

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2024-01088
Patent 10,656,758 B1

Record of Oral Hearing
Held: October 17, 2025

Before: JAMESON LEE, MIRIAM L. QUINN, and
SHARON FENICK, *Administrative Patent Judges*.

IPR2024-01088
Patent 10,656,758 B1

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P R O C E E D I N G S

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JUDGE QUINN: I'm going to start before we begin our session today with renewing what we did yesterday with the Patent Owner's statement of waiver for any actual or potential conflict due to Mr. Melvin's presence in the courtroom. So if you can please state your waiver. Thank you.

MR. LEVENTHAL: Your Honor, Daniel Leventhal for Patent Owner. We waive any issue as to Mr. Melvin both for this morning's session, which is on the '758 Patent and this afternoon's session on the '212 Patent and to the extent there was any concern with the transcript yesterday, also the other sessions that were Thursday and Wednesday for these related proceedings.

JUDGE QUINN: Thank you. The Court appreciates that very much. All right. Let's begin.

We are here today for the case concerning Apple, Inc. vs. Smith Interface Technologies, LLC. We are here for IPR2024-01088. With me are Judges Jameson Lee and Judge Sharon Fenick, and I'm Miriam Quinn. My colleagues are both appearing via video, and as you now probably understand, there is lag between our communication. So please refer to all demonstratives clearly and speak to the microphone at all times. We had some issues yesterday with audio, so if you can turn on your bench mics on at all times that would be great for them.

This is a contested proceeding. So we will be relying on your arguments of record to assess the challenges of unpatentability on this

1 patent, and the defenses of Patent Owner according to the burdens
2 established by the rules. We have read through the record and understand
3 the issues in the proceeding. Arguments that will be given today in this
4 session, please make sure that everything you want to be considered for this
5 IPR is stated in this proceeding and not in hearing transcripts for other
6 proceedings.

7 I wanted to again reiterate we may be looking down or away
8 from our computers, but that's because we are working with the record and
9 also taking notes. We mean no disrespect. We're still paying attention.
10 Also, as you know, no objections that are spontaneous are allowed. If you
11 have any objections to your opponent's argument, please state it during your
12 time.

13 The demonstratives have been provided to the court reporter,
14 but as always please make sure that you stay behind after the hearing is
15 concluded so that she can clarify anything that may be needed to be
16 corrected in the record. I will now hear appearances of counsel for
17 Petitioner. You can let me know who is here and who you are.

18 MR. RENNER: Good morning, Your Honor, Karl Renner, Fish
19 & Richardson on behalf of Apple, Petitioner, and I'm here with Kenneth
20 Darby, a colleague of mine from Fish & Richardson also, and Jason Melvin
21 from Apple. Thank you.

22 JUDGE QUINN: Thank you. For Patent Owner?

23 MR. LEVENTHAL: Good morning, Your Honors, Daniel
24 Leventhal of Norton Rose Fulbright for Patent Owner, Smith Interface. And
25 it's just me today, and if I could please reserve 10 minutes for rebuttal.

1 JUDGE QUINN: Yes, sir. Thanks. Petitioner, would you also
2 like 10 minutes?

3 MR. RENNER: As well, thank you.

4 JUDGE QUINN: Thank you. Anything else we need to
5 address before we get started?

6 All right. Petitioner, you have the floor. Just let me know
7 when you're ready.

8 MR. RENNER: Okay, thank you. Okay, I'm ready to go.

9 Thank you and good morning, Your Honors, Karl Renner for
10 Petitioner, Apple, may it please the Board. If we could go to Slide 2 of our
11 presentation materials, please. There you'll see a table of contents that's
12 really tracking the slides of the presentation materials for organizational
13 sake, but it also, this time, reflects the arguments that we do intend to cover.
14 There are just three of them. And I would be handling the first of the three
15 of them, which deals with the -- it's the contentions that relate to
16 consistencies in the petition and the mappings that were made. I'll be
17 addressing that, and my colleague, Kenneth Darby, will be joining us to talk
18 about motivations in the next two and other ancillary issues.

19 Slide 3, please. As to consistency, Your Honors, to assess the
20 petition's mappings, we note that two grounds are advanced in the petition.
21 In each ground, there's the similar combination in that Chaudhri-Martyn-
22 Griffin are combined. It ends up that the Chaudhri reference is the reference
23 that's used to map into the two different elements that are going to be talked
24 about with respect to consistency. So it's the subject matter that's being
25 drawn from Chaudhri that we'll be discussing as a consequence of that, and

1 we'll discuss it just once because it's equally applicable on both grounds.

2 If you go to Slide 5, please, Your Honors. There's several key
3 elements that you can actually see in Slide 4 if you looked at it there at the
4 bottom of Claim 1, representative Claim 1, but it's quite small there because
5 the claim's quite a long claim. So --

6 JUDGE QUINN: Can you clarify for me and for the record,
7 when you say consistency, are you talking about a consistent touch? Is that
8 what you're referring to?

9 MR. RENNER: No, I'm sorry. The argument we'll be making
10 is consistent across the two grounds because the art is mapped in a similar
11 way as it relates to the alleged inconsistency.

12 JUDGE QUINN: Thank you.

13 MR. RENNER: Certainly. If you look at Slide 5, you can see
14 the four scenarios that are at the bottom of Claim 1, and those scenarios are
15 the subject of this part of the discussion. In fact, the first and the fourth
16 scenarios are the two that are subject of the questions on consistency.
17 Smith's position, as we understand it, is that they contend -- the position it
18 vacillates between two different of Chaudhri's application icons that are
19 shown in its figures when mapping those first and fourth scenarios.

20 And as a consequence of that, the contention is that there is no
21 specific application icon that is the first as consistent with the claim. We
22 think their accusation's unfounded. We think that there is consistency, and
23 we'll demonstrate why with respect to the petition and the proofs that have
24 been forward in it for Your Honors' consideration.

25 Before I dig too deep into those details, I just wanted to give a

1 high level summary of the way that the argument comes in. That way,
2 there's a bit of context for everyone involved. First, the framing of Ground
3 1, it actually starts almost unusually with the concept of the Chaudhri
4 reference being described right out of the gate, just after the headings in
5 Claim 1. There's about four pages in there, and those pages are closely
6 similar to the mappings that are made thereafter under the actual elements as
7 they're headed.

8 There's a footnote in between the two, and that relates to the
9 subject matter of that introductory summary, and those -- those -- so there's
10 no inconsistencies as between them. It's just a more fuller context. That's
11 pages 8 to 12 as we mentioned, and the petition incorporates this, of course,
12 into all of its different mappings as it describes how the summary material
13 there is applicable because it's Chaudhri that says that these application
14 icons that it presents, they are really treated one and the same throughout its
15 disclosure, so we treat them one and the same, similarly.

16 The second part of our case and our argument on this point is
17 that when you look through our mappings, and we'll show this as well, what
18 we have is one of those application icons that is in fact identified with
19 respect to each of the elements, and we'll talk about that one in particular as
20 well.

21 So the petition addresses those first and actually the third and
22 fourth scenarios with consistency, we think, both generally and specifically.
23 And with that, I'll turn to the claim scenarios and talk about those for a
24 moment. If we could turn to Slide 6 for a minute.

25 Slide 6 shows the first scenario. And the first scenario is shown

1 here, and it says it's a tap and launch is what we like to think of this
2 particular scenario. The launch of the application happens when the contact
3 is made, and it's less than a first-time threshold. It's a fairly simple way of
4 thinking of it. And Chaudhri actually discloses, in fact, a tap that is made
5 with respect to the application icons in its interface to actually cause a
6 corresponding tapped icon to go ahead and be launched.

7 If we go to Slide 20, and I'm going to do this. Incidentally, the
8 slides were organized and we made them as they go all through the claims
9 and then later on we do the art. I'm going to kind of integrate that so that
10 when we cover an element, I'll show you the element, and then I'll show you
11 where our mappings are, and then come back to the next element. So if
12 you'll bear with me in that sense.

13 Slide 20, the fourth scenario is shown here, part of the mapping
14 that happens in the petition. And you can see here it's a reference to the part
15 of that summary, pages 8 and 9, as well as the footnote. The Ground 1
16 opens with the disclosure of Chaudhri, and at this point there's a portion
17 that's reproduced here.

18 And generically, it speaks to the touch that's detected with
19 respect to any one of those application icons that are displayed by Chaudhri
20 in its interface. And with respect to that touch with any one of those icons,
21 not a specific one, but the general application icon being contacted, it tells
22 you launch. It says you launch it. And that's, again, consistent with the
23 Chaudhri reference that we've been talking about because those application
24 icons have consistency. And that's a cadence to the summary. Because in
25 the summary section, what you'll find is each time Chaudhri talks about its

1 application icons and an activity with respect to those icons, it's going to talk
2 generally first, and then it says, each time, for example, and then it will talk
3 about a specific example.

4 Now, at times we'll reference the example for shorthand, but in
5 the summary and elsewhere we've made it clear that we're actually
6 referencing the disclosure that's in Chaudhri, which would be both the
7 generic reference to its application icons and then, of course, whatever the
8 summary is. Often that summary or that example is with respect to an icon
9 called a solitaire application icon. Or sometimes it's a photo application
10 icon, was used as the example that Chaudhri used.

11 And one time it was a racing application icon. But the point is
12 they're all application icons. They're all even numbered the same, 5002.
13 Then a hyphen and some ending on the various screen interfaces, and then
14 you get into what the details are. So if we now look at --

15 JUDGE FENICK: Mr. Renner?

16 MR. RENNER: Yes?

17 JUDGE FENICK: Judge Fenick, I apologize for interrupting.
18 The fact that you're presenting this first, it sounds to me like you're in
19 agreement that there's no claim construction issue with respect to the
20 question of whether the third scenario and the fourth scenario are
21 independent or have to be shown in the same -- in the same touch.

22 MR. RENNER: Your Honor, thank you for asking that
23 question. Yes, that's correct. We think that they would be satisfied whether
24 it's the same touch or another or two independent touches. We think that the
25 art is used to demonstrate each, in fact. And so two things. One is we think

1 that that is clear in the way that they're phrased. But secondly, we think that
2 the issue actually becomes moot because of the way the art comes in against
3 them that we've presented.

4 JUDGE FENICK: So I just want to make sure. Your position
5 is that the argument is moot, so we don't need to reach the question, because
6 you're showing it in the same gesture.

