it would have been obvious to utilize a different gesture, and that
26 different gesture would be a gesture with a lower movement parameter.

1 JUDGE SMITH: And to the point that the swipe-up and the flick
2 in Shiplacoff, it's not possible for them to both start from the same point, if
3 we were to hold that the claim requires the long and the short movement,
4 that both originate at the same point, how does Shiplacoff teach the swipe-up
5 and the flick starting from the same point?

6 MR. HOLT: So, it doesn't explicitly describe --

7 JUDGE SMITH: It doesn't describe it, right, but I mean in terms
8 of the 103 analysis and teaching it, how does it teach it?

9 MR. HOLT: So, if you look at the switching modes section, it
10 talks about examples of various gestures for being able to switch between
11 modes. Swipe up is one, another is swipe down. These gestures are talked
12 about as being able to come from certain locations of the screen in order to
13 be able to distinguish them from other gestures. And so, those teachings in
14 that section of Shiplacoff are that, to switch modes, your gesture could and
15 would start from the gesture area.

16 JUDGE SMITH: I guess what I'm getting at is, according to
17 Shiplacoff, the swipe-up starts at the gesture area and the flick starts on the
18 screen. So, how would we conclude that one of skill in the art would start
19 both the swipe-up and the gesture from the same point?

20 MR. HOLT: I would say, frankly, for the reasons that were
21 highlighted in the POR, because gestures that are on a screen that is taken up
22 by a whole application would likely involve that application. And Shiplacoff
23 talks about gestures from the gesture area to transition modes. And, again,
24 it's not Shiplacoff's exact flick from those other sections of Shiplacoff; it's
25 the idea of distinguishing between a swipe-up and a flick being two different
26 gestures, and it being the position of the petition that that teaching would

1 have rendered obvious to a POSITA the ability to implement a different
2 gesture than the swipe-up, such as a flick, from, again, the gesture area.

3 Now, I'll admit the petition doesn't talk about the gesture area with
4 respect to [1k], but it also doesn't say that you'd utilize a gesture that starts
5 on the screen, either. And what it does say is that you'd utilize a gesture
6 with a different movement parameter. I think the operating assumption there
7 was that the gesture would otherwise share the characteristics with the
8 swipe-up. It's that you're able to distinguish between them, due to Shiplacoff
9 saying that it's able to distinguish between these types of gestures.

10 JUDGE SMITH: Okay. So, it's not just the gesture from
11 Shiplacoff that describes the flick; it's this idea that if you want to switch
12 modes you would use a gesture that has some amount of movement, and the
13 user would start that gesture in the same spot. And then, depending on the
14 length of that movement, one mode or another would be chosen?

15 MR. HOLT: Yeah, the position that Dr. Terveen was explaining is
16 that, in the light of the totality of Shiplacoff's descriptions, that a POSITA
17 would have recognized that Shiplacoff's system had the capacity to
18 distinguish between gestures based on length, effectively. And, for what it's
19 worth, that is confirmed by the Duarte reference that was incorporated. We
20 saw that the scrolling was as a function of distance, and the flick was as a
21 function of distance and speed. And so Shiplacoff's system has the capacity
22 to distinguish between gestures and outcomes in light of distance, and Dr.
23 Terveen was explaining that the flick is an example of one of those types of
24 gestures. But, again, he was referring to it in the class of flick, not taking
25 that exact flick from the card mode section and just repeating it.

26 JUDGE SMITH: Okay

1 JUDGE LEE: Mr. Holt, it's Judge Lee. I want to get back to
2 starting at the common point issue. I know there's disagreement as to
3 whether that's required, but, hypothetically, let's say it is required, what part
4 of the reply addresses that? Is it when the reply says, well, generally said,
5 any gesture will do? Is that implicitly saying, starting the gesture from the
6 same place, if it's a longer one it's one result, if it's a shorter one it's another
7 result? Is that the response to their argument?

