

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2024-01089
Patent 10,671,212 B1

Record of Oral Hearing
Held: October 17, 2025

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

Case IPR2024-01089
Patent 10,671,212 B1

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The above-entitled matter came on for hearing Friday, October 17, 2025, commencing at 12:00 p.m. CDT, at the U.S. Patent and Trademark Office, 207 South Houston Street, Dallas, Texas.

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

(12:00 p.m.)

JUDGE QUINN: This is a session for hearing for the oral argument in Apple, Inc. v. Smith Interface Technologies, LLC, for IPR2024-01089. I'm Judge Miriam Quinn presiding from the Texas Regional office. With me are my colleagues, Judge Jameson Lee and Judge Sharon Fenick. As I've stated before, they're appearing via video today.

So if you can please identify yourselves clearly in the microphone and make sure it's always turned on green so they can hear what you say from your respective desks. Also, please refer to the evidence specifically so we can follow along.

We are here to assess the arguments that are in the briefs and the papers that we have in our proceeding, and we will weigh your arguments accordingly, according to the burdens that are as established by our rules. Again, from time to time, we're looking down or looking away to our computers. That's because all of the record is electronic, and we have everything that we need right on our screens. And from time to time, we're writing things down.

It's not that we are uninterested. It's just that we're occupied trying to process the information. You're familiar, so I'm not going to go over a lot of the details of the hearings, but I will say that, always bears repeating, is that there are no spontaneous objections allowed.

If you have an objection, you can make that during the time of your argument. I have here that this hearing also will be 45 minutes per side. I have already programmed a timer for it. I just need to know whether 10

1 minutes for rebuttal will be what you wanted for your respective rebuttals,
2 and then we can begin.

3 MR. DARBY: Petitioner will reserve 15 minutes for rebuttal.

4 JUDGE QUINN: 15, okay.

5 MR. LEVENTHAL: Good afternoon, your honor. Daniel Leventhal
6 for Patent Owner, and we, please, reserve ten minutes.

7 JUDGE QUINN: Ten minutes. All right. Okay. Petitioner, would
8 you like to state appearances for the record?

9 MR. DARBY: Yes. Kenneth Darby for Petitioner, Apple. With me is
10 my colleague, Karl Renner, lead counsel in the case. We're also here today
11 with a representative from Apple, Jason Melvin.

12 JUDGE QUINN: Patent Owner, could you state appearances for the
13 record, please?

14 MR. LEVENTHAL: Yes. Good afternoon, Your Honor. Daniel
15 Leventhal for Patent Owner.

16 JUDGE QUINN: All right. Petitioner, whenever you're ready, you
17 can approach. You have the floor. Just let me you know when you're ready
18 to start.

19 MR. DARBY: Excellent. I'm ready.

20 JUDGE QUINN: Okay. Proceed.

21 MR. DARBY: Good afternoon. Kenneth Darby for Petitioner, Apple,
22 speaking. I'm going to start at Slide 3 of our demonstratives. This is our --
23 what should, I think, be familiar by now -- our overview slide just telling us
24 where we've come from and just giving us a bit of a roadmap about where
25 we'll go today.

1 So the challenged claims we have listed here on the slide, independent
2 Claims 1, 16, and 84 all rise and fall together. We'll spend most of our time
3 today, if not all of it, speaking about the independent claims today, subject to
4 any questions, of course, in the panel on any of the dependent claims. And
5 we're going to focus on as of the two grounds that were presented, the
6 Ground 1 that is focused on the independent claims. And so that's the
7 Hotelling, Martyn, and Cho combination.

8 The next series of slides in our deck provides an overview of the
9 claims and the prior art, but I'm going to skip over the vast majority of those
10 so we can spend more time talking about the disputed issues. And I'd move
11 to Slide 6. So I'll just make a quick pit stop here.

12 So this is one of the main limitations that's been surrounding the
13 debated issues between the parties. So this is the second duration scenario,
14 and it's got -- what it requires is that there's an output of tactile feedback in
15 the display of a menu when a second duration of the touch is detected; so,
16 basically, a long touch or a touch and hold. When you have one of those, you
17 have to have tactile feedback, and you also have -- just have display of a
18 menu.

19 So with that, I'll turn us to Slide 17, and we can start diving into some
20 of the issues. And so the first dispute that I'd like to address today is the one
21 regarding the combination of Hotelling and Martyn.

22 Martyn is one of the references that we talked about earlier today. It's
23 in a couple of these proceedings, and the question is whether a skilled artisan
24 would have been motivated to combine these references such that the menu
25 that Martyn teaches would have been invoked by a long touch from the user

1 interface of Hotelling, which provides a main page GUI, and it's got
2 application icons on it.

3 And so we put forward this combination; think it's logical,
4 straightforward, and supported. And yet there's been an argument that we
5 don't have support for the touch and hold. And -- Judge Quinn, do you
6 have?

7 Okay. There's been talk about us not having the motivation for the
8 touch and hold, which again is an overlapping issue, but I'll turn straight to
9 it. And so when we look at the record, and I turn us to Slide 19 so we can
10 start unpacking some of what we have in front of us.

11 In Slide 19, we can begin with the Hotelling reference. It's one that
12 we haven't talked a lot about. And what you can see at the top of the slide,
13 this is the top left-hand corner of the slide. This is Figure 18 from Hotelling.
14 And it's a main page GUI that is part of a touchscreen mobile device. So
15 Hotelling is one of the 2006 publications; it's one of the foundational patent
16 disclosures that paved the way for the iPhone.

17 So what you're looking at is the homepage that we're sort of all
18 familiar with. It's got these, what are called virtual buttons, which are
19 application icons. You can touch any of the virtual buttons, and you can
20 launch the corresponding application.

21 So Martyn, again, it has the App Snapshot. That's the contextual
22 menu in Martyn. And what does it provide? It provides a number of
23 different functionalities, shortcut functionalities that the user can very
24 quickly and easily get to where they want to go in the application. How do
25 you launch it? Martyn tells us one of the ways you can launch this sort of

1 contextual menu is with a press and hold on the selection function while the
2 application icon is selected.

3 And so what we propose here in the combination is a long touch.
4 Because, again, we're going from press and hold in Martyn, the analog to
5 that is a long touch in Hotelling. And what you'll find as we move to Slide
6 20, that the long touch -- Hotelling is no stranger to long touches. In fact,
7 Hotelling teaches the use of a long touch in order to invoke a contextual
8 menu.

9 Now, the disclosure from Hotelling about this long touch comes in the
10 context of a music player GUI. So if you were to touch one of the
11 application icons corresponding to the music player, it would take you to the
12 music player GUI. Once you're there, you can do a long touch on one of the
13 virtual buttons, and you'll get the contextual menu.

14 And so what we say is that what we have here is a particularly strong
15 motivation for this combination because we have these documents, one of
16 them telling us invoke a contextual menu using a press and hold. That's
17 Martyn. The other document is telling us when you want to invoke a
18 contextual menu in the context of a touchscreen mobile device, use a long
19 touch. The documents are mutually suggesting the combination, which even
20 pre KSR is a particularly strong teaching, suggestion, motivation, style of
21 argument.

22 Happy to take any questions on that issue. If not, I'd move on to the
23 tactile feedback disputed issue.

24 JUDGE FENICK: Can I ask, is this -- this is an argument Patent
25 Owner makes that you're combining this Figure -- sorry, I apologize. I think
26 it's Figure 27, which is the music player with other disclosures in Hotelling.