7 MR. RENNER: Oh, no, sorry, my apologies. I'm saying the
8 argument is moot because we have demonstrated both that one gesture could
9 be used and that two gestures could be used, and so because the art is
10 comprehensive of both interpretations under the real time or the -- there's a
11 couple of cases in there that tell us that we need not resolve the claim dispute
12 to the extent that the art is not calling for that in terms of resolving, but we
13 map it --

14 MR. RENNER: My apologies.

15 JUDGE FENICK: Sorry, your argument here is about a single-
16 gesture meeting both?

17 MR. RENNER: We're going to present both, Your Honor,
18 yeah. We have two different gestures that do both, and then we also have an
19 argument in the record that tells you that you could have a hold contact and
20 you maintain that contact so that you not only get to the reconfiguration
21 mode, but then once you're in the reconfiguration mode, that you actually
22 move the icon. So there's an argument there as well.

23 JUDGE QUINN: You have combined then the two movements
24 into one single gesture. Is that what you're -- done?

25 MR. RENNER: In one of the embodiments that we apply, yes,

1 Your Honor. But the other embodiment is you just invoke the
2 reconfiguration. It's a jiggle, I think it's what it's called in the reference.
3 And so once you hold a long enough period of time, the application icons
4 start to shake. And that reflects the fact that they can be moved. They're put
5 into a moving posture, reconfiguration posture. And in one of the
6 applications, the one that's talked about the most, frankly, in the record, is at
7 that point, then you come in and you touch again and you move it. But there
8 is an application in our -- in our petition, all the way back at the beginning, it
9 says that that one hold and then drag would work as well. I believe that --
10 well, I'll -- so thank you, Your Honors. Is there any further question on that?

11 Great. Slide 18. So Slide 18, when you look at pages 25 to 27,
12 this isn't the summary of Chaudhri, it's actually the application and the
13 specific element itself in the petition, pages 25 to 27. We find that, for the
14 1G element, the petition showed two different mappings. Those are specific
15 mappings. It looked at the two examples that followed. Remember I
16 mentioned that in the summary, it says that the activity could be done with
17 respect to allocation items generally. Then, after that, there was a, for
18 example. Here, for example, they gave two examples. And the two
19 examples were the solitaire application icon, 5002-4.

20 COURT REPORTER: Can you slow down just a little bit?

21 MR. RENNER: Oh, certainly.

22 COURT REPORTER: Thank you.

23 MR. RENNER: Too much coffee this morning.

24 And the other was photo application icon, 5002-1. And when
25 you look at the two figures on the right-hand side, you can see that each of

1 those figures corresponds to one or the other of those icons. The topmost
2 one, upper left, shows you the photo application icon, which we tapped and
3 therefore interacted with and therefore launched. On the bottom, you would
4 see the solitaire application icon to the 5000-4 (PHONETIC).

5 You're on Slide 23, if I may, because in Slide 23 we can see
6 that the petition mapping of figure -- this 1G element is not limited to the
7 photo or solitaire application icons, however. The petition at 8 and 9 and 12,
8 as mentioned, it broadens this considerably. And it shows in that general
9 description of Chaudhri that it cites to paragraph two-thousand and -- or 216,
10 and it reveals that Chaudhri treats its icons similarly at that spot.

11 Slide 24, please. Actually, let's go ahead and do Slide 26.

12 JUDGE QUINN: Are there any icons in Chaudhri that do not
13 behave like the described icons that you can touch-and-hold, jiggle, and
14 move?

15 MR. RENNER: No, but I will be careful. When you look at
16 the record, you might find there are other activities that are icon-specific.
17 Some of the icons have some particularities, but not with respect to these
18 three.

19 JUDGE QUINN: These are generic --

20 MR. RENNER: Correct.

21 JUDGE QUINN: -- functions for all of --

22 MR. RENNER: That's right. There's a delete function that
23 sometimes come into play, and some of the icons are not deletable, as I can
24 see. But these, there's no differentiation that's made.

25 And yet the examples, those specific examples, only speak to a

1 subset, of course, of icons, because those are the particular examples as to
2 the launch, for instance, or as to the put the icon into the configuration mode.

3 So let's go back, if we could, to Slide 8, please. Slide 8 goes to
4 the third scenario. The third scenario is the -- this is the one where you put
5 the application icon into the reconfiguration mode. In this case, you don't
6 just tap it to launch. You hold onto it. And eventually, what happens, you
7 pass a threshold. And when you pass the threshold, that's a signal that it's
8 supposed to be reconfigured for movement.

9 So that is where you get into the jiggle as it relates to the
10 Chaudhri reference. You would invoke press-and-hold, and at some point it
11 would start to jiggle. And not only would the one application icon you
12 interfaced with jiggle, all of them would. So we know that once you go into
13 that mode, and we'll get to this in the fourth, that you can move any and all
14 of them.

15 Slide 13, please. The petition's evidence on this point shows up
16 at -- or the evidence that the petition is mapping on this point shows up at
17 pages 33 to 35, and that was the specific example it references. And it
18 references there the Figure 5B jiggle, the hold to invoke reconfiguration
19 mode, and the solitaire application icon. It focuses its example on just the
20 one application icon, the solitaire one. But all the application icons, again,
21 jiggle, and there's no reason to think that all the application icons couldn't be
22 interacted with in the same way that this third step calls for.

23 Also, the petition at 10-11, it talks about exactly that. It gives
24 the more generic view. It says, and I quote, in addition to the tap gesture,
25 Chaudhri's device also recognizes and responds to a touch-and-hold, also

1 colloquially called the long touch, at an application icon. It's not identifying
2 any particular application icon there. It's just referring to the generic, an
3 application icon. And we can see right after that that --

4 MR. RENNER: Pardon?

5 JUDGE FENICK: That's in the description of Chaudhri, which
6 you're saying is kind of incorporated into each of the later kind of --

7 MR. RENNER: Correct, the mappings.

8 JUDGE FENICK: -- where you address each limitation later in
9 the petition?

10 MR. RENNER: That's --

11 JUDGE FENICK: But in those parts of the petition, is it also
12 clear that it can be any application icon?

13 MR. RENNER: So in the generic part of the description of
14 Chaudhri is where we talked about the generic application of it to the
15 application icons generally. When we got to the mapping of the elements
16 themselves, we just pointed to the, for example, part of it. But we have the
17 footnote in the middle that tells you that the generic part applies to all of the
18 elements as they're mapped.

19 And you can see in the generic part, here again, that cadence
20 comes through where right after the generic reference to an application item,
21 it then goes at a for example, 5a and b show you the solitaire application
22 icon being put into the reconfiguration mode.

23 So while that solitaire application icon is, in fact, singled out
24 with respect to the third, for instance, scenario, as an illustrated figure, it's
25 really clear from this that all application icons are shown as being subject to

1 the tap and hold that's being talked about and the reconfiguration mode.

2 So Slide 9, if I could, please, and we'll get -- this is the last of
3 the three. And this is the -- remember, the contest was that the first and the
4 last were the two that were inconsistent. I just wanted to show you the
5 middle one in there as well. So this one is the fourth scenario, and it is the --
6 we call it meet movement criteria. So if your movement for the finger that's
7 touching is a great enough degree to cross the threshold, well, then you, in
8 fact, move the icon involved. It's not a duration-based element. It's more
9 about the distance of movement. And moving the first application icon in
10 the foreground virtual display layer is something else that's contemplated.
11 So here, within the configuration mode, the way that Chaudhri comes in,
12 while the jiggle is being done, if you engage with one of those application
13 icons, you drag it, then it moves. And that is going to be where we try to
14 map.

15 Slide 14 details some of that. In Slide 14, we look at the
16 petition. And for the petition, we look at pages 35 to 39. We see there
17 citations specifically to Figures 5B to C, and those are shown up on the top
18 of the slide. Here we show the example, because Chaudhri showed us the
19 example of a racing application icon.

20 JUDGE QUINN: I'm sorry, your slide cites to petition at 11
21 and 12 or petition at 8 and 12?

22 MR. RENNER: Oh, my apologies.

23 JUDGE QUINN: What other petition cites do you have for
24 this?

25 MR. RENNER: The petition cite here is pages 35 to 39, and

1 petition, I believe, it's 11 to 12.

2 JUDGE QUINN: Okay, yeah, no, that was not on your slide.

3 Someone -- I was wondering if --

4 MR. RENNER: Oh, sorry.

5 JUDGE QUINN: -- you have a different version of slides than
6 we got.

7 MR. RENNER: Oh, interesting. So Slide 14 is the slide I'm on
8 right now.

9 JUDGE QUINN: Yes.

10 MR. RENNER: And you can see Chaudhri, overview Chaudhri
11 figures, maybe --

12 JUDGE QUINN: 5B and 5C.

13 MR. RENNER: Yeah, 5B and 5C.

14 JUDGE QUINN: Yeah.

15 MR. RENNER: So maybe I might have misspoken. I'm not
16 sure.

17 JUDGE QUINN: I don't know.

18 MR. RENNER: Okay.

19 JUDGE QUINN: Just checking.

20 MR. RENNER: Thank you. On this slide, I wanted to point
21 out that the petition, just mentioning where in the petition things are found,
22 and then we'll talk about the more generic text that's here, but the petition
23 itself, at pages 35 to 39, it's where you have citation to Figures 5B and C,
24 and the figures are on the slide, and then the racing icon is referenced in the
25 reference to those Figures 5B and C. But at petition pages 11 to 12, and that

1 text is here on the slide, it confirms that the petition, like Chaudhri and like
2 the earlier elements, it applies a more limited -- this more limited and also
3 more broad discussion of the application icons themselves being applicable
4 here. And it makes sense because, after all, in Chaudhri, you have a
5 reconfiguration mode that jiggles all of the icons on the screen, signifying to
6 anybody that those are all available for movement. But it makes that clear.

7 And here's the text. It says, while the interface for the
8 application menu is on the reconfiguration mode, Chaudhri's device
9 recognizes yet another, a drag, as a command to move an application icon.

10 Notice the nonspecific reference again to an application icon.
11 And that's not too interesting until you look after it again. It qualifies as a
12 for example, and it goes into the specific example. So there you can tell.
13 The for example calls to Figures 5B and C. The racing icon application
14 merely is an example. All jiggling icons are implicated.

15 If we go to Slide 29, I thought it was instructive here because so
16 far we've just got really two kinds of mappings that are going on. We have
17 the very generic indications we think three times over by Chaudhri that all of
18 its icons are subject to these particular three things as well as four example
19 statements by Chaudhri just to give some sense of what that might look like
20 with respect to any one application icon, and with that we think we have, by
21 the way, consistency, because all of the icons being subject to all of these
22 different activities means that there's consistency in the mapping between
23 them. But in addition, you'll notice that I've talked about those examples of
24 the first two. I mentioned that the solitaire application icon, it was the
25 example that was given in the, for example, statement.

