

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC,
Patent Owner.

IPR2024-01087
Patent 10,656,755 B1

Record of Oral Hearing
Held: October 16, 2025

Before JAMESON LEE, JEFFREY S. SMITH, and MIRIAM L. QUINN,
Administrative Patent Judges.

IPR2024-01087
Patent 10,656,755 B1

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P R O C E E D I N G S

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(9:00 a.m.)

JUDGE QUINN: How is everyone? Welcome to the Southwest Regional Office. We thank you for your appearances in person today. I hope my staff was found pleasant to deal with and here we are in the courtroom. We have so many visiting us.

We are convening here today for oral argument IPR2024-1087, Apple, Inc. v. Smith Interface, LLC. My name is Judge Miriam Quinn. I'm presiding here in person from the Texas Regional Office. Remotely are my colleagues, Judge Jameson Lee and Judge Jeff Smith. They are both appearing from the hearing room in Madison. Because they are appearing remotely via video, when you approach and go the podium and when you are speaking from your respective desks, please use the microphones so everybody can hear you. Also identify the demonstratives specifically so they can follow along. We have everything in electronic format, so there's no need to display them up here because we can't even see the screen. So it's better if you just tell us where you are in the record.

As you know, your parties' proceedings are contested proceedings so we are here relying on you to address all the issues of patentability raised in your papers in accordance with the burdens established by our rules. We have read through the record and we are here today to hear arguments. We have heard argument yesterday in a case, we have another one this afternoon, and a couple more tomorrow so we understand there's a lot that may be said here that could be relevant to other proceedings we ask you to

1 make all of the arguments that you want to make here since the records are
2 separate.

3 From time to time we will have our computers and our papers and be
4 taking notes. The fact that we are not looking forward doesn't mean we
5 aren't paying attention. We are listening. We're just trying to capture
6 everything you're saying. We are paying attention, I assure you. My
7 colleagues, I understand, they tend to get a little bit of lag, so if we interrupt,
8 we're not trying to be rude, we are just trying to mention that we needed
9 your attention, but I apologize in advance.

10 So you are all familiar with the process. Each one gets 45 minutes
11 total for openings, consider time for rebuttal, and I'll enter that time for
12 rebuttal. During the time we're here, I'll also ask you now for the end of the
13 hearing today if you will stay after the hearing of this session to help the
14 court reporter with any spellings or anything she may have questions about.

15 Okay. Last but not least, you'll notice but I want to reiterate that the
16 parties are not allowed to state spontaneous objections in this argument so
17 you must wait until your time to enter any objections while you have the
18 floor.

19 JUDGE QUINN: At this time, I'll do appearances for the record.
20 Petitioner?

21 MR. RENNER: Yes, Your Honor, this is Karl Renner from Fish &
22 Richardson on behalf of Apple. I'm joined by Co-Counsel, Jennifer Huang,
23 as well as representative from Apple, Jason Melvin.

24 JUDGE QUINN: Thank you. Patent Owner?

1 MR. LEVENTHAL: Good morning, Your Honor. Daniel Leventhal
2 with Norton Rose Fulbright for Patent Owner, and with me is Mr. Chad
3 Wallis.

4 JUDGE QUINN: All right. Let's get ready to start. I'm going to ask
5 you how much time you want to reserve.

6 MR. RENNER: Ten minutes, please.

7 JUDGE QUINN: And Patent Owner?

8 MR. WALLIS: Ten minutes.

9 JUDGE QUINN: All right. We're ready to start whenever you're
10 ready.

11 MR. RENNER: Your Honor, may it please the Board. Your Honor,
12 Karl Renner on behalf of the Petitioner, Apple.

13 Slide 2, if I may. You'll see on Slide 2 a list of issues that have been
14 briefed in the case which corresponds to the manner in which they are
15 addressed in our demonstratives. Today we're going to obviously focus on
16 just a subset of the limited time together of the issues you can see here. And,
17 in principal part, I'll be speaking to issues 1a and 1b concerning the
18 Hackborn-Westerman combination and the reasons in particular for the
19 combination being motivated to a person of ordinary skill.

20 My colleague Jennifer Huang will then approach and she'll speak
21 beginning with issue two to the Townsend reference and how it comes
22 together as well as other issues. Your Honors, we plan probably to leave
23 issues three and four to the papers. But if you have questions, we certainly
24 are here to try to make sure we're answering anything that you have on your
25 mind. So please just let it be known and we'll do our best to make sure we
26 address them. For convenient reference, Slide 5 shows the grounds that we

1 have in this case presented. And 6 shows you example Exemplary Claim 1.
2 Again, since we'll be talking first at least about the combination of the
3 references, which is in fact not hindsight-motivated, we won't be spending
4 time in this claim at this point.

5 But instead I'll turn your attention to Slide 7 to look at Hackborn and
6 we can start to talk about how it is disclosing what it discloses and how it
7 informs the combination that we've proposed. So at slide seven you'll see
8 figure one and a couple of exemplary paragraphs from Hackborn. And I
9 want to point out that Hackborn, it discloses, one of its embodiments as a
10 live grass wallpaper embodiment. And that is what's illustrated in fact in
11 Figure 1 and disclosed at paragraph 26 at the top.

12 Paragraph 28 in the middle, on the right hand side it starts to detail.
13 It's quite a long paragraph. We've only given you a snippet here, but it
14 details some of the features relating to that grass wallpaper. And I'll read
15 just a little bit, two snippets from it. One says in the example shown in
16 Figure 1, a user is swiping his -- her finger across the touch-sensitive display
17 screen.

18 Next sentence it says in response the blades of grass, that is the grass
19 that's in that animated wallpaper. They are displayed in an area of the screen
20 swiped by the user, are caused to bend and sway, and they're bending and
21 swaying as if contacted by the user's finger during the swipe.

22 This last sentence, last part of the sentence is quite important. You
23 can see from it that Hackborn's intending that its animation isn't just any
24 animation. It's an animation that tracks that finger's movement across the
25 screen. It says that it's going to contact as if that grass is moving, swaying

1 and otherwise bending during the swipe. According to that swipe, and
2 consistent with.

3 JUDGE QUINN: There's a difference here I think of detecting the
4 location of the swipe with the vector and actually determining a magnitude
5 of the distance that the swipe has taken on the screen.

6 MR. RENNER: Yes, yes. So if you look at paragraph. Thank you,
7 Your Honor, it's a good point you're making. And if you look at paragraph
8 33 just a little bit further down on the same slide on the right, we start to see
9 that difference show up. We start to see that Hackborn tells us it's not as an
10 aspirational goal that it's going to use to actually make that swipe happen.
11 It's going to tell us about the mechanism.

12 And you mentioned the vector, that's -- that's right on. What they do
13 is they look at the touch screen and paragraph 33 tells us this, and they track
14 that finger's movement. And in tracking that movement, process one, it's a
15 display screen process, it's capturing the attributes of that swipe. Those
16 attributes, three of them, one is the position, another the direction, another
17 the speed. These characteristics are used, as you mentioned, to build that
18 vector.

19 And the reason for that is because, of course, the objective, as stated
20 earlier, is to make the animation track that movement. So now this process
21 that's captured the finger's attributes, put it into a vector, it's handing that
22 vector and that information to an animation process. And the animation
23 process is what is going to use that position, direction and speed to then
24 create the animation to generate, they say in animation, and, and I quote here
25 from 33, that makes the grass blades look as if the finger is actually
26 contacting them as it drags across the screen of the device.

1 JUDGE QUINN: So are you saying that the disclosure of this vector
2 having position, duration, and speed necessarily discloses that there is a
3 determination of the length of the swipe?

4 MR. RENNER: You would need to, yes, Your Honor, we believe
5 that's the case. In order to figure out what direction it's going.

6 That's one of the attributes that would be relying on, say for instance,
7 a length, a speed would also be a length over time, of course. So there are
8 attributes that the author is telling us. And notice in that paragraph, and we'll
9 talk more about this, that that paragraph doesn't mention tap. It's the only
10 place you talk about motivating this grass movement. And they speak
11 consistently and numerous times about swipe. And we'll see that again when
12 we look a little more deeply into this.

13 JUDGE LEE: Mr. Renner, it's Judge Lee.

14 MR. RENNER: Good morning.

15 JUDGE LEE: Is there any embodiment in Hackborn where the grass
16 blades in the wallpaper are moved by a tap?

17 MR. RENNER: No, Your Honor, there is not.

18 JUDGE LEE: So I understand that that's -- the reason Petitioners say
19 in order to make the grass blades move, you absolutely have to detect a
20 swipe. Is that right?

21 MR. RENNER: That is correct, Your Honor. And we can see in Slide
22 17, you can see testimony from expert Mahon, that is the expert for Patent
23 Owner. We asked the question of Dr. Mahon. We said, does Hackborn
24 provide any other explicit examples of gestures that cause the blades of grass
25 to move? His answer was very ambiguous and ultimately ends with I don't
26 recall any others specifically. We followed that up because his answer was

1 ambiguous. He says he kind of lays it well. It didn't limit. It, didn't say you
2 couldn't. But he clearly says it doesn't, and we wanted to make sure. So we
3 gave further testimony from Dr. Cockburn. It's shown on the right.

4 We said to him, through his testimony, he said, there is no other
5 disclosure and to your point, Judge Lee, of anything other than the swipe
6 being used to motivate that grass movement. And there's a reason for that.
7 When you look at Hackborn again, I want to direct attention to the detail that
8 Hackborn provides where Hackborn actually lays out, I'm building a vector.
9 And I'm building that vector because I really want to motivate that grass to
10 look and feel like the swipe of the finger. I want it to track that. I want it to
11 look as if you're contacting that grass and moving it. I want that illusion to
12 appear.

13 And in order to do that, in order to make it feel like you're really
14 engaging it, I've got to build a vector. And it's doing that because it's
15 tracking of swiping movement. That's what it's.

16 JUDGE QUINN: But you can do it in a different way. You can track
17 the movement, and it is an animation. So it's not like it's actually moving
18 blades of grass. It is just detecting where it's going and then animating
19 based on that direction. It is a horizontal swipe. So doesn't mean that it's
20 necessarily detecting a magnitude. It could do it other ways without it.

