

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC
Patent Owner.

IPR2024-01090
Patent 10,725,581 B1

Record of Oral Hearing
Held: October 15, 2025

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

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The above-entitled matter came on for hearing Wednesday, October 15, 2025, commencing at 12:00 p.m. CDT, at the U.S. Patent and Trademark Office, 207 South Houston Street, Room 155, Dallas, Texas.

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

12:00 p.m. CDT

JUDGE QUINN: Welcome to the Texas Regional Office.

We're convened today for the oral argument in Apple, Inc. versus Smith Interface Technologies, LLC, for IPR number 2024-01090. I'm Judge Miriam Quinn presiding from the Texas Regional Office. In the hearing room remotely are my colleagues Judge Jameson Lee joining you from Madison -- the Madison Building and Judge Sharon Fenick. Because my colleagues are appearing via video, I ask that you speak clearly in the microphone so they can hear you. And also they have the demonstratives electronically, so if you can refer to the evidence specifically so they can follow along with you.

Any, are any of you presenting on this screen locally? Okay. They cannot see that screen, so that's why I'm saying that so that they can follow along with you. As you know inter parties reviews are contested proceedings, so we rely on the advocacy of the parties to address the challenges raised in the petition. Our role is to assess your arguments and evidence and weigh those according to the burdens established by the rules.

We have read through the record in this proceeding, and we are prepared to hear your argument. We recognize that during the next three days -- we're going to have additional hearings that are related to this proceeding -- but each proceeding has its own docket, its own independent record. So we ask you that any arguments for the 1090, the case that we are here for today, are made here. So that the record ---and arguments cannot be outside of the record that's in front of us anyway, but I'm just giving you that heads up because of this.

1 From time to time, we'll be looking down. We're paying attention.
2 We're just taking notes. I'm old school. I still use pen and paper. My
3 colleagues may also experience a little bit of lag, so they may interrupt from
4 time to time. I'm not trying to be rude, just trying to get questions in.
5 Counsel is familiar with our process, so I won't repeat what we're here to do.

6 Today each party has 45 minutes total. And you can reserve some
7 time for rebuttal. And I'll program the timer in a minute. Before that I want
8 to say that the court reporter may need to have clarity in the record post the
9 hearing. So I'll ask you to please stay behind and help her with any spellings
10 or anything else that she may need. This order has already been provided, so
11 that should take care of most things.

12 You'll notice -- but I'll say it anyway -- objections are not allowed
13 spontaneously, so if -- you must wait until your argument time to make any
14 objections.

15 Okay. Are the parties ready? All right.

16 Petitioner, how much time would you like --

17 MR. DARBY: Thank you, your Honor. We'll reserve ten minutes for
18 rebuttal.

19 JUDGE QUINN: How much would you like for rebuttal?

20 MR. ROBINSON: Ten minutes as well, please.

21 JUDGE QUINN: When you're ready. You may proceed.

22 MR. DARBY: Yes, your Honor. We're ready to proceed.

23 JUDGE QUINN: Okay.

24 MR. DARBY: I'll start at slide three. Again, good afternoon. This is
25 Kenneth Darby speaking for the Petitioner, Apple.

1 Slide three of our demonstrative, this slide provides an overview of
2 Apple's challenge against the 581 Patent. Apple's petition covers and
3 challenges a subset of the 581 Patent, 73 claims, and the challenge is based
4 on a single ground of obviousness based on the Blumenberg, the Bhumkar,
5 and the Griffin references. The vast majority of the ink has been spilled in
6 this case on the independent claims, claim one and 42. And so that's what
7 I'm going to do today. I'll probably spend most of my time, if not all of my
8 time today, on the independent claims. And even within the independent
9 claims and the disputed issues there, I really want to hone in and focus in on
10 the claim construction question with respect to the word "when," which I
11 think has taken center stage in the party's briefing.

12 Before I get there, and just before I any further, I'll say, I won't
13 belabor the point, but the 581 Patent is about touchscreen devices and web
14 browsers. And the critical date, the alleged critical date, the earliest claim
15 priority date is August of 2011. And just for some context, by that time,
16 Apple had already released multiple versions of the iPhone.

17 In fact, if you look at the 581 Patent and you go all the way to the end
18 of the lengthy specification, which you'll find is a number of different Apple
19 patent publications incorporated by reference. Again, showing that this
20 technology was already known. And in fact we're talking here about a
21 combination of known elements and we certainly understand that known
22 elements is not enough to prove obviousness.

23 We have to prove also that it would've been obvious for a person to
24 kill the art to combine those known elements. We've done so in the petition
25 and we've done so throughout the proceeding and we'll talk about that today.
26 I will briefly jump to slide 38 if I could.

1 I mentioned at the onset, I'm pretty sensitive to just jumping into the
2 claim construction because I know that's the big ticket item in the case. I do
3 think it makes sense to spend a little bit of time just getting a shared baseline
4 in terms of the claims at issue and the Blumenberg reference in particular,
5 just to set the stage.

6 But before I go there, I do want to show this map so we can just look
7 at the big picture together and just think about what that means. And so we
8 have a flow chart here on our slide 38. A little complicated. There's not a lot
9 to take away from it. Right now there are two main things. We'll come back
10 and we'll talk about it more.

11 The two main things to keep in your mind, and one of them is this. If
12 you side with Apple on the claim construction issue with respect to the word
13 "when," that puts the issue to bed. If you side with Smith, the patent owner
14 of this case on construction of the word "when," the story continues, and
15 that's because Apple's petition puts forward two additional arguments with
16 respect to the construction that we know Smith has raised.

17 In this case, and so we'll get there. I'll come back to it. I just want -- I
18 just want to have that --

19 JUDGE QUINN: Are you referring in these boxes to the left of the
20 claim construction one "in response to" not being the first one and the
21 second one, are you referring only to claim 42 then?

22 We're talking about both of the independent claims, claims one and 42
23 because what does this mean in response to --

24 MR. DARBY: So the claim construction issue indicates is whether
25 the word when just means when a conditional relationship, which is Apple's

1 position, advance in the petition and throughout the proceeding in response
2 to the causal link comes from Smith Construction.

3 That's their proposed construction. That there's no difference between
4 the word when and the phrase in response to. And so --

5 JUDGE QUINN: I thought the argument was a little different. I
6 thought the argument more of a causal relationship or a causal connection.
7 I'm not sure that it needs "in response to." I guess you could say it's a
8 cause-and-effect situation. But in any event, I do want to hear what your
9 proposed construction is and why do you think it's the proper construction.

10 MR. DARBY: Absolutely. I'm happy to jump to that now if you
11 prefer that I -- okay. Absolutely. And so let's do that. Let's go straight to
12 the claim language. And in fact, I'd take you to slide 37.

13 And here are the party's respective constructions on this particular
14 slide. And what on the left hand side is slide is Apple's construction, and
15 this is put forward in the petition. The first bullet Apple proposes that when
16 means when "when" is a broad term, and it's one that's used in this claim.
17 The language unmodified "when" stands alone. There's no modifier attached
18 to it. There's no further limitations attached to it. And so our position is that
19 "when" just means that, and it establishes a conditional relationship.
20 Meaning just correlation, two things are correlated. So in this claim for --
21 sorry.

22 JUDGE QUINN: So you're taking a position that "when" is the plain
23 ordinary meaning?

24 MR. DARBY: Yes. And specifically what we mean by that?
25 Because I know a lot of people say it's plain and ordinary meaning, and they
26 don't say what they mean by the plain ordinary, meaning. I hear you.

1 JUDGE QUINN: That's where I am going because you said plain,
2 ordinary meaning, but it seems to me that patent owner is also taking the
3 stance that it's plain and ordinary meaning, and it's just nuanced in some
4 other way and you're both arguing the same thing. But like ships crossing in
5 the night, you're not really hitting the issue here: that "when" really is a
6 temporal limitation, or the temporal word. And you are both asked – arguing
7 cause-and-effect. So do you have support in the specification for reading the
8 "when-then" relationship as not having a temporal relationship to the things
9 that have to happen during the "when" clause, as things do happen in the
10 output clause?

11 MR. DARBY: Sure. We do have support in the intrinsic record. And
12 I'll get there. I do. Before I go to the record, want to make clear our
13 position because I -- I certainly hear you in terms of everybody's saying
14 plain meaning, but what is the plain meaning? So just to maybe put a finer
15 point on that. We are saying that there is a conditional relationship and
16 nothing more. Requiring correlation but not causation. And it is the second
17 bullet here on our slide 37. This is an excerpt from the reply, when the
18 claim touch-contact limitations are met, the claim functions must be
19 performed.