1 So now, when we look at the fourth scenario, the question is,
2 what about that solitaire icon? Do we happen to see that one in particular
3 being signified? And the answer is, we do. In the pages that we're dealing
4 with this particular element in the petition, what we find, and you can see it
5 here on the slide, is a reference by us to Figures 5M and 5N as part of the
6 discussion. It's about a four-page discussion, and those are referenced
7 within it. There's not a lot of fanfare made to them, but there they are, and
8 when you look at them, you can see down below in the slide, but maybe a
9 little easier on your eyes if you look at Slide 30. It's a more blown-up view
10 of it. What you'll see is, in fact, that solitaire icon, of course, being shown as
11 being grabbed during that reconfiguration mode and moved, much like the
12 racing application icon had been in the other example.

13 So here we've actually cited to that in the papers, right in the
14 section where we're talking about that particular element. Not that we
15 needed to, because after all, as I mentioned, we have a consistency across all
16 of the icons being referenced. But just to make sure you saw that, we
17 wanted to make sure we pointed it out.

18 As I wrap this up without questions, I'll just kind of summarize
19 this then. So we have demonstrated, we believe, that in the petition it
20 applied the first and third scenario mappings specifically to that solitaire
21 application icon, 5002-4. And it did so with respect to all three of the
22 scenarios. Therefore, consistency exists.

23 Also, we've demonstrated that the petition applied the first
24 scenario mapping to the photo application icon, and it applied the fourth
25 scenario mapping to all of the icons, and therefore there'd be consistency as

1 it relates to that one as well. And then, of course, there's the generic.
2 There's consistency across the applicability to all of the application icons.

3 So we hope this puts that issue to bed, but if you have any
4 questions, I'd be happy to take them. Otherwise, I will ask my colleague to
5 join us.

6 JUDGE QUINN: Thank you.

7 MR. RENNER: Thank you very much.

8 MR. DARBY: Thank you. May it please the Board, Kenneth
9 Darby for Apple. I'm going to pick up where my colleague, Mr. Renner, left
10 off to cover some of the remaining issues.

11 With that, I'll start at Slide 40, and just get straight to it. So one
12 of the remaining issues in the case goes to motivation to combine.
13 Motivation to combine the Chaudhri reference, which we've talked a lot
14 about, with the Martyn reference. I won't retread on Chaudhri. I think we
15 got good coverage of that just now. But let's talk a little bit about Martyn
16 because we're said to have not offered enough motivation in order to support
17 this combination. And I'm here today to tell and to show you that we have.

18 And so when we turn to Martyn, what does Martyn disclose?
19 It's a contextual menu called the app snapshot. And it's used for mobile
20 devices like smartphones, PDAs, that sort of thing. The app snapshot, it's
21 launched from a main page GUI.

22 And it presents a number of different shortcuts that allow the
23 user to very quickly and efficiently access commonly used functions. So
24 instead of diving into the application and finding whatever your favorite
25 function of that application is, you can use this app snapshot as a shortcut to

1 get straight to where you want to go.

2 JUDGE QUINN: So in your combination, when you're touch-
3 and-holding an app in Chaudhri, at some point you reach some threshold at
4 which the app snapshot pops open for you to select something related to that
5 icon or that application that underlies that icon. Is that correct?

6 MR. DARBY: That's correct.

7 JUDGE QUINN: Okay. What is your motivation to combine
8 these two things exactly?

9 MR. DARBY: Absolutely. So what Martyn discloses is the
10 press-and-hold. It says press and hold on a selection function. So the first
11 piece of the motivation going to the command gesture starts there. So when
12 you're integrating that into a touchscreen mobile device, like Chaudhri is, the
13 analog, and this is undisputed in the record, the analog of a press-and-hold
14 of, let's say, a physical button on a touchscreen device is a touch-and-hold
15 gesture. And so that's the first piece of the motivation.

16 Because at this point, pre-institution, there was a dispute about
17 whether it was even -- the person of skill in the art would have been
18 motivated to bring the app snapshot over. Post-institution, we're not having
19 that debate anymore. It's all but conceded that the person of skill would be
20 motivated to have the app snapshot. Once you're there, you're asking about
21 the command gesture to launch it once you're into Chaudhri's device. And
22 so first and foremost, the natural analog of that which Martyn discloses is
23 the touch-and-hold. So that's the first piece of the motivation. But there's
24 more to it as well. And the more to it is this.

25 When we are putting forward -- and I'll move to Slide 41. And

1 as I mentioned, the motivation rationales are no longer really in dispute. The
2 question is whether they actually apply to the press-and-hold as well. We
3 just talked about the first piece of the touch-and-hold being the analog of the
4 press-and-hold, but also the very first of these motivation rationales, it's
5 applying the well-established KSR paradigm, the predictable use of known
6 prior art elements according to their established functions. There's a
7 motivation to do that. And this plainly applies --

8 JUDGE FENICK: I just want you to focus on the motivation to
9 use the -- the Martyn touch-and-hold. It sounds like the motivation
10 rationales, as Patent Owner argues, focus on the menu. And I understand
11 what you're saying, is that while you're bringing the menu, bring the touch-
12 and-hold that causes the menu to appear in Martyn. But Martyn also has a
13 scrolling wheel.

14 What parts -- I mean, you have -- what motivation do you have
15 to include the touch-and-hold and not the scroll wheel, obviously, in the
16 combination, as opposed to just taking the pop-up menu?

17 MR. DARBY: Sure. So I think the first part of that is it is one
18 of the options that Martyn discloses. So I think that's a suggestion by
19 Martyn that it would be the command gesture you would use. So I think
20 that's the first part of it. But when we have in the evidence and we're talking
21 about the predictable use of known elements, there is evidence in the record
22 that the touch-and-hold was a commonly used command function for
23 invoking contextual menus.

24 And so that is how the motivation applies, not only to the menu
25 itself, which certainly there's a motivation to do that. But also the touch-

1 and-hold, frankly, because that is what was commonly used in the art, and
2 that's what users would have been expecting. If you were using a mobile --
3 touchscreen mobile device, and you were looking to launch a contextual
4 menu, what the record shows us, and we have expert testimony on this point
5 from Dr. Cockburn, who's put in two declarations in this proceeding, one of
6 them undisputed, his reply declaration.

7 And what that shows is that not only the menu but also the
8 touch-and-hold, is part of the known element that the person of skill in the
9 art would have been motivated to use when incorporating Martyn's teachings
10 into Chaudhri. And so I can give you the citations to that. I'd point you to
11 paragraphs 47 through 48 and 62 through 62 of Dr. Cockburn's original
12 declaration, and that's Exhibit 1003 in the proceeding, and then also to
13 paragraphs 18 through 19 of his supplemental declaration, which is Exhibit
14 1067 in this proceeding. And I won't go into detail on it any more than that,
15 but if you would like to see some of the evidence summarized, you can see
16 that on our Slide 44 materials as well.

17 JUDGE FENICK: Thank you.

18 MR. DARBY: Absolutely. Yes, and I'll just briefly turn to
19 another one of the issues that's been debated in the case, which is the
20 allegation that a touch-and-hold, which, again, was the commonly used
21 function. Users would have expected to use the touch-and-hold. Person of
22 skill in the art would have known that that was the normal way to approach
23 things. But there's an allegation that that would cause a sort of conflict, I
24 believe is the term used, with Chaudhri because Chaudhri uses the tap of an
25 application icon to launch into it, and the touch-and-hold in order to get into

1 the reconfiguration mode. I just want to stress that there is no conflict, and
2 we have expert testimony on this point from Dr. Cockburn. What he
3 explains is that the tap is a very short touch gesture, right, on the order of
4 500 milliseconds. We're talking about milliseconds. When Chaudhri
5 discloses a touch-and-hold to get into the reconfiguration mode, it's a much
6 longer duration. It's on the order of two seconds or more. And so there is a
7 very clean gap there that -- where there's plenty of room to put in another
8 touch gesture, another touch-and-hold gesture, which, again, this is what
9 users would have been expecting, would have been the expected way to
10 launch one of these menus. And a person of skill in the art would have
11 known that.

12 JUDGE QUINN: Why would you do that? You know that
13 when you touch-and-hold, that at some point you're going to be in
14 configuration mode, and things are going to jiggle, and you can move them
15 and delete them, whatever you want to do, then on top of that you're adding
16 a menu?

17 MR. DARBY: Absolutely, and when we think about it, we step
18 back and think about it --

19 JUDGE QUINN: Actually that doesn't make sense to me --

20 MR. DARBY: Okay.

21 JUDGE QUINN: -- add a menu. So that is a very specific
22 feature that you probably don't want to activate a lot, the jiggle and the
23 moving and the deleting options. It's more reasonable that you're going to
24 want a lot of interaction you're your app if you want to do the short menu so
25 that you can have a quick link to something that do a lot with an application,

1 and you would do it after a single tap. So why would you do the long touch-
2 and-hold that is used specifically for deleting an app or moving an app,
3 which is something you rarely do, and combine it with something that you
4 want to do very frequently to avoid launching the app?

5 MR. DARBY: Sure. So to answer that, what I say, first off, I
6 agree with you that you would be using -- everybody would know, you'd be
7 using the menu more so than you'd be using the reconfiguration mode. I
8 absolutely agree with that. And what we put forward in the petition
9 explained there, with the supporting expert testimony, is that that's why you
10 would put the touch-and-hold as a shorter duration touch from the
11 reconfiguration mode. Because we absolutely agree, once you get the
12 reconfiguration mode, you really don't want to be interfacing -- you're not
13 trying to use the applications at that point, you're trying to move them. And
14 so it would be a shorter duration while the device is still in the normal mode.

15 That's the important part, is that you would do the touch-and-
16 hold while the device is in the normal mode. Once it's in reconfiguration
17 mode, there's no reason for the app snapshot anymore because you're not
18 trying to interface with the applications icons. And we -- so we agree with
19 that. What we're saying is that there's a space in the normal mode for this
20 touch-and-hold, which would, again, would have been the expected gesture
21 to use to get the menu. Plenty of space there. And we also have the Griffin
22 reference, which tells us that you can have as many as three different -- three
23 or more of these thresholds on the same application icon, and, you know,
24 you tick through the different functions when you get to the different
25 thresholds.

1 And so it's very clear in the record. We believe that not only
2 from the expert testimony, but, you know, you don't have to take it from us
3 and the experts. You can take it from the Griffin reference that this is
4 absolutely something that was known to do, to have different thresholds on
5 the same application.

6 JUDGE QUINN: I know, but you -- but now you're picking the
7 threshold based on the fact that you had this combination that you say would
8 have been motivated by the fact that you want this feature, but now
9 recognize that you actually don't want to adjust the thresholds because you
10 want the feature faster. But the feature was added by you. You're saying
11 that you want this feature, but now you're adjusting the thresholds based on
12 your combination as a result of the teachings that you've combined, not as a
13 result of, oh, we're going to start with this -- with this concept that we want
14 icons to be interacted with and this may need to be interacted with quickly.