21 MR. RENNER: Well, Your Honor, respectfully, I believe that
22 Hackborn is telling us how Hackborn wants to do it. It is obviously possible
23 to do many things in many ways, but this author is telling us how it wants to
24 do it. And the way it tells you that it wants to do it, it's building a vector that
25 actually captures the attributes of the finger swipe so that it is able to then
26 feed those attributes to the vector so that in this instance, whatever instance,

1 it's able to know what that finger swipe looks like and then emulate it
2 through that animation.

3 It's certainly the case that I could imagine there might be animations
4 built otherwise. But this author is telling us how it wants to do it, and it's
5 tracking this specific finger movement as opposed to there are animations
6 maybe that I could just run a movie, that's not a movie that's going to play
7 based on this swipe and the characteristics of this particular movement.

8 JUDGE LEE: Mr. Renner, it's Judge Lee again. There are many
9 challenged dependent claims for which Patent Owner has made separate
10 arguments. And I -- there's a group of them where the theme of Patent
11 Owner's argument is that all of these dependent claims, for instance, 5, 8, 9,
12 21, 30, 31, 43, they all, in one form or another, require detecting a cessation
13 of the contact or something to happen after cessation of the contact.
14 However, they say there's nothing in Kim that determines when or if the
15 contact has ceased.

16 Can you explain your response to that argument?

17 MR. RENNER: Your Honor, I'll ask your indulgence. Unless you
18 prefer, I'd have my colleague Jennifer Huang speak to the cessation, what
19 happens after that, when she comes the podium.

20 JUDGE LEE: Okay, that's fine. Can you answer the lock screen issue
21 of Claims 18, 19, 39 and 40?

22 MR. RENNER: Yes, Your Honor, I certainly can.

23 JUDGE LEE: Okay. The question is, do the parties agree on the
24 meaning of lock screen? The term isn't in the spec. It's only in the claim.
25 So I'm not sure exactly what that means. So my question is, do the parties
26 agree what it means? And if there is agreement, tell us what it is.

1 MR. RENNER: Your Honor, that wasn't briefed, candidly. There
2 wasn't a dispute over the term that was briefed. As you're acknowledging,
3 what we know is that in the primary reference, in the Hackborn reference --
4 and this is what I thought you were going with your question toward -- in the
5 Hackborn reference, we see reference to tapping being used to I'll call it
6 unlock a portion or unlock the animation that is used to secure, if you want
7 to call it that, the grass wallpaper.

8 I could take you to, if I could, Slide Number 18, please. Slide 18.
9 You'll see paragraph 28. And I'm mentioning this because we think that it
10 becomes less important in that there's a locking mechanism that's used here
11 by the primary reference that is the tap enabled locking method.

12 But maybe I'll go back to your question, because this isn't directly on
13 point, and say to you that there hasn't been a live dispute over that term and
14 its meaning. So we don't have the parties having disagreed on that.

15 JUDGE LEE: I see, but let me explain. I don't have a problem with
16 19 and 40. Let's say the lock screen is in an unlocked state, because if the
17 screen is unlocked, then certainly the wallpaper can react to gestures. But
18 for Claim 18 and 39, which require a lock screening, that doesn't seem to
19 make sense.

20 If locked screen means the screen is locked, then the actions required
21 by the independent claims cannot be performed. So it looks like it's
22 inconsistent, Claims 18 and 39 appear internally inconsistent by requiring all
23 the activities of the independent claim while the screen is locked, if "lock
24 screen" means the screen is locked.

25 MR. RENNER: And please forgive, we've wandered into the
26 presentation materials of my colleague, now that I understand your question

1 better. But I would say to you, I'll preview some of what she'll talk about.
2 And that is to say, while there's a locked screen, there can be wallpaper grass
3 on that locked screen as well. And so the animations that we're talking about
4 remain pertinent, we believe, and not inconsistent. But I will leave that to
5 her because that is a portion of the presentation she was planning to address.

6 JUDGE LEE: I see, but I'm not sure you're saying in any locked
7 screen that the wallpaper still moves.

8 MR. RENNER: Correct.

9 JUDGE LEE: In response to --

10 MR. RENNER: That's correct, Your Honor. Yes.

11 JUDGE LEE: Thank you.

12 MR. RENNER: Certainly.

13 JUDGE LEE: I have another question about Claims 17, 37 and 38,
14 where you're using a combination of wallpaper, right? The grass blades plus
15 the live social media feeds.

16 MR. RENNER: Yes.

17 JUDGE LEE: And Patent Owner is arguing, well, you're relying on
18 the moving social media feeds to meet these limitations, but that movement
19 is not in response to the magnitude of the user's touch. Can you respond to
20 that?

21 MR. RENNER: In two ways, I can. And again, I'm wandering a little
22 further than my motivation arguments, but I'll do my best to address that,
23 because part of the answer there is we're not relying entirely on those being
24 moved. We're relying also on the grass that is also displayed. You
25 mentioned combination. There are both grass artifacts in that combination
26 as well as the images that you're talking about.

1 JUDGE LEE: And that's fine. I have no problem with your reliance
2 on the grass. But I just want to ask you about the reliance on the
3 automatically moving social media posts, because they don't seem to be in
4 response to the magnitude of the user's touch.

5 MR. RENNER: Yes, Your Honor, we thought that would be an
6 obvious implementation as it relates to the combination that came in.

7 JUDGE LEE: So the answer is you're relying on obviousness, not that
8 the automatic feeds are in response to the magnitude of the user's touch.

9 MR. RENNER: That's correct, you, Honor.

10 JUDGE LEE: Okay, thank you.

11 MR. RENNER: Other questions before I continue on with Hackborn?
12 Thank you, Your Honor. Okay, so central to Smith's dispute over the
13 combination, as we had it, was the idea that because they believe that Smith
14 is reacting both to taps and to swipes, there's no need to turn to the
15 Westerman teachings, which are about differentiating between taps and
16 swipes and other inputs from the device. We believe that this argument is
17 not supported by the record and otherwise is only supported by
18 uncorroborated testimony from the expert.

19 Three issues are problematic with respect to this position, that is that it
20 is confronted by express disclosure. You already heard me talk about on
21 Claim 20, on paragraph 28 and 33, which has Smith disclosing that swipes
22 are in fact the mechanism, the only disclosed mechanism, as Your Honor
23 seems to appreciate it, for triggering and informing an animation of the
24 wallpaper that is grass, two, that in paragraph 33, as Judge Quinn, we had
25 talked a little about, there's a building of a vector that is based on that swipe,
26 on that animation being built on the swipe.

1 That's another express disclosure that would be contested by their
2 theory. And three, the tap is otherwise used. And this is where I was getting
3 to, Judge Lee, in the beginning of answering, not answering your question.
4 Forgive, please, when I referenced in paragraph 28 that the tapping is
5 actually used by Smith for something else. Tapping is used by Smith, you
6 can see in paragraph 28, in order to unblock what would be otherwise a
7 locked animation, that is a tap to make sure that it's now available for a
8 triggering and informing swipe. So we've got an acknowledgement now by
9 even Smith of the existence of, of course, it's in the reference, of taps and of
10 swipes. And we have the need as a consequence of this, to distinguish
11 between them. And therefore, you want to look for something because after
12 all, you don't see how to distinguish between these. In Smith itself, we look
13 to Westerman.

14 If we look at Slide 16, we can see in greater detail clips that
15 differentiate or that 28, from Slide 28 that show us that swipes is indeed
16 again, I don't want to belabor that point too much the mechanism for actually
17 selecting and triggering and informing the animation.

18 Slide 17, I just mentioned to you, the experts seem to agree in part on
19 the existence of that in 18, we reproduced the existence, the sole existence of
20 tapping in Smith, in Hackborn, which actually tells us it does acknowledge
21 tapping, but that also that tapping is for a different purpose.

22 Dr. Cockburn, on Slide 20, we have testimony from Cockburn that
23 confirms what tapping is and what it isn't, and, in fact, confirms that a
24 prosecution of ordinary skill seeing Hackborn's omission of TAFs as
25 intentional, when looking at how to animate this grass, he points out that
26 taps just don't give the kind of detail that is necessary.

1 This is to the point we were talking about, Judge Quinn, to inform the
2 kind of animation that Hackborn has in mind in the building of the vector
3 that it's trying to use in its mechanism. Back to Slide 19, that leaves us with
4 Hackborn clearly disclosing swipes to promote or inform animation of its
5 wallpaper, but not telling us how to get there with Hackborn also disclosing
6 taps for other purposes with them; therefore coexisting, taps and swipes
7 coexisting in Hackborn, but it not giving us a mechanism, as recognized by
8 Patent Owner's counsel, to distinguish between them. And that points us
9 back to the need for some sort of differentiation.

10 Hence we go to Westerman. Westerman is something that would fill
11 in the quote gap, that is the reliance that this author has on persons of
12 ordinary skill knowing that, in fact, you can distinguish between taps and
13 swipes in order to inform what it's doing. And we asked Mahon about this,
14 we asked him, and you can see the testimony here on slide 19, whether
15 Hackborn teaches how the device knows whether or not a tap is in existence.
16 And he says no. He says basically Hackborn doesn't go beyond identifying
17 multiple taps within a given time period in order to do this. And he says it
18 just doesn't go beyond this teaching on the right. The testimony that comes
19 in from him is further to the point, because Hackborn, he says, discloses that
20 multiple taps could be used to change the mode of the device, the mode of
21 the device, not inform the movement of the grass. And he says that's all that
22 Hackborn discloses. All of this is to say we're pointed back to the need for a
23 gesture-differentiating technology like Westerman.

24 If we could go to Slide 24, please, and I'll make this a little shorter.
25 We're going to look at Westerman very briefly to make sure that in fact, it
26 does do what we say that it does. Slide 26. Dr. Cockburn, in his opening

1 declaration, he tells us that Westerman teaches gesture differentiation as
2 we've talked about. The first part of it, he tells us that Westerman describes
3 how to discern between the types of user inputs, namely taps and swipes,
4 and bottom tells us that it has methods of distinguishing between, which we
5 see in paragraphs 18, 19, and 61, particularly of Westerman, where it
6 actually speaks of using a threshold to distinguish the various characteristics
7 that it picks up off of that finger swipe as either a swipe or a tap. Now, this
8 doesn't --

9 JUDGE LEE: Mr. Renner, this is Judge Lee. I'd like you to address
10 the ground where you're relying on these social media posts. Are you able to
11 do that, or would that be someone else's subject?