1 Is there a -- do you have a reason that you're including this table as a
2 more general motivation for press and hold on a -- on one of the buttons in
3 Hotelling's main page GUI?

4 MR. DARBY: Yes, absolutely. So it is part of the motivation to
5 combine rationale for using a touch and hold to launch the contextual menu
6 from Martyn. We're not combining two different embodiments.

7 There was some talk about that in the briefing. So we're not looking
8 to combine the Figure 18 GUI -- main page GUI with the Figure 27 music
9 player GUI. We're turning to the long touch for a contextual menu as a
10 suggestion in Hotelling about how you would launch a contextual menu in
11 the context of using that device.

12 And so what we would submit is that if for the music player GUI,
13 you're using a long touch to invoke a contextual menu, when you're bringing
14 a contextual menu to the main page GUI, how would you launch it? You
15 would also use a long touch.

16 That's what any user of this device would be used to doing when they
17 want to get a contextual menu. And we think that the music player GUI is
18 an example of that. But we're not looking to bodily incorporate those
19 embodiments or anything like that.

20 In fact, we think it's one embodiment. We think that what Hotelling
21 teaches is you have the main page GUI, you click the -- or you select the
22 virtual button or application icon to get to the music player GUI, you go
23 there, and within that you can do the long touch. And we think that applies
24 back, when you're going to add a contextual menu to the main page GUI,
25 you do the same thing.

26 JUDGE FENICK: Thank you.

1 MR. DARBY: Okay, with that, I would turn to Slide 12 and get into
2 our next of the disputed issues. And so this one has to do with tactile
3 feedback.

4 If we remember back to that second duration scenario, you have to
5 have two things on the long touch. You have to have the menu, which we
6 talked about, but you also have to have a display -- or, excuse me, you have
7 to have the output of tactile feedback. There's no dispute that Hotelling
8 teaches tactile feedback, but what the debate between the parties is, is
9 whether or not Hotelling teaches or renders obvious, and we have two
10 separate arguments for that.

11 Does it teach or render obvious the notion of providing that tactile
12 feedback when there's a long touch? So turning next to Slide --

13 JUDGE QUINN: So when during the long touch, does the tactile
14 feedback occur?

15 MR. DARBY: Well, the claim says when, which I know is a term that
16 we discussed before. And so what we would say is it -- when you do the
17 long touch, it happens after the long touch or during the long touch to signal
18 that you successfully inputted the long touch and that the menu, because
19 now we have the menu from Martyn, that the menu is ready for you to
20 interact with.

21 So it could be during the long touch. It could be when you complete
22 the long touch. It's a signal. It's an alert that you've completed it.

23 JUDGE QUINN: Well, it would have to be after it's detected that a
24 long touch has been -- indeed happened.

25 MR. DARBY: Agree. We would agree with that.

26 JUDGE QUINN: So it can't be during?

1 MR. DARBY: After the duration, I guess, if we get -- if we narrow in
2 on the plain language, it's after the duration is detected. Suppose you could
3 have a longer touch that would continue. You would get an indicator, a
4 tactile feedback telling you that during your touch you've completed it, and
5 you go ahead and pick your finger up and you can interface with the menu
6 would be our position.

7 JUDGE QUINN: Thank you.

8 JUDGE LEE: So, Mr. Darby, it's Judge Lee. So what you're saying is
9 upon touching the screen, there's no tactile -- there's no feedback until
10 sometime later when a threshold is passed to determine a long touch and
11 then you get the haptic feedback later on?

12 MR. DARBY: Our position is that there's certainly -- our combination
13 doesn't address that particular issue about whether you have or need the
14 tactile feedback on touchdown. You certainly could have that. And that's
15 one of the things that Hotelling teaches.

16 What we've learned over the course of the proceeding is that it was
17 perfectly natural to have tactile feedback at multiple points in time of a touch
18 input to signal different things to the user. So, for example, you may have
19 tactile feedback of one sort when the finger goes down. You may have
20 tactile feedback of some sort when the finger goes up.

21 For example, there's some talk in Hotelling -- it's not exclusive, it's
22 just an example -- of talking about simulating a button. And so you could
23 have tactile feedback on a virtual button when you contact and when you lift
24 off but also during that, we would submit, when you get to the second
25 duration such that you're going to invoke the menu in our combination, you
26 would get tactile feedback at that time. So it doesn't exclude earlier or a

1 different kind of tactile feedback, but we're just focused on the tactile
2 feedback. That's the alert to the user that you've completed the long touch
3 gesture.

4 JUDGE LEE: Yes, but the claim requires tactile feedback during a
5 second duration. Does the claim exclude tactile feedback during the first
6 duration? Or are you saying, no, it's okay as long as there's tactile feedback
7 throughout it meets the claim?

8 MR. DARBY: If there's tactile feedback when the second duration is
9 detected, that's all the claim requires. There can be a different kind of tactile
10 feedback earlier on, but this particular tactile feedback happens when and
11 because there was a long touch and you got to the second duration and
12 you're signaling now to the user.

13 And so that's what we're mapping. And the claim leaves open whether
14 or not there could be other kinds of things going on at some earlier time in
15 the touch. It's not exclusive --

16 (Simultaneous speaking.)

17 JUDGE LEE: That is very interesting because when you put your
18 finger down, and you don't know if it's long or short. Let's say the tactile
19 feedback starts already, right, without you knowing it's long or short, and it
20 happens to be long. And then you're saying, well, that meets the claim then,
21 because in this instance the long touch started when the haptic feedback
22 started.

23 MR. DARBY: Well, we would submit you'd get a different kind of
24 tactile feedback. So, for example, I point you to Slide 14, and on the right-
25 hand side of the slide -- so the citation is to Dr. Cockburn's declaration
26 where he talks through this. It's here on the slide. On the right-hand side

1 this is one of the corroborating references that is cited by Dr. Cockburn, and
2 what it explains is that you can have different kinds of tactile feedback to do
3 different things over the course of a touch.

4 So you could have it when the user puts their finger down, you could
5 have it when the user does a drag, you could have it when the user does a
6 hold. Right? And those are all different kinds of tactile feedback. But the
7 tactile feedback we're focused on happens when there is a long touch. It's
8 not happening before, the tactile feedback we're talking about.

9 There could be other different kinds that happen earlier. The claim
10 isn't exclusive on that. Hotelling is not exclusive on that when you provide
11 it. And so it's not part of the combination because it's not one of the -- it's
12 not part of the claim. So it wasn't part of the analysis.

13 JUDGE LEE: Thank you.

14 JUDGE QUINN: So -- so we have here some -- some issues of
15 conditionality again. Is there an argument here, one way or another, that
16 while Hotelling does disclose tactile feedback that it is not in response to
17 detecting the long press?

18 MR. DARBY: That is one of the arguments. It's not so much a claim
19 construction argument as it was, I know, in some of the other cases. Here it's
20 a disclosure. It's a disclosure question.

21 And so Smith's taken a narrower view. I mean, if we go back to -- let
22 me take you back to the slide that's got the -- that's got the teachings from
23 Hotelling on it, and I can speak to this issue.