20 JUDGE QUINN: What does that mean "to require correlation but not
21 causation."

22 MR. DARBY: When the -- when one thing happens, the other thing
23 also happens.

24 JUDGE QUINN: At the same time?

25 MR. DARBY: It doesn't necessarily have to be at the same time. That
26 would be a temporal, an additional temporal limitation. For example, they

1 could have said simultaneously the things happened. We don't see that in a
2 claim language. It could have said subsequently or prior to, we'll see on the
3 intrinsic record that they've expressed those kinds of temporal limitations
4 elsewhere.

5 They chose not to express them here. And so when is a word that
6 simply means that there's a condition, conditional relationship with
7 correlation between --

8 JUDGE QUINN: So are you saying that something that happens, or
9 that it's recited in the "when" limitation, it could happen before... You could
10 have an action that happens before the "when" condition is met.

11 MR. DARBY: I think what we're saying is more a less, in a temporal
12 fashion, more logical fashion; when X happens, then Y must happen as well.

13 JUDGE QUINN: But there is an issue here of timing because if you
14 have an action that started at some point in time and you don't detect a
15 condition until after that action has already started, how is there even a
16 correlation between those two if they are independent actions?

17 MR. DARBY: I would agree with you on that. If they're not
18 correlated, there's then there's no conditional relationship. I think you're
19 absolutely right on that. And I think that's where our construction stands.
20 There's got to be correlation between them.

21 JUDGE QUINN: And what is the meaning of correlation exactly?

22 MR. DARBY: I think it really just breaks down to when X happens,
23 then Y must also happen. Two things that are connected in terms of the fact
24 that they correlate. They don't have to cause. One doesn't have to cause the
25 other, but they do have to correlate.

1 And with respect to the timing, I think as you'll see, as we walk
2 through some of the evidence and get back to the Blumenberg reference, that
3 if you think there is a temporal aspect to this, because I hear you and when
4 you look at the dictionary definitions, in fact there's some flavor of, you
5 know, when this happens, that happens, or while at which time, and we see
6 that as well. And if you think that's the way to go, the Blumenberg reference
7 certainly gets us there because when you pass a certain threshold, an
8 activation threshold is what we call in Blumenberg, it corresponds to the
9 second duration in the claim. When the contact is maintained for that amount
10 of time, when you surpass that threshold, you will have display of the
11 preview.

12 And that is the -- that's the dispute.

13 JUDGE QUINN: The preview was already displayed.

14 MR. DARBY: Yes, that's true. The preview started being displayed
15 earlier. It is also displayed after you pass that threshold. The two are
16 absolutely correlated. And in fact, we would submit further, and this is
17 getting into one of our, one of our additional arguments.

18 The continued display of the preview is in fact caused by the
19 maintaining of the context. And so even if you have a causal length between
20 them, which we don't think would be appropriate to inject into the claim,
21 you still get there with Blumenberg because if you don't hold your finger
22 beyond that activation threshold, the device takes a different behavior.

23 JUDGE QUINN: How does that align with the claim language that
24 actually says, "further display"?

25 MR. DARBY: I think there's -- there's, I think there's two ways to
26 look at that. I don't know that the parties have had a particular argument

1 about that, but just, I think one way you can look at the “further display” is it
2 is a further thing that you do.

3 So when you look at the claim language, you get to that third scenario
4 that to read the things that have to happen, you have to collectively have the
5 output of feedback. You have to have the display of a menu, and you have
6 to have the display of the preview. And so it can certainly be you further do
7 this third thing.

8 I think another way to look at it and I think would be very consistent
9 with Blumenberg, which by the way is one of the, I believe is one of the
10 documents that's incorporate by reference in the 581. That “further display”
11 is fully consistent with continuing to display, right? We're talking about a
12 comprising claim.

13 And there's nothing in this claim that tells you that the display can't be
14 happening earlier, as long as it is also happening when the touch contact
15 conditions in the claim are satisfied.

16 JUDGE LEE: Counsel, it is Judge Lee, I have a question. So I'm not
17 sure I understand your construction, but you seem to be saying as long as
18 when the condition happens, the function must be performed.

19 But according to that, if the action could be done earlier, even before
20 the condition is met, and that would still make your broad construction?

21 MR. DARBY: I think you're correct, Judge Lee. The sense that it --
22 our construction doesn't exclude the idea of display of the preview
23 happening earlier. The preview can start to be displayed earlier, but under
24 our construction, that requires correlation, or even causation as I just talked
25 about.

1 You have to have display of the preview go on after you surpass that
2 second duration. And in Blumenberg, it is, in fact, caused by. The preview
3 would not stay on, would not stay on the screen. It would not continue to be
4 displayed if you didn't have contact.

5 JUDGE LEE: Okay, but why do you arbitrarily stop there? Why
6 couldn't you just say it is a plain relationship? You know when this
7 happens, you check if the action was performed at any time. It seems
8 arbitrary for you to say no, I require it to, to happen after the condition
9 happens, but without causation. That seems arbitrary, you should just go all
10 the way if you want to say there's no causation. There's no causation, then
11 the action could be performed way earlier, even before the condition occurs.

12 MR. DARBY: I think that was getting to where Judge Quinn was
13 coming from, and I agree with that, which is they can't be independent. It
14 can't just be that A happened last week and B happens today, and those
15 things are correlated merely because A happened and now B happens. There
16 has to be some correlation, some meaningful correlation between them. And
17 we have, but.

18 JUDGE LEE: My point, too, so it seems arbitrary for you to just put a
19 line there. There obviously is some causation, otherwise you'd be able to
20 say, yeah, this happened yesterday and right now this condition happened.
21 So right now, both things are met.

22 MR. DARBY: I take your point. I think there are examples of things.
23 First and foremost, I think to the extent the claim is broad, that's because the
24 claim is broad, right? They use the word "when" is merely of conditional,
25 conjunction as used to express a conditional relationship. Conditional

1 relationships can be broad. There's nothing wrong with conditional
2 relationships being broad and in fact what we find --

3 JUDGE LEE: I understand that perfectly, but can you address that? It
4 seems arbitrary to me that you want to say it has to occur, the action has to
5 occur after the condition occurs, and yet say there's no causation.

6 MR. DARBY: Sure. We're not trying to be arbitrary. We're trying to
7 require what the claim requires and when doesn't require anything more than
8 the correlation between them. I do hear your point and again, I want to
9 make sure that I address your question. I don't think it's arbitrary. I do think
10 there has to be a correlation between them, a relationship between them.

11 And I think that has meaning. I don't think it's arbitrary. I think that
12 has some bite to it. I don't think things can be correlated if they don't have a
13 relationship at all. And where you draw the line? I think when you use
14 terms like “when” I think there's a, the borders of the claim are quite broad.

15 There are a lot of different ways that you could have correlation, but I
16 do think it requires correlation and I don't think, I don't think that part about
17 it is arbitrary --

18 JUDGE QUINN: But so I want take you back to the question I asked
19 earlier. I want to know what embodiment in the specification support what
20 you are proposing of this correlation – then you added meaningful
21 correlation, whatever that is – I want to see how the spec supports you.

22 MR. DARBY: Sure. We are in an odd posture in this case because
23 this is a situation where we don't have the specification describing what's in
24 the claim. I don't want to belabor the point, but what, what tends to happen
25 in a lot of cases, you'll see if you look at the prosecution history, is that there

1 is a, there, there's an amendment that's done and it often raises the, 70, a
2 hundred claims.

3 And those claims don't really tie back to the specifications and there's
4 no argument about why they have written description support or what
5 anybody would be looking at in terms of the specification to find support for
6 it. So what I can show you in the intrinsic record Well, I can't show you
7 in the specifications this particular embodiment, I don't believe it exists in
8 the specification.

9 But what I can show you in the specification is -- and I have this on
10 our slide 42 -- the two things I draw your attention to on the left hand side of
11 the slide, I draw your attention to the definitions and terminology sections of
12 this patent. And what we don't find there is any lexicography. And so when
13 we're looking at "when," does "when" have a lexicographers definition in
14 this patent? It absolutely does not.

15 And they had every opportunity to do so and they defined other terms.
16 They chose not to define this one. And then on the right hand side of the
17 slide, and I think this is important because Judge Quinn, getting to your
18 point, this is the closest I think you'll find to the claim language and what's
19 described in the claim being described in this specification.