15 And on top of that, be on the same touch, be able to configure
16 the icons so that you can move them and delete them. That second part is
17 not in Chaudhri at all. So what I mean is you've -- you're -- you seem like
18 you're adjusting the thresholds to fit your story, not because it is actually
19 something that someone would -- would design the thing to do it.

20 MR. DARBY: Sure. Let me address that. So I think what
21 we're doing in Chaudhri, and this may not have been clear. So I appreciate
22 the question. We're leaving the thresholds in Chaudhri as they are and are
23 not looking to do anything with them, not looking to change them in any
24 way. What we're saying is that the thresholds that the person of ordinary
25 skill in the art would understand, that are in Chaudhri existing, stay exactly

1 where they are.

2 What we're saying is that the person of skill in the art would
3 understand that we want the app snapshot. How do we launch it? We know
4 touch-and-hold is the normal way people do this. So what do we do? We
5 just add the extra threshold in between the two existing in Chaudhri, and the
6 expert testimony tells us that there's plenty of room for that. And the Griffin
7 tells us that that's a completely normal and known thing to do. And so we're
8 definitely leaving Chaudhri as it is. I could see maybe we'd have a different
9 case if we were looking to change around the thresholds in Chaudhri. But
10 we're leaving them.

11 JUDGE QUINN: Okay, thank you.

12 JUDGE LEE: Mr. Darby, this is Judge Lee. Quickly, there's a
13 lot of talk about press and hold on the select function. But what does that
14 really mean? What are we press and holding on? Is it a soft key on the
15 screen or a right click on the mouse? What is press and hold on the select
16 function?

17 MR. DARBY: Sure, so Martyn doesn't tell us anything more
18 than that, that it's a press-and-hold on a select function. But there is context,
19 I think, Judge Lee, to your point. And so it's not a mouse click because
20 we're talking about a mobile device. So Martyn is talking about mobile
21 devices like smartphones and that sort of thing. And, for us, whether it's a
22 virtual button or a physical button or what have you, our case is the same,
23 which is if it's a physical button, the analog to that, it's undisputed in the
24 record, is the touch-and-hold gesture, when you're adding that to a
25 touchscreen device. And so if we're now undisputed on the person of skill in

1 the art would have brought over the app snapshot. Now we have to ask
2 ourselves, how do you launch -- how do you launch it? And the analog to
3 that, which Martyn described, in a touchscreen is the touch-and-hold. And
4 so that's how we get that.

5 JUDGE LEE: Yeah, yeah, I can see that. But why pick the
6 application icon to press and hold on?

7 MR. DARBY: Sure. Two things. One of them is we go to
8 Martyn, and Martyn says that we do a press-and-hold while the application
9 icon is selected. So Martyn even is telling us that while you're sort of
10 residing on that application icon, do your press-and-hold. Likewise, when
11 we look at the corroborating evidence, the expert testimony, what it tells us
12 is that the way it was known to launch these kind of contextual menus was a
13 press-and-hold on the icon in question. And so that's how we know.

14 JUDGE LEE: Oh, I see. So the connection is because Martyn
15 already says, while the application icon is highlighted. So then you go, well,
16 the closest thing to that is to just press and hold on the application icon.

17 MR. DARBY: Absolutely. Which was the known thing to do,
18 absolutely.

19 JUDGE LEE: Even though that press-and-hold is already there
20 in the primary reference.

21 MR. DARBY: Again, yes, absolutely. And we're leaving the
22 press-and-hold exactly where it is in Chaudhri. And all we're doing is fitting
23 the press-and-hold, the touch-and-hold that's suggested by Martyn, and that
24 the person of skill in the art would have known from the state of the art to
25 bring over. We're just inserting that right in the gap that Chaudhri leaves

1 open. So not changing anything about the Chaudhri.

2 JUDGE LEE: To make it work, you've got to make the
3 duration longer or shorter?

4 MR. DARBY: Shorter, because you want to be in that normal
5 mode. So if you've 0.5 -- or 500 milliseconds for tap, then you go one
6 second for app snapshot, two seconds for getting in reconfiguration mode.
7 But, yeah, it's -- absolutely it's a good question. And we explain that in the
8 petition that you want to be shorter because you want to be in that normal
9 mode when you give the -- when you give the menu, and you want the
10 reconfiguration mode to come after that, because once you're in
11 reconfiguration, you really don't want the app snapshot at that point because
12 you're trying to move around the application icons there. You're not trying
13 to use them.

14 JUDGE LEE: Okay. Thank you.

15 MR. DARBY: Absolutely. Thank you for the question. I see
16 that I'm into my rebuttal, and so I'll save the remainder of our time.

17 JUDGE QUINN: Okay, thank you. Are you ready, Mr.
18 Leventhal?

19 MR. LEVENTHAL: I'm ready, Your Honor. Good morning,
20 and may it please the Board. Judge Fenick, I want to start with a question
21 you asked, and I apologize for not making this more clear. Yes, Patent
22 Owner has withdrawn the request to construe whether the third and fourth
23 steps need to be continuous. We put that on Slide 64. And it's citing to our
24 surreply at 3 through 4, so that'll -- that'll give you that. And we certainly
25 are not asking the Board to do that work. We have -- we have withdrawn

1 and accepted Patent Owner's construction, which is that that is broad enough
2 to include either a continuous touch or two non-continuous touches.

3 JUDGE FENICK: Thank you.

4 JUDGE QUINN: Are there any other claim construction
5 issues? I thought there was an interface.

6 MR. LEVENTHAL: There is one, Your Honor, and that's
7 going to be the third point if I get to it in time. But it's the word user
8 interface element. It only applies to one dependent claim. That's why I'll do
9 it third if I have time. But, yes, that is a live issue. And let me just
10 summarize very briefly. Our position is that the word interface refers to
11 interactivity. And Dr. Madisetti provided testimony on that. We're not
12 aware of any contrary testimony on it. Our position is that every time the
13 specification uses the word user interface element it uses it in conjunction
14 with how you are going to detect that that thing gets touched and that the
15 specification uses a different phrase, display element, that kind of a Venn
16 diagram.

17 You could be both a display element and a user interface
18 element. You could be just one or just the other. What they point to, what
19 Petitioner points to in the petition is a static wallpaper. And this is not to
20 mix hearings, but this reference is not Hackborn. Everyone agrees it is a
21 static wallpaper. You do not interact with it. And so if our construction is
22 adopted, we believe that what the claim says, is that part -- something is
23 behind the first application icon. They point to a static wallpaper. It has to
24 be a user interface element that's behind it. So we believe if our construction
25 is adopted, then Claim 47 would not be met based on their mapping. But

1 other than that --

2 JUDGE QUINN: Is this plain and ordinary meaning then?

3 MR. LEVENTHAL: We believe it is the plain and ordinary
4 meaning. We're not saying there's lexicography, not saying disavowal. It's
5 the plain and ordinary meaning of the word interface that creates this
6 interactivity. We believe Patent Owner's proposal of plain and ordinary
7 meaning that -- that doesn't work because they didn't take a position either
8 way. If their position is plain and ordinary meaning of an element of a user
9 interface, and it does not need to be interactive, then that's the decision for
10 the Board to decide whether user interface element must be interactive.
11 That's the live dispute between the parties for the Board to decide.

12 JUDGE QUINN: Well, it sounds like this is coming down to
13 more like what is the term mean to a person of skill in the art rather than just
14 a, you know, layperson's understanding?

15 MR. LEVENTHAL: Absolutely agree, Your Honor. It would
16 be plain and ordinary meaning to a person of ordinary skill in the art at the
17 time of the invention, in view of the specification here every time, and the
18 specification is consistent with that. And just to memorialize, if that is the
19 only live issue in our additional slides at the end, we also memorialize the
20 other points where there was some discussion of claim construction, but that
21 everyone agrees by the end of briefing doesn't matter for this one. It
22 mattered for other ones in the family.

23 So, Your Honor, with that, let me preview the two arguments
24 I'd like to spend most of my time on. And they are the same two arguments
25 that counsel spent time on. The first is the failure in the petition to

1 consistently map first application icon between the two elements, and the
2 second is the flaws in the motivation. And there are five different links,
3 each one of which Petitioner needs, each one of which is flawed, in how you
4 get to the idea of we're going to have these two different long touches. And
5 so if I could start on Slide 24.

6 Slide 24 is the heart of the beast. This is the mapping that the
7 petition has to limitation [1.g] and [1.l]. In limitation [1.g], the petition
8 maps the first application icon to photos or solitaire icon. In [1.l], the
9 petition maps it to the racing icon. The end, full stop. And again, not to mix
10 proceedings, but there is no argument from Petitioner in this case that that's
11 excusable. The argument is we propose more. They did not. And so this is
12 not -- there's no claim construction issue. Everyone agrees, there is not a
13 consistent mapping, and there is not here because for [1.l] only mapped to
14 racing icon, not to either photos or solitaire, which is what was established
15 as the first icon. That is fatal to the petition.

16 JUDGE QUINN: What about the argument that, I mean, these
17 functions are generically applicable to all the icons without exception? I
18 mean, there may be some that you can't delete because you may not want,
19 you know, something very important like the settings icon to be deleted. But
20 if you can do the same thing with the racing icon that you can do with the
21 photos icon, the solitaire icon, why does it matter when Chaudhri is probably
22 just explaining, based on the image that you have of that user interface at
23 that point in time How do you do it with different icons? But -- but that
24 doesn't mean you can't do it with all of them.

25 MR. LEVENTHAL: The answer, Your Honor, is because what

1 you just summarized is not something I've given a bit of thought to, because
2 that's not what was presented in the mapping. That's an argument that -- in
3 the petition, that's an argument that was made for the first time in reply, and
4 we'll show that everything that was made in reply of it's good enough, it's
5 generic, and everything else was not in the petition. And so that's not an
6 argument available to Petitioner to support a final written decision based on
7 the petition.

8 JUDGE QUINN: Isn't that logical from just a reading of the
9 reference and Chaudhri? I mean, petitions are limited in the number of
10 words and pages, and so are the Patent Owner responses. So, I mean we --
11 we often see just get down to the brass tacks of an argument, but can we see
12 the thread of this going through --

13 MR. LEVENTHAL: I'm sorry. I didn't mean to speak over
14 you. There is no thread, Your Honor. And that's the answer. And I'm going
15 to walk through each of these, and, Judge Fenick, I think it's important to
16 start with your question. And if we go to page -- Slide 25, Judge Fenick,
17 you, as you noticed, Counsel focused entirely on the generic summary,
18 which does not purport to create any mapping of what is being pointed to for
19 the first application icon in any of these elements.

20 They pointed entirely to that summary. And, Your Honor, you
21 asked the question. Okay, you're telling me it's clear from the summary that
22 it can be any. Is it equally clear in the element by element section? Mr.
23 Renner did not say yes, it is, because he could not. But I'm going to be more
24 blunt. No, it is not. In fact, it is the exact opposite. It is abundantly clear
25 that there is no specific mapping here.