24 So I take you to Slide 13. So paragraph 163, the way that Petitioner
25 submits the skilled artisan would read this paragraph is that the tactile
26 feedback is used to alert the user when you've done an input. One of the

1 inputs is a long touch. So Hotelling teaches us that there's tactile feedback
2 when there's a long touch. Smith's taken a narrower --

3 JUDGE QUINN: It says, tactile feedback can be used in conjunction
4 with a input event.

5 MR. DARBY: Absolutely, and we --

6 JUDGE QUINN: It doesn't say because for -- as a way to inform you
7 that you have performed a touch event.

8 MR. DARBY: So that first sentence, audio and/or tactile feedback
9 may be used to alert a user that a user input has been made, is what we're
10 talking about in terms of alerting the user that they've successfully
11 completed the input.

12 And so I think that is consistent with the in conjunction with because
13 one of the touch events, touch inputs, is the long touch. And so what
14 Hotelling is teaching us is that as we're meeting these different thresholds or
15 having these different events, we can be giving tactile feedback to signal to
16 the user that that's been successfully completed.

17 And when we're invoking a menu, that makes all the more sense
18 because we want to give a cue to the user that it's time to use the menu. And
19 so you could imagine, for example, you're putting your finger on these
20 application icons and you're carrying your device and you're sort of, maybe
21 multitasking, doing some other things, that visual cue alone may not be
22 enough because, one, you may be obscuring some of it with your finger, but,
23 two, you may be looking elsewhere. And so that's why the tactile feedback
24 to alert the user that you've successfully completed an input, and it's now a
25 cue for you to use that which you invoked is not only informing the reading

1 of Hotelling, but also providing a motivation for why it would have been
2 obvious to do.

3 If there are any further questions on this issue, happy to take them.
4 Otherwise, I'd move to the next and last.

5 Okay. With that, I'd turn us to Slide 23 together. So this, we're now
6 moving away from the duration scenarios, the long touch in order to get the
7 tactile feedback, in order to get the menu, we're now talking about once the
8 menu is up and you're interfacing with the menu, and what this claim
9 element requires is that you're going to use a slide or a swipe to change some
10 aspect of the display of the menu. It's exceedingly broad language, and it
11 doesn't say what kind of change you have to make, but any way you change
12 the menu with a slide or a swipe would satisfy the claim element.

13 And so given the breadth of the claim, we have five different
14 independent reasons set forth in the petition, any one of which would do the
15 job of meeting this particular claim element. And on Slide 24, this is an
16 excerpt from the reply, just summarizing the five different independent
17 mappings, and the one I'd highlighted on the Slide 24 here is the scrolling of
18 the menu. And so that's what I highlight for our discussion today.

19 We turn to the Cho reference for this teaching. The top right-hand
20 side of the slide is an excerpt from Cho's paragraph 27 -- 127. And as you
21 can see from the figures, Cho is another one of these touchscreen mobile
22 devices. And it can do all sorts of things with long touches and short
23 touches, slides, swipes, or, what Cho calls them, flicks and drags.

24 And so one of the things it can do is that once you've invoked one of
25 these windows that has selectable menu options, you can interface with it.
26 You can change the size of it by doing a drag; that would meet the claim.

1 You can scroll through it; that would meet the claim. You can dismiss it;
2 that would meet the claim.

3 And so in particular we're pointing to the scrolling feature here for --
4 highlighting that for today's discussion. And so we have to ask ourselves -- I
5 don't think there's a question about whether Cho describes changing some
6 aspect via a slide or swipe, but the question is about motivation. Why would
7 somebody add the scrolling functionality?

8 And so we would submit that this again is right out of KSR. We have
9 a very well-known element that's been used in terms of scrolling, been used
10 in mobile devices for a very long time, and it's been used for this exact
11 reason in order to scroll a contextual menu. It's something that's been known
12 for more than a decade before the '212 patent in 2011.

13 And so when you're using known elements according to their
14 established functions in a very predictable way to add functionality to a
15 device, that's obvious. So we submit that there's very much a motivation
16 here for that.

17 JUDGE QUINN: So if we go with -- we do have five ways in which
18 to meet that limitation, correct?

19 MR. DARBY: Absolutely, yes.

20 JUDGE QUINN: So I understand you want to focus on that one. But
21 if we find that the highlighting of the menus with Martyn is sufficient, do we
22 need to reach any of the other alternative ways?

23 MR. DARBY: Not for the independent claims. Some of the
24 dependent claims -- some of the dependent claims map to specific ones of
25 those, of those five. For the independent claims, if -- any one of them will
26 do.

1 JUDGE QUINN: Okay.

2 MR. DARBY: I think with that, unless there are further questions
3 from the panel, I'm happy to pass the podium.

4 MR. LEVENTHAL: I am ready when you are.

5 JUDGE QUINN: All right. You may proceed.

6 MR. LEVENTHAL: Thank you. Good afternoon, Your Honors.
7 Daniel Leventhal for Patent Owner. Going to go over the exact same three
8 issues that Counsel just went over. My slides are in a slightly different
9 order. So I'm going to start with the haptics concept that we talked about,
10 and if I could direct the panel, please, to Slide 20 of Patent Owner's
11 demonstratives.

12 So again, as Counsel talked about here, what we have is a claim
13 element. And just I think we're all in agreement on this from taking the
14 notes, there is not an issue as there was in the Wednesday proceeding of an
15 argument that when gives -- that there doesn't need to be a causal
16 relationship here. I think we're all in agreement on that. And what makes
17 that absolutely positive is, as Counsel said, all of these independent claims
18 rise and fall together.

19 And Claim 84 says based on. So we can -- if we assume when and
20 based on in some cases means something different, I think in this case we
21 want to go with the stricter one, based on, here.

22 So what we need to find in the reference in the proposed combination
23 is that there is haptic feedback based on passing this second threshold, this
24 time threshold. The long touch has been registered, as Counsel explained.

25 So the question here is, does Hotelling disclose or render that
26 obvious? And the answer is no. And it begins from the general point that

1 Hotelling does not say haptics is good; and therefore, any use of haptics that
2 would be useful is obvious.

3 Hotelling describes using haptics in two instances, neither of which
4 would result in what is being proposed, which is the only thing that would
5 meet the combination. And I'm going to summarize those and then go
6 through the specification for each of them. But the two things that Hotelling
7 describes using haptics for is first simulating physical touch.

8 Simulating physical touch, I don't think there's any dispute here,
9 would not meet this limitation because you would have a physical push
10 down when you push down, and that would be a physical touch. Upon the
11 beginning of the touch, you'd be simulating pushing down on the key. And
12 then at whatever random time the user chooses to lift up that touch, you
13 would -- could then have other haptics simulating the lift up of the touch.

14 But even if a user tended to put that finger down, and there's a secret
15 timer that the device knows and the user doesn't, and the user happened to
16 lift it up at the exact time that the second threshold was hit, that does not
17 meet the claims because you would have provided that feedback based on
18 the lift up, not based on passing the second scenario. So I want to emphasize
19 that. So the first idea here of you do it to simulate physical touch, there's no
20 way for that to meet the claim.

21 The second way, and, again, I'm going to go into the very specific
22 words of the specification as we go through each of these, is what is called
23 an alert. And what we'll see in the specification is alert is not just a catchall
24 of, hey, I want to alert you that you did the touch. Alert refers to system
25 events like your battery's low, things like that. It's very specific on it.