20 JUDGE QUINN: So let me take you back because we know from
21 Figure 16, I mean this patent is about gestures and detecting certain things
22 happening on the touch screen, and performing actions. And in Figure 16
23 you see the relationship between detecting what's happening with the
24 gesture, which I assume we don't content that touch isn't a gesture.

25 MR. DARBY: We're not contending that.

1 JUDGE QUINN: And you do have a “performance” that is associated
2 with that gesture as an action that occurs once you have detected that
3 gesture. So that gives you some context. That is a relationship between
4 when you detect X, this happen.

5 MR. DARBY: I think it's a particular embodiment and I'm familiar
6 with that Figure 16, it, it is not describing within, it's not describing what's
7 in claim one.

8 So one, I think it is just an embodiment and we don't import
9 limitations from the specification absent your --

10 JUDGE QUINN: It's a very broad embodiment. I mean it's the
11 general description of what this patent describes, of how you select things on
12 the screen, and detect the gesture, and then you perform an action. And that
13 is as basic as it gets.

14 And I want to know what the position is as to whether that supports
15 your position or not.

16 MR. DARBY: I think it's consistent with our position; two things.
17 The things are correlated, the touch is correlated with the action.
18 Absolutely. I don't think it is something that could narrow the scope of the
19 claim to being causal because I think it's an embodiment.

20 And I don't think it is -- it is a limiting embodiment, and I don't think
21 it's describing what's in the claim. And so I don't think we can take from
22 Figure 16 and import that into the claim language. I --

23 JUDGE QUINN: Okay. I don't, I think I asked you to tell me which
24 embodiment can be imported into the claim. I asked you which
25 embodiment, or which description of how this works, supports your
26 contention that there is only a correlation, not causation.

1 MR. DARBY: Okay. And I'll try to answer that as directly as I can.
2 We -- here's the best that I can give you in terms of that, which is
3 corresponding to the language, the specific language of claim one, and I
4 think it's on the right hand side of the slide. This is a very similar language
5 to what's in claim one. And what you'll find is an added limitation. You'll
6 find the word subsequently with respect to when the display happens. It's
7 not just displayed. It is subsequently displayed. So I think there's another
8 sign in terms of us not having causal links or temporal links or those sorts of
9 things into the claim that this language, in fact, was in the pending claims.

10 If you look at the prosecution history, and we point this out in a reply,
11 that they have this language in their claims. They abandoned these claims.
12 They walked away from this language, they put it, and that they've made an
13 amendment to put in the spec, but they walked away from the claim. And so
14 I think that's a sign for us, but there's not an intention to limit.

15 I think the Figure 16 is consistent with what we're saying. I don't
16 think it is narrowly talking about the embodiment of claim 1, and I sense the
17 dissatisfaction with that answer.

18 JUDGE QUINN: No, I'm not. I'm thinking that, just because you had
19 a claim that had an adverb of "subsequently" my question then will be that
20 meant that there was an order that, that the specification envisioned for the
21 three actions that needed to happen first you have a menu, and then you have
22 this, and then you have this. I believe the tactile feedback is also one of
23 those that could happen before the menu or after the menu, you know,
24 design it the way you want.

25 But these are all still actions that occur after detecting the states in
26 which the screen has passed, with the timer of the touch.

1 MR. DARBY: I think I understand, and I don't even necessarily think
2 I -- I disagree with you on that. I think it's a temporal limitation. And I think
3 the, what our reliance on it would be to show you that when they want to get
4 specific in terms of things like causation, temporal limitations, they put them
5 in the language.

6 And that in this particular claim, they decided not to put those things
7 in the language. And so that, that's the main point of our argument and that's
8 why we think the claim meaning really is a broad claim, meaning not an
9 arbitrary one, but indeed a broad one. And so when you look at claim one, I
10 mean it's not a short claim, it's long claim.

11 It's got a lot of limitations in it. They get really specific on some
12 things. The only thing they don't get really specific about, and one of them
13 they didn't get specific about was "when" and here we have to hold them to
14 that. And in fact, when they want causal language, if we look at slide 40
15 again, they put it in the claim.

16 And so here they have "in response to" in the claim, clear causal
17 language. I mean everybody knows "in response to," we believe that all
18 time them off. And that's what we usually use when we mean that there's a
19 causal link and we don't have that here. They chose to use something else.
20 It could very easily have said "in response to," and it could have amended
21 the claim to say "in response to," it could have done during prosecution to
22 reissue reexamination, or even by motion to amend. In this case, they
23 wanted to do it; fine not to do that.

24 JUDGE LEE: This is Judge Lee. Let me explore this a little bit.
25 Earlier you mentioned that it does not, the action does not have to happen at
26 the same time because you say it doesn't have to be simultaneous, it just

1 needs to be after, right? So where's the cutoff if it be a long time that. So
2 much has occurred that there's really no relationship whatsoever to
3 occurrence of the condition that, they're saying, it doesn't have to be causal
4 as long as it's after.

5 And that sounds like there's no end. It is open-ended in that you have
6 the condition and then way, way later, so much later that the context is not
7 even the same, and the action is performed then. Under your construction,
8 that would still meet the claim.

9 MR. DARBY: I don't think so, because I don't think they would be
10 correlated. In that sense I think you're right. It can't -- I don't think there can
11 be infinite intervening.... It can't be so long ago that there are infinite
12 intervening events that happen and now there's no relationship between
13 them, I think is the way you put it. And I would agree with that I don't
14 believe there's correlations.

15 JUDGE LEE: So where's the cutoff? It seems like your construction
16 has so much vague reasoning there. And Judge Quinn asked you, is that at
17 the same time? And you say no. So if it is a no, then it can indefinitely be
18 way later. Where's the cutoff?

19 MR. DARBY: That's a good question and fortunately, I don't know
20 that you have to decide where the firm cutoff is because of the way that our
21 prior art works.

22 So in our prior art, it is after the contact is detected, as passing the
23 duration. It's after you detect contact that goes beyond what we call the
24 activation threshold in the Blumenberg reference. You're passing that
25 second threshold, that second duration threshold. And after that the display
26 is being displayed. And that needs to--

1 JUDGE LEE: I'm not sure that we don't have to decide that because if
2 it, under that scenario, it makes no sense. We probably don't want to go with
3 your construction to say that as long as it occurs after, because that would
4 cover infinitely after.

5 MR. DARBY: I -- I would encourage you to use the word conditional
6 or correlation if you adopt our construction, I think would be the best way to
7 put it. I don't think it is a specific amount of time after, I think that's more
8 temporal and less of a conditional or correlation between the two things.
9 But I certainly understand that. And if you'd like I'm happy to move forward
10 in our discussion to talk about our other arguments for addressing this causal
11 link.

12 Again, I think you have probably seen in the briefing what our
13 arguments are for all the intrinsic reasons that you wouldn't interpret, that
14 you wouldn't import extra limitations into the claim. There's extrinsic
15 evidence on that as well, including dictionary definitions. I'm happy to go
16 through that more. I'm also happy to pivot, and we can talk about why, even
17 if you think there's a causal link, we still get there on the Blumenberg
18 reference.

19 JUDGE QUINN: It would be better if we jump into Bluemenberg,
20 because we have a lot of questions about your position on how it meets the
21 second and third "when" conditions.

22 MR. DARBY: Okay. Absolutely. So I think what I'll do is jump
23 back in our demonstratives here and I'll go to slide -- I go to slide 14.

24 The timeline we created -- the -- it summarizes the testimony from our
25 expert, Dr. Cockburn. And we have a citation to the declaration at the
26 bottom of the side and the corresponding description of the petition at the

1 top right. And so this is a timeline with respect to the contact duration and
2 the way Blumenberg works is that if you have contact, extending the contact
3 that's terminated, excuse me, before the selection threshold, which is the first
4 threshold on the left hand side of the timeline, if you have contact that
5 terminate before you get there, that the device doesn't take any action.

6 That's considered inadvertent contact. It's disregarded. That's the first
7 claim scenario in the 581. If you hold the contact further, you go past that
8 selection threshold, the link information first for the very first time starts to
9 be displayed. And if the contact terminates between the selection threshold
10 and the next threshold, which we call the activation threshold in
11 Blumenberg, the device will navigate you to the page.

12 And that corresponds to the second claim scenario in the 581. Now, if
13 you keep on holding and you go even further, now you should pass the
14 activation threshold. So we have selection threshold, that's the first duration
15 of the claim, the activation threshold at the second duration of the claim, you
16 passed that, the link information continues to be displayed.

