

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC
Patent Owner.

IPR2024-01091
Patent 10,936,114 B1

Record of Oral Hearing
Held: October 16, 2025

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

IPR2024-01091
Patent 10,936,114 B1

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Patent 10,936,114 B1

The above-entitled matter came on for hearing Thursday, October 16, 2025, commencing at 11:30 a.m., at the U.S. Patent and Trademark Office, Southwest Regional Office, 207 South Houston Street, Room 155, Dallas, Texas.

PROCEEDINGS

(11:30 a.m.)

JUDGE QUINN: We're having an in-camera review of appearances for the record. We want to discuss, currently, whether Attorney Jason Melvin, appearing today and also appearing yesterday on behalf of Apple, whether we have a waiver from Patent Owner on regarding any appearances or conflicts that may arise due to his presence here.

MR. LEVENTHAL: Your Honor, Daniel Leventhal, on behalf of the Patent Owner. Yes, we do waive any concerns based on the understanding that the panel has no concerns as well. And Mr. Melvin, to my knowledge, has not been involved in any of these proceedings.

JUDGE QUINN: And, for the record, the panel doesn't have a concern, either. So everybody -- yes, Mr. Renner, do you want to say something?

MR. RENNER: Just for tomorrow, there's also hearings where Mr. Melvin will also be attending, and I just wanted to clarify whether this would apply to those as well.

JUDGE QUINN: Yes, we would like to make sure of that. We've made that statement in each of these proceedings, and we'll put a notice in the record as this waiver applies to yesterday. Is that an understanding?

MR. LEVENTHAL: Yes, Your Honor.

JUDGE QUINN: Okay, for IPR2024-01091, and for this morning's hearing as well, which was IPR2024-01087.

MR. LEVENTHAL: Yes, Your Honor.

JUDGE QUINN: Okay, that concludes this part. And now we can get to the matters at hand, which is what we're here for.

1 Thank you, Mr. Melvin, for indulging us.

2 MR. MELVIN: Thank you, Your Honor.

3 JUDGE QUINN: Let's get started. This hearing concerns Apple Inc.
4 v. Smith Interface Technologies LLC. We are here to hear argument on
5 IPR2024-01091. With me are Judges Jameson Lee and Judge Jeffrey Smith
6 appearing from the Madison headquarters hearing rooms. They're appearing
7 via video. I feel like I'm repeating myself, but I have to say it. So, please
8 speak to the microphone and please identify your demonstratives
9 specifically, so they can follow along.

10 There shall be no objections spoken, you know, spontaneous
11 objections. You can make objections during the time that you are arguing.
12 Again, we are taking notes, we're listening to you, and please don't take our
13 interruptions as anything other than our interest in getting answers from you.

14 We want to thank you for your indulgence. I know it was a very short
15 break that we had here today, but we wanted to make sure everybody's got
16 their needs met and we had some things we have to do in the afternoon.

17 We're going to start with appearances and rebuttals. Petitioner, can
18 you state your appearances for the record?

19 MS. HUANG: Yes, Your Honor. This is Jenny Huang for Petitioner,
20 and with me is my colleague Carl Renner, who you may hear from as well.
21 And with us also is a representative from Apple, Jason Melvin.

22 JUDGE QUINN: Thank you. And you have the rebuttal time you
23 may want to reserve. What is that?

24 MS. HUANG: Ten minutes, please, Your Honor.

25 JUDGE QUINN: Thank you. Appearances for Patent Owner?

1 MR. LEVENTHAL: Good afternoon, Your Honor. This is Daniel
2 Leventhal for Patent Owner, and with me is backup counsel, Art
3 Licygiewicz. L-I-C-Y-G-I-E-W-I-C-Z.

4 If I could please have ten minutes for rebuttal, Your Honor. Thank
5 you.

6 JUDGE QUINN: All right. Unless there are any other housekeeping
7 things we need to take care of, Petitioner, you have the floor.

8 MS. HUANG: Thank you, Your Honors. So, if we could just start
9 with Slide 2, that would be great.

10 Central to this case are questions of claim construction. And there are
11 three limitations at issue. Now, ordinarily, when we talk about claim
12 limitations, we like to show corresponding or informing patent specifications
13 or disclosures, but, here, given the thinness of the spec, we'll instead briefly
14 just review relevant aspects of the applied art, which will help just to orient
15 everybody and get us all on the same page.

16 So, if you could please turn to Slide 5. For convenient reference,
17 we've offered a list of the instituted grounds. You'll note that Claims 29 and
18 59 are no longer at issue because the Patent Owner indicated that those
19 claims have now been statutorily disclaimed. And so the Petitioner's
20 position on those claims as to invalidity remains unrebutted.

21 If you could please turn to Slide 7. So, we show Representative
22 Claim 1, and the last of those three elements -- and you can see the
23 shorthands we're using for those claims are in lighter font for your reference.
24 But you can see the last of those three elements, [1.f], [1.g], and [1.i], are
25 central to the issues addressed during the proceeding. And the Board has

1 referenced these elements as the conditional limitations or the "when"
2 limitations. So we'll do that -- we'll do the same today just for brevity's sake.