1 And so the answer, Your Honors, is what Hotelling teaches a person of
2 ordinary skill is it's good to do haptics for an alert. It's good to do haptics to
3 simulate physical touch. We accept that; you can implement that; you can
4 build a device that does that. It does not meet this claim element. And so --

5 JUDGE FENICK: Mr. Leventhal?

6 MR. LEVENTHAL: Yes, Your Honor?

7 JUDGE FENICK: Looking at the paragraph that we're seeing on
8 Slide 21, paragraph 163.

9 MR. LEVENTHAL: Yes, Your Honor.

10 JUDGE FENICK: It says -- the first highlighted sentence says, the
11 tactile audio feedback can be used in conjunction with an input event,
12 including touch events, motion events, squeeze events. But I think your
13 argument is that this paragraph only describes haptics or touch events.

14 So my question is, how do you -- and I understand your argument is
15 that it also describes elsewhere alerts. But how does that -- how do you
16 confront the fact that motion events and squeeze events are also discussed in
17 this paragraph?

18 MR. LEVENTHAL: Judge Fenick, I think you've absolutely
19 identified where the rubber meets the road, which is what do those words
20 mean in the abstract?

21 And I would take it in two things. So first of all, answering your
22 question on motion events and squeeze events, those are also physical
23 manipulations of the device. That's how I read it. A squeeze event, you
24 squeeze the thing, so -- and then motion event, you move, you drag a
25 physical knob, like, you know, devices used to have.

1 So I read motion event and squeeze event as fully consistent with the
2 general purpose here of simulating the physical -- the physical device. And
3 we'll get into a little more when we talk about Hotelling generally. That's the
4 purpose of Hotelling.

5 Hotelling is a multifunction device. And what it said is we want to
6 combine existing physical devices that everyone knows, an iPod that has
7 physical buttons and a screen, a video game device that has physical buttons,
8 maybe sliders and a screen. That's the purpose of Hotelling, to virtualize
9 each of those and virtualize the buttons.

10 And so motion events and squeeze events here, I read as consistent
11 with the idea that this is all what -- this is all describing making it feel like a
12 physical device, which is, at bottom, what Hotelling is about 100 percent.
13 That's its goal.

14 And, Your Honor, I thought you were going somewhere else. And
15 what I was going to say in Slide 21 is we think the word input event, that
16 first one, is being taken out of context and just said, well, input event's
17 broad.

18 So a long touch is an input event, so I did not provide haptics in
19 response to that. And the answer to that point that we believe the Petitioner
20 made in the papers is that's reading input event wrong in the abstract, not in
21 the context of paragraph 136 and 131, 132 as well.

22 And that's what Dr. Madisetti's testimony on the right-hand says, is,
23 look, everything here is about the physical touch. It is about simulating what
24 it would be if you touch the physical device. And so again, the word input
25 event is not carte blanche to then turn around and pretend we're in the touch
26 world and say, well, long touch is an input event.

1 The entirety of this paragraph is talking about simulating physical
2 touches. And so that would be in response to Petitioner. I hope I answered
3 your question about the other two terms.

4 JUDGE FENICK: Thank you.

5 MR. LEVENTHAL: Thank you. So then if we go on to Slide 22.
6 Slides 22 and 23 are, again, the collection of testimony, both on the left-hand
7 side, the citation from the reference, and on the right-hand side, Dr.
8 Madisetti's testimony. And my refrain is the same.

9 It is that the word alert in the abstract, you can't then say, okay, well,
10 it's alerting you that you passed the threshold to be a long touch. That's not
11 what Hotelling meant. Hotelling is very clear that it says on Slide 22, we're
12 talking about the alerts that we described above.

13 And then if you go to Slide 23, we've included the above. And there it
14 talks about system events such as status of battery life or an incoming call.
15 So we don't think the word alerts is shorthand for, hey, put haptic feedback
16 on there because you've done a touch event, because you've exceeded a
17 threshold for a long touch, and we don't think input events is there. And that
18 is the sum total of what Hotelling tells you to do with haptics.

19 And if there are not questions, that's all I have to say on that first point
20 on haptics. So that's the summary, is we agree Hotelling says haptics are
21 good in these specific situations; use them for those purposes. POSITA
22 would be motivated to do so, would not reach the claims by doing so.
23 They'd add it at different times for different purposes.

24 So if we could now, the next topic to discuss is the motivation to add
25 the long touch. And if I could, I'd like to go to Slide 12 and talk about -- just

1 take a step back and talk about what Hotelling is about. And I started
2 previewing this a little bit.

3 So on Slide 12, we have the summary of the invention of Hotelling.
4 And the idea of Hotelling, as I said, is you have a series of physical devices.
5 And if you have Exhibit 1004, pages 6 and 7 of Exhibit 1004 show a series
6 of physical devices that will look familiar to many of us of a certain age, I
7 think most of us in this room, but not to my son and others, of physical
8 devices that had buttons, physical buttons, and a screen. And the idea of
9 Hotelling is that we're going to virtualize all of these.

10 We're going to take -- and I'm at page 6 now of Exhibit 1004. You can
11 see Figure 11 looks very much like an iPod. That is what it is supposed to
12 be. It's showing the simulation of the physical buttons and then where the
13 screen area is.

14 Figure 9 to the left of Figure 11, that's a PDA. Figure 10 to the left of
15 Figure 9, I believe that's a calculator. And so you have a number. And
16 Figure 13 is a gaming system. And so the idea of Hotelling at bottom is in
17 order to have all of these different devices that were present at the time and
18 were the combination of a screen that displayed information and physical
19 buttons, what we're going to do is create graphical user interfaces for each of
20 those that virtualize the buttons and replicate the screen.

21 And if we can go back into the slides, on Slide 14 we have an example
22 of how is that done in a more granular level. So on the right-hand side we
23 have the description of the -- of this example of a music player. And this is a
24 music player graphical user interface. And the key things to understand here
25 is that we have this consistent labeling in every single one of these virtual
26 graphic user interfaces. 152 is the standard region that's simulating where

1 the screen used to be and where you're going to have what they call list
2 items.

3 And 154 is known as the control region. And there you're going to
4 have the virtual buttons. And so this is the description of how you do that
5 for a music player. It's Figure 11. Now, if we go to the left-hand side, what
6 we have at the top left is the description of the -- is the description of the
7 specification of what is meant by the touch vocabulary shown in Figures
8 27A through E. And it says -- this same paragraph appears twice in the
9 specification. It's the only time the specification tells you in any way how
10 you are supposed to use Figures 27A through E.

11 And it says it's for a music player. So that is the number one point
12 here, Your Honors, that this describes a music player. And I'm going to read
13 a little from Figure 27A. This may be too small. It may be easier to go to
14 page 12 of Exhibit 1004. But the important thing I want to point out, Your
15 Honor, is what Petitioner is focused on is the fourth row of Figure 27A
16 where it describes the feedback as context sensitive menu pop up.

17 Where does it say you do that? And this is in the middle column
18 called Touchdown Location. It says on a virtual button. And what is
19 important, Your Honors, is if you look up and down that column of
20 touchdown location, the answer is not always the same. In the second row,
21 it's on a virtual button or a list item. In the row below what we're talking
22 about, it's anywhere.