17 And I really want to emphasize this, that it's not by happenstance that
18 it just, it continues to be displayed. It's a behavioral thing in the device that
19 the device is changing the way it behaves. And so it is choosing to keep that
20 preview display. And the reason it does that is because we, you terminate
21 contact after the activation threshold, but before the expiry threshold where
22 it's going to take the preview away, you terminate contact between those two
23 thresholds, the link information's going to stay on the screen, and that gives
24 the user a chance to make a decision about if they want to go to that page at
25 their premium. You can make a confirmatory touch input, then we'll send
26 them to that page.

1 And so the key point here is that there is a causal link between
2 maintaining the contact past the activation threshold. It's temporal. The
3 preview absolutely stays displayed, it's displayed after you surpass that
4 threshold. It's also causal, because the reason it stays displayed when this,
5 when the contact breaks is because the device has changed its operation
6 because your contact has gone past the threshold.

7 JUDGE QUINN: So for the second -- the second "when" limitation,
8 you are relying on what occurred between-- after the selection threshold; Is
9 that correct?

10 MR. DARBY: That's correct.

11 JUDGE QUINN: And are you relying on the embodiment in
12 Blumenberg in which a quick tap is required to activate the link and then
13 replace the web page with the source of the url that you just pressed?

14 MR. DARBY: Glad you asked that question.

15 That's not our primary argument. It was before the alternative in the
16 petition, not our primary argument. Our primary argument is that the fingers
17 stay down, you past the selection threshold, and if you raise your finger
18 before you get to the, before you get to the activation threshold, you're going
19 to be sent to the page.

20 That's our primary argument. It's not a second task. So there's
21 another claim construction issue in the case, and I don't think you have to
22 decide that because our primary argument is keep your finger down. You
23 pass the selection threshold and when you're between those two and the
24 contact terminates, you're sent to the page and that's the second claim
25 scenario.

1 JUDGE QUINN: Okay? So if you're breaking contact, you are
2 looking at the automated activation. But if you maintain contact past the,
3 what you are calling here the activation threshold. But Blumenberg talks
4 about it as the first predetermined amount of time, you still break contact
5 and the link, the second-- the snippet is, still persists on the screen.

6 So how is -- are you modifying that action for your third "when"
7 limitation, to occur after you detect the condition?

8 MR. DARBY: Yes. So take your point there. Or I think I do, you tell
9 me if I don't hit it right. But I don't know if there's a modification required
10 there, but we have Griffin, the Griffin reference that's brought in for the
11 implementation details about how to put in these different touch duration
12 thresholds and it a nice flow chart in Griffin that tells us how we do that, but
13 with respect to whether the information continues to be displayed, that --
14 that's just in Blumenberg. So if you hold your finger down past that
15 activation threshold, the device will continue to maintain the link
16 information and it is causal and it makes a decision to do that.

17 There is another argument that we have our second additional
18 mapping. I want to make sure I cover. And that gets to the narrowest, I am
19 careful not to say narrowest possible, a very narrow way to view causality.
20 Even if you say if and only if for example, or exclusively triggered by our
21 second argument mapping argument would get there because we have
22 motivation to combine arguments with respect to the three references.

23 And when you put them all together, the only time you're going to get
24 all three of the things collectively that the third claim scenario requires—that
25 is the preview, the menu and the feedback—that's only coming when you

1 hold past this activation threshold. And it's going to be for the very first
2 time.

3 So it'll be for the very first time, only triggered by the fact that you
4 held that long. And that is a combination of all three references and we have
5 specific motivation arguments that are in the petition that build it that way
6 and it makes a lot of sense. For example, when you're talking about what --

7 JUDGE QUINN: Do you -- what do you say then to the argument of
8 patent owner that by extending, now you are triggering the display of the
9 snippet with the menu until after that second threshold. But what happens
10 with your second threshold scenario in which you have that displayed? I
11 don't see how the two coexist within the same programming. I understand
12 they don't have to happen at the same time because these are mutual
13 exclusive conditions.

14 But by saying that you can have the third condition in a way that the
15 snippet is only displayed after that second threshold, what happens to your
16 second condition?

17 MR. DARBY: Great question. Let me clarify. There it is. Not that
18 we're changing what happened between the selection and activation
19 threshold, that all still looks the same. To clarify what we're saying is that
20 the claim's third scenario, collectively, requires all three of the things to
21 happen. And what we're saying is yes the link preview starts earlier. The
22 combination I was talking about doesn't, it doesn't change that. What we're
23 saying though is that collectively, all three of the functionalities that are
24 required by the claim, the third claim scenario, those three things together
25 will not happen until, and unless you hold past the activation threshold.

1 The second the other the other thresholds work as a, as we described
2 for --

3 JUDGE QUINN: I'm not understanding that at all. Okay. How do
4 you say that you are...this is in your "causation" alternative embodiment?

5 MR. DARBY: This will cover the causation, yes. Okay. But it is the
6 same combination. I want to make sure I'm clear about that.

7 We're not changing the combination. This is the combination. It
8 we're just saying that it applies to even a very narrow view of the causation.
9 Because when you build our combination, for example, if you think about
10 the menu and adding the menu, what we explain our motivation arguments,
11 and we have expert testimony on this, is that you wouldn't display the menu
12 earlier, you would display the menu after you pass that activation threshold.
13 Because that's the only point where when you take your finger off the
14 preview's going to stay. And if you add the menu earlier, right? And you're
15 a user and you see the menu and you want to interface with it immediately,
16 if you take your finger off, it is going to actually send you to the page, but
17 you don't want to go to the page.

18 So the only time that it would show the menu in our combination
19 would be after you pass that activation threshold, because that's when the
20 user can actually interface with the menu. Otherwise, they're very likely
21 going to send themselves to a page that they don't want be, and they're going
22 to be frustrated.

23 JUDGE QUINN: So the only thing precluding you from displaying
24 the menu earlier, is that you just don't want it there?

25 MR. DARBY: That the logical time. What a person's feeling the art
26 would do is it would say the best logical time to put that menu on this

1 display show it for the first time would be once you're past the point that
2 showing it is the time -- it is the time to use it.

3 JUDGE QUINN: But the snippet, is, which is the second portion,
4 persisted from the second scenario to the third scenario?

5 MR. DARBY: Agree. And so what we're saying with this additional
6 argument is that all three things for the first time, because the claim requires
7 all three of those things.

8 JUDGE QUINN: So you are only adding the menu to the third
9 limitation after the threshold is...you passed the threshold?

10 MR. DARBY: With the tactile feedback.

11 So the menu, tactile feedback and preview, you won't have all three of
12 those things together, which the claim requires them together. You won't
13 have all three of those things together until and unless you go past the
14 activation.

15 JUDGE QUINN: But we still don't have causation for the display of
16 the snippets?

17 MR. DARBY: We have narrow causation for all three in that
18 particular argument, three of them together. What we would say --

19 JUDGE QUINN: You're taking, you're reading the claim to require
20 causation in your second embodiment to mean that the causation is for all of
21 the outputs to be done at once, not whether every single action that is
22 performed has a causational relationship to meeting the threshold?

23 MR. DARBY: That's right. We're not taking them individually. So
24 we're not saying one of the Exactly. We're not taking them individually.
25 We're taking them collectively in that argument. And as a collective, you
26 will not have them, let's say

1 JUDGE QUINN: Thank you that explanation.

2 MR. DARBY: Absolutely. Thank you for the question. I think, on
3 that -- okay. I see that I've got about ten minutes left.

4 We've covered a lot of the issues. Another thing that we haven't
5 talked as much about and I think I'd like to say a few words on

6 JUDGE QUINN: You are into your rebuttal time. I just want to let
7 you know.

8 MR. DARBY: thank you for that reminder. And actually, I think I'll
9 hold on that last point and I'll pass it over.

10 JUDGE QUINN: Thank you.

11 MR. ROBINSON: Judge Quinn, a quick administrative question
12 might simplify things on -- oh, sorry. Take quick administrative question
13 out. It might simplify things.

14 Do you have access to the demonstratives?

15 JUDGE QUINN: I do.

16 MR. DARBY: I do as well.

17 MR. ROBINSON: All right. I'm not going to share them since it
18 doesn't go to everybody. I'll just refer to slide to the extent that is -- so based
19 on that discussion, I'd like to address a couple of key points, address two
20 other arguments, and then we'll likely give back some time.