8 MR. HOLT: Yes, Your Honor. I would say that, again, the
9 obviousness argument was about changing the movement parameters; so it's,
10 instead of a long, a short. And the assumption is that nothing else about the
11 gesture would change in light of how it was described as being a different
12 gesture in the petition. And so the position, both in the petition itself and the
13 reply, was that it would start from a common location as the swipe up.

14 JUDGE LEE: And then they said in the petition you chose one
15 gesture and one mode, another gesture in another mode, to meet the two.
16 And now in the reply, based on that description, you're not really relying on
17 different gestures and different modes. You're relying now, in the reply, on
18 the same gesture within one mode, the full-screen mode.

19 MR. HOLT: I respectfully disagree that the petition was relying
20 on a gesture in a different mode. It turned to the teachings of Shiplacoff
21 with respect to its broad class of gestures that it has the capacity of
22 recognizing, one of which is flick. It was not relying upon the fact that the
23 flick was in card mode. What it was trying to say -- and this you can see in
24 the conclusion paragraph after the discussion of that flick -- is that you
25 would apply that alternative gesture, and the teachings with respect to it, in
26 order to arrive at an obvious gesture to transition from full-screen mode back

1 to home screen.

2 JUDGE LEE: Okay. Let's say we agree with you, you didn't rely
3 on two different mode gestures. So, we're all from the full-screen mode, and
4 then you mention, here's the swipe, but other gestures will do, too, including
5 a shorter one. So, I guess that would be the response; there it is, two
6 different things starting from the same starting point?

7 MR. HOLT: Yes, Your Honor. And that's why the -- you know,
8 my colleague was talking about how brief the discussion was. The reason
9 the discussion was so brief was because we felt that that was quite clear, that
10 what we're talking about, like the claims we're talking about, is the capacity
11 of the system to be able to distinguish based on something like movement
12 parameter. And, therefore, in the combination, it would be able to render
13 that obvious as a result of the disclosures in Shiplacoff.

14 JUDGE LEE: Okay, what about the one method claim? Does
15 Schulhauser apply there, or does the other case your colleague there mention
16 apply that's different, reaches a different outcome than Schulhauser?

17 MR. HOLT: I'm not sure we address that issue specifically on the
18 record. I would -- it's my understanding, from the Federal Circuit's case law,
19 that a method that has two mutually exclusive possibilities, you only have to
20 perform one of them. But, that being said, our reply focused on the fact that
21 Shiplacoff renders obvious exactly what they're saying the claim says and
22 doesn't rely upon the fact that you'd only have to do one or the other. So,
23 even if the method did require both things, Shiplacoff renders that obvious.

24 JUDGE LEE: And then, if Schulhauser applies, then you even
25 meet it more easily?

26 MR. HOLT: Yes, Your Honor.

1 JUDGE LEE: Okay. Thank you.

2 JUDGE SMITH: And to the point that Shiplacoff detects whether
3 a gesture transitions from the gesture area to the screen, versus it's entirely
4 contained within the screen to determine the type of gesture, but it doesn't
5 rely on a movement threshold, what would you say to that?

6 MR. HOLT: I would say, Your Honor, that if you were to look at
7 Shiplacoff as a whole, Shiplacoff has various examples. Now, we didn't
8 speak to these because, again, our position is that Shiplacoff has the
9 capacity, through the things we did cite, to be able to distinguish based on
10 length, regardless of the start position of the gesture. But if you look at the
11 various examples of how the gesture area is used, the gesture area is able to
12 distinguish between things like taps and swipes and double-taps, just in the
13 gesture area.

14 So you can tap or you can slide to the left and right in the gesture
15 area. So it's not just that the gesture area has the capacity to distinguish
16 movement, in general; it is specific movement, including swiping and
17 swiping distance. There's an example in card mode where you swipe left
18 and right in the gesture area and the cards move back and forth. That could
19 only happen if the distance traveled in the gesture area could be interpreted
20 by the system itself.