23 And so this is specific teachings of how we're going to optimize this
24 in a specific way. And here what they have told you is a virtual button
25 which we know appears in a control region. That's where you should use
26 this. And so with that background, Your Honor, if I could go to Slide 26. So

1 I'm going to make the blindingly obvious point first and then go into more of
2 the details.

3 If you follow, literally follow what Hotelling says, you do not apply
4 Figure 27A to the main menu graphical user interface, Figure 18, because
5 Hotelling says apply it to a music player. Dr. Cockburn kicked and
6 screamed a little bit but never would -- you know, he said -- but I think
7 Counsel said it best. The music player has -- the main menu GUI has a
8 menu, a button to go to the music player GUI, but it is not itself a music
9 player GUI.

10 I don't think there's really any credible dispute over that, if there's any
11 dispute at all. And so if you follow the literal language, you do not get there.
12 Now what else, because we are in obviousness realm, what else would you
13 learn by that? And why is it that Patent Owner is saying you simply would
14 not get to this point?

15 Again, if we just go to Slide 27, this is Dr. Madisetti's testimony,
16 which again is just to confirm what I hope is blindingly obvious and is not
17 disputed, but that graphical -- that main menu GUI 18 is not a music player.
18 So if you follow the literal instructions, you don't get there. But why is it
19 that it's -- and if we then go on to 28, this is very important.

20 Why is it so clear that Figure 27A meshes so well with Figure 11, and
21 it's the background that I gave Your Honor that you have a control region
22 and a standard region where you have list items. That is the characteristic of
23 Figure 27A -- of Figure 27A and Figure 11 that match up together.

24 So the idea here is, let's say, and this is part of the disclosure of
25 Hotelling, you have a list of songs or you have a list of albums that is shown
26 in the general region at the top. Figure 27A nor anywhere else in Hotelling

1 says long pressed on the name of a song and have a context menu come up.
2 The only place it tells you to put a context menu is the simulation of the
3 physical buttons on an old school iPod. That's the only place it says to long
4 press.

5 And so I would submit, Your Honors, that not only does it not literally
6 get there, but if you follow the teachings, you follow the understandings,
7 what we're talking about with these names of -- what we're talking about
8 with these names of applications here, that's closer to a list item.

9 I mean, number one, Figure 18 does not have a general region. It
10 doesn't have a control region. So there's no way to apply the understanding,
11 but it just doesn't match. Figure 18 just does not match, in any way, the
12 teachings from Figure 27A.

13 And if we go to Slide 29, again, if we reach the point, and, again, we
14 don't think there's any teaching in Hotelling that says use this technique in a
15 main menu GUI, period. We don't think it's there. But Your Honors say,
16 you're wrong. It's that -- we're going to go there. You still would not arrive
17 at the invention because what you would do, and we show this on Figure 29,
18 is if you have Figure 27 and Figure 27, this touch vocabulary is based on the
19 idea of, I have a control region and I have a general region, well, the main
20 menu GUI you would use is Figure 9 because that's a PDA. And a PDA
21 launches lots of different apps, and it has a main menu.

22 And so what would happen is these buttons that represent each of the
23 app would be in the control -- it would be in the general area and then you
24 would have the virtual control buttons, as Figure 9 shows. And what Figure
25 27A would do is say put your long touch on one of the virtual control
26 buttons.

1 And again, that is a teaching that could be derived if you just wanted
2 to force it and say I need to do a main menu. It would not meet the claim
3 limitations because the claim limitations they use the word indication that
4 everyone agrees here is being mapped to an icon for an app. So you would
5 not long press on the representations of the app. You would long press on a
6 virtual button in a control region.

7 JUDGE QUINN: So any mapping to a virtual region that has -- it's
8 being represented as a virtual representation of buttons or controls that
9 mimic an actual tactile interface with the device, that is not an indicia in this
10 case?

11 MR. LEVENTHAL: I thought you were going somewhere else with
12 the first two thirds. So let me process that. So the mapping that -- so let me
13 say in this way what I understand Petitioner's mapping to be in, and Counsel
14 can correct me if I misrepresent it, is pushing in Figure 18 the button that
15 says music player. So that's -- that -- or, you know, the icon that says music
16 player.

17 JUDGE QUINN: Right. I mean, their position is that the icons are
18 the --

19 (Simultaneous speaking.)

20 MR. LEVENTHAL: Right.

21 JUDGE QUINN: -- but if -- but what do we do with the teachings
22 that you can use any portion of the display to have other things that you can
23 interact with that have functionality you can program in the device that will
24 give you tactile feedback would not also be applicable to the icons?

25 MR. LEVENTHAL: So what I would say, Your Honor, is that when
26 we see in Figure 27A, do it on the virtual buttons. Virtual buttons. And I

1 want to be very clear, the word virtual button is used to describe these icons
2 in Figure 18.

3 So I don't want to run away from that. We don't believe that's the
4 same use as it is in 27. We think it's what -- but because the bottom line is in
5 27, it's talking about a representation of a physical button. And there is no
6 such device that lives out there that has no screen at all and just has a bunch
7 of buttons to change modes that -- that doesn't physically exist.

8 And that's why we think the representation of Figure 18 just doesn't
9 match 27 at all. What if you just needed to get a main menu GUI and you
10 needed to get there, you do something that looks like Figure 1 on our Slide
11 29, which has the icons and they're touchable.

12 They have the icons, and they're touchable in the top region, the
13 general region, and then has virtual buttons in the control region. And
14 following that understanding of kind of this modification of Figure 9, all
15 Figure 27 would tell you to do is long press to get a context menu on the
16 virtual buttons at the bottom, not on the icons at the top, which are the
17 mapped indicia.

18 JUDGE QUINN: I understand. It sounds a lot like a bodily
19 incorporation argument. That's why I'm pushing a little bit, because all these
20 teachings are in the same reference.

21 MR. LEVENTHAL: They are, Your Honor, and let me get to that
22 point. If we could go ahead to Slide 32. This is, again -- what we've shown
23 on the screen on Slide 32 on the right-hand side, that's the sum total. There
24 is no logic here. There's no explanation.

25 The petition, again, just -- and, again, Your Honor, I understand your
26 point that obviousness and everything else, but the bottom line is it's the

1 burden of the Petitioner to explain in the petition why you do this, and they
2 did not.

3 There's no explanation there. They just took something that very
4 explicitly says music player, and then they took something, and then they
5 said, we'll put it here, and that just doesn't match. And just also to directly
6 answer the bodily incorporation point that Your Honor just mentioned, my
7 first statement of it tells you to use a music player, that's bodily
8 incorporation. No dispute there.

9 I'm just saying that that's all they pointed to. So that's all that you
10 would directly learn. I'm not saying that there couldn't be obviousness
11 arguments for more, but I would push back on the idea of what Figure 27A
12 assumes is that you have a general region representing information from a
13 physical device, and you have a control region representing what used to be
14 physical buttons. And the only thing it tells you to press -- long press on is
15 what used to be physical buttons.

16 Figure 18 has nothing that used to be a physical button. We win.
17 That's what I'm saying. So I do think I'm going well beyond what it says.
18 I'm saying what it teaches you. It teaches you put it on a representation of
19 what used to be a physical button, and that is not Figure 18.

20 JUDGE QUINN: Doesn't Petitioner have additional arguments of
21 obviousness? I mean, the rationale doesn't in and of itself come from
22 Hotelling. They have other arguments that are more of the general KSR
23 nature.