21 The first thing is this notion that continued contact, past the activation
22 threshold is responsible for the continued display of the link preview in
23 Blumenberg.

24 It is not -- Mr. Darby, I believe, conceded during his presentation that
25 once you reach that activation threshold, the link preview stays up regardless
26 of whether the contact continues. That alone should be, that alone

1 undermines the notion that continued contact is the causation . . . continued
2 contact beyond that activation threshold is causation even for continued
3 display of that link preview.

4 JUDGE QUINN: His position was that it was not an independent
5 causation for each one of the actions. It was taken as a causation for all
6 three of the actions together. For --

7 MR. ROBINSON: For all three of those actions to occur
8 simultaneously, correct.

9 And your honor, I guess the point stands for all three as well. In that
10 Blumenberg teaches that once you get to that activation threshold the link
11 continues, the link continues to display the -- in their theory, it was
12 emphasized in the reply, the menu is added and the haptic feedback is given
13 under their theory, but that depends on getting to that activation threshold.
14 What happens when you continue past that activation threshold is it doesn't
15 matter if you continue the contact or not, because the link preview continues
16 to be displayed irrespective of that contact.

17 And, in fact, Blumenberg teaches that if you maintain that contact a
18 little farther, then it all goes away because then it was probably an
19 inadvertent touch to begin with. In terms of disclosure and the specification
20 consistent with "when" indicating a causal relationship, yes.

21 JUDGE QUINN: Can you go back to what you just said? The third
22 "when" limitation? One of the conditions is that you cease to detect the first
23 contact. So that third "when" limitation does require that contact stop. So
24 I'm not sure that it matters.

1 Does it matter that you continue touching the screen or not? When
2 you break contact, it still persists, and at that point you can interact with the
3 menu?

4 MR. ROBINSON: Your Honor, one minor point of clarification, that
5 third when limitation of whether it was 1.0. Actually, says that the first
6 contact is determined to be greater than the second user configurable,
7 predefined duration.

8 And I believe Petitioner made the point in his papers that doesn't
9 actually require termination of the contact. Okay? So it's got to exceed that
10 second threshold. It's not enough that it meet the second threshold. And
11 again, in Blumenberg exceeding the second threshold is essentially
12 irrelevant because the link is already, the link is already displayed. There is
13 no causation. And as Your Honor's questions suggested and directly
14 addressed, it is meeting the first threshold that causes that link display to be
15 displayed in the first place.

16 And once you get past that second threshold and main, maintenance of
17 the contact beyond that second threshold, what has been termed the
18 activation threshold has no impact on whether that link continues to be
19 displayed, except if you maintain it too far. And then Blumenberg teaches
20 that it actually takes away the link.

21 In terms of Your Honor's questions about what in the specification
22 supports the interpretation of "when" as requiring causation, column 59,
23 lines 15 to 17 describe gestures associated with operations carried out as a
24 function of the gesture when the gesture is performed. So very similar
25 language within this overall context of a user interface and specifically these
26 multi-part and various types of gestures that when those gestures are

1 performed cause these operations. Mere coincidental occurrence is not
2 causation. That's the foundation of this argument.

3 Two other elements I'd like to briefly address, unless there are any
4 other questions on this specific issue or that third scenario.

5 JUDGE QUINN: No, I don't have questions on the first scenario at
6 this point, but can you walk me to -- through your arguments on the second
7 scenario, because I believe you were, your brief, were attacking the quick
8 tap modality of Blumenberg, and I don't believe that's what petitioner was
9 relying on.

10 MR. ROBINSON: So there are two things that the briefs address.
11 The first is the quick tap. The quick tap is not the first contact. It's actually
12 a subsequent contact. And so that was addressed in terms of claim
13 construction as well. Certainly, these conditions are mutually exclusive, but
14 in the context of this programmable instructions to perform certain functions
15 in response to different inputs, a given input has to be able to, based on the
16 criteria, perform either of the three scenarios. And so the point there on that
17 quick tap was that doesn't meet the claims. It seems that Petitioner again has
18 said that its primary mapping does not rely on that quick tap. And so I'll
19 focus in on the other.

20 They're largely focused on, believe it's paragraph 51 of Blumenberg, I
21 believe. Let me find this one. The B's are running together a bit. So
22 paragraph 51 of Blumenberg rather than. This is -- it's actually on
23 Petitioner's slide 29 from the reply criticizing what Petitioner says is the
24 sentence that patent owner quotes.

25 Says that "the selected link is activated by a contact break if the link
26 information was displayed less than the pre first predetermined amount of

1 time, and if the link..." and that's, I'll stop there. And if it the predetermined
2 amount of time relates to the amount of time that the link information was
3 displayed, not the length of the contact.

4 Petitioner criticizes that argument. It says, oh, there's all the, this
5 other teaching in Blumenberg and also Griffin. But if you look at the
6 petition of pages 37 through 38, it is this specific phrase in this specific
7 sentence regarding the amount of time that the link information was
8 displayed that the petition relied on for its mapping of Blumenberg, and that
9 is the reason that Patent Owner, in fact, addressed this sentence.

10 JUDGE QUINN: Doesn't that imply though that, you still have
11 duration of a contact being determined because in order to meet the
12 activation, well the selection threshold that, that (I think that's what
13 Petitioner is calling it) you've already started a timer to detect the touch and
14 the timer just continues on? So isn't that necessarily happening even if you
15 are, in addition to taking the duration of the contact also somehow detecting
16 how long the link is displayed?

17 MR. ROBINSON: Your Honor, certainly there is an last -- a lasting
18 of time and an lasting of contact. What this sentence suggests is that it's
19 actually a new timer that has to begin when the link information is
20 displayed, which suggests that there can be potentially some delay between
21 when the first threshold is met and when that link information is actually
22 displayed.

23 Now, it was Petitioner's burden to tie those two things together.
24 Ultimately, these references talk about retrieving information from web
25 pages, which inherently takes some amount of time computing resources if a
26 computer is running slow for whatever reason, and maybe the cache is full,

1 the memory is loaded, there's some other amount of time that inherently
2 passes. And so ultimately, the point here is what Petitioner has pointed to is
3 a different timer from when the link information begins to be displayed as
4 opposed to when the contact started, and that if Petitioner wanted to rely on
5 some inherent connection to when the contact started, it was Petitioner's
6 burden to establish that that in fact was the case in the petition.

7 Now in the reply, the Petitioner also says Griffin talks about contact
8 duration, so that should be fine here. But again, if you look at pages 37 to
9 38 of the petition where this mapping actually happens, the only thing that
10 Griffin has pointed to for this is the user configurable nature of thresholds.

11 And so our contention here is that the Petitioner just doesn't meet the
12 burden to connect those dots in the way that the claims required. That this is
13 pointing to a timer that is distinct on its face. Again, in the one phrase of the
14 one sentence that the petition quoted for this element. And the petition does
15 not tie that back to a timer that would've began from the beginning of the
16 contact or a threshold that was tied in the beginning of the contact, as
17 opposed to you may not.

18 JUDGE QUINN: Even though Blumenberg clearly discloses the
19 timer for the contact duration? I mean, you don't dispute that there is a
20 contact duration timer in Blumenberg, it's just not being used for this
21 particular embodiment of exceeding the threshold and then the snippet
22 persists, is that what you're saying?

23 MR. ROBINSON: Blumenberg discusses a contact timer for purposes
24 of that, what has been termed the selection threshold in 0.2 seconds.
25 Blumenberg also discloses a timer from when the link information begins to

1 be displayed, and it is that second timer that Petitioner relies upon without
2 having tied it to the first and the two are not inherently co-extensive.

3 JUDGE QUINN: So it does say that, not to belabor the point here, but
4 it does say that for the second “when” limitation, Petitioner relies on the
5 embodiment that says that the activation may be triggered after the breaking
6 of contact before or after a predetermined amount of time has elapsed. That
7 seems to suggest there is still a timer going on from the first point of contact
8 on the screen.

9 MR. ROBINSON: I'm sorry, where were you reading from just now?

10 JUDGE QUINN: I'm sorry. I apologize. That was paragraph 51,
11 third line down from the beginning of the paragraph.

12 MR. ROBINSON: So breaking the contact that is absolutely
13 consistent with the second timer being breaking the contact after the link
14 information has been displayed for a period of time. And in fact, the quoted
15 sentence at the bottom is talking about combinations of the foregoing. And
16 so when it says the timer after the link information, sorry, the link
17 information is displayed, it's actually adding clarification to the sort of more
18 general kind of phrasing of it in the foregoing sentences.