21 JUDGE SMITH: Okay. And then, unless you have something
22 else to say about Ground 1, I'd like to go address Patent Owner's remarks
23 regarding Ground 2. Patent Owner is saying that this idea that, let me see,
24 where Nan talks about the block 804 may be determined to present an
25 application selection interface in response to a relatively short, single-finger
26 gesture, or a system control interface permitting selection to shut down the

1 computing device 102 in response to a relatively long, single-finger gesture.

2 This is from column 7 of Nan. And I think you addressed this in
3 your reply, but Patent Owner doesn't want us to consider this because it was
4 not in the petition.

5 MR. HOLT: I don't think that's appropriate, Your Honor, if for no
6 other reason than the example given there is, again, an example of the
7 general Figure 8, and how it operates, that we were specifically showing and
8 saying was integrated into the combination. Figure 8 is actually explicitly in
9 the petition at page 42.

10 And the whole point of Nan, as we described, going into the
11 combination, is the ability, through Figure 8, to be able to distinguish
12 between two different gestures from the edge in order to determine which
13 type of interface to present.

14 I heard my colleague also argue that the mapping section [1i]
15 through [1k] only changes the swipe up. But, as we talked about in my
16 direct, and Your Honors pointed out correctly, this is specifically intended to
17 be a response to Patent Owner arguing that Shiplacoff does not disclose the
18 movement threshold. It is showing -- it's using Nan to pull that movement
19 threshold into the combination of the two.

20 And why have a threshold for one gesture? What is the point of a
21 threshold for a single gesture? A threshold exists to distinguish. And when
22 you look in the totality of how Ground 1 was actually presented in light of
23 this combination, the point being made is that you would utilize the
24 threshold to be able to determine that one gesture is above the threshold.
25 And then, when you look back at Ground 1, what was being said is it would
26 have been obvious to utilize a gesture of a different parameter, a movement

1 parameter.

2 That, frankly, applies again in Ground 2, which is to say that you
3 are distinguishing between two gestures based on its movement parameter.
4 And that's exactly what is being done in Figure 8 of Nan, which is discussed
5 throughout this. And, again, the example we point to, beyond being within
6 the citation that exists in the petition, it is an example of that Figure 8
7 process flow that was being brought in. And so, again, it's not that specific
8 example that really, truly matters here; it just is confirmatory of everything
9 we had argued in the petition, which is that you can utilize a threshold to
10 distinguish between gestures, like a longer gesture and a shorter gesture.

11 JUDGE SMITH: Okay. Thank you.

12 MR. HOLT: I think that is all that I have, if you have any other
13 questions?

14 JUDGE SMITH: We're good.

15 MR. HOLT: I'll cede the rest of my time. Thank you, Your
16 Honors.

17 JUDGE SMITH: Thank you.

18 Patent Owner, you got a lot of time left. I forget how much. We'll
19 let you talk for as long as you want to talk.

20 MR. ROBINSON: Whatever you give me, I won't use all of it.

21 JUDGE SMITH: Okay.

22 MR. ROBINSON: I think, again, what was most striking about
23 that is the amount of explanation needed to respond to Your Honors'
24 questions that simply was not in the petition. Quote, operating assumption,
25 on pages 23 and 24, the operating assumption was that the tap or flick for
26 [1k] would start in the same place. The operating assumption was that the

1 tap or flick would start on the gesture area 102. Unstated assumptions
2 cannot possibly meet Petitioner's burden to articulate their obviousness
3 theory.

4 Petitioner's Counsel, I believe specifically noted that Shiplacoff
5 describes gestures starting in different areas so that they can be distinguished
6 from one another. And that's exactly the opposite of what now Petitioner is
7 taking the position on here, that the gesture would both start in gesture area
8 102, whether it's short or long.

9 I feel like, forgive the pun, I'm playing a bit of whack-a-mode.
10 Petitioner is now saying that, all this time, for Limitation [1k], it intended for
11 the tap or flick to be in the full-screen mode as opposed to the card mode,
12 that the paragraphs 99 through 102 were cited simply as an example of a
13 flick. But that's not what the petition says. If you look at the top of page 23,
14 it actually quotes, it says Shiplacoff teaches a user can perform another
15 gesture. Remember, this is after we've moved from full screen to card mode.