12 MR. RENNER: My apologies, Your Honor. I was really here
13 specifically for this combination, but that is the Hackborn 2, and let me have
14 your question. I may be able to pose it.

15 JUDGE LEE: That's okay. I'll reserve it for later. Thank you.

16 MR. RENNER: Certainly, Your Honor. And that is the combination
17 where you have the social media posts rather than the grass animation that
18 come in. And so I think with that, I will ask my colleague to approach.
19 Thank you, Your Honors.

20 JUDGE QUINN: Thank you.

21 MS. HUANG: Thank you, Your Honors. I'm happy to start Judge
22 Lee, with your question if you. It's probably fresh in mind, so if you'd like
23 to ask it now, I'm happy to address it.

24 JUDGE LEE: I'm not sure if you remember my questions. Please go
25 ahead and answer them.

1 MS. HUANG: Oh, I don't know that. I think you said you'd like to
2 ask a question about the social media posts. Yeah, I can go back to the other
3 ones, too.

4 JUDGE LEE: But the more important questions had to do with the
5 other dependent claims. Do you remember those that I asked earlier?

6 MS. HUANG: Yeah, I'm happy to start there. So why don't I --just --

7 JUDGE LEE: Yeah, because I don't want to waste your time by
8 repeating all of them again. If you have answers, please go ahead.

9 MS. HUANG: Sounds great. If I miss anything, I trust you'll let me
10 know. So let's turn to maybe slide 33 and kind of orient ourselves. So let's
11 talk about Townsend. And so in attempting to. I'm just going to lay some
12 foundation. I promise I'll get to it. So -- and what you got to earlier, what
13 you mentioned earlier was that opposing counsel argued that perhaps Kim
14 doesn't teach when the motion is or the gesture ceases. And that's precisely
15 why we go to Townsend for these claims that you referenced earlier,
16 including five and some of the other ones that are in this section. So that's
17 where Townsend comes into play.

18 So what is Townsend about? Well, Townsend's directed to displaying
19 virtual objects so that they behave how they do in the physical world, and
20 they want to simulate real world behavior. So if you're looking at Slide 33,
21 we've really tried to illustrate to you here the applicability of Townsend in
22 the world of Hackborn. So Townsend's saying, you know, user may expect
23 virtual objects to behave how they do in the physical world. That's at
24 paragraph four. And if you look at Hackborn in a section that my colleague
25 discussed in detail with you, we have a discussion in paragraph 28 of
26 Hackborn that says that the blades of grass in that live wallpaper are

1 displayed in areas of the screen swiped by the user, are caused to bend or
2 sway as if contacted by the user's finger during the swipe. So they have a
3 common goal, right.

4 MS. HUANG: Hackborn wants to make the animation appear as if
5 the grass was actually swiped, which is exactly Townsend's goal of trying to
6 address the issue that users may expect virtual objects, things that they see
7 virtually on their device, they want them to display as they would in the real
8 physical world. So if you turn to Slide 34, you'll see highlighted text from
9 Slide 16 that talks about Townsend's clear teachings here, that they relate to
10 displaying objects so that they exhibit physical characteristics such as
11 elasticity and deceleration.

12 And they use what they call an inertia system to actually generate
13 events based on a simulation of the behavior of the objects. And so this
14 inertia system is what really comes into play here to try to implement
15 Hackborn's goal to make things look as real as possible. And if you look at -
16 -

17 JUDGE LEE: This is Judge Lee. Can I interrupt you? Because my
18 question is about the cessation of the contact, and yet you haven't gotten to
19 it.

20 So many of these dependent claims are premised on detecting a
21 cessation of the contact or something happening after cessation of the
22 contact. So everything you just said doesn't really answer the question. The
23 animation can be -- just be during the contact. So my question is: How have
24 you accounted for the requirement of detecting a cessation of the contact
25 where the animation happening after cessation of the contact?

1 MS. HUANG: Sure. And it's -- just to clarify, so if you'll turn to
2 Slide 36, this is where you'll see excerpts from Hackborn and from
3 Townsend. But I really want to direct your attention to Townsend to
4 paragraph 16. And also on here, just for your benefit, we've included the
5 language from Claim 5, and that says that the change in appearance of the
6 background of the first user interface decays.

7 So that appearance is already that the change is already happening and
8 that it decays following detection of a cessation. Alright. So with that, if
9 you look to Townsend, which is on the right column, there's some
10 highlighted language, but if you look right above it, it says, for example, if
11 the user lifted the contacts while the object has a velocity.

12 So here we have cessation. Right. Then we know that the inertia
13 system, excuse me, continues sending events that indicate that the object is
14 now moving in that direction, but it's slowing down over time. So there's
15 that decay right, so there's the user lifting contact, there's cessation, and then
16 we have the subsequent decay that goes along again with Townsend's
17 teaching of wanting to display really the real and simulate real world
18 behavior of objects. So if you stop touching it, then the movement's going to
19 slow down and decay over time.

20 JUDGE LEE: Yes, thank you. I see that. That only accounts for half
21 of the issues. The half that's accounted for is that something continues to
22 happen after cessation. What about the claims that require affirmative
23 detection of cessation?

24 MS. HUANG: Well, Townsend I think discusses, in Claims 16 right
25 there, the cessation that occurs with the lifting of the finger. And so with

1 that lift, it's sort of cause and the reaction. So the cause is the user lifts
2 contact and then the reaction is the decay.

3 JUDGE LEE: Is that necessarily detecting, because you don't have to
4 detect it. Whatever is happening can continue to happen without the system
5 detecting anything.

6 MS. HUANG: I think the idea with Townsend is that we have
7 -- the idea being if a device is detecting any motion at all, it's because the
8 user has an intent to try to make the display respond in a certain way. And
9 so the device is constantly detecting, right? And so with the user lifting
10 contact, it's detecting again the user's input. And with that is a detected user
11 lifting the contact while the object is --

12 JUDGE LEE: Okay, thank you.

13 MS. HUANG: Yeah.

14 JUDGE LEE: Thank you. I am interested in two things still. One is
15 the lock screen. I'm not sure what that means.

16 MR. RENNER: Sure.

17 JUDGE LEE: And the other one is the other ground, where you're
18 relying on the social media posts. I'd like you to tell us why that would be
19 obvious where -- it's in a wallpaper.

20 I mean, the prior art you cited for scrolling through social media posts
21 are not in a wallpaper, in active applications.

22 MS. HUANG: Would you like me to start with the social media posts
23 then? And then go ahead.

24 JUDGE LEE: Either sequence is fine.

25 MS. HUANG: I'll start with if I could direct your attention to Slide 47.
26 And I think that's kind of getting to the question you had earlier about a lock

1 screen. I believe, Your Honor, that your question was, if you have a lock
2 screen, how is the wallpaper responding?

3 And the answer to that is: If you have a lock screen, in the absence of
4 our combination, your wallpaper will not be responding. But the idea is
5 Hackborn teaches the idea of a live wallpaper, something that's potentially
6 aesthetically pleasing. It's a change in what users necessarily can have on
7 their device. Wallpapers normally don't respond to what we're doing.
8 Hackborn says let's change that up because the user might appreciate that.
9 And so when we have the combination of Hackborn with Townsend, we are
10 adding the fact that the wallpaper is now active. We're not making other
11 things active that weren't active before. And that's consistent with
12 Hackborn, right? In Hackborn, you are only animating the wallpaper with
13 your swipe. It's not teaching to change anything else about the object. In
14 fact, it specifically says that the foreground objects don't change. That's
15 again, consistent with the concept of a lock screen. The idea, as Jobs teaches
16 with a lock screen, is that when you have a lock screen, your -- what
17 typically are things that you would interact with when a device is unlocked,
18 foreground objects or applications or icons, would potentially be animated --
19 or not animated, but they could be affected by a user input.

20 And all that we're adding with this combination is the idea of you still
21 have a wallpaper which, previous to this combination isn't responsive to a
22 user input. But let's make the wallpaper, if a user wants to look at it or just
23 enjoy the benefits of a live wallpaper, we'll make that active, but it's not
24 going to affect execution of applications. It's not going to turn anything on
25 that otherwise wasn't turned on, and it won't unlock the screen. That's what
26 the unlock button is for.

1 JUDGE LEE: Thank you. If I understand you correctly, and based on
2 Mr. Renner's earlier saying that parties don't really have much dispute over
3 the meaning, is it correct for me to understand it like this: when the screen is
4 locked, it's just locked for the ordinary activities of the computer. The
5 background wallpaper is still unlocked and is capable of receiving a swipe or
6 a touch?

7 MS. HUANG: In the combination, that is correct, Your Honor.
8 Previously, the background wouldn't have been doing anything in a locked
9 or an unlocked screen. But the idea is we're again bringing in Hackborn to
10 allow a user to have the benefit of Hackborn's live wallpaper and enjoy
11 something that they could, you know, watch the grass move or see other --
12 having other live wallpaper examples that Hackborn has. So just -- it just
13 kind of makes sense. It's not going to affect the processes that are otherwise
14 locked by the lock screen.

15 JUDGE LEE: I see, So the lock or unlock doesn't really apply to the
16 background?

17 MS. HUANG: Correct.

18 JUDGE LEE: And there's no dispute on that from Patent Owner?
19 Both parties understand it as such.

20 MS. HUANG: I don't -- yeah, I believe the parties are in agreement
21 about what the background is.

22 JUDGE LEE: There's no need for any further briefing?

23 MS. HUANG: I believe that's correct, Your Honor. Yes.

24 JUDGE LEE: Thank you.

25 MS. HUANG: Yes, you're very welcome. And I would --

1 JUDGE QUINN: So what do we do with the teachings in Hackborn
2 about putting it into that mode in which you are actually activating the live
3 wallpaper?