3 If you look at Slide 8, please, we enlarge those three "when"
4 limitations, showing them in isolation. And let's briefly talk about these
5 elements. Now, as we previously indicated, this case has claimed
6 construction issues. And at the heart of the dispute is the impact of the first
7 clause of each of those "when" limitations. Those are the conditions. And
8 so, as we step through them, we'll isolate the condition from the
9 corresponding actions that are performed. And because the patent spec
10 doesn't offer a lot of support here or examples, we'll very briefly mention
11 aspects of the prior art just to serve to illustrate and to get us all on the same
12 spot.

13 JUDGE LEE: Counsel, this is Judge Lee. For Ground 1, for the first
14 "when" condition, why are you comparing each of the taps of the double tap
15 event to the threshold associated with the hold event? Isn't the gesture for
16 the first "when" a double tap, right? If it's a double tap, why are you just
17 measuring one of the two as the duration?

18 MS. HUANG: Sure, and thank you for the question. For that
19 question, I'll note that the petition does argue that both the duration of a
20 single tap and the duration of the entirety of the tap are less than a first
21 magnitude threshold. But, to the extent that we argue that it only applies to
22 one of the magnitude -- one of the durations -- or one of the taps, excuse me,
23 I'll note that -- and this relates to the Board's questions -- that when we talk
24 about what a gesture is, if you look at the '114 patent, and if I can direct you
25 to page -- or, I'm sorry, slide. Slide 17.

1 When we talk about what a gesture is, in some of the support that is
2 offered by the '114 patent, it talks about a gesture as including a user input
3 defined by the inputs, flags, and signals that make up that gesture. There's a
4 lot of things. The gesture isn't just -- it's not a simple thing that the device is
5 trying to detect. And, in fact, it's trying to figure out what is this device,
6 based on the inputs, flags, and signals that the device is taking in. How long
7 did that gesture occur? How long did the touch occur that is part of the
8 gesture.? And, in some instances, how much pressure was applied? Was
9 there a distance that was expanded?

10 So all of these are parts of the gesture. And so the way the claims are
11 written, they really allow for the magnitude of the duration of the gesture to
12 include any part of that gesture, because you're using lots of things to
13 determine what that gesture are. It could be a component of a gesture, a
14 portion of a gesture. And so that's why we can point to both just to one of
15 the taps or multiple taps that are composed of the gesture, because it's all
16 part of the, as the '114 patent says, the inputs, flags, and signals that the
17 gesture comprises. And that's cited in the '114 patent.

18 JUDGE SMITH: Petitioner, this is Judge Smith. Before we move on
19 to something else, I just want to make sure I understand your point. Are you
20 saying that -- for the gesture of a double tap, you're saying that the gesture of
21 a double tap could be either each individual tap of the double tap could be a
22 gesture, as well as the two taps together that makes up the double tap could
23 also be a gesture? Is that what you hear me saying?

24 MS. HUANG: I am, Your Honor. And, actually, in support of that
25 question, and as you'll see is a theme of our presentation, in trying to
26 understand what this claim means and to understand the scope of that claim,

1 we often look to the -- Petitioner often looks to the dependent claims. And,
2 to that end, I'll direct you to the '114 patent, column 103. This is Claim 26.
3 It's a claim that we've cited to extensively in the briefing. And if you look at
4 lines 10 through 11, it says each instance of said "when" includes only a
5 portion of a duration. So that's further supporting the idea that, again, what
6 the '114 patent says, you can look at the inputs, flags, and signals, because
7 they're all portions of that duration.

8 (Simultaneous speaking.)

9 JUDGE SMITH: I'm sorry, can you repeat where you're reading?

10 MS. HUANG: Yes, happily. It's column 103, and that's lines, I think,
11 about 10 to 11. The lines aren't entirely aligned. And also, actually, if you
12 look to the same column but lines 1 to 3, it says includes only a portion of a
13 duration when the magnitude of the duration meets a corresponding
14 magnitude threshold. So we've got lots of support here showing that the
15 scope of the independent claims allows for the magnitude to just include just
16 a portion of that duration, as well.

17 JUDGE SMITH: Counsel, I think I might understand it, but you're
18 not making it very clear, because the "when" condition, according to the
19 petition, is met by a double tap gesture. That's your position, right? The
20 gesture is a double tap. That means the "when," the first "when." Is that
21 right?

22 MS. HUANG: Yes, in conditional limitation 1.

23 JUDGE SMITH: Okay, so if the gesture is a double tap, then the
24 duration of the double tap would have to include both taps.

25 That's the first part. But then, if you look at Claim 1, when you're
26 talking about claims, it's just talking about when a magnitude of a duration

1 of the gesture. Is that what you're saying? Because the claim says a
2 duration of the gesture, then you're free to choose any portion of the gesture
3 as a duration. That I can understand. But I'm not sure if that's what you're
4 saying, because you're referring to Claim 26, which is not -- I don't think
5 that's before us. But Claim 1 talks about a duration of the gesture.