24 MR. LEVENTHAL: So I may not be directly answering that, but I do
25 want to point out, and then I will answer your question very quickly, that we

1 disagree that they pointed to Martyn's press and hold as what they're trying
2 to adopt here.

3 That was this morning in '758. That's not in '212. We think it's very
4 clear on page 29 of the petition that says the discussion at element 1.c further
5 shows that comma through Hotelling, comma the combination includes the
6 notion of triggering the display in response to a long touch. And that's
7 petition 29 through 30.

8 So, Your Honor, I would say that I guess I did answer your question.
9 But number one -- they didn't point to Martyn. That was '758. '212 petition
10 does not point to Martyn. And, again, in terms of the general, this is great to
11 do. Again, that was not their mapping. Their mapping was, we are adopting
12 Figure 27A. So that's how we read their petition.

13 And I would, Your Honor, if I could briefly point to Slide 14 of
14 Petitioner's slides. Actually -- I apologize. That's the wrong thing. So I'll
15 just say this. But it's not on point. This is the tactile feedback point that we
16 already passed. I just wanted to point out on Slide 14 that this relies -- this is
17 the supplemental declaration. It relies on Exhibit 1060, which was not filed
18 until the reply was filed.

19 So we would disagree that that's support from the petition. But I
20 apologize, that was the wrong argument. But in terms of this, no. Again, we
21 believe petition 26 through 27 says that they're just acting like this is a quasi
22 anticipation. I'm just taking this stuff from Hotelling, the idea of why we got
23 there. No, we don't believe it's there.

24 And, Your Honor, if we go to Slide 33, I'm not going to read each of
25 these both because my eyes cannot handle it at this point of the day. But
26 what we've shown visually on Slide 33 is this is Petitioner's reply brief, Your

1 Honor, that points out, I think what you were getting at. All these more
2 general reasons and each of the red boxes indicates that nothing in here, you
3 know, that these motivations to combine Figure 27A and Figure 18, they're
4 all new and untimely.

5 That is all I had on the second point, pending questions.

6 Okay. So the third point, if we could go to Slide 35, so again,
7 hopefully we are going to -- we are doing a good job, Mr. Darby and I, of
8 narrowing down the disputes here. So agree there are five theories. Agree
9 one of the any of the five is good enough for the independent claim. As Mr.
10 Darby said, it gets a little more complicated for the dependent claims. And
11 Slide 35 has a table to help. And I'm sure Mr. Darby will let me know if we
12 whiffed on any of those in terms of which ones are mapped for each of the
13 dependent claims.

14 So that's just housekeeping for everyone's benefit. Bottom line here,
15 we -- and there are five mappings. There were five swings and misses. So
16 I'm going to go through each of these five. None of them work.

17 So if we could go to Slide 36. The first of the five theories is that you
18 would want to swipe in order to move the highlight that Martyn used in its
19 non touchscreen device. We heard the exact opposite this morning in the
20 '758 that once you get from non touchscreen world to touchscreen world, it's
21 Petitioner's petition that a highlight doesn't make any sense. There's no point
22 to it at all.

23 So the question is, why would the highlight from Martyn -- there's
24 nothing in the petition that explains why the highlight from Martyn, the
25 purpose of which was to use physical buttons on our Nokia candy bar to

1 move, to drag using the physical buttons, a highlight on the display screen,
2 to understand which application you've displayed.

3 There's just no reason for that. And so there's no explanation in the
4 petition of why the highlight would be there in the first place, let alone why
5 you would want to use the highlight, let alone why you would use a swipe to
6 do it. And I note --

7 JUDGE QUINN: I thought there was an explanation. Highlight gives
8 you -- gives the user a visual indication that that's the selection you're about
9 to click on?

10 MR. LEVENTHAL: Well, if that's the case, then why is it a swipe?
11 Then why wouldn't it be a tap? And so, again, I don't think there's any -- the
12 reason why the highlights are there -- I'm sorry, Your Honor, I didn't see you
13 were about to talk.

14 JUDGE QUINN: No, I was -- keep going.

15 MR. LEVENTHAL: The reason why the highlight is there in Martyn
16 is to indicate where you have physically moved your cursor using your
17 physical buttons. That highlight has no purpose in this touchscreen
18 implementation, where the whole beginning of the theory is you're going to
19 tap on an icon to select it.

20 And, I guess, even further, Your Honors, I probably -- we're actually
21 talking about the App Snapshot. So I apologize. That's the wrong little
22 figure we should have up there. We actually have to go one figure further in
23 Martyn, which is you have your App Snapshot. Again, the claim requires
24 that you tap this claim to meet it. You have to tap. There's a -- that's step --
25 there's a selection touch that's 84F. It is 1 -- 1.e. There's a selection touch for
26 once your quick menu, your App Snapshot, is up there. You have a selection

1 touch. So it's just you've done your selection touch. You've already selected
2 what you want in the app menu. This swipe comes later. There's just no
3 purpose for it. So that's our view on theory number one.

4 On theory number two, the theory number two is that you're going to
5 navigate hierarchically through this quick action menu. And the reason you
6 would navigate hierarchically is what's missing. This is a quick action
7 menu. The entire purpose of it is easy access.

8 There is nothing in Martyn that suggests there are multiple
9 hierarchical menus to a quick action menu. There's nothing in Martyn that
10 suggests that you would in any way ever want to have nonvisible options
11 because that's completely contrary to the purpose of a quick action menu.
12 The whole purpose of a quick action menu is quick action. Every single
13 option you have available is displayed.

14 And on that point, this overlaps with theory three. And so if we could
15 go to Slide 40, I'm going to start with Dr. Cockburn and then go back to
16 Slide 39. Dr. Cockburn had no reason why there would be nonvisible menu
17 items in this quick action menu. He couldn't say Martyn should do it.
18 There's no reason why to do it. It's contrary to the purpose of Martyn. And
19 for that reason, both two and three fail.

20 First of all, you're definitely not going to have hierarchical menus.
21 Everything's displayed. Second of all, theory three is that you would swipe
22 to get items that are off the screen. There are no items off the screen. The
23 App Snapshot of Martyn does not have items off the screen. And I
24 mentioned Dr. --

25 JUDGE QUINN: Well, doesn't Martyn have a long menu, a short
26 menu and a long menu?

1 MR. LEVENTHAL: So, Your Honor, what -- Martyn -- let me make
2 sure I'm answering --

3 (Simultaneous speaking.)

4 JUDGE QUINN: I mean, so there are options that are not displayed
5 in the short menu, so you can get to the long menu.

6 MR. LEVENTHAL: Once the App Snapshot is displayed, every
7 single option of the App Snapshot is displayed. So the first thing you'd see
8 on the little screen is mail, phone, messages. Once you decide mail is what
9 you want the App Snapshot for, everything for the mail App Snapshot is
10 displayed on the screen. And so there's no hierarchical menus.

11 So that ruins figure -- theory three. There's no quick action items that
12 are not shown. So that ruins theory three, which is I want -- I need to scroll
13 to unknown items. That just does not exist in Martyn. So it's a theory that
14 does not match Martyn.

15 And on Slide 40, we've had Dr. Cockburn's testimony, and on Slide
16 39, we have Dr. Madisetti's declaration explaining the same thing. So there's
17 just nothing not seen there.