4 There's a mode in which the wallpaper is there. It's supposed to be
5 live, but it's not. And then you have to do something actively to put it into
6 that mode.

7 MS. HUANG: Yeah. And thank you for your question. Paragraph 28
8 of Hackborn, that's where the discussion is of putting the live paper into that
9 mode. And the discussion of that is really -- it says that in some cases or in
10 other wallpapers, it actually says it might require a predetermined input to
11 put it into that mode. In our combination, we're really focusing on that live
12 grass wallpaper where Hackborn doesn't have a discussion of having to put it
13 into a mode.

14 So in our combination, we would have the live grass wallpaper
15 already in that mode. And then if you lock the device, you still have the
16 benefit of that live grass wallpaper that was already there. You can enjoy it,
17 you can swipe, you can -- kids can play with your device and have a ball.
18 Trust me, I have kids and they would love that. But it doesn't need to have --
19 it doesn't need to go into a mode. And if it did need to go into a mode, it's
20 just not something that's contemplated by Hackborn.

21 JUDGE LEE: Counsel, This is Judge Lee. Well, this answer I
22 understand, but it undermines your other ground where you're relying on the
23 wallpaper being a social media posting that's streaming in. It undermines
24 that other ground because in the other ground, you're essentially making the
25 wallpaper an active workspace by scrolling through the streaming posts. But
26 here you're saying, oh, when you have a lock screen, things in the

1 background are not locked. That seems inconsistent because why would you
2 want to be working on the background when you have a lock screen?
3 Because you're essentially making the background the workspace.

4 MS. HUANG: Yeah. So we kind of have two different things going
5 on here, Your Honor. With the lock screen, you're adding the fact that the
6 benefit of a lock screen is that you can lock the device and have it not affect
7 or have -- save battery, not have inadvertent touches activating icons and
8 things in the foreground, but you would still have the benefits of a live
9 wallpaper.

10 And in that combination that we spoke of earlier, it would just be this
11 aesthetically pleasing and kind of fun background to play with. Now,
12 addressing your social media questions, and in that combination in ground
13 two, I sense that you are a bit skeptical about the idea of making the live
14 wallpaper, you said, an active workspace, but Hackborn is actually the one
15 that teaches doing that.

16 It says one of the examples for a live wallpaper is social media. So if
17 you'll turn to Slide 53 of the presentation, Hackborn talks about the idea that
18 you could have post from a social media site. They're already in the
19 background and they're already scrolling back there. And as new posts come
20 in, they're going to be automatically updated and a user has the benefit of
21 looking at them.

22 So whether it seems counterintuitive, Hackborn seems to have -- want
23 to provide that to a user and says, look, it's back there. If someone wants to
24 see the updates, they get to see the updates. They don't have to see the
25 updates. They can close their eyes or they could look away, or they could
26 pick a different background. But if you want to, because many people are

1 addicted to social media, perhaps it might be useful to be able to have these
2 posts coming in and looking at them or having the benefit of them in front of
3 you.

4 JUDGE LEE: But I understand, that's passive. That's not due to any
5 action of the user.

6 MS. HUANG: Sure. And it is. And it is passive. And what would
7 happen then because it's passive and because it's not something that the user,
8 as Hackborn teaches, is actually interacting with. As someone is seeing new
9 posts come in and let's say my husband says something to me or kid needs
10 something, and then I just saw. I was just about to read that post and it
11 scrolled out of view and now I can't see it. So something that was
12 previously helpful could actually turn out to be a little annoying because all I
13 need to do is just see that last post that's now sort of hidden.

14 And Dr. Cockburn spoke to that. If you look, go to Slide 55. And he
15 says it would be an infuriating user experience to have the benefit of, of this
16 live social media feed that Hackborn teaches, but not be able to easily access
17 that without having to really make this what, Judge Lee, what you're making
18 it or saying that it would end up being, which is having to launch an
19 application and have to go through the whole rigmarole of doing that. This
20 doesn't require that. This says just with our combination, by bringing in
21 something like Jobs, it's teaching something that was as well-known as
22 simply going through an old list or a list of messages and saying there's
23 some old messages that I'd like to go back and look at.

24 All I need is to scroll intuitively scroll back and just see what I just
25 missed. And we're just introducing the idea that if you have something that's
26 displaying the feed and you may have missed something in the feed, we're

1 not going to tie you to that and then have to have you necessarily go to the
2 application and go find that post, but instead just saying, you know where it
3 is, it just rolled out of view and all you need to do is swipe up and you can
4 see it. And by swiping up, you're just scrolling the way that Jobs teaches
5 doing that in a message feed.

6 So it doesn't have to be active, but it allows a user to not be infuriated
7 by the fact that they're being able to see stuff, but it might just be a tease
8 because if something new comes in, they're not going to be able to see the
9 older messages. Does that answer your question?

10 JUDGE LEE: Yes. Thank you.

11 MS. HUANG: Okay, with that, I will. I'd like to reserve the
12 remainder of the time for rebuttal, please.

13 JUDGE SMITH: If I could, this is Judge Smith. I just have one
14 question.

15 MS. HUANG: Certainly.

16 JUDGE SMITH: Just about the differences between Claim 18 and 19.
17 So both claims say that the user interface includes a lock screen. And Claim
18 19 further says that the lock screen is unlocked. Claim 18 doesn't say
19 whether the lock screen is locked or unlocked.

20 Are you construing this to mean that the lock screen is locked for
21 Claim 18?

22 MS. HUANG: Yes. For Claim 18, it would be locked. And the lock
23 screen can be locked or unlocked. So just for purposes of Claim 18, it would
24 just be in its unlocked state or 19, excuse me.

25 JUDGE SMITH: Okay. Thank you.

1 MS. HUANG: You're very welcome. I'd like to reserve the remainder
2 for rebuttal. Thank you.

3 MR. WALLIS: Are Your Honors ready?

4 JUDGE QUINN: Are you ready? Okay.

5 MR. WALLIS: Your Honors, Petitioner's grounds, each of them
6 involve misunderstandings or mischaracterizations of the references. The
7 primary issue we have here that runs through each of their grounds is this
8 characterization that Hackborn distinguishes between taps and swipes in its
9 wallpaper environment.

10 Now, Petitioner's theory is essentially that Hackborn does not
11 recognize a tap on the background, but it does recognize a swipe. And
12 because of this, they say Hackborn must necessarily be distinguishing
13 between these two gestures. And it's because of this false premise that
14 Petitioner goes to seek out Westerman. And it is through this false premise
15 the Petitioner intends to introduce Westerman's threshold into Hackborn's
16 environment, despite it not fitting with Hackborn's disclosure.

17 Now, I think we need to talk a little bit about the background of
18 Hackborn before we get into the arguments. If you can turn to my Slide 9.
19 Here's a picture of the grass wallpaper on the left hand side that we've been
20 discussing for the Ground 1A. And here we have on the right hand side, a
21 paragraph 26 that's talking about the home screen layout shown in Figure 1
22 with the wallpaper 104. That includes the live grass wallpaper example.
23 Right?

24 It says this example may respond to inputs. It does not say this
25 example may respond to swipes. So Hackborn broadly teaches that its
26 background is responsive to inputs. Now, before I go any further, I think it

1 might be prudent for everyone to pull up Hackborn's paragraph 33. I don't
2 think there's any good example of the slides of the full paragraph, but I think
3 this will help shed some light on maybe the distinctions in our arguments
4 that I think may not be getting through.

5 So Petitioner talked a little bit about this, and some of it was correct.
6 And so I just want to go through this and make it clear what our position is.
7 So the first sentence starts the processes for different visual display layers
8 may also communicate with each other in some implementations. In this
9 example, a process for the home page itself is communicating with a process
10 for the wallpaper.

11 In particular, the user input of dragging a finger across the top of the
12 grass may not be received and processed by the wallpaper process. Rather,
13 the input may be received by a home screen process which may interpret the
14 input and pass it to the wallpaper process.

15 So I think we agree with Petitioner on how this works. You have
16 essentially two different modules or processes that work on different layers.
17 So if you have a foreground layer, it is going to receive the input first and
18 then it can transfer that input down to the wallpaper process. So it has a
19 priority. So it will receive it first, determine what to do, interpret it, and if it
20 needs to send it to the wallpaper, it will do so.

21 The next part is, I guess, just an aside on that. Again, this paragraph
22 says in this example, right? And in particular, the user input of dragging
23 your finger, it does not say only swipes do this. It says an example that is a
24 user input. And the particular example is a user dragging his finger across
25 the screen. This is consistent with how Hackborn broadly responds to user
26 inputs.

1 Now, the next part, which I think is the most important here, it says
2 the message right, from the higher priority layer that passes the information
3 may indicate a vector representing the position, direction and speed of the
4 user's dragging motion. Such information may then be used to process
5 executing the wallpaper to determine that the user's finger contacted the item
6 to the wallpaper.

7 So essentially, the wallpaper process gets the information. The
8 contact information. In this example, it's a vector with three criteria,
9 position, speed and direction. The wallpaper process, once it, once it
10 receives that, Hackborn says exactly what it does, right? Such information
11 may then be used to determine that the user's finger contact the items on the
12 wallpaper.

13 And if it does, such information may be used to generate an animation
14 that makes the grass blades look like the finger is actually contacting it. So
15 what Hackborn is doing is it's getting the information from the top process.
16 The background process is it will determine whether the contact is or
17 whether the finger path, I guess the finger is contacting the screen, but
18 there's also a contact of the wallpaper itself. So you have a finger going
19 across the screen. It's going to determine whether there's any overlap with
20 the wallpaper itself.

21 If there is any overlap, it's going to produce an animation. Now, this
22 is not saying that Hackborn is going to take this vector. It is going to
23 determine which gesture would correspond to this vector and then perform
24 an animation based on the gesture that identified.

25 So, for example, if I'm in Hackborn's live wallpaper and I make an S,
26 Hackborn is going to get that information in vector form, or potentially other

1 form because it's a different example, and then it will determine the overlap
2 of that contact on the grass and the overlapping areas. It will produce an
3 animation as if the finger is actually contacting them. So if I make a
4 squiggle, it does the same thing. A spiral, a square, a circle, an oval.
5 Hackborn is not saying detected --detect the contact, determine it's a circle
6 gesture, produce a circle animation. Determine it's a squiggle gesture,
7 produce a squiggle animation. It is merely responding to the contact.