19 And ultimately it is explicitly without question in the petition, the --
20 the time after the link information was displayed that is directly quoted in
21 the petition.

22 Second point I'd like to briefly address is the first scenario where the
23 limitation *Im*, and this really boils down to whether a POSITA looking at
24 Blumenberg and Griffin would have understood that nothing happens when
25 a contact is below the first threshold, the selection threshold as the petition
26 characterizes it. Blumenberg is silent on that point.

1 Blumenberg says you don't activate the link. There's nothing else in
2 terms of Blumenberg's context to say that you are not going to do anything
3 else.

4 JUDGE QUINN: But this is a negative limitation. Basically the
5 claim says don't do anything, right? So how do you expect that to be met by
6 prior art if you can see that something is not happening, then it's not doing
7 anything if you don't exceed that first threshold?

8 MR. ROBINSON: The problem here is that we've got a combination
9 with Blumenberg and Griffin. Blumenberg is silent. It says you don't select
10 the, you don't select the icon. You don't activate the icon. But when you
11 look at Griffin, it says above a similar functional threshold above which you
12 activate or select an icon; then, you activate and select the icon, But if you
13 fall short of that, activate.

14 The names get a little confused. If you fall short of that threshold,
15 then you highlight what it was that was touched. And so you've got silence
16 in Blumenberg. Compare, combined with an explicit discussion in Griffin,
17 that if you fall short of that selection threshold, you actually highlight. And
18 so the question then is that enough to show that nothing is happening when,
19 in fact, one of these two references is explicitly describing falling short of a
20 similar threshold and highlighting the thing that was not activated.

21 JUDGE QUINN: I don't -- I -- correct me if I'm wrong, I don't believe
22 -- I don't read Petitioner's position on the first "when" limitation, to allow for
23 a highlighting as disclosed by Griffin. I thought that they're relying on the
24 fact that Blumenberg avoids the display of the snippet, and that is the
25 avoidance of the display that is required by the claim. Are you reading more
26 on that?

1 MR. ROBINSON: I misunderstood your earlier question. The claim
2 language is broader than simply not displaying link information. And let me
3 pull up that claim language so I can quote it.

4 So what the claim limitation says is “avoid display on the first web
5 page, a result of any operation based on the first contact.” And so Patent
6 Owner's position here is that when you highlight -- a link falling below that
7 first threshold, when you highlight that, that is actually a function based on
8 that first contact.

9 And what the -- I guess to take that a step further, Petitioner has not
10 shown that you wouldn't perform that highlighting function, that was
11 inherently present, or that it would've been obvious to not highlight. And in
12 fact, to the extent that Petitioner argues that it would've been obvious to not
13 highlight now, that conflicts with some of the other motivations that have
14 been put forward, for example, displaying the menu only in response to
15 reaching the activation threshold to provide visual feedback. That
16 highlighting in Griffin does just that, provides visual feedback. Here's what
17 we touched, but you didn't touch it long enough, or you didn't meet the
18 threshold, is what Griffin described.

19 And so if you want to actually activate that, you get, you're going to
20 have to do it more. And so, the Petitioner is-- the claim precludes
21 highlighting the link before it is activated or before the other functions
22 happen and that Petitioner has not shown that it was inherently absent from
23 this combination or that it would've been obvious to omit from its
24 combination, to not highlight that link.

25 JUDGE QUINN: I understand your position. I don't read the petition
26 as advocating a combination of teachings from Griffin to include that

1 teaching of highlighting since it referred to Griffin ... a combination of
2 Griffin and Blumenberg in that first scenario to avoid the inadvertent touch
3 of a, or activating inadvertently, any function on the display. So that meant
4 an inert touchscreen, which also means no highlighting, nothing.

5 MR. ROBINSON: The problem is the Petitioner doesn't actually
6 articulate an inert touchscreen with no highlighting. The Petitioner does
7 point to Griffin for inadvertent touches, but Griffin also teaches that Griffin
8 talks about inadvertent touches and the, a bunch of touches happening and it
9 just recognizing that can't be done.

10 But Griffin talks about in the context of thresholds highlighting when
11 you don't meet the threshold to activate something. And that's exactly the
12 type of threshold we're looking at here. The petition doesn't say it would be
13 inert. It doesn't say that it wouldn't highlight. It just says it doesn't activate.

14 JUDGE LEE: Counsel, it's Judge Lee. Is there any embodiment in
15 the patent where the action is not caused by the associated gesture?

16 MR. ROBINSON: Let me try to rephrase that back to you, Your
17 Honor, and make sure I understand it. I think you're asking whether the
18 specification discloses in an embodiment in which there is no causation, no
19 causal relationship between a gesture and an operation that's associated with
20 the gesture?

21 JUDGE LEE: Right.

22 MR. ROBINSON: To my knowledge, as I stand here today, I'm not
23 aware of any. I will take another look at that when I sit down and will try to
24 come back to you if I see anything different, but I'm not aware of anything in
25 the specification that suggests an absence of causation between a gesture and
26 the action associated with identification of that gesture.

1 JUDGE LEE: Thank you.

2 Earlier you mentioned column 59 in lines 15 plus, but all this
3 language says gesture may be associated with operations that are carried out
4 as functions of the gesture input. So what do you make of the word "may"?
5 I -- I see the word "may" repeated throughout this column that -- does that
6 support Petitioner's view that it really does not have to be a causal
7 relationship between the action and the gesture?

8 MR. ROBINSON: Your Honor, no, I don't believe it does. I think
9 "may" has used extensively to denote the fact that while that is true, other
10 things may be true as well. But to say that a gesture may be associated with
11 operations, you're saying you have operations, you have gestures, you may
12 associate them. It is not suggesting that you would associate them without
13 causation. I guess --

14 JUDGE LEE: You just mentioned that other things may be true. So
15 the first thing that comes to mind is the opposite. The opposite may be true,
16 may not be a function, the action may not be a function of the gesture is
17 what comes to mind. And we're talking about other possibilities --

18 MR. ROBINSON: Your Honor, I don't think that possibility is one
19 that really can exist in the context of the application and what it describes. I
20 think the types of other possibilities that I would say could exist are the
21 types that have been addressed in dependent claims where you can have a
22 causal relationship with multiple actions, and then you may specify that
23 those actions happen in a certain order, that it may also be contemporaneous
24 that, any number of sort of other variables may be present, but nowhere does
25 the specification explicitly or in just the overall context of what it discloses.

1 Nowhere does it suggest that we're having, mere coincidence as an
2 association between gesture and action.

3 JUDGE LEE: I see; I understand. That's fair because this just says
4 there's a functional relationship, but it can't be a causal relationship without a
5 functional relationship. So you're saying the "may" mentioned in these
6 paragraphs is not inconsistent with your view that there has to be a causal
7 relationship.

8 MR. ROBINSON: That's accurate, Your Honor.

9 JUDGE LEE: Okay. Thank you.

10 MR. ROBINSON: Thank you. I think with that, unless there are any
11 other questions, I'm happy to give back a little bit of time.

12 JUDGE QUINN: I do want to ask you about the construction of
13 "when." I mean, I saw your reply that you were taking the point that you
14 called it causational relationship and then you also called it causational
15 connection. Again, these are like really vague terms, so already a vague
16 term defining another vague term. We're back to square one, so I was trying
17 to figure out in your explanation for how the structure of the claim how it
18 really described something that happens in computer language that is being
19 executed in the computer, that you are detecting something and based on
20 determining whether the outcome of that detection is true, then perform
21 actions.

22 Is that an accurate summary of what you have argued to us?

23 MR. ROBINSON: Obviously, to Your Honor's point words matter,
24 and so I don't want to be off the cuff -- too off the cuff, but I think
25 fundamentally what I think you're describing and what I think we're arguing
26 is that in a program with instructions to perform actions based on pre-

1 conditions, the preconditions have to be met before the -- before the
2 associated action is performed.

3 JUDGE QUINN: Okay. So here's my problem with the word "pre
4 condition." You have in each one of these "when" limitations, the first
5 condition is the first web page is displayed. So once the web page is
6 displayed and it stays on the screen, you can start then interacting with the
7 display, not -- there's no timing to that. There is no condition that is met by
8 displaying those first web pages. At some point you detected it, you marked
9 it in some variable: yes, first web page displayed. And now you have made
10 that condition, so you will have detected that condition has happened and
11 you're performing it. But the first web page continues to be displayed in the
12 third limitation until you do something with the snippet or something else
13 with the menu-- so you understand what I'm saying?