1 And if we could start with Slide 25. Your Honor, this is, again,
2 I think Mr. Renner did a good job of explaining how the petition is
3 organized. Petition at 25 is where the element by element mapping of claim
4 element [1.g] begins. And what we've done is we've worked through the
5 entirety of the section of this element by element to show that there is a very
6 intentional, clear mapping here. And so what we see on Slide 25, which
7 shows excerpts from petition at 25 and 26 is that there are specific
8 quotations to the solitaire icon and to the photo icon. And if we go on to
9 Slide 26, we're now on petition page 26, in the middle of it.

10 Now, the Petitioner first told you in words what was their
11 mapping. Now they're showing you in figures with annotations. And they're
12 saying here what we're pointing to for the first application icon is the
13 solitaire on the left, Figure 5A and -- or the photos on the right, Figure 5000.
14 And that, Your Honor, is, again, what is made clear basically from, you
15 know, from -- in words -- in figures. And then if we go to Slide 27, we're
16 now on petition at page 27. It then explicitly defines in words what they are
17 saying is the first application icon, and they say it's what is depicted in
18 Figures 5A and Figures 5000. And as we just saw and as they just showed
19 very clearly in annotations, that is tapping on the solitaire icon or the photos
20 icon. And then there's --

21 JUDGE QUINN: Isn't --

22 MR. LEVENTHAL: Yes, Judge?

23 JUDGE QUINN: Sorry, Mr. Leventhal. Isn't this always given
24 as an example or additionally, or in language that shows that it's -- it's kind
25 of expanding on or explaining or providing an example of what's been what's

1 been discussed before?

2 MR. LEVENTHAL: Well, I want to address both of those
3 words, the example and the in addition. So, yes, it does say the word, for
4 example. Great. That reserves the ability to provide another example, an
5 explicit mapping. It does not allow you to say, well, I then reserve the right
6 to address anything that I didn't say. So I would say yes, it is an example
7 that allows you to say, let me point to other examples, but there is not
8 anything anywhere in this petition where they said we are trying to point to
9 any application icon. There is not anything that says any of these are there.
10 It's a specific made mapping. And then your second question, Your Honor,
11 I'm sorry. Please go ahead.

12 JUDGE QUINN: I mean, the other reading is that they say
13 something generally and then they give an example. And so you don't need
14 to give every example. You just are saying something generally and then
15 giving an example. And if they discuss Chaudhri and then refer to the
16 discussion of Chaudhri and then give an example, I'm not sure why they
17 should only be limited to that example.

18 MR. LEVENTHAL: Well, Your Honor, my answer to that is
19 the petition is required to provide the mapping. And there was a general
20 discussion of Chaudhri.

21 The linking statement of -- based on this general discussion of
22 Chaudhri, I can point to any icon on this as meeting [1.g] is not in the
23 petition, period.

24 And, Your Honor, I would direct you to Slide 34, and we have
25 several of these slides.

1 But this is the two case law excerpts. And the first one is at the top
2 of the slide. It's the Netflix case, Federal Circuit 2023, says a Petitioner may
3 not rely on vague, generic, or meandering petition and later fault the Board
4 for not understanding what it meant.

5 Your Honor, you just used the word generic in your
6 characterization. I noted Counsel did as well. I made a little Post-It note to
7 myself. That's not good enough. And, again, it's not the Board's job to
8 cobble together the assertions. And if I could go backwards to another case
9 law on Slide 31. We have an extreme amount of respect for Counsel here.
10 These are -- this is a top firm that does great work in this space. I have filed
11 plenty of petitions. I understand. It is a terrifying act to hit send because
12 what the statute says, what the trial practice guide says, what the Federal
13 Circuit says is when you hit send, that's it. It has to be in your petition. And
14 simply there was a whiff here. It's not a forgivable whiff. The case law
15 doesn't allow it. Statute doesn't allow it. Consolidated trial practice guide
16 does not allow it.

17 MR. LEVENTHAL: I'm sorry, Your Honor, Judge Lee.

18 JUDGE LEE: It's Judge Lee. I was going to ask, so on
19 Petitioner Slide 27, is it, you just showed us, so the first application icon is
20 what is shown there on the next slide.

21 MR. LEVENTHAL: I'm sorry, Judge Lee, did you say
22 Petitioner's or Patent Owner's?

23 JUDGE LEE: What you were just showing us, the Petitioner's
24 mapping, 5A and 5000.

25 MR. LEVENTHAL: Yes, Your Honor. Okay. So and it's --

1 which slide was it, Your Honor, of mine?

2 JUDGE LEE: I forgot, was it -- it's what you just showed us
3 with the 5A and 5000, the solitaire and the photo.

4 MR. LEVENTHAL: Got it. That was Slide 26, Your Honor.

5 JUDGE LEE: Okay, so what's the meaning of pointing that
6 out? Are you just saying, so that's the first application icon, but it's not the
7 application icon that they subsequently say is moved?

8 MR. LEVENTHAL: Correct, Your Honor.

9 JUDGE LEE: What is the application icon that is subsequently
10 moved? Now that we know, according to you, the first one. Are these
11 shown here? Which is the application icon that's subsequently moved?

12 MR. LEVENTHAL: If you go to Slide 29, Your Honor, it's the
13 racing icon.

14 JUDGE LEE: Petitioner's Slide 29?

15 MR. LEVENTHAL: Patent Owner's Slide 29, Your Honor.

16 JUDGE LEE: Okay. Cool.

17 MR. LEVENTHAL: Sorry.

18 JUDGE LEE: Okay. Thank you.

19 MR. LEVENTHAL: And, Your Honor, I'm not going to
20 belabor the point because I know everyone is very familiar with the record.
21 But the exact same pattern that I went through if I started on Slide 28 and
22 went through Slide 30, we'd see the same thing. We'd see a description in
23 words, in parentheticals, in annotations. That is very clear, over and over
24 again, we're talking about the racing icon. That is what we are pointing to in
25 this second one.

1 And, Your Honor, if there aren't questions on the base mapping,
2 what I would like to do is address individually each of what we thought was
3 the backup places that Patent Owner's -- excuse me, that Petitioner said,
4 well, we disclosed this somewhere. So if we go to Slide 32. This is what --
5 this is a longer excerpt of what we saw on one of Petitioner's slides. This is -
6 - excuse me. This is in the element by element section of for [1.l]. And so
7 what Patent Owner pointed out, and what I've highlighted in a little detail, is
8 that there's a string cite reference to 5M through 5N. And the reason Patent
9 Owner pointed that out, they never say it in words anywhere in the petition.
10 But if the Board, on its own volition, went and looked at 5M and 5N, that
11 shows an example of a different icon being moved.

12 But the point I want to make here, Your Honor, is, again, this
13 goes to the meandering. They have to explain it. They don't get to go
14 backwards. Is that what we're looking at here on petition at 37 and 38, is not
15 an attempt to define the mapping for exhibit -- for element [1.g] of what the
16 first application icon is. That was accomplished on pages 35 and 36. On
17 pages 37 and 38, they've moved on to another part of element [1.g].

18 Not the identity of the first application icon, but the appears to
19 float part. And so the only purpose for which 5M and 5N are cited is for it
20 appears to float. There is no indication to the reader that I'm -- I cited to 5M
21 and 5N because I'm changing my mapping that I established in words, in
22 annotations, in drawings, one page earlier. And so we don't believe that that
23 little bit in a string site allows the idea that, well, I had this alternative
24 mapping. They did not say that that is something that is new. It's in the
25 reply only.

1 And if we want to understand that this is really only about this
2 floating aspect, on Slide 33 there's a dependent claim that also recites the
3 same floating thing, and you'll see the same paragraph shows up word for
4 word. The only reason 5M and 5N are cited is to prove applications' icons
5 float, not to divine from the fact that 5M shows a specific application icon
6 floating that we're now changing our mapping of what the first application
7 icon is.

8 JUDGE QUINN: Do you have any cases from the Federal
9 Circuit or otherwise that shed light on whether the Petitioner can further
10 clarify its positions in the petition using the reply, obviously, and that for
11 whatever reason, a citation to something is not sufficient notice?

12 MR. LEVENTHAL: And I would direct Your Honor to -- I'm
13 not sure, this is the best I can give you standing here right now, but if I direct
14 you to Slide 38, and this is a PTAB decision; it's not a Federal Circuit case.
15 But it talks about what is meant by respond. And it talks about how you
16 don't embark in a new direction with a new approach compared --

17 JUDGE QUINN: I know, this is a 2016 case. And since then,
18 we've had a lot of paper from the Federal Circuit on what is appropriate on
19 reply and what is response. And in some cases, Petitioner can clarify
20 positions they had in the petition or expand on a position they already had.
21 And there is -- somewhere there's a line in which you're like, okay, this is
22 new.

23 MR. LEVENTHAL: Understood, Your Honor. And that is a
24 great question. Let me -- I don't believe Petitioner cited to that case law.
25 Therefore we didn't respond to it, but I am generally aware of it. So let me

1 say without reference to a specific case, every one of those cases was talking
2 about not what the Board must do, but what the Board had discretion to do.
3 It was, well, the Board had discretion to allow this new stuff in reply.

4 And I would respectfully submit, Your Honor, even if Petitioner
5 had cited to specific case law that applied here and said the Board had
6 discretion, the Board should not exercise it. This was something where
7 Petitioner chose to do a specific mapping. We spent our time in the Patent
8 Owner reply addressing the problem with that mapping, and just the spirit of
9 the CFR and the rule and everything else, it's you do it right the first time,
10 because this is an accelerated proceeding. And that is on Slide 31, Your
11 Honor, the expedited nature of IPRs, and this is a Federal Circuit case, again,
12 2016. And your point is well taken. You have an obligation, the Petitioner,
13 to make their case in the petition to institute. We heard over and over again
14 from counsel that Dr. Cockburn's reply declaration was undisputed. Well, of
15 course it was. I'm not allowed to put one in. That's exactly why they needed
16 to address it in the petition.

17 So, with that, Your Honor, I do want to talk a little bit about the
18 motivation because we do think there are several issues here. If I could turn
19 your attention to Slide 42. So, Your Honor, this is the first of, I think, five
20 flaws, and it is one that there's questioning on. So I'll be very brief about it.
21 But if we look at Slide 42, the petition wants to do two things with Martyn.
22 Number one is add the app snapshot. Number two is adopt this specific
23 gesture from Martyn. We pointed out in our Patent Owner response that all
24 four of the motivations that were said were undisputed. Yes, they are
25 undisputed that they motivate you to add the app snapshot. None of them

1 say a word, and it's telling on the right side of the slide, in the petitioner
2 reply, they say those four only motivate you to add the app snapshot. So we
3 just don't think that helps them at all with this.