8 If I draw two S's and they're slightly different, the animation will be
9 slightly different, in Hackborn. Like we've said, it's realistic. It's trying to
10 be an illusion. This is what we've talked about. But in their theory, the
11 threshold -- or that Hackborn would identify as an S and produce an S, an
12 animation that corresponds to a gesture that's an S. So it first determines is
13 an S gesture, and it would produce an animation corresponding to that S
14 gesture. But that's not what it does.

15 In contrast, if you look at Westerman, going back to my Slide 11, this
16 is exactly what Westerman is doing, right? There's a keyboard input. You
17 can either use this area and it will produce two functions depending on
18 whether the gesture is identified as a tap or whether the gesture is identified
19 as a swipe. So, in Westerman, if you touch the screen and you move just a
20 little bit, but that just a little bit is not enough to meet the length threshold, it
21 will identify it as a tap, and it will produce a function that corresponds to a
22 tap. Now, if I move my finger more within a short amount of time, it will
23 identify that as a swipe, and it will produce a distinct gesture that
24 corresponds to a swipe. So this is the key differences that we're talking
25 about here.

1 As Hackborn is essentially a freeform -- as we say in the papers, or
2 our expert says, it's a continuum, right? If you have a vector that starts at 1-
3 1, direction 5, speed 6, it's going to produce an animation that corresponds to
4 that. If you have a vector that's 1-1 direction 7, speed 4, it's going to
5 produce an animation that responds to that. It's not going to classify each of
6 those vectors as different gestures and then --

7 JUDGE QUINN: Why does it matter, with respect to the claims,
8 whether you have a continuous, freeform gesture versus a direct swipe that
9 creates a tap on a keyboard? Why does it matter? They're all gestures that
10 are dynamically changing the display.

11 MR. WALLIS: Yes. So I guess the main point in [1.j], right? So, in
12 [1.I], we have detecting a first input location that corresponds to the
13 background -- and I'm paraphrasing here for time. And then in [1.j], we
14 have dynamically changing the appearance of the background in accordance
15 with the determination that the first contact has a magnitude that is above the
16 threshold. So once the magnitude is above -- of the gesture is above a
17 threshold, that's when it's going to start dynamically changing the
18 appearance of the background.

19 But in Hackborn, and I guess why it relates to Petitioner's theory, and
20 maybe the claim is a little bit of a misnomer, because Petitioner's sole
21 purpose for pointing to Westerman is that Hackborn must distinguish
22 between a tap and a swipe on its background.

23 If it does not show that, then its motivation to combine falls apart,
24 right? There is now no logical explanation for why a POSITA is going to
25 Hackborn, and there is no logical explanation as to why it's putting these
26 thresholds from Westerman into Hackborn's background. Because without

1 that determination, if Hackborn's operating like I'm determining it is, or I
2 think it is, and there are no thresholds, and therefore there's no reason, there's
3 no logical reason to go to Westerman except hindsight bias. Right?

4 That's all their explanation relies on. Hackborn must distinguish
5 between taps and swipes. And that's because that's all premised on the fact
6 that a tap on the background does not produce any animation. But that's
7 simply not true. So with that, the motivation falls apart. This is, you know,
8 in Ground 1A.

9 JUDGE QUINN: Are you saying that Hackborn has animations that
10 are caused by a tap?

11 MR. WALLIS: Yes, I am. So if I will direct you to my slide. Let's
12 see, 16, we see again, paragraph nine. This is Hackborn I'm talking about.
13 The method includes producing an animated moving display of the graphical
14 wallpaper representation in response to the user input on the display. Right?
15 And in paragraph 26, talking about the grass wallpaper in Figure 1. Right?

16 We know that this responds to inputs from a user. So, I don't think it's
17 disputed here that a tap is a user input. And if a tap is a user input, Hackborn
18 says it responds to it on its wallpaper. Now, I want to be a little bit clear,
19 because Petitioner's argument seems to be shifting the burden a little bit.
20 Petitioner always has the burden of proof and that never shifts to Patent
21 Owner.

22 So it is not Patent Owner's job to show that Hackborn must explicitly
23 teach a tap on the background. It is Petitioner's burden to show, to establish
24 that Hackborn explicitly excludes taps from user inputs. And they have not
25 done that. They have not met their burden. And for that reason alone, all
26 their motivations to combine fall apart.

1 And so turning again to 28, which they make a big deal about on
2 paragraph 17, right, in the example shown in Figure 1, a user is swiping her
3 finger across the touch-sensitive display screen, and the grass bends as if
4 contacted by the user finger during the swipe. Again, this is an example. To
5 hold that this example precludes every other example that could be used I
6 don't think is a logical interpretation.

7 JUDGE QUINN: I think the problem that we have with your
8 argument here is that it's too much of a bodily incorporation argument.
9 We're looking at what the teachings would tell a person of skill in the art
10 they were capable of doing and whether there would be motivation to do it
11 that way. Not necessarily whether putting the precise technique in
12 Westerman that you have to have a tap or show that you would not ever need
13 a tap. I don't think that we're looking at it that way.

14 MR. WALLIS: So I think -- we're not arguing that -- I guess our
15 arguments are not that they're bodily incorporating Westerman, right?
16 Westerman is in a keypad, right? So if you bodily incorporate that, you
17 would just put the keypad in the environment and that wouldn't meet the
18 claims. But the teaching they're relying on is this threshold. So Hackborn --
19 or, I'm sorry, Westerman is teaching that it's using gestures to determine two
20 separate functions, right? If it's a tap function, I'm going to do A. If it's a
21 swipe function, I'm going to do B. And these are distinct functions in --

22 JUDGE QUINN: What if you detect a tap function, but you're -- you
23 detected a tap happen and your function is do nothing?

24 MR. WALLIS: Well, I guess I would say, what evidence is that in the
25 record that that says a tap function does nothing in Hackborn or any of these
26 references?

1 JUDGE QUINN: I'm asking you, Westerman, whether it teaches just
2 have a tap and do a function, that function could be do nothing?

3 MR. WALLIS: Okay. Yeah. And so I guess circling back to the
4 motivation to combine, right, Petitioner's already made this assumption to go
5 seek out Westerman. So if you're at Westerman, it's too late. They say the
6 motive, the reason you're going to seek out Westerman, is that Hackborn
7 must distinguish between taps and swipes on its background. So they've
8 already said what Hackborn does, and this is the reason they're going to
9 Westerman.

10 So if you're arriving at Westerman and saying, oh, well, I could have a
11 tap do nothing and put it in there, well, you're right, that's possible, but the
12 motivation to go seek out Westerman is not supported or is not established in
13 this record as to why you would do that. Because they've already said the
14 sole reason for seeking out Westerman is that Hackborn distinguishes
15 between a tap and a swipe on its background. If it does not do that, the
16 motivation to combine is gone. There's no reason to bring in Westerman.
17 The whole case falls apart.

18 And so, again, Petitioner makes additional arguments about the
19 predetermined mode and how tapping on Hackborn only discloses a
20 different function. Well, if you look at my Slide 18 -- so on Slide 17 is the
21 whole paragraph of 28 reproduced. If you want to check my work, the blue
22 box is what is shown in Slide 18.

23 So this is talking about the predetermined inputs for mode switching,
24 right? None of them are a tap on the background. There's tapping multiple
25 times on the display screen. But that does not require distinguishing a tap
26 from a swipe. It requires determining a number of contacts that happen in a

1 predetermined time. And, again, it leaves open the possibility, as you see Dr.
2 Mahon's testimony, if Hackborn treated taps differently than swipes and
3 other inputs for this wallpaper, a single tap would be sufficient to switch
4 mode, but Hackborn does not say it does.

5 But what it does say, right, is predetermined user inputs can include,
6 and tapping is one of them, albeit tapping multiple times to perform a
7 different function. But user inputs are specifically contemplated to
8 encompass taps in Hackborn and paragraph 28.

9 JUDGE SMITH: Counsel, this is Judge Smith. Let me ask you this.
10 Let's just say -- for the sake of argument, let's just say we don't agree with
11 you that there's no motivation. Let's say we find there is motivation to
12 combine these references. Does that mean you lose on this issue, or do you
13 have any other arguments that are in your favor on this issue?

14 MR. WALLIS: So, I mean, that's the biggest argument that we have,
15 is motivation to combine. I think, for the independent claims, we have the
16 same issue with -- if you look at -- and I will, before I leave this argument, I
17 will just point out two things.

18 One, in Slide 19, Petitioner admits that Hackborn discloses user inputs
19 and not swipes. Right? It says causing the background to change
20 appearance responsive to user input. And then Slide 20 talks about how, if it
21 wants to be realistic, a poke of the grass would change the grass, just like it
22 does in real life. Or a tap of the grass would correspond to poking the grass
23 in real life.

24 Going on to, I guess, Claim 1, it's a similar argument as what we're
25 making for the motivation to combine. Again, like I described in Hackborn,
26 it's taking user inputs and it's changing the background. It's not only

1 responding to only swipes, like a single line swipe. If you go and do a wave
2 on the background, it's going to do a wave on the wallpaper. If this were to
3 work via thresholds, it would have to have, essentially, an infinite number of
4 gestures in a database that it corresponds to, oh, this is S subset 1, or this is
5 an S that's got a little bit of a squiggle or comes up a little bit more on the
6 bottom, so now I have to, you know, have this threshold S to correspond to
7 that gesture.

8 If you're introducing thresholds, looking at Westerman, right, it's
9 teaching and it's swipes to determine the difference. Is it higher in the X
10 axis, is the length higher in the X axis or the Y axis? And based on one being
11 higher than the other, it determines the gesture.

12 But these are -- we're talking about freeform, complex gestures that
13 cannot readily be determined that easily. If Hackborn does indeed want its
14 grass to look realistic, thresholds would not make it -- it would make it so
15 much harder to be able to do that. And so we don't think that it's meeting
16 Claim 1 where it's dynamically changing the background in accordance with
17 the determination that the magnitude is above the threshold.