18 The fourth one, Your Honors, and now I'm on Slide 41, is that you
19 would like to resize the menu.

20 And so let me pause --

21 JUDGE QUINN: Excuse me. You're on Slide 41 of your
22 demonstratives?

23 MR. LEVENTHAL: Yes, Slide 41 of my demonstratives.

24 JUDGE QUINN: Okay.

25 MR. LEVENTHAL: Sorry. And let me again pause and show
26 agreement here. We are not suggesting that Cho, as a third reference, does

1 not describe resizing a window. What we take issue with is why. This quick
2 action menu, there's nothing in Martyn to suggest the quick action menu
3 needs to change size, would change size.

4 It is contrary to the very basis of a quick action menu to have to do
5 anything other than the perfect size to display the perfect amount of
6 information that you can quickly get to is there. So that is our problem with
7 theory three -- excuse me, theory four.

8 Theory five is that Cho has a dismissal swipe. And the bottom line is
9 Martyn already teaches multiple ways that the App Snapshot can be
10 dismissed. So this is, again, just hindsight, just trying to find something that
11 would meet the claim, not actually addressing any problem, adding
12 something useful in any way. So that's -- that's our response to each of the
13 five, five swipe theories.

14 JUDGE QUINN: So it sounds to me like a lot of your arguments are
15 based on that there's no motivation to combine because -- because you
16 wouldn't necessarily find this useful or beneficial.

17 MR. DARBY: Correct, Your Honor.

18 JUDGE QUINN: And you have expert testimonies.

19 MR. LEVENTHAL: We do for each one, Your Honor. And it's -- it's
20 on each of the slides. I know I went quickly.

21 JUDGE QUINN: You don't have any arguments that I see here on it
22 wouldn't work, the combination wouldn't work as intended.

23 MR. LEVENTHAL: I would say that for hierarchical menus and for
24 scrolling, both of those, it wouldn't work as intended because there is no
25 hierarchical menu and there's nothing unshown. So you'd be adding
26 worthless functionality.

1 JUDGE QUINN: You're talking about Hotelling at this point?

2 MR. LEVENTHAL: Martyn's App Snapshot applied to Hotelling. If
3 you did that, the entire App Snapshot would be displayed in a fixed-size
4 window displaying every single element because that's what Martyn teaches
5 and that's the heart of the idea of having a quick action menu.

6 So all of these things about resize the window, scroll the things off the
7 screen, scroll the hierarchy, they're incompatible is what I would say.

8 JUDGE QUINN: But, I mean, a quick action menu will still work.
9 It's just longer.

10 MR. LEVENTHAL: Well, I would say if the idea is, first, we're going
11 to add unseen items and then we're going to scroll, the initial step of adding
12 unseen items is not found in any reference, not suggested. It's not a good
13 idea, and Martyn teaches away from it. And we have testimony on that.

14 JUDGE QUINN: So you're also relying on teaching away.

15 MR. LEVENTHAL: No, Your Honor, just for the purpose of -- you
16 would not interpret Martyn as the -- every single embodiment of Martyn
17 shows every single -- everyone's in agreement that every single embodiment
18 of Martyn shows an App Snapshot where every possible option is displayed.

19 What I'm saying is a POSITA would not interpret Martyn, nor would
20 they modify Martyn, to add unseen items because that would be contrary to
21 the purpose of Martyn, which is quick display, not a bunch of touches, et
22 cetera.

23 And unless there are other questions, those were the three points.

24 JUDGE QUINN: All right. Thank you.

25 MR. LEVENTHAL: Thank you.

26 JUDGE QUINN: Are you ready, Mr. Darby?

1 MR. DARBY: I am ready. Thank you.

2 JUDGE QUINN: Okay. You may proceed.

3 MR. DARBY: Thank you. So just a few issues to touch on, and I'll
4 start with tactile feedback. So with respect to the teachings of Hotelling --
5 and we have two arguments. One of them is that Hotelling teaches the
6 tactile feedback when there is a long touch. There's also the motivation to
7 combine, which we talked about earlier as well. Those are two different
8 arguments.

9 I do want to go back to the teachings of Hotelling on this point. And
10 there was some talk about Hotelling being limited to this idea of mimicking
11 a physical button. And I just don't think that can be squared with the
12 language of Hotelling. Specifically, 163, that first sentence tells us that
13 tactile feedback may be used to alert a user that a user input has been made.
14 That isn't limited to the idea of simulating a physical button.

15 And if we just scroll back up in the same column -- so this is
16 paragraph 61. It's in the same column as paragraph 163. Hotelling is talking
17 about the many different ways you can use tactile feedback. For example,
18 you can use it simultaneously with onscreen actions. So there are different
19 ways to use tactile feedback with respect to Hotelling. And there's more.

20 Hotelling incorporates by reference another document. And as we
21 explained in the reply and their citations to the record for this, that there are
22 other aspects in the incorporated document that talk about using tactile
23 feedback in conjunction with user interface elements like menus as well.

24 So this idea that Hotelling is limited in its application of tactile
25 feedback, we simply can't agree with. We don't think that's right. I also
26 want to talk about the motion events. And, again, that's back at 163. I

1 couldn't tell if Counsel was talking about physically moving the device or
2 something of that nature.

3 But motion events in Hotelling, the way we see it, is talking about
4 motion in terms of touch. And so, again, this is going beyond the nature of
5 only mimicking a physical button. So, for example, if you look at Figure 26
6 of Hotelling, there's this notion of determining if there's motion. So motion
7 events are going to touch movement of the finger or, for example, a stylus.
8 And so, again, there's just no support for this idea that it's limited to a
9 physical button.

10 Moving on, I'll skip now down to the change of display. So there
11 were the five different items that Counsel was going through. One of them
12 was scrolling, which is what I had highlighted earlier, and the notion that the
13 Martyn reference is limited and can only have a certain number of these
14 items, and I just think that's too narrow a way to look at it, even if in those
15 particular figures there are only a certain number of items.

16 Martyn also tells us, and this is at paragraph 26 of Martyn, that the
17 number is user customizable. And so a user could add more than just those
18 small number of items. And if you wanted to get to the items you put in
19 your customizable menu that you can't see, you would scroll through them
20 or you would change the size of it. And we think that those are all very clear
21 reasons for why you would do this.

22 And getting to your point, Judge Quinn, I really think you touched on
23 an important point there, which is even if the menu were longer, and if -- if
24 Martyn tells us he wants a short menu, if we just assume that's true, we're
25 talking about now, would it be better or worse, the best option. But it's not
26 an unworkable option.

1 And, in fact, it's something we see in the record that users do. There's
2 testimony, and I'll give you the citations to this. This is Exhibit 1062. This
3 is Dr. Cockburn's supplemental declaration, paragraphs 56 through 58,
4 where he talks about this idea of many different items being added to a
5 contextual menu and the user is needing, you know, wanting to scroll
6 through in order to view those other menu items.

7 The last point, or next to last point I'd make is with respect to
8 dismissing the menu. And on page 20 of our reply brief, I think I heard
9 Counsel say that the reason there's no reason to -- the reason there's no
10 motivation to use the teaching from Cho in order to dismiss would be
11 because Martyn already teaches ways to dismiss.

12 I think that's been -- that argument's just been debunked by the law.
13 You can look at the Intel case that we cite on page 20 of the reply brief. Just
14 because one reference teaches one way to do it, if it's a known way to do it
15 and -- known technique to accomplish the same thing, that's actually the
16 motivation to combine.