4 Now if we go on to slide -- so that's the first flaw. If we go on
5 to Slide 43, this is the next flaw, which is the idea that if you read Martyn's
6 description of press and hold of a select function, when an application name
7 is highlighted that by analog says press and hold on an application icon on
8 the display.

9 Judge Lee, to answer your question, if you look at the pictures
10 in Martyn, it's only a five page reference, it very much resembles to me
11 personally the Nokia candy bar phone. And there's no dispute. Dr.
12 Cockburn admitted there's not a mention of a touchscreen in this thing. The
13 best you could say, well, it doesn't exclude it. So there is not anything in
14 here that would suggest that Martyn is a place you would go looking for
15 inspiration of what touchscreen gestures to include.

16 And so what this select thing happens here, the baseline, what
17 Martyn says is that you should be using either some physical button and you
18 should scroll. And if you stop scrolling and you just wait, then this thing is
19 going to pop up. And that as an alternative they say you could use the
20 physical buttons and scroll, and once you got there, you could press down on
21 another physical button and that would pop it up also. That's one of five
22 different things. And Dr. Madisetti has provided testimony explaining as
23 shown on Slide 43.

24 JUDGE QUINN: You're not saying that Martyn is not in the
25 same field of endeavor, right?

1 MR. LEVENTHAL: I am not, Your Honor. I know that's a
2 high bar. What I'm saying is presented with the intelligent POSITA saying I
3 need -- I'm convinced, I'm going to add Martyn's app snapshot. That's where
4 we are here. Martyn -- the POSITA then going about saying where am I --
5 what gesture am I going to assign to call it up? There's nothing helpful in
6 Martyn. It has nothing to do with what touchscreen gestures you would use.

7 JUDGE QUINN: But is there a technical reason why we'll be
8 dissuaded from -- from using Martyn's --

9 MR. LEVENTHAL: There is, Your Honor, because it doesn't
10 describe a single touch. Well, let me put it this way. If you chose to use
11 Martyn, and, again, Dr. Madisetti testified to this, you wouldn't end up with
12 their combination. If you chose to use Martyn, Chaudhri also describes
13 having a virtual or a physical click wheel. So if you chose to use Martyn,
14 what you would do is you would have a virtual or physical click wheel and
15 go along and highlight the application icon you wanted, and then press the
16 select button on the virtual or physical click wheel.

17 JUDGE QUINN: The touch scrolling that the iPods used to
18 have --

19 MR. LEVENTHAL: Yes, Your Honor.

20 JUDGE QUINN: -- a long time ago.

21 MR. LEVENTHAL: That's what Chaudhri describes. And so
22 if you wanted to be inspired by Martyn, that's what you do. Chaudhri
23 describes having the touch scrolling that iPods had. Chaudhri is an Apple
24 patent. It says either virtual or physical. That's how you would apply
25 Martyn. You just wouldn't end up at the invention.

1 So the next one, Your Honor, on Slide 44, we really take issue
2 with what was said in reply on somehow suggesting Patent Owner had said,
3 well, there's a conflict, and how dare you say there's a conflict? I want to
4 walk through the history of this. On Slide 44, we start at the top left.
5 Petitioner's reply said Patent Owner's first reason is based on the false
6 premise that adding the touch-and-hold gesture would cause a conflict, and
7 they cite to Patent Owner response at 42.

8 Now, if we go to the bottom left of our Slide 44, we have Patent
9 Owner response at 42. We quoted the petition. This is not a false premise
10 that Patent Owner came up with. This was quoting the petition and pointing
11 out that the Petitioner's own reason to get to Griffin explained why there is
12 no reason you would adopt this touch-and-hold in the first place.

13 And so we take issue with the concept that there's some sort of
14 false premise here. What the petition says, and now I'm on the right hand
15 side of Slide 44, is because we've now gotten to the point where we have
16 two touch-and-holds, we have to seek a solution to the problem of
17 distinguishing between gesture commands. And that's the main reason said
18 to go to Griffin.

19 And, Your Honor, I would also note that Dr. Cockburn,
20 paragraph 46, is what is cited here. Exhibit 1003, Dr. Cockburn's reply
21 declaration, where he says, well, there's no conflict. That's ridiculous. It
22 deserves no credit because it is contrary to his opening declaration at
23 paragraph 76 where he said, this is a problem and we need a solution. And
24 so, Your Honor, again, so the bottom line here is there's no false premise.

25 The premise was in the petition. And as the questioning to

1 Counsel, you know, recognized, I think we've made this clear here that there
2 is absolutely no reason to adopt a touch-and-hold gesture. It's not obvious to
3 adopt a touch-and-hold gesture for Chaudhri when the -- than when
4 Chaudhri has already assigned a touch-and-hold gesture on the application
5 icon to a different function, entering reconfiguration mode. An intelligent
6 POSITA would look at that and would not bang aimlessly into the, you
7 know, into the door. I mean, like they're a robot that doesn't know what
8 they're doing. They go find a different solution.

9 And, Your Honor, I want very briefly to present three different
10 legal theories on why I believe that is, you know, that's not good enough. So
11 number one is on Slide -- I'm sorry. Go ahead, Your Honor.

12 JUDGE FENICK: Sorry, I apologize. I wanted you to address
13 the evidence we have before us that one of ordinary skill in the art would
14 have known that this touch-and-hold was the gesture to use for a context
15 menu. And whether you've rebutted it or how you address it.

16 MR. LEVENTHAL: Your Honor, I would say that Chaudhri --
17 I would say, number one, that the mapping presented in the petition was,
18 where do you get this from? Martyn. And so that's what we rebutted. And
19 the idea that there was then additional support for Dr. Cockburn's
20 explanation that this is a good thing to do, that wasn't part of the mapping
21 presented in the petition. It wasn't the reason why.

22 And, ultimately, I don't think it changes things because the idea
23 is, if this is a well-known thing to do, it may be appropriate in some other
24 circumstances. But, in this particular circumstance, in Chaudhri, where
25 Chaudhri already has that gesture assigned to something else, find a different

1 solution. So that would be our position on rebutting it. We did not address
2 that evidence specifically, to answer your question. We don't think it helps
3 rebut our main point.

4 So, the three theories, and I won't even go to the slides on this,
5 but the three legal theories, number one, we are accepting here the high
6 burden that we think this teaches away. And we understand it's a high
7 burden -- and I will actually ask Your Honor to go to Slide 45 -- when you
8 would be discouraged from following the path set out in the reference. That
9 is what teaching away is. And the path that has been proposed here is use a
10 touch-and-hold gesture on the application icon. And you would be
11 discouraged in that by reading Chaudhri.

12 And, for sake of argument, assuming the Board feels, look,
13 teaching away, high burden, you didn't get there --

14 JUDGE QUINN: It is a very high burden.

15 MR. LEVENTHAL: Yes.

16 JUDGE QUINN: We usually want to see something expressly
17 stating, don't do this, or something more than just, oh, I can't see a reason
18 why you would want to do this in light of the fact that you do something else
19 that's harder to do.

20 MR. LEVENTHAL: So, I have two other legal theories, and
21 that's why I wanted to make sure it was clear that we had all three. So, the
22 second one is the requirement that in obviousness you read the reference as a
23 whole. You're not -- you're ignoring the fact that Chaudhri already has this
24 assigned if you say it's obvious to do it. So we think that's wrong in reading
25 the reference as a whole.

1 And if I could direct Your Honor to Slide 51, we also wanted to
2 just very briefly address the fact that creating a problem, KSR said it's not a
3 problem to create a problem. So am I being contrary to KSR? And the
4 answer is no. And what we have on Slide 51 is the Intel Corp. case from
5 the Federal Circuit. I was involved in that campaign. I can't remember if I
6 was involved in this case or not, but the important thing in both Intel and
7 KSR, which Intel cited, is the idea is, if you successfully solve problem one,
8 then it's okay that you created problem two.

9 That's what both KSR and Intel v. Qualcomm stand for. If you
10 successfully -- if a solution successfully solves problem one, and I think in
11 KSR it was -- I apologize; I don't have that committed to memory. But if
12 you successfully solve problem one, it's still obvious, even if you create
13 problem two, because you successfully solve problem one. The difference
14 here is you are successfully solving zero problems by assigning a touch-and-
15 hold gesture to calling up app snapshot. You haven't successfully done
16 anything. You've created a problem with doing zero --

17 JUDGE QUINN: You don't always have to solve a problem.
18 You can just have an improvement. And if a person of skill in the art would
19 recognize there would be an improvement in the usability of this device, and
20 is not outside that person's skill, then that is a motivation.

21 MR. LEVENTHAL: And, Your Honor, I would say there is no
22 improvement here. You created a problem. It's not fixed. And then -- and
23 so I would disagree --

24 JUDGE QUINN: Well, not according to Petitioner. They think
25 they have solved a problem of giving functionality of something in addition

1 to what Chaudhri already gives you.

2 MR. LEVENTHAL: I would say that is, according to
3 Petitioner, you created a problem, because it's what I cited on Slide 40. I
4 mean, they're the ones that said it. They're the ones that said they've created
5 a problem. It's bootstrapping. We've created a problem. Therefore, we're
6 going to go to Griffin to find a solution. That's the problem.

7 JUDGE QUINN: You have a slide on this, you said?

8 MR. LEVENTHAL: I do, Your Honor. It is Slide 44, and this
9 is on the right-hand side of Slide 44 in the petition. The Petitioner states, by
10 assigning a touch-and-hold gesture to both the app snapshot and this, we've
11 created a problem. Now we're going to create a solution. That's improper
12 bootstrapping. I understand -- and as I said, that's why I want to distinguish
13 it from KSR. KSR makes perfect sense. You solve the first conundrum.
14 You created a second one. Let's go solve the second problem. Here, you
15 just created a problem for the sake of creating a problem in order to justify
16 your story of going to Griffin.

17 JUDGE QUINN: Well, that's a hindsight issue.

18 MR. LEVENTHAL: It is, Your Honor. We think this is a
19 textbook case of hindsight. There's no reason --- and I apologize. I did not
20 take -- Judge Quinn, I don't want to inaccurately attribute this to you, but I
21 heard one of the judges say in questioning, it seems like this is, you know,
22 changing the fact that -- you know, there's a story here that you're trying to
23 fit, rather than what the evidence says. And we think that's what it is here.
24 We think that's exactly right.

25 And, Your Honor, in terms of the last couple ones, in terms of

1 the problem we have with this, and, again, looking at it holistically, what we
2 put in evidence is that there are four other ways, looking at Chaudhri itself or
3 looking at the other alternatives that Martyn describes and analoging them
4 over to touchscreens, that you can do this without creating the conflict. So,
5 again, that would also inspire a person of ordinary skill in the art to
6 understand, why would I do this? I have all these other alternatives
7 available. Why is it obvious to use one that the petition itself stated causes a
8 problem?