18 Now, if you think you've decided all there is to say on that, I can go
19 into some of the other points for the dependent claims here. And I guess
20 before I do that, I see Judge Smith, you're about to ask a question, or Judge
21 Lee, but the Ground 1A motivation to combine is incorporated into Ground
22 2, and it's the sole reason, again, in Ground 2, for looking to Westerman. So
23 if it fails for Ground 1A, if you find the motivation to combine Westerman is
24 deficient for Ground 1A, you also must find it for Ground 2

25 And I'm sorry, Judge Lee, I believe you're about to say something.

1 JUDGE LEE: Counsel, this is Judge Lee. For the record that depends
2 on the social media feeds, wouldn't you have to determine whether there is a
3 swipe?

4 MR. WALLIS: I don't believe so. So if I can -- sorry, this is Ground 2
5 you're talking about, because there's a social media feed that's used in one of
6 the dependent claims that you asked about for Ground 1A, where it's not
7 moving to any user input. And so --

8 JUDGE LEE: No, I understand your argument for the grass blade
9 ground to be that the grass blades move in response to contact in general, so
10 you don't need to determine whether there's a swipe. But for the other
11 ground relying on the social media feeds as the wallpaper, Petitioner's say
12 they want to swipe the list of social media postings, so wouldn't you have to
13 determine swipe?

14 MR. WALLIS: So my answer would be no. And I can direct you to
15 my Slide 67. The first point here, again, is what I was just discussing about
16 the motivation to combine for Ground 2. Because the sole reason they're
17 seeking out Westerman is the same as in Ground 1A, and it's talking about
18 the grass example. So they're bringing in that grass example into Ground 2
19 to go seek out Westerman, and then they change to the background being
20 social media feed. But now I will address your actual question.

21 So if you look at my Slide 67, Jobs is doing the same thing, right? In
22 response to detecting the movement, the list of items displayed on the
23 touchscreen is scrolled so that a new position is displayed. So, again, this is
24 -- as we talk about in the briefs, this is relative to the movement, right?

25 So, essentially, if I move a small amount, it's going to move the screen
26 a small amount. If I move a large amount, it's going to move the screen a

1 large amount. So, just looking to Westerman for contrast, it allows small
2 movements that are still classified as taps. And so, if I have my finger on the
3 screen and I'm either scrolling up a little bit or I'm scrolling up very slowly,
4 Westerman is going to classify that as a tap.

5 Now, you would expect Jobs, if you're moving, right, just as it says,
6 detecting the movement, if I'm moving up, albeit a little bit or albeit very
7 slowly, it's going to respond similarly, it's going to scroll the message.
8 Because -- and in Jobs' messaging environment, a tap does nothing. There is
9 no reason it has to distinguish a tap from a swipe. And a lot of this I think is
10 -- we talk about contact on the screen, right? Contact can be anything, right?
11 Contact can be a tap. Contact can be a swipe.

12 I think, I might be just now realizing, so please ignore this if this is
13 incorrect, but I think there might be a distinction that I think we're missing
14 here about taps and swipes, because those both occur in the real world and in
15 the interface. So I can tap the podium right here. I can tap the microphone
16 right here. It's obviously not detecting it as a tap gesture, because it's an
17 inanimate object.

18 Now, if I tap my finger on Westerman, it will register that and detect it
19 as a tap. So now the interface is saying, this is a tap. If I hold my finger
20 down, move very slowly, and move a little bit, Westerman is still detecting
21 that as a tap, but we wouldn't call that a tap from the outside. So I guess
22 there are two ideas of tapping here that I just want to make sure that we're
23 not getting confused with.

24 And so what Westerman is saying is it's registering the gesture in the
25 device as a certain gesture. So, it's registering it as a tap or it's registering it
26 as a swipe. But I think my point still stands. In Jobs, if I'm scrolling the

1 screen a little bit, like, very slowly, Westerman is going to classify that
2 gesture as a tap. But Jobs, as it tells us, is going to move the screen up.

3 Now, we wouldn't call it a tap. You wouldn't see me scrolling the
4 screen slowly and say, he's tapping it. It would scroll slowly upwards, and
5 Westerman would classify it as a tap.

6 So I think that's kind of the distinction here. If I'm just touching the
7 screen with no vertical movement, contact, and release contact, nothing is
8 going to happen in the messaging environment that's causing Jobs to say, oh,
9 that was a tap, I'm distinguishing it as a tap, and I'm doing nothing. Right?
10 It just moves based on the magnitude of the vertical movement. So if the
11 vertical movement is zero, it does nothing. If I'm going side to side, right, if
12 I'm swiping, it's still not going to move up and down. But if I start moving
13 up and down in any direction, it's going to follow my finger. It's not going
14 to wait to determine that it's tap or swipe to do so. It's just relating to the
15 contact. And that's the same point that I was making about Hackborn earlier.

16 JUDGE LEE: Counsel, you also say that there's no motivation to
17 combine scrolling through media posts because Hackborn's posts are in a
18 wallpaper, whereas in all the prior art teachings of scrolling through social
19 media posts, they're in actual apps. Can you talk about that lack of
20 motivation?

21 MR. WALLIS: Yes, yes. So, if you can turn to my Slide 69, that
22 might help. So there is a distinction between background processes and
23 active applications, active processes. So, as you'll see here, these are
24 different embodiments of Hackborn, right? One's a social media feed and
25 there are some other ones. But in each of these there are icons that are
26 overlaying the object -- or the wallpaper, I'm sorry. There are objects

1 overlaying the wallpaper, because this is in the background. This is
2 purposefully obscured by these icons because it's not meant to be some in-
3 depth navigational tool.

4 Petitioner ignores this and I think, frankly, is just relying on the
5 common-day use of smartphones and social media that is clearly done today.
6 But in 2011, through the evidence, they say, oh, it would be obvious to start
7 scrolling the background like a social media feed today. But I just don't
8 think that's the case. Because when you look at the scrolling activity in Jobs,
9 that is an active messaging application; they had to open the application and
10 start scrolling on it for that to work.

11 And now Hackborn actually teaches a process. And you'll see in my
12 Slide 70, when it talks about, when you start engaging with the background
13 screen, that it will assume a more prominent display position or status. And
14 consistent with the rest of the prominent display positions in Hackborn, that
15 means it will become higher priority. In other words, it will become above
16 the other icon, so it will no longer be the background.

17 But this does not meet Petitioner's claim, right? For them, and if you
18 turn to, I think, my Slide 71, I think this is our real issue here, is that their
19 assertion is that Jobs provides an obvious solution to Hackborn's obscured
20 messages, but one that neglects the fact that Hackborn's obscured messages
21 are a feature, not a problem.

22 It wants it to be in the background. It's not wanting an in-depth
23 navigational tool, and it tells you, if you want to start manipulating the
24 background, what will happen. It will assume a more prominent display or it
25 will become -- it will launch an active application in which you can do that.

1 It's not saying, I'm embedding a complete application in the background
2 where you can function and use it.

3 The second issue is their modification doesn't solve the problem. So
4 if the problem is obscured messages, their solution is just to make the
5 background scrollable. But the icons are still overlying it, right? They're
6 still obscured. So I don't think it's credible for them to say, oh, this POSITA
7 is going to want all these messages to be unobscured, and so we're going to
8 seek out the solution for making these messages unobscured, and then rely
9 on a modification that has obscured messages. Right?

10 They rely on this, in my Slide 70, paragraph 48, this more prominent
11 display position, right, where it's launching an application. That's one of
12 their reasons for doing this, for making this modification. So, to say that it
13 wouldn't do that, I think, is inconsistent.

14 JUDGE SMITH: But it's still -- Counsel, this is Judge Smith. Let me
15 ask you, this paragraph 48 that you're quoting to us, even in this section that
16 you're quoting, it's still -- that first paragraph on Slide 70, the last two lines
17 of that first paragraph, it still says that it's wallpaper. It may allow the user
18 to work with an aspect of the wallpaper or associated with the -- so, still,
19 even though you're saying no longer in the background, this paragraph still
20 says it's wallpaper. Can you speak to that, please?

21 MR. WALLIS: Yes. So I would say --- you are right. It says the
22 wallpaper or a portion of a wallpaper to be selected to cause the wallpaper or
23 portion thereof to assume a more prominent display position or status. So
24 once it's assuming that more prominent display position, it's no longer a
25 wallpaper. Right? It's a wallpaper to begin with, because it has to be in
26 order to be able to assume the more prominent display. So it's still calling it

1 a wallpaper before the input to bring it further up in the display layer
2 happens, or to launch an application. So I don't think the --

3 JUDGE SMITH: But I guess -- I'm sorry. Just, my question is, you're
4 saying it's not wallpaper, but the reference itself is still calling it wallpaper,
5 and the user can become more active with what this reference itself is still
6 calling wallpaper. Why are you telling us this no longer wallpaper?

7 MR. WALLIS: Well, I'm not necessarily saying it's no longer
8 wallpaper. I think -- so, the issue here relies on the argument that we've
9 made where the claim says you can't change an appearance of any
10 foreground object. So if the wallpaper does assume a more prominent
11 display and covers any of the icons that are presently there, then it will no
12 longer meet the claim. And so I think that's the issue there.

13 I don't care if we call it wallpaper or whatever. It can still be the
14 wallpaper because it was in the background. Now we've moved it up, right?
15 It was the wallpaper. So I don't think the fact that you could still refer to it
16 as the wallpaper negates the fact that it is what it is.

17 I think the issue here is that, if it overlies the icons, then it no longer
18 meets the claims because of that, in the limitation [1.j] when it talks about
19 without changing the appearance of the foreground objects. So I think that's
20 kind of my issue. I'm not sure I take issue with the distinction between
21 wallpaper versus non-wallpaper whenever it assumes a larger display.

22 JUDGE SMITH: Okay, thank you.

23 JUDGE LEE: This is Judge Lee again. I don't think Petitioner has
24 said that when one scrolls through the post in the wallpaper anything
25 becomes more prominent, right? So everything they're proposing is done
26 within the wallpaper. Is that right?

1 MR. WALLIS: Well, that is their -- I think that is their argument. If
2 you look at their motivation for making the background scrollable, they're
3 relying on that paragraph I just showed you. And they quote the language on
4 their petition, right, at 55-56.