17 So Martyn already teaches it isn't a reason to get away from
18 motivation. It's a way to lean into motivation. Martyn tells us, you need to
19 dismiss the menu, and a known way to do that, Cho says, is to use a slide or
20 a swipe, a drag or flick.

21 The last thing I'd say is just pointing to the testimony of the experts in
22 this case. And I think you've heard both sides, and I know you've heard me
23 say it. I believe you've heard Counsel say it as well, that, you know, if you
24 go look at the expert testimony of Dr. Cockburn for our side or Dr. Madisetti
25 for their side, that's where you'll find the evidence for either party's position.

1 And so I think we have to look at the expert testimony with a skeptical
2 eye and see what's there. We would submit that if you look at the two of
3 them, you'll find Dr. Cockburn's testimony comprehensive and corroborated
4 by many different third-party documents.

5 And if you look at Dr. Madisetti's declaration, I don't believe you're
6 going to find that. I believe you're going to find bare testimony from an
7 expert that doesn't have any backstop to it in terms of corroboration.
8 Additionally, when you see Dr. Madisetti's testimony in these cases, and we
9 don't say this lightly, but we have it in the reply, and it's on pages -- I'll get
10 the citation for you here in a bit. But if you look in the reply of this case, we
11 found through deposition of Dr. Madisetti, the very concerning
12 inconsistencies in his testimony that we think is difficult to overcome in
13 terms of a credibility standpoint.

14 So I won't belabor the point; that's in the reply. This is pages 22
15 through 27. We just encourage you to look at that and to look at his
16 testimony. We don't believe he's credible. And so I think with that, unless
17 there are further questions from the panel, I think I'll leave it there.

18 JUDGE QUINN: So with regards to that testimony, are you asking us
19 to not give it any weight?

20 MR. DARBY: We're asking for you to find it not credible, not to
21 exclude it or anything like that. But we think being inconsistent in your
22 testimony, we think does bear on credibility. So we're asking you to look at
23 those inconsistencies and to weigh it in terms of his credibility.

24 JUDGE FENICK: This is Judge Fenick. I wanted to return to
25 Hotelling and to the combination of functionality with respect to the screen
26 that has the buttons, with the different application buttons. I guess Patent

1 Owner is -- not to -- kind of paraphrase what Patent Owner has said, and
2 apologies if I get this wrong, that Hotelling has different devices, and the
3 different devices include a standard region and a control region, and the
4 standard region is a display. The control region has kind of user interface
5 buttons, and that's separate from the main menu, such as in Figure 18, that
6 the Figure 27 maybe shows how there are proposed behaviors for different
7 buttons in the control regions, but that has nothing to do with the main
8 menu.

9 I was just wondering if you have any -- anything you'd like to point us
10 to about why we should find that the buttons on the main menu should be
11 treated the same way as the buttons in control region 154.

12 MR. DARBY: Sure. I think the primary reason for that, or one main
13 reason for that, is that they are indeed virtual buttons. And I think eventually
14 there was an acknowledgement of that. The Figure 27 does say a long touch
15 on a virtual button. And make no mistake, in Figure 18, and I think
16 everybody agrees here, those are indeed virtual buttons.

17 There's an argument now that they're not the right kind of virtual
18 buttons, but they're virtual buttons, and a person of skill in the art looking at
19 these references, when they see a disclosure of a long touch on a virtual
20 button, they would not look at that with blinders on and only a limited subset
21 of the types of virtual buttons.

22 When you have another graphical user interface in the same reference,
23 and it has virtual buttons, we feel very strongly that the person of skill in the
24 art, who's not an automation, would look at that and understand that you can
25 do a long touch on these buttons. And that would be the natural way to

1 invoke a contextual menu, which, again, was a very well-known thing to do.
2 The evidence in the record shows that.

3 JUDGE FENICK: Thank you.

4 MR. DARBY: Absolutely. If there are no further questions from the
5 panel, I happily pass the podium.

6 JUDGE QUINN: Thank you.

7 MR. LEVENTHAL: I believe we are going to successfully give time
8 back on this one.

9 JUDGE QUINN: Let's see.

10 MR. LEVENTHAL: Judge Fenick, just to answer your question on
11 just where we picked off and certain types of virtual buttons and everything
12 else, what I would point out is that Figure 27A has two types of items, list
13 items and virtual buttons, and makes a very intentional choice to say this is
14 not a touch on a list item. And so when we see the main menu GUI and we
15 have a list of applications, what they're proposing is something different.

16 What Figure 27A was proposing is maybe a list item, a song or
17 something is selected, but you're still going to press the virtual button.
18 That's the representation of a control. It's not the list item itself.

19 Now, what Petitioner is proposing is the long touch on the list item
20 itself. And I would fully agree with the automaton and everything else, that
21 big wind up, and say, yeah, you gotta look at the whole reference. And here
22 you're not looking at the whole reference when you're just trying to say,
23 okay, I found these words and these words match, the end, I'm not thinking
24 about it any further. So that was the only substantive point I wanted to
25 make.

1 On the attacks on Dr. Madisetti, we take issue with those. I will be
2 blunt that some of the language we had in our surreply was taken out by Mr.
3 Robinson, my colleague, because we know none of you want to hear this
4 sniping. So I will just leave you with what we wrote in our surreply, which
5 is six pages of attacks, not a single one of any of those criticisms explaining
6 why Dr. Madisetti did not meet his burden, linking it to any of the disputed
7 testimony in this case.

8 The statement that Dr. Madisetti said, I had not read every word of
9 Hotelling. He then went on to say, I'm a rebuttal expert. My job is not to
10 learn the entire record, every single thing. My job is to understand the
11 portions of the record that were cited, perhaps identify other portions that are
12 contrary, but go on. So that's our bottom line there, is I think the question
13 that was asked is exactly right. How does this relate to any of the disputed
14 testimony? And the answer is it does not.

15 JUDGE QUINN: Well, we can look past this early commentary and
16 get to the bottom of whether it is an actual inconsistency, which is the first
17 threshold. And the second thing is, why does it matter?

18 MR. LEVENTHAL: Yes, and I think the why does it matter is the
19 bottom line here. The bottom line is Dr. Cockburn said he didn't read the
20 provisional that's incorporated by reference to the patent itself that he was
21 challenging, but it's not relevant to anything. So we didn't put it in there. I
22 mean, he didn't read the whole record either.

23 So that's all I have. Thank you, Your Honors.

24 JUDGE QUINN: Is that it? All right.

25 MR. LEVENTHAL: That is it.

1 JUDGE QUINN: Wow. We have successfully concluded a very long
2 day and a marathon of hearings. I am very impressed with your stamina and
3 putting up with all of us and then all this information. It's very appreciated.

4 This concludes the oral argument for IPR2024-01089. The case is
5 considered for submission of preparation for final written decision.

6 Again, I'm going to thank you for your professional decorum, the
7 spirited discussion, and indulging our questions. They've been very helpful,
8 all of the discussions today. Safe travels home to all of you, and we will see
9 you again. I'm sure there's more of these. I think there's a few coming up in
10 November, and I think they'll be here as well. So we will see you then.

11 Okay. Stay safe, everybody.

12 (Whereupon, the above-entitled matter went off the record at 1:13
13 p.m.)

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