14 There are conditions that are not really "pre," they are happening
15 while you are detecting other things when they may have happened at
16 different times?

17 MR. ROBINSON: I guess maybe I'm thinking of precondition in a
18 slightly different way in that the condition has to be met before you get to
19 the point at which all of those preconditions have been met. So they take, all
20 of the conditions have to happen before you can, before the action. Before
21 you can determine that all of those actions have happened and then you
22 perform the actions because you don't perform the actions until all those
23 conditions have met.

24 JUDGE QUINN: Okay. Understood. So really they're just
25 conditions?

1 MR. ROBINSON: If you don't -- I think we're saying the same thing.
2 I think it's the pre-prefix that is maybe causing some, I don't know.

3 JUDGE QUINN: Why, are you wedded to the pre-condition?

4 MR. ROBINSON: I don't think so. I think we're saying the same
5 thing with or without the prefix. Okay.

6 JUDGE QUINN: And the question next is: What happens with claim
7 42? And there's a lot of argument about whether there is a difference in the
8 language or not. What is your argument about whether we could, with the
9 same, use the same meaning or the same construction, when you use
10 different words?

11 MR. ROBINSON: I think our position is that claim differentiation is
12 a guide and not rule. So to the extent that there is any inclination to look at
13 these differently, or obviously there is any need to look at them
14 independently. Claim 42 is very explicitly "based on" and there is no
15 argument in the record to interpret that as anything other than causation. I
16 don't think 42 is explicitly addressed once in the reply.

17 And so our position was those two should be it should be interpreted
18 consistently that in the context of a program with executable instructions,
19 they're effectively one and the same. To the extent that there is any
20 inclination that when might be something less than that, I think based on -- it
21 is that much more explicit, but I think it's absolutely consistent with the
22 intrinsic record and the language itself to interpret those two consistently for
23 purposes that causal relationship.

24 JUDGE QUINN: I wanted to also ask you about the language in
25 Claim 41, Petitioner raised an argument that claim 41 includes the
26 modification or a further limitation that describes "when" as a "while."

1 MR. ROBINSON: As a while, yes, Your Honor. I would just say that
2 adds a temporal restriction as well, that without -- while when it's just when,
3 the conditions have to be met, the actions are performed. If you add while,
4 then it could add the temporal limitations that the actions have to continue to
5 be performed while, while the conditions continue to be met. I don't think
6 it's any more complicated than that.

7 JUDGE QUINN: Does that mean at the same time?

8 MR. ROBINSON: While, I think, is contemporaneous. I think the --
9 I think though it still depends on the conditions having been met before you
10 start to perform those actions. So conditions are met, perform the actions
11 until the conditions stop being met.

12 JUDGE QUINN: Can you repeat that again?

13 MR. ROBINSON: So conditions are met. Once the conditions are
14 met, you start performing the actions and the “while” simply means that the
15 actions continue to be performed while the conditions continue to be met,
16 that once something changes, you stop performing the actions.

17 JUDGE QUINN: Would you still have to detect all of those
18 conditions as met to start performing the action?

19 MR. ROBINSON: Yes. Yes. There's nothing inconsistent about that
20 there.

21 JUDGE QUINN: You don't think that hurts your argument on
22 causation?

23 MR. ROBINSON: No, Your Honor, because while it can't happen
24 until all of those conditions are met.

1 JUDGE QUINN: How do you have “while” the duration of the first
2 contact is determined to be less than a first user configurable predetermined
3 duration? How do you have that met?

4 MR. ROBINSON: Let me look.

5 JUDGE QUINN: That's the first “when” limitation.

6 MR. ROBINSON: Until a new set of logic begins, the -- it -- I'm
7 trying to figure out a way to say this. The determination is made responsive
8 to that determination. In that instance, you don't do anything. And so while
9 that continues to be true, you don't display any action. If another contact
10 happens and then that contact stays long enough to do something else, then
11 you do something else, but that determination stays true until there's a
12 different determination that's made.

13 JUDGE QUINN: Thank you. I appreciate that.

14 MR. ROBINSON: Other questions? I'll save the rest of my time.

15 MR. DARBY: Okay. Okay. Your Honor, we're ready.

16 JUDGE QUINN: Excellent.

17 MR. DARBY: Thank you. I am going to start at our slide 40. And
18 I'm just going to -- go back to the point about the different terms used in the
19 claim. The term “when” is used unmodified in the very same patent, the
20 very same claim, the very same element as causal language “in response to,”
21 and I think that's important because what the Federal circuit tells us -- the
22 case law tells us we've got to presume it is not optional. We have to presume
23 those are different meanings. We have to presume that in response to and
24 when don't mean the same thing.

1 So if we're going to go in a direction that says when means something
2 other than when we have to ask ourselves what is so powerful in the record
3 that would overcome the presumption?

4 JUDGE QUINN: Well, there may be synonyms, you don't necessarily
5 have to have the exact same meaning, but they convey the same idea.

6 MR. DARBY: Fully appreciate that. We've got to have intrinsic --
7 strong, intrinsic record support to overcome what is a presumption, that the
8 different terms have the different meanings. I fully appreciate, and I have
9 other cases from the Federal circuit on that as well, that two words don't
10 have -- absolutely have to have different meanings, but we do presume that
11 they do.

12 And so we have to have some pretty strong evidence of the record.
13 And so when we're walking through the intrinsic evidence and we find time
14 again that there's no reason to import these causal or temporal limitations, I
15 think that's actually strong evidence leading in the other way. We have to be
16 leaning into the presumption, not shying away from it. Because we don't
17 have any reason on the other side to do so. Another point I'd like to make,
18 Judge Lee's response to the discussion that you and I had in -- in the opening
19 about how far do we have to go in terms of the construction.

20 And we point you back to the to the *Wellman* case that we actually
21 cited in the petition, this is on claim seven of the petition. It's one you've
22 probably see in a lot of IPR petitions. But it is the case that says that you
23 only have to construe the claim in so far as to resolve a controversy.

24 And so how far do we have to go in terms of defining the outer
25 boundary of the claim? How much correlation is enough correlation? We
26 don't have to go very far because if it is correlation, I think that's the game.

1 If it is causation, then....And to be clear, when I say that's the game, I think
2 that's in favor of Apple. Or another way to say it is, if it is not causation,
3 there's no argument from the other side, that the claim isn't satisfied if it's not
4 causation. So I really think that's the only question you have to answer.

5 And if you agree with us, that it's not a causal link I think we can put
6 that issue to bed. I don't think we have to go any further because the parties
7 haven't had a dispute that requires you to go any further. On the other hand -
8 -

9 JUDGE LEE: Thank you. Before you use the -- all of your time, I'd
10 like to ask you another question about -- I think your papers rely on the
11 duration of a display rather than the duration of a contact, and the latter is
12 actually what's required by the claim. So can you explain that, the
13 appropriateness of doing that?

14 MR. DARBY: Absolutely. I think that's going to the issue with the
15 second scenario, and we're talking about paragraph 51, which I think was
16 discussed earlier from Blumenberg. So our position is that we're talking
17 about duration, that Blumenberg is a reference about touch--contact duration,
18 not displayed duration expert testimony to that effect and that effect, and in
19 fact, I think it was conceded earlier by -- by Counsel and even in the sur-
20 reply that Blumenberg for displaying the link information, they agree it is
21 clearly a contact duration.

22 JUDGE QUINN: No, this is for the third scenario.

23 MR. DARBY: Oh, I apologize. I thought it was a second, Judge.
24 Judge Lee does misunderstand your question.

1 JUDGE QUINN: The question is that paragraph 51 of Blumenberg
2 states that the link information is displayed. If the link information is
3 displayed for more than that amount of time, then the link persists.

4 MR. DARBY: I think that goes to the second claim scenario, but I
5 think we can put it aside to the moment. Our position is the same, whether it
6 would be the second or the third claim scenario that corresponds, that the
7 argument corresponds to our position is that Blumenberg teaches touch
8 contact durations.

9 JUDGE QUINN: You are confusing me. The second scenario is the
10 one in which you break contact and then the link activates automatically to
11 open the second webpage, right?

12 MR. DARBY: That's correct.

13 JUDGE QUINN: So the third scenario is the one in which you rely on
14 when that you press the screen, you keep contact on until you exceed that
15 second threshold.