16 JUDGE SMITH: I'm sorry. Say that again? I'm on 23. What
17 does it say?

18 MR. ROBINSON: So, under Limitation [1k] -- remember, in
19 Limitation [1j] we had moved from full-screen mode to card mode. And
20 now, under Limitation [1k], it says, oh, Shiplacoff teaches that the user can
21 perform another gesture or command to return to the home screen. And then
22 it explicitly cites and quotes the sentence that describes moving from the
23 card mode to the launcher mode. This isn't just an example of a flick; this is
24 quoting an explicit description of moving from card mode, which we've just
25 moved to, back to the launcher mode.

26 In terms of the Ground 2 combination between Shiplacoff and

1 Nan, jumping ahead, again, to, I believe it was, pages 41 through --

2 JUDGE SMITH: I'm sorry, just real quick. You're saying in [1k]
3 they're not starting in full-screen mode? That the analysis in the petition is
4 not started from full-screen mode?

5 MR. ROBINSON: Well, Your Honor, the Petitioner's position
6 here today was that their operating assumption was that it was starting from
7 the full-screen mode, but they only cited to those card mode paragraphs as
8 an example of a flick doing things, or moving between modes. But they
9 actually quoted sentences from those paragraphs describing moving from
10 card mode to the launcher mode, not from full-screen mode to the launcher
11 mode.

12 JUDGE SMITH: Okay, thank you.

13 MR. ROBINSON: In the Shiplacoff and Nan combination, and
14 specifically the relatively short and relatively long gestures, there is nothing
15 about the petition's combination of these features that would have required
16 the relatively short gesture to move from full-screen mode to the home
17 screen, and they didn't articulate it.

18 Specifically, if you look at Nan, and you look at the gestures, those
19 gestures already do things. They already do things. And so the only
20 articulated position is the relatively long gesture is now going to move from
21 Shiplacoff's full-screen mode to its card mode. That's the only change they
22 articulate. And so, if you're just bringing in Nan's gestures, that shorter
23 gesture doesn't now just magically get assigned to moving from a full-screen
24 mode to a launcher-screen mode. There has to be some articulated way to
25 put those together in a way that meets the claims. And it's not there.

26 Again, it's another operating assumption. It's not articulated, even

1 if you accept that you're going to bring in Nan's gestures, even if you accept
2 that relatively short and relatively long were a part of the petition's theory,
3 which they're not addressed, and there's a lot of other things in that passage
4 that were specifically addressed, even if you accept all that, there is nothing
5 in the petition that explains we're going to bring in this edge gesture from
6 Nan, we're going to take the relatively long one to move from the full screen
7 to the card mode, and we're going to take the relatively short one to move
8 from full screen back to the home screen. That explanation isn't there.

9 So, even if you get all of those steps, even if you give them credit
10 for all of those steps that they've made on reply, it still doesn't get into the
11 claim language.

12 With that, I'm happy to cede the rest of my time, unless there are
13 any other questions.

14 JUDGE SMITH: Okay, thank you.

15 MR. ROBINSON: Thank you, Your Honors.

16 JUDGE SMITH: We're off the record.

17 (Whereupon, the above-entitled matter went off the record at 2:28
18 p.m.)

IPR2024-01084
Patent 10,649,578 B1

PETITIONER:

W. Karl Renner
David Holt
Usman Khan
FISH & RICHARDSON P.C.
axf-ptab@fr.com
dth@fr.com
khan@fr.com

PATENT OWNER:

Eagle Robinson
Daniel Leventhal
Chad Wallis
NORTON ROSE FULBRIGHT US LLP
eagle.robinson@nortonrosefulbright.com
daniel.leventhal@nortonrosefulbright.com
chad.wallis@nortonrosefulbright.com