9 JUDGE LEE: Counsel, this is Judge Lee. I want to ask you,
10 why shouldn't Petitioner be able to rely on different instances of the detected
11 input? Because a single one wouldn't be able to meet -- be sufficient to
12 carry out the mutually exclusive two of the four conditional apps.

13 MR. LEVENTHAL: So, Judge Lee, let me answer that in a
14 couple parts, and I know this is harkening back to our discussion yesterday
15 in the '114 Patent. That is waived. There is no argument from Petitioner
16 anywhere in the record that they can rely on two different -- on a touch on
17 one application icon for the first application icon in [g], and a different
18 application icon in [l]. This is -- everyone is all-in.

19 I understand that Petitioner made that argument in '114. They did
20 not make it here. Everyone is all-in on understanding that the application
21 icon in [g] and [l] must be the same one. The question before the Board, and
22 I think we both presented our case as to why, is whether that is supported by
23 the petition.

24 JUDGE LEE: Yeah, but in their reply, their response to your
25 saying they were inconsistent about the icon is that, in their view, any first

1 icon will do, right? So that implies they're using different -- multiple
2 instances of the input, the touch, because any first icon will do.

3 MR. LEVENTHAL: Your Honor, that's not how I read either
4 the briefing or Counsel's comments here. I think what they were saying is
5 you should interpret our mapping, as our mapping is saying I could have
6 pointed to any icon. Therefore, you should interpret the mapping of [1.g] as,
7 sure, every last word I ever said in there said the racing application icon, but
8 you should interpret that I also reserve the right or subliminally said it was
9 the solitaire icon.

10 And Your Honor, again, I don't think that's a live issue. I know
11 it was in '114. But I would also note that even the argument that a Petitioner
12 made in '114 about you can't do them all at once, that's not true here. The
13 [g] and [l] do occur on the same --

14 JUDGE LEE: When you say '114, what are you referring to?
15 The Patent Owner?

16 MR. LEVENTHAL: Yes, Your Honor, our argument yesterday
17 afternoon on whether you could point to three different gestures. What I'm
18 saying is that's not applicable here. Petitioner has not asked for permission
19 to point to two different application icons. No one is saying here, it's good
20 enough to point to the solitaire icon for [g] and the racing icon for [l].
21 Petitioner's argument is that you're not being fair to us by saying that's the
22 only thing we mapped.

23 JUDGE LEE: Thank you. That was good, because when they
24 say any first icon will do, that's not in the same line of thought.

25 MR. LEVENTHAL: Correct, Your Honor. And I'm very

1 conscious of Judge Quinn's very accurate guidance to not mix them. But
2 that's what I wanted to point out, that it is -- it's different argument, different
3 proceeding.

4 And, Your Honor, I think I said what I had to say on claim
5 construction, so I will reserve my remaining time, unless the panel has
6 questions.

7 JUDGE QUINN: We're good. Thank you.

8 MR. LEVENTHAL: Thank you.

9 JUDGE QUINN: Whenever you're ready, Mr. Renner.

10 MR. RENNER: Thank you, Your Honor. It's improper to
11 artificially limit, as Smith is urging, to pages 11 to 12 of the petition the
12 explanation of the mapping that is offered, because Chaudhri application
13 icons are, in fact, generically referenced and they're moved in the
14 reconfiguration mode, and it's described on pages 11 to 12. Spanning those
15 two pages, which is one page of text, the petition is not ambiguous in
16 explaining that Chaudhri moves its application icons, not just the racing
17 application icon.

18 Slide 14 reproduces the text from this portion of the petition. I
19 reviewed it earlier with you, but I will just for one moment again. While the
20 interface for the application menu is in the reconfiguration mode, Chaudhri's
21 device recognizes yet another gesture, a drag, a command to move an
22 application icon. It's only two paragraphs, I believe it's one page, and it's
23 very clear that this is an indication that the Petitioner is intending to indicate
24 that the application icons in general are moved in the reconfiguration mode.
25 And in the footnote number one that follows in the bottom of that very page,

1 it tells you the same thing. It says, on that same page, the petition is again
2 unambiguous in instructing that this text, the text that's in that summary at
3 the beginning, out of convenience, is to be incorporated into the subsequent
4 mapping of the claims.

5 JUDGE QUINN: I will ask you the obvious question here.
6 Because this could have all probably been avoided had you consistently used
7 the same icon throughout your explanation of the claim. Why didn't you do
8 that?

9 MR. RENNER: We were following what Chaudhri is giving us
10 as examples, Your Honor. Chaudhri's drawings --

11 MR. QUINN: You were trying to stick to the embodiments you
12 saw.

13 MR. RENNER: That's right. So, to us, all the application
14 icons, they were application icons. But the author, Chaudhri, they gave us a
15 good graphics. We used this graphics and we followed that. But we talked
16 about, and we talked about it very specifically in the beginning, the
17 summary, we said, this is Chaudhri. Here's how it is, general then specific.
18 And we said incorporate that. We didn't want to repeat ourselves. We
19 thought that was more clear for Your Honors when we put that in the front
20 end, when we talk about the references, than to repeat ourselves or to wait
21 and put into the actual mappings. But we did put it in the mappings by
22 virtue of a footnote that tells you to incorporate it into the mappings. It's not
23 20 pages of text, it's not more than one page dealing with the element in
24 question, [1.1]. That element in question, the mapping for the movement, it
25 literally spans the middle of one page to the middle of the next, and that's to

1 be incorporated.

2 JUDGE QUINN: So, a summary and a footnote, and then that,
3 inoculates the whole issue of consistency?

4 MR. RENNER: Well, we believe it is consistent, yes. We
5 think that it is consistent, Your Honor, because if you do the incorporation
6 that's instructed, you end up with the text where you need it and you know
7 what you've gotten. Besides which, we're talking about an application icon.
8 This isn't very difficult to understand, we don't think. This is not a very
9 confusing concept. It's not like it's a semiconductor where there might be
10 some sort of a confusion left.

11 I'd also like to address, though, as for the 5M and N, the figures
12 speak for themselves, we believe. And if there was any ambiguity, the
13 Federal Circuit is not unclear. Your Honors asked a good question about
14 what is the authority and where there might be any. Apple v. Andrea
15 Electronic Corporation, 949 Fed. 3d. 697, 705 to 707, it's Fed. Circuit 2020
16 case, the holding: the Board abused its discretion by rejecting reply
17 arguments that, quote, merely demonstrated another example of the same
18 prior art algorithm from the petition to further explain its original theory.

19 We don't even think we could go that far. But there's authority
20 out there, and I think Your Honor's instincts are there, as well. Notice was
21 given here. It's not difficult to find. There's no more than five pages of text
22 that address the element in question. Among those pages are citations to
23 references and figures. There's citations to the generic nature of the
24 application icons, which, if you read the reference you know exist. And,
25 frankly, we don't leave you to read the reference. It's actually quoted in the

1 section, that is the page-long section that is in the summary which is
2 incorporated into the later part.

3 So, Your Honor, we believe that notice has been given. We
4 believe it's a fair mapping. We believe that a read of this petition does the
5 job. But I do welcome any further questions before I invite my colleague to
6 speak to any combination --

7 JUDGE QUINN: Who's going to address the interface, the user
8 interface? Are you addressing that, Mr. Renner?

9 MR. RENNER: The user interface, which --

10 JUDGE QUINN: The dependent claim.

11 MR. RENNER: Oh, that would be my colleague. Yeah.

12 JUDGE QUINN: Thank you.

13 MR. DARBY: Time is short, and so I'll get to the point. I want
14 to start with the motivation to combine issues.

15 JUDGE QUINN: No, we want you to start with the user
16 interface.

17 MR. DARBY: Oh, okay. Happy to do that. So, the user
18 interface is pretty straightforward, from our side, that the words are
19 descriptive. It is an element that's part of a user interface, user interface
20 element, and so --

21 JUDGE QUINN: Based on plain and ordinary meaning?

22 MR. DARBY: Absolutely, because the terms are descriptive on
23 their face. User interface element, element of the user interface, is how we
24 read it.

25 One other point that I want to make --

1 MR. DARBY: Apologies.

2 JUDGE FENICK: The element of the user interface, so, a user
3 interface, according to the patent, is the whole screen that's displayed on the
4 device?

5 MR. DARBY: In the asserted patent?

6 JUDGE FENICK: That's right.

7 MR. DARBY: There are a couple of different instances where
8 it says 'user interface element.' I don't know that it's limited to any particular
9 one of them.

10 JUDGE FENICK: Well, if we look at, I think, Figure 5. It has
11 element 500, and element 500, look at column 28, it says 'user interface 500.'
12 So that's one example. Is the user interface the entire user interface, and so
13 an element is a specific element of it?

14 MR. DARBY: That's consistent with our understanding of a
15 user interface element. The user interface is the entirety of it. And any
16 element that's part of that user interface is itself a user interface element.
17 There are examples of user interface elements in the specification, but none
18 of them limiting. All, for example -- and, again, no lexicography or any
19 disclaimer or anything like that. So, they use the broad term 'user interface
20 element.' We think they're entitled to the full scope of that of that term, and
21 that's how we've mapped it.

22 I do want to mention, though, that in the reply you'll note that
23 we have a response to the interface element has to be interactive. The
24 wallpaper that we point to in the challenging reference does, in fact, change
25 when there's a user interaction. And so we would argue and submit that,

1 whether you adopt their construction or what we think is the real plain
2 meaning, that we have the element covered.

3 I see that I have one minute left and so I'll be brief on the
4 motivation. And a couple of things. First, I want to address the issue of the
5 conflict. That word is not the petition. We said design problem. Those of
6 skill in the art are motivated to solve design problems. And so that was that
7 was our case. We were not saying that there is a conflict. In fact, we
8 explained why there wasn't a conflict, as I think we covered in the earlier
9 direct.

10 The other point I want to make is that I don't believe we heard
11 any dispute from counsel about the two key facts here on motivation for the
12 touch-and-hold. One of them, that it was the natural analog to a press-and-
13 hold and -- Judge Quinn?

14 JUDGE QUINN: I was going to say, don't rush. We're going
15 to give you another five minutes.

16 MR. DARBY: Okay. I'll slow down. And thank you for that.
17 And so the other pieces: I don't think we heard a dispute in terms of the
18 touch-and-hold being a very common way that everyone knew it was how
19 you invoked one of these contextual menus. And, again, when you put those
20 things together, that's the motivation to combine.