16 MR. DARBY: That's correct.

17 JUDGE QUINN: And that's the limitation that we're talking about.

18 MR. DARBY: Okay. And our position on that is that it is
19 touch—contact duration and that it is not display duration.

20 JUDGE QUINN: And what do you say about the disclosure in
21 Blumenberg, about, that the information that you are using in order to
22 determine whether you can break contact and the link persists on the screen,
23 if the link information was displayed for more than that amount of time?

24 MR. DARBY: I think that's putting -- that's further discussing what
25 comes earlier in the paragraph and even in the paragraph before that, which
26 is all about touch—contact duration. And so I think it is just another way of

1 saying that you held the contact long enough to get the link information on
2 the screen. And now we're talking about, from that point, how much longer
3 did you hold the contact.

4 I think that's the clear way to read Blumenberg. There's no talk of a
5 second timer or anything like that. And in fact, that almost hardly makes
6 sense. It's looking at touch contact for the entirety for all the different
7 triggering of the different ways that the device operates. And we think that
8 if you read the document from the perspective of the field artisan in its
9 entirety, that's what you come away with.

10 And we have expert testimony to that effect. And another point I'd
11 make is that we do have Griffin for that. And in the petition we were clear
12 that you'll look to Griffin for the implementation details about how to do
13 what Blumenberg teaches in terms of these different contact duration
14 thresholds.

15 And Griffin's clear about contact duration thresholds. That's not new
16 in the reply. That's from the petition. And so I do want to, I want to make
17 sure that's clear. We read Blumenberg as being touch contact and only touch
18 contact, but also we have Griffin. So in the combination, there certainly isn't
19 any doubt that we're talking about touch—contact duration here.

20 JUDGE LEE: So Counsel, are you saying there's no mistake in either
21 your belief or in the language of -- of the reference, that the meaning simply
22 is that when it refers to display duration, it's implicit that there's contact
23 that's causing the duration. So they're used interchangeably?

24 MR. DARBY: Implicit in the sense that it's referring back to the
25 contact, yes. When it says display -- when it says display later on in the
26 same paragraph, where we're talking about contact, we believe it's talking

1 about contact the entire time, and the -- that's how this person of skill in the
2 art would read it.

3 JUDGE LEE: Does the finger have to be on the screen to -- for the
4 display to continue? It's coextensive if there's a display that implies there's
5 contact.

6 MR. DARBY: If I understand that, correct -- the question correctly,
7 yes. We're talking about keeping the finger down, about keeping the finger
8 down past the activation threshold.

9 JUDGE LEE: At least in that instance, it, the two are co-existing. So
10 display duration is the same as contact duration.

11 MR. DARBY: We don't see a difference between them, no.

12 JUDGE LEE: Okay. Thank you.

13
14 MR. DARBY: Absolutely. I see that I'm down to about a minute left
15 here. One of the things I do I do want to point out and I believe Counsel had
16 mentioned earlier with respect to the third claim scenario, this idea of
17 whether when you pass the activation threshold that it doesn't matter what's
18 going on there, so there's no causation because you're keeping the display,
19 keeping the preview display no matter what.

20 I want to point out that it is true that the preview continues to be
21 displayed when you pass the activation threshold, but the reason that it's
22 displayed is because you passed the activation threshold. So there is
23 causation. You got there, you passed it. Once you're past it, now the device
24 is going to behave differently.

25 It's not going to send you to the -- it's not going to send you to the
26 target page. You pick your finger up, it's going to maintain the display

1 preview information. So there is causation and, Judge Lee to your earlier
2 point about temporal. We can absolute -- we can live with that. We can live
3 with that. And in fact, we have dictionary definitions that are in the record
4 that talk about during at which time, while, we absolutely live with that
5 because when you look at Blumenberg, that preview is at which time,
6 during, while the contact extends beyond the activation threshold.

7 JUDGE QUINN: I think the reason there's a disconnect is these
8 claims really are meant to work differently. The second scenario never
9 displays anything to you in the claim. It just activates the hyperlink and you
10 go to the second web page. And that's why in the third scenario, you
11 actually see something relating to the second web page, like the summary or
12 a portion of it. Whereas Blumenberg gives you the snippet of, or that portion
13 of, that second web page from the get-go.

14 MR. DARBY: The way I responded that by saying that the claim
15 only requires -- to your point, only requires in the third scenario that the
16 preview be displayed, but it's comprising claims and it doesn't exclude you.

17 JUDGE QUINN: I understand that, but there's a design to it, and
18 there is a way that it was meant to operate with the user interface type -- type
19 of design. So it's just -- you're trying to fit it into what Blumenberg does and
20 now we have this issue of the timing of the display because that's not what
21 the claim is requiring.

22 MR. DARBY: I -- I think -- I think I understand the point is the -- our
23 best response to it is that if the claim isn't limited to that I understand that
24 those, that's the sequence of limitations in the claim. But we do have a -- we
25 do have an open-ended claim, so there could be other things that go on, too.

1 It doesn't say display only when, or display only triggered in response
2 to; it's comprising. That could be an earlier display the claim just doesn't --
3 the claim just doesn't require.

4 I see that I'm out of time.

5 JUDGE LEE: Okay, one last question, it is Judge Lee. Are you able
6 to point to a described embodiment in the challenged patent that does not
7 have a causal relationship between the actions performed and the associated
8 contact?

9 MR. DARBY: What I am able to point to, and I think this is going in
10 the direction of your question is but I want to be specific in terms of talking
11 about duration. What you'll find in the -- in this patent is there's a lot of talk
12 about pressure is not allowed to talk about duration at all. And so when
13 you're talking about duration causing something, I think there are actually a
14 lot of examples where you would have a touch contact that goes on for a
15 duration, but the duration isn't the cause of the ultimate action.

16 It's, in fact, they're correlated because you must have a duration of
17 contact. But it is the pressure that causes. And so we were looking at
18 column 59 earlier, and I think you'll find that in column 59. And I think
19 what else you'll find in column 59, beyond just the pressure is also this idea
20 of the gesture being performed -- or excuse me. The things like feedback or
21 some kind of action being performed during the gesture -- during the
22 gesture.

23 So again, we can live with at which time or during because that's not
24 causal. That's temporal. We're happy to live. We're happy to live there. I
25 have a little causal, too, but in any event, we think Blumenberg gets us there.

1 With that, I see I'm out of time. Unless there are any further questions
2 from the panel, I'll pass the podium.

3 JUDGE QUINN: Thank you.

4 MR. DARBY: Thank you.

5 MR. ROBINSON: All right. Thank you, Your Honor. So I'll be
6 brief. A few points I'd like to briefly respond to. First the notion that Patent
7 Owner conceded that Blumenberg was talking about touch or contact
8 duration as opposed to display duration is simply not accurate.

9 I believe that argument is written in Exhibit 2001, paragraphs 46, and
10 I believe 45. Both of those paragraphs are consistent with the language used
11 in paragraph 51 of Blumenberg and talking about the duration of display.
12 On that same paragraph 51, not seeing a difference between contact duration
13 and display duration as we sit here today it is not the same as having shown
14 in the petition that those were the same. The petition does not.

15 With that, I'm happy to see the rest of my time unless there are any
16 other questions.

17 JUDGE LEE: Can you respond to Petitioner Counsel's last comment
18 about where he thinks there are embodiments in the specification where
19 causal relationship is not required?

20 MR. ROBINSON: Yes, Your Honor, I believe the argument was that
21 the specification discusses some examples that include pressure thresholds
22 and that time would be happening at the same time, but not using those
23 thresholds. I suppose just fundamentally that's not what's claimed that the
24 specification discusses thresholds, certainly, and discusses different things,
25 including time that can be associated with those thresholds.

1 And once the thresholds are associated with time, it -- it's irrelevant
2 that time passes while also using an embodiment that has pressure
3 thresholds.

4 JUDGE LEE: So in summary, you think those instances are irrelevant
5 to the -- to these claims where we're talking about duration?

6 MR. ROBINSON: Yes, Your Honor. When the threshold is
7 explicitly related to duration and that, that's what it is.

8 Thank you.

9 JUDGE QUINN: Thank you.

10 All right. Thank you, everyone. This concludes the oral argument for
11 IPR2024-1090. The case is considered submitted for preparation of the final
12 written decision, which we will issue in due course. Thank for argument
13 today and professional decorum.

14 Thank you. You have indulged our questions, and I found your
15 arguments and discussions very useful. Have a great afternoon.

16 (Whereupon, the above-entitled matter went off the record at 1:40
17 p.m. CDT).

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