5 JUDGE LEE: That's not the same as what you're showing at Slide 70,
6 right? Slide 70 is saying Hackborn recognizes that you can actually launch
7 an app from within the wallpaper. Then it's no longer the wallpaper because
8 the app is now active. What they're proposing is not what Hackborn says.
9 What they're proposing is: just do all of this in the wallpaper.

10 MR. WALLIS: So, yes, I think there are two options on my Slide 70
11 that I'm talking about. One is launching an application, and I think that's the
12 one in yellow. But if you look at the third line down from where I've quoted,
13 it says, to cause the wallpaper or a portion thereof to assume a more
14 prominent display position or status.

15 So, it might not launch, right? It might not launch the complete
16 application, but it might just raise it above inputs. So I think they are --

17 JUDGE LEE: Right. In either case, it's no longer the wallpaper that it
18 used to be.

19 MR. WALLIS: So I guess I -- that might be their theory. But I take
20 issue with them quoting "to assume a more prominent display" position as a
21 reason to make it scrollable and then not making -- to quote that and then not
22 use that seems disingenuous to me. I think, again, throughout the petition,
23 we've said a lot that a lot of their assertions are conclusory and that their
24 motivations to combine are hindsight. And I think that highlights it.

25 So I think that's our issue. And I'm not sure if I answered your
26 question. But I think that's really our main point, is kind of the

1 inconsistencies between what they're saying and why they're doing stuff and
2 the ultimate outcome of what happens.

3 Obviously, they're going to have something that allegedly or possibly
4 maps to the claim. That's their job. But we need to figure out if a POSITA
5 would have made those same modifications and explain why they would
6 have done so. But if you're saying the why is to assume a more -- you know,
7 quoting "to assume a more prominent display position," I think it's
8 disingenuous to say, oh, but it would still be behind the icons. That you
9 would take this active part, still make it in the background, it's kind of
10 pulling from everywhere, and it seems like they're just rearranging puzzle
11 pieces. So that was my issue with it.

12 JUDGE LEE: Thank you.

13 MR. WALLIS: The last thing, again, this is going to be a similar
14 theme if we're looking to Townsend. And I'll try to be quick here, unless you
15 have any questions. They make a lot -- so if you go to my Slide 41, this
16 shows Townsend's model. And you can see, right, Townsend states, to move
17 naturally, objects should also exhibit physical characteristics such as
18 elasticity and deceleration.

19 All right. Well, what is elasticity? Let's look to what Townsend says.
20 If you go to my Slide 42, Townsend defines what elasticity is. If an
21 application author defines two objects as being elastic, then the two objects
22 may bounce off each other.

23 Again, if you go to 43, what's deceleration? Essentially, when
24 something is in motion, using a frictional force to slow it down. The issue
25 here -- and they say to use Townsend's inertia engine to exhibit elasticity and
26 deformation. The issue here, which is not really in the briefs, but it's a subtle

1 undertone in the arguments, is they're talking about essentially the elasticity
2 of the grass, which is the elastic deformation, as in the solid mechanics sense
3 of a fixed object.

4 But that is explicitly not what Townsend's says elasticity is. So they're
5 essentially seeing elasticity, saying, oh, grass is elastic, and we'll make our --
6 we'll have our motivation be that. That is simply, again, inconsistent with
7 what the references are actually teaching. Right?

8 There is no -- Townsend, again, if you look at my Slide 45, it's telling
9 you what it's doing, right? It's taking a whole object and it's disclosing it can
10 use transforms of rotation, scale and translation. So if you have, like, a
11 football going across the screen, it can rotate, right, like a field goal kick. It
12 can move also, like, linearly or in any way. It can also enlarge.

13 At no point is it talking about bending or any type of elastic
14 deformation or anything that Petitioner is actually relying on for their
15 modification. They point to, in their reply, that, oh, it says a pivot point, so
16 it must be bending. But, again, if you look at my Slide 46, paragraph 22,
17 Townsend is very, very clear what pivot point is, right?
18 If you have a sphere, you can select pivot point as the very center of it and it
19 will be essentially like a bowling ball, you know, rolling down the alley. It's
20 just going straight and rotating as it goes. But if you change that pivot point
21 to the very outside of the circumference, it's going to essentially oscillate.
22 So, as it's moving, right, it'll rotate further like that.

23 That's what the pivot point is, is the point at which the object is
24 rotating. There is no bending and there's no other disclosure of what they're
25 proposing for their modifications in Townsend. So, again, I think this points
26 to hindsight.

1 And I think I have only eight minutes left. So, with that, unless you
2 have any questions for me, I'll reserve the remainder of my time.

3 JUDGE QUINN: Thank you. Are you ready?

4 MS. HUANG: I am. Your Honors, I just want to take a moment to
5 address what Patent Owner's Counsel just spoke about as to Townsend.

6 Patent Owner seeks to dumb down Townsend, basically, to make it
7 useless. It doesn't respect Townsend's goals, and it doesn't really
8 acknowledge its roots in physics. It's a physics-based engine. And maybe
9 I'm being too earth-centric here, but real-world behavior, which is what
10 Townsend seeks to emulate and to simulate, includes more than what Patent
11 Owner calls freely moving whole objects. And so, in that way, it really is
12 dumbing down Townsend's system in a way that's not fair to what
13 Townsend's disclosure is.

14 It talks about more than just objects freely moving in space, but,
15 instead, seeking to simulate those behaviors and respecting things like
16 physics, which includes characteristics and, for example, elasticity and
17 deceleration.

18 The other thing I wanted to just briefly address is the lock screen and
19 the benefits of that lock screen as it applies to social media posts, because
20 that is part of the Ground 2 combination. And so, in a similar way, in
21 Ground 2, we have live social media feed forming the basis of the
22 background. And a lock screen would similarly provide benefits that Jobs
23 describes, in the same way, that foreground objects or other things aren't
24 going to be inadvertently caused to launch or open or anything like that,
25 because the lock screen will prevent that inadvertent touch on any
26 foreground objects.

1 And I'd like to offer my colleague, Mr. Renner, because I'm otherwise
2 done with my rebuttal here. But if there are any other questions for myself
3 or for Mr. Renner, we're happy to address them here.

4 JUDGE SMITH: I have a question. This is Judge Smith. The Patent
5 Owner spoke about, you know, this idea of moving the social media
6 application to the foreground. You know, once you do that, it doesn't meet
7 the claim limitation, and you wouldn't use it in the background because there
8 would be foreground objects that cover it up, making it difficult to scroll
9 through in the background.

10 Can you speak to why would you want to keep the social media app in
11 the background if it's being covered up by various objects? Like Patent
12 Owner's Slide 69 has, like, Figure 1 of Hackborn, Figure 3A of Hackborn
13 have all these objects that will be over the social media app, making it
14 difficult to read.

15 MS. HUANG: Yeah, thank you for that question. Happy to address
16 it. If I could turn your attention to Slide 58, we get right to that paragraph.
17 And in that paragraph, the first thing I want to point out is that Hackborn's
18 language about making the display more prominent is permissive. It says
19 "may," and we're really highlighting that over and over and over again.

20 So, in some instances, it may bring that up. That really implies that in
21 some instances it might not make that display more prominent. So we have -
22 - "may" implies "might not," too, right?

23 JUDGE QUINN: Have you relied on that to make the combination
24 with the references, to the extent that you need to see the posts that are
25 obscured, that somehow that interaction or that input makes it prominent?
26 Are you relying on that language to motivate the scrolling?

1 MS. HUANG: We do cite that to language in the motivation ,and
2 really just because in some instances you might want to make it more
3 prominent, some instances you might not want to. But the reality is, I think
4 this statement, even if it -- what Hackborn said here, even if it was made
5 more prominent, it doesn't say it comes right to the front with all the
6 foreground objects behind it.

7 If you'll go to Figure 2, if you take a look at Figure 2 of Hackborn, it
8 shows just an example of three -- it says processes, but they're, like, layers of
9 different objects that are displayed on the screen. And in that example on
10 Figure 2, it shows the background in the very back, but then there's two
11 layers in front of it of different kinds of objects. There's applications, there's
12 icons. And the idea here with what Hackborn is saying is, even if you
13 brought the background forward, it might not be in the very front -- and
14 that's the Petitioner's position as well -- it might not be brought all the way
15 forward. It is truly a background.

16 As you pointed out, Judge Quinn, it's a wallpaper. Right? People
17 have an expectation that it's behind something. So even if it was to have a --
18 take on a more prominent display layer, it would still be a background that a
19 user would expect to be in the background because it's a wallpaper. That's
20 what we all expect. Wallpapers are in the back. And there would still be at
21 least some foreground objects. So, even if some foreground objects that
22 were initially displayed in the foreground were somehow to be put behind it,
23 or some objects that were in front of it are now behind it, we still
24 nonetheless have foreground objects that would overlay the front.

25 And Hackborn certainly contemplates the notion that there's many
26 process layers, so there can be shifting among layers. But with the notion of

1 a wallpaper, you would certainly expect it to be behind something, some
2 foreground objects.

3 JUDGE SMITH: Counsel, let me ask you. This is Judge Smith. This
4 idea that Hackborn has a background, foreground, and then a middle ground
5 between the background and foreground, and to the extent that Hackborn's
6 talking about making the wallpaper more prominent means having it overlay
7 the middle ground, but not the foreground, were these arguments in your
8 briefs?

9 MS. HUANG: I don't recall at the moment. Yeah, I don't know that it
10 necessarily came up. Yeah.

11 JUDGE LEE: Counsel, this is Judge Lee. I think Judge Quinn was
12 asking you whether this passage in Hackborn about making a part of the
13 wallpaper more prominent was relied on in the petition to justify the manual
14 scrolling of posts in the background. I don't recall that that's the case in the
15 petition. Your motivation to scroll the background post simply is, oh, it
16 automatically scrolled past something that I wanted to see, so I'm going to
17 manually scroll back. I just want to clarify Judge Quinn's question. If my
18 understanding is not correct, you can comment.