21 There was a note about Dr. Cockburn's supplemental
22 declaration, and I just want to comment on that as well. And what I'd say
23 about it is, I mean, the reason we mark it unrebutted in the slides is literally
24 because they chose not to depose it. It's rebutted because they never asked
25 him any questions, or wanted to ask him any questions, about his

1 supplemental declaration. They never sought to strike or exclude it. They
2 never sought to enter any evidence in reply to it, which they could have
3 asked. So we think Dr. Cockburn's supplemental declaration is a fair
4 extension and putting it further evidence on the things that he already opined
5 about.

6 JUDGE QUINN: There's very little that Patent Owner can do
7 after you submit a declaration. I mean, it's not like it's an open door to new
8 evidence and new declarations and you start that process all over. Cross-
9 examination of the expert is not rebuttal.

10 MR. DARBY: I take your point to that. Well, maybe we could
11 use a different word, but they didn't -- they didn't depose him. They didn't
12 cross-examine him. So if they had questions about his testimony or thought
13 something about his testimony was not correct, they could have asked for his
14 basis for that testimony. And, again, we think it was a fair extension of the
15 evidence put in.

16 In fact, when you look at the supplemental declaration, which
17 you'll find, it doesn't add a lot of exhibits. I mean, there are a couple of extra
18 documents that are added in. A lot of what Dr. Cockburn, though, is talking
19 about in that supplemental declaration, he's harkening back to that which
20 was in the original. And so he's looking at documents that were part of the
21 original declaration and putting just further discussion to it, for the most
22 part, even though, to your point, there are a couple of extra documents put
23 in, but that's fairly routine in these proceedings.

24 JUDGE QUINN: How do you address the issue that there may
25 be inconsistent testimony?

1 MR. DARBY: I think that was with respect to the word
2 'conflict.' I was trying to clarify that earlier. We said 'design problem.' I
3 believe Dr. Cockburn also said design problem, which is once you're
4 bringing over the app snapshot and you know you want to use the touch-and-
5 hold because that's what everybody is used to, you do have a design
6 problem, to the extent of where do I fit it? And because Chaudhri gives you
7 those wide margins and there's a clear gap there in the normal mode of the
8 device, that's the nature of the design problem. And so we were saying that
9 is part of motivation to combine, that the person's skill would see that. And
10 where would you slot it? You slot it right there. Not that there was any sort
11 of conflict. So when there was a mention of a quote, I don't believe the word
12 'conflict' was quoted from the petition.

13 JUDGE QUINN: No, I mean, I think it's a function of it's a
14 problem of your own design.

15 MR. DARBY: It does come about from that which is part of
16 the combination, and we fully embrace that. And counsel noted some of the
17 case law on that. And I think you were actually headed in the right direction
18 in your thinking about it, which is there was a first problem, right? Which
19 is, we want to make Chaudhri's user interface better. How do we make it
20 better?

21 We bring over the contextual menu from Martyn. And how do we
22 invoke it? Well, we invoke it with the thing that everybody knew to use,
23 which was touch-and-hold, which is the analog of what Martyn describes.
24 And now where are we? Just like in KSR, what do we do? How do we get
25 it in there? And we put it right where Chaudhri left the opening for it to go.

1 With that, I don't have anything further. I do appreciate the
2 extra time. And if there's any questions from the panel, I'm happy to take
3 those as well.

4 JUDGE QUINN: I think we're good. Thank you, Mr. Darby.

5 MR. DARBY: Thank you very much.

6 JUDGE QUINN: Mr. Leventhal, I don't think you're going to
7 need it, but you have the extra five minutes as well.

8 MR. LEVENTHAL: Thank you, Your Honor. And this shows
9 my lack of instincts here. I told the Court Reporter beforehand I thought this
10 was going to be a short one and we wouldn't go our whole time.

11 So, Your Honor, I just have two brief points and then happy to
12 answer any questions. Number one, addressing what does the petition say, I
13 would direct everyone to Slide 35 of Patent Owner's slides.

14 And the point here, Your Honor, is that what we've heard is,
15 well, we talked about big, broad disclosure from Chaudhri in the
16 background. And then we provided a specific mapping that everyone agrees
17 is not good enough for [g], that didn't mention it. But if you read that
18 specific background, then you should understand there were other mappings
19 there. And what we've done on Slide 35 is, on the left-hand side, this is the
20 missing link. The missing link is reasoned argument that, because there is
21 broad disclosure in Chaudhri, we are reserving the right or we are mapping it
22 to any application icon.

23 And what is important, Your Honor, is that missing link is not
24 anywhere in the petition. What we have here is basically the -- what is cited,
25 all of these cites, the argument's not there and none of the cites that are in the

1 excerpt are found anywhere in the petition for this point. And so it's a new
2 argument made in reply to create that missing link. And, ultimately, that's
3 why we think this is different than cases where you've said, look, I've got
4 lots of examples, I'm going to use lots of examples. Here's one, but here's
5 how you could learn what other ones are. That missing link did not show up
6 until the reply. There's no reason it could not have been said in the petition.
7 And we believe that, ultimately, is the problem.

8 JUDGE QUINN: What about the argument that there's this
9 summary of Chaudhri and the footnote gives you ample notice?

10 MR. LEVENTHAL: Your Honor, the answer is that we are on
11 ample notice that they may cite to other stuff to support their mapping.
12 That's the difference here. It's not, we may cite to something to create a new
13 mapping. That's ultimately what they did. There is no word anywhere that
14 says, "I am mapping the first application element in element [1.g] to the
15 solitaire application."

16 Ultimately, what they're saying here is, we wanted to -- you
17 know, we wanted to -- we cited to some stuff that, if we had done in the
18 petition, we could have created a theory, but we did not. So we think that's
19 the difference.

20 And then just one small thing on the motivation. Counsel said
21 there were two things that were undisputed. I think I answered Judge
22 Fenick's question on the second one in terms of, no, we don't have a specific
23 response to "lots of people knew to do touch-and-hold for this," because we
24 don't think we need to. It ultimately runs into the exact same barrier of "you
25 wouldn't do it here."

1 But I do dispute that we did not address that the selection is a --
2 the press-and-hold is a natural analog. I think we addressed that in the
3 briefing and we address it on Slide 43, if I could direct everyone there. Slide
4 43 talks in detail -- and I won't take up all the time, but just to point out, with
5 Martyn, the idea of Martyn -- and this is Apple 1005 -- is that it's this little
6 LCD screen, non-untouchable, in kind of a Nokia candy-bar-type phone.
7 And the way you get this quick action menu up is you have to manually
8 select, press up and down or left and right buttons, to move the highlight
9 from Messages to Contacts to Calendar to Phone.

10 And what Martyn says is the main way, the default way that
11 you are going to call up this app snapshot, is you're going to press down to
12 go from Messages to Contacts, and then you're just going to pause. And
13 after a certain amount of time passes, you're going to launch that application.
14 You're going to launch the quick app, the app snapshot. Now, then they
15 provide alternatives. And one of those alternatives is a press-and-hold of the
16 select function when an application name is highlighted. And the words
17 there 'when an application name is highlighted' make clear to a POSITA --
18 and this is what Dr. Madisetti describes; it's on the right-hand of the slide --
19 that's a two-step process.

20 Step one is use the physical buttons to scroll your highlight to
21 the correct application that you want. And then you press the physical
22 button on a press-and- hold. And what we have said is, no, that is absolutely
23 not the analog to a press-and-hold on an application icon. Not generally and
24 certainly not in Chaudhri, because Chaudhri explicitly describes, either as
25 physical or as virtual, having a scroll wheel.

1 So you can do what Martyn says. You can scroll, using the
2 physical or virtual scroll wheel, to highlight an application, and then press
3 that select button. And so that would be the analog of what Martyn says on
4 a touchscreen, and on Chaudhri's touchscreen more specifically. So we do
5 dispute that.

6 And that was that was all I had, unless there were questions.

7 JUDGE QUINN: It didn't dawn on me, until you said this now,
8 that what you're describing in Martyn with the Nokia phone, that this is
9 displayed on the entire screen.

10 MR. LEVENTHAL: It is, Your Honor, and there's a secondary
11 -- sorry, Martyn has used -- I was about to go into a 212 argument that we'll
12 get into this afternoon, because Martyn is a secondary reference there, also.
13 But, yes, this is the entire screen in Martyn. And that matters for this
14 afternoon. I'm not sure it matters, particularly, here.

15 JUDGE QUINN: Well, no, it explains why you are arguing
16 that the navigation using the track wheel or any other mechanical function
17 makes sense in those screens.

18 MR. LEVENTHAL: It does. And in Chaudhri, again, there's
19 embodiments of Chaudhri where you still use mechanical buttons to
20 navigate. Could you do it by touching also? Absolutely. All I'm saying is
21 it's not the analog of Martyn. So we can test that point, right?

22 JUDGE QUINN: I don't think we have any further questions
23 for you.

24 JUDGE FENICK: I just wanted to make sure that I asked you
25 the same question that I asked Petitioner about the user interface element. I

1 know that Dr. Madisetti says that it's a user interface element -- and I'm
2 quoting from paragraph 55 of Dr. Madisetti's declaration, Exhibit 2005. A
3 plain and ordinary meaning of the user interface element is an element of a
4 device that a user must be able to interact with, rather than the element of a
5 user interface.

6 And so I guess if I ask the same question as to whether user
7 interface in the '758 patent is the entire display, you would say that that,
8 even if it is, it doesn't have a bearing on Dr. Madisetti's kind of definition of
9 what a user interface element is?

10 MR. LEVENTHAL: I think that's very fairly stated, Judge
11 Fenick, and I did understand where you were going with those questions. I
12 think your point is, well, I'm being too narrow, Dr. Madisetti's being too
13 narrow, because if we know what the user interface is and it's the whole
14 screen, isn't it an element if it's on the screen? And, yes, I think the response
15 to that would be that I certainly don't contest your characterization of what
16 generally is described as the user interface. It's just, in this case, to be an
17 element of the user interface, we think at least one of the plain and ordinary
18 meanings is it's got to be interactive. And every single example of when the
19 word user interface elements are used in the spec, it's consistent with that.

20 JUDGE FENICK: Thank you.

21 MR. LEVENTHAL: Thank you.

22 JUDGE QUINN: Is that it?

23 MR. LEVENTHAL: That is it.

24 JUDGE QUINN: All right. That's all she wrote. Thank you.

25 MR. LEVENTHAL: Thank you.

1 JUDGE QUINN: All right. We're going to conclude here. We
2 consider the matters submitted for preparation of the final written decision,
3 which we'll be working on an issue in due course. Thank you, everybody,
4 for the arguments today. They were very useful to us. And we are going to
5 adjourn for an hour and 20 minutes. We will be back here at noon for the
6 second hearing of today, and until then I guess we are adjourned.

7 (Whereupon, the above-entitled matter went off the record at
8 10:45 a.m.)

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