19 MS. HUANG: Your understanding is correct, Judge Lee. That is
20 correct. That's the primary reason for bringing in Jobs. But I will say that it
21 is correct that the petition does mention paragraph 48 as another reason why
22 one might think that it could be beneficial to do that. But we certainly didn't
23 argue that we would bring in Jobs in order to perform all the permissive
24 steps that are in paragraph 48 of Hackborn saying that you would necessarily
25 bring it to the front. It just says that if you want to interact with it, you
26 know, it may, you know, cause a user to want to act -- interact with it,

1 because there's something interesting going on there. And so that would
2 motivate one to want to have more of ability to interact with that
3 background.

4 JUDGE LEE: Thank you.

5 JUDGE QUINN: Do you want to sum up?

6 MS. HUANG: Yeah, yeah.

7 MR. RENNER: My apologies. I just wanted to briefly address the
8 comment, Judge Lee, and I think Judge Quinn as well. This is part of the
9 live part, we believe, of what the proceeding is. There were allegations that
10 there's something in the reference that breaks what we did talk about in the
11 petition, and these were responsive to those concerns. So I just wanted to
12 not leave a misimpression with anyone about the nature of what was in the
13 petition as it relates to this.

14 There was the prominence of promoting the content that was
15 otherwise in background at times, and that we believe, again, in response to
16 those kinds of arguments, that there wasn't a full -- you know, that's not a full
17 evisceration of the benefit, that there nevertheless is still an opportunity to
18 benefit from background objects, that some of the material might well be
19 occluded, some of the material you might bring forward, but you're still
20 going to have some benefits, we believe, in these circumstances. And we
21 think this is all within the general purview of a person of ordinary skill. So I
22 just wanted to make sure we didn't leave that impression.

23 JUDGE QUINN: Thank you for that.

24 MR. RENNER: I know we're well over. My apologies for that.

25 JUDGE QUINN: Anything else?

26 MR. RENNER: No, Your Honor. Thank you.

1 JUDGE QUINN: Thank you.

2 MR. WALLIS: Your Honors, as I said at the outset, here, it is
3 Petitioner's burden to show that Hackborn explicitly excludes taps from its
4 user input. If it does not do that, if it does not meet that burden, then its
5 motivation for every single ground here fails and we're done.

6 We know it's undisputed that Hackborn discloses its wallpaper
7 responds to user input. And I believe it's undisputed that a tap is a user
8 input. With those two together, Petitioner cannot meet their burden of
9 showing that Hackborn excludes taps.

10 Now, that aside, a couple of things that you asked on reply, I think
11 Judge Smith asked, is there any reason to have the background in the
12 Ground 2 scrolling wallpaper still obscured? And the answer was, well, it's
13 only permissive language that says it must be in it.

14 That is not a reason why you would do it. A POSITA in 2011, not
15 trying to meet the claim elements, trying to actually perform the solution to
16 the problem of obscured icons, would almost certainly -- I can think of no
17 reason for why they would not move the background above the display.

18 I think, Judge Lee, you had discussed that that's not in their petition or
19 their portion. But I think, if we look at the petition page 66, I'm going to
20 read it. Given that Hackborn teaches, one, receiving user input on the
21 background; two, causing the background to change appearance responsive
22 to user input -- inconsistent with its arguments in Ground 1, I'll say -- three,
23 causing a portion of the background wallpaper to assume a more prominent
24 display position; and, four, its passive scrolling new image or post a POSITA
25 would have found obvious for -- it's a long sentence, but essentially scrolling
26 to older posts is how it ends.

1 So the foundation --

2 JUDGE LEE: What page is that?

3 MR. WALLIS: Page 69, Your Honor -- or 66, sorry. Sixty-six, Your
4 Honor. There are four reasons. One of them specifically is quoting this
5 language to assume a more prominent display position. Now, their
6 modification might not implement this more prominent display position, but
7 that is only because it shows that it is hindsight. There's no reason why you
8 would still have a background obscured if the user is actively trying to
9 manipulate it.

10 I think their expert, right, got at the foundation of this is: it would be
11 such an infuriating experience if the background's not scrollable. Well, we
12 don't have any disclosure anywhere that the background was ever scrollable
13 in any context before 2011, before this modification that they're presenting
14 right now. Right? If I get on a plane today and there's not Wi-Fi, I'm pretty
15 mad. But back in the early 2000s, I had no idea there was Wi-Fi on planes,
16 so I wouldn't have been infuriated.

17 If we're looking at it through a present-day view, that might be correct.
18 The user might be infuriated. But that is not what the evidence shows and
19 that's not what we're looking at. And even if the user was infuriated because
20 the status scrolled down, Hackborn gave you options to deal with that. But
21 to say that the user would fix that infuriating issue, but not fix having the
22 icons obscure the background, I think is nonsensical. And I think that shows
23 that their modifications, their motivations to combine, are not based on the
24 art, but they're based on hindsight and conclusory assertions by its expert.

25 Now, we talked about Townsend a little bit, or Petitioner did, about
26 how we're narrowing it too much, right? It should treat real-world objects

1 how real-world objects act. But there is no evidence here about the elasticity
2 of grass, right? The grass is supposed to move in a realistic manner. And
3 they say it does all this bending stuff because that's how grass really moves.
4 But no one here knows anything about grass. There's no evidence of how
5 grass moves. Petitioner's expert says it depends on the season and that he's
6 not a grass expert. So, to the extent they're relying on this just for a real-
7 world object, again, that is too generic. You could essentially swap that with
8 anything, right?

9 If I want to make anything real-world, it would not be patentable
10 because Townsend says, oh, you can simulate things like the real world. But
11 that is -- it's too broad, it's too generic, it does not explain why a POSITA
12 would have specifically implemented the modification it seeks.

13 And unless you have any other questions, that is all I have.

14 JUDGE SMITH: This is Judge Smith. I have a question. In terms of
15 the lock screen, the brief Petitioner spoke about it in her opening remarks
16 and also in rebuttal. I haven't heard you speak about the lockable screen,
17 this idea that the combination teaches that you can manipulate the
18 background even when the screen is locked. Do you have any comments
19 about that?

20 MR. RENNER: Yeah. So I think the first thing -- and this is talking
21 about, I believe, [1.d], which is Jobs, right? And if you look to my Slide 55
22 and 54, 55-54 shows the modification that they use where they put the
23 wallpaper into Jobs. Now, we know this is a live, active wallpaper and if
24 you touch it, it will perform a function, it will animate the wallpaper.
25 Petitioner concedes to that. Right? What's the reason they're doing this,
26 right?

1 If you look at my Slide 55, the petition at 59, they say that doing this
2 would improve the device by preventing unintentional activation or
3 deactivation of functions. But if you put a live wallpaper on the lock screen
4 and you touch it, it will necessarily perform a function. So how can adding a
5 live wallpaper that's only job is to perform functions when you touch it
6 prevent unintentional activation? If the user accidentally touches that
7 portion of the screen, it will activate.

8 So I think the first issue is, again, the motivation to combine here is,
9 again, deficient. The second is, I think when we're talking about this lock
10 screen, right, if you look to my Slide 59 -- or let's go to Slide 57 first.

11 So, Claims 18 and 19 depend from Claim 1, and 1 has a first user
12 interface that includes a background and one or more foreground objects.
13 Now, Petitioner identifies these foreground objects, as you'll see in my Slide
14 59, as the icons, but then it removes them in its combination, in its
15 modification. You see that there are no foreground objects here. So,
16 regardless of whether it's a lock screen or whether it's not, the modification
17 that they show does not have foreground objects. It does not meet the Claim
18 1.

19 Now, they say in their brief that the sliding image 302 is a foreground
20 object, but that is a conclusory assertion by the expert. There is no
21 testimony this is a foreground object. It doesn't overlie the wallpaper. That
22 is simply false. And to correct this on reply, they introduce, as you see in my
23 Slide 60, a new and inconsistent theory where they say, essentially, oh, well,
24 the first interface is two separate interfaces, it's the wallpaper screen and
25 then it's, like, a different screen.

1 But, again, that wasn't in the petition. That is new. And, again, is
2 inconsistent. It says a first user interface. And as you see on Slide 59, their
3 first user interface does not have foreground objects.

4 JUDGE LEE: So, Counsel, it's Judge Lee. So your position is that
5 Hackborn's disclosure of making some background objects more prominent
6 would not have suggested manually scrolling forward or back to bring in
7 something new?

8 MR. WALLIS: So, they use Jobs to do that scrolling. And again, we
9 talked about Jobs doesn't have those thresholds.

10 JUDGE LEE: Yeah, I understand that. But since you point out they
11 also relied on Hackborn's making something in the background more
12 prominent, or that feature, it's your contention that, well, making something
13 in the background more prominent also would not have suggested the
14 manual scrolling?

15 MR. WALLIS: No, it's not directed to the scrolling feature. I'm
16 saying, if you actually put yourself in his shoes in 2011 and are looking at
17 this not through hindsight, and you're reasoning as you're doing something,
18 is this making more prominent, that's what you're going to do.

19 I'm saying it doesn't -- it's inconsistent with their alleged modification.
20 And that's my issue. It's hindsight. It's inconsistent. And that inconsistency
21 is what I'm pointing at. I'm not saying whether Hackborn's more prominent
22 says it's to scroll or not to scroll. I'm saying, if you're actually implementing
23 the solution to, you know, the problem of obscured objects, you're not just
24 going to have "do it," especially if you're relying on the fact of a position in
25 the reference that says to, you know, fully do it. So that was my position.

26 JUDGE LEE: Okay, thank you.

1 MR. WALLIS: Thank you, Your Honors.

2 JUDGE QUINN: Okay, thank you. All right. This concludes the oral
3 argument for IPR2024-1087. This case is considered submitted for
4 preparation of the final written decision, which we will issue in due course.
5 Thank you to the parties for their argument and answering our pointed
6 questions. I found it very useful, and I thank you for the candid discussion
7 we had today. We will adjourn for this session, and we will get back here --
8 we're going to give a little bit more time. We'll get back at 11:30, so you
9 have some time to use the facilities, get some lunch, perhaps, and -- all right.
10 So adjourned, then. Thank you.

11 (Whereupon, the above-entitled matter went off the record at 10:40
12 a.m.)

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