6 MS. HUANG: Sure. What I am trying to say is something that -- it's
7 not just because it says a duration, but, rather, that the way that these claims
8 are written, and the way that Claim 26, for example, informs the meaning of
9 the claims and the '114 patent itself informs the meaning of the claims, we
10 know that a gesture itself is comprised of different parts. It has different
11 components, different inputs, flags, and signals that define what that gesture
12 is.

13 So it may have multiple durations. And, again, 26 says you might just
14 look at a portion of that duration. And so if you have the entirety of the
15 duration of the double tap, that's okay. But the "when" limitation may also
16 be met, according to Claim 26, if you just use a portion of that duration,
17 which would include --

18 JUDGE SMITH: But if it doesn't come from the language of the
19 claim, I'm not sure where it comes from. Because if the wording is the
20 duration of the double tap, where would you have the flexibility?

21 MS. HUANG: If the duration is the duration of the double tap?

22 JUDGE SMITH: Yeah, if the language is not a duration of the
23 gesture, but the duration of the gesture, and your gesture is the double tap,
24 wouldn't that have to include both taps?

25 MS. HUANG: Our position is that it does not, because you can have
26 a duration of a gesture, and that duration is allowed to be various durations

1 depending on which gesture that we're pointing to. The claim is shockingly
2 broad, for a fairly long claim, and really the breadth of this claim is informed
3 by the dependents. We know dependent claims have to fit within the scope
4 of the independent claim.

5 So, perhaps, Your Honors, on first read of some of these claims, you
6 might think, okay, I think I know where this claim -- I think I know where
7 the boundaries are. But as we go through dependent claims -- and it's
8 briefed extensively, the dependent claims are, by Petitioner. We look to the
9 dependent claims. We looked to 2; the Board's institution decision looked 9;
10 we looked to 10; we looked to 33. There's a number of -- in 26. There's a
11 number of dependent claims that say, by the way, in case you're wondering,
12 here's a dependent claim that says that you could have a first gesture meet
13 the first thing, a second gesture meet the second condition, and a third
14 gesture meet the third condition. Great, now I have three gestures.

15 We have some claims saying that -- dependent claims -- adding just an
16 idea that, okay, now you have performance of the function for [1.f]. The
17 action happens after cessation. It's all it adds. So now we know that
18 cessation is probably not required by the independent claims. We're just
19 kind of understanding where the bounds of that --where the scope of the
20 independent claim is based on these dependents.

21 And with Claim 26, we see that we have to allow for the duration to
22 just be a portion of that duration. Otherwise, 26 wouldn't fall within the
23 purview of Claim 1.

24 JUDGE LEE: It's Judge Lee again. So I know you also say... The
25 entire duration of the double tap also meets the limitation. Is that disputed

1 by a Patent Owner? Do they say, no, if you count the entire duration of the
2 double tap, then the first "when" condition is not met?

3 MS. HUANG: I believe they are disputing it, yes. I believe they're
4 saying that, yeah. I'll just answer your question and say yes.

5 JUDGE LEE: So even if we count the entire duration, there's a
6 dispute as to whether that meets the first when clause?

7 MS. HUANG: There is, Your Honors.

8 JUDGE LEE: Okay. Thank you.

9 JUDGE SMITH: This is Judge Smith. I just want to kind of follow
10 up on what we've been talking about. This idea that you just measured the
11 duration of the first tap of the double tap.

12 JUDGE SMITH: Let's say we disagree with that. That's not what this
13 claim term encompasses. You need to count the duration of the entire double
14 debt to know that it is, in fact, the gesture of a double debt. But if we do
15 that, does your argument depend on counting? The duration of the first tap
16 of the double tap, I mean, do you lose on that point, or do you still meet the
17 claims if we say that the duration is the duration of the entire double tap?

18 MS. HUANG: We still meet the claims. So we've mapped it both to
19 just a single one of the double taps or the collective double taps, and that's
20 with Ground 1A. Where we know that with a double tap gesture, a POSITA
21 would have recognized that that double tap gesture would be shorter than a
22 first magnitude threshold, and that's how that gesture is recognized. And
23 when it's recognized, because it's less than a threshold, we know that the
24 subsequent performance then occurs, according to Kim. So it is not fatal.
25 We have two options.

1 JUDGE LEE: This is Judge Lee. Can you explain how the third
2 “when” is met? It seems rather complicated when I read it. I would like you
3 to explain it, please.

4 MS. HUANG: Sure. I guess we could orient everyone. Why don't
5 we go to slide 13? So with slide 13, we have a teaching from the primary
6 reference, Kim. And Kim says, if there's an interrupt on the device, and
7 there's also on slide 13, you can see a figure. 2A from Kim and it says, an
8 interrupt is detected and if that interrupt is corresponds to nothing, then the
9 device might disregard that input. And with that --

10 JUDGE LEE: I'm sorry, but what is an interrupt here? That's not a
11 gesture on the screen, right? It's something else.

12 MS. HUANG: It's some type of input on the screen. And the device
13 then, at that point, has to say -- is it a gesture? Is this an intentional gesture?
14 And that really leads into, that's why I think it's a great way to put it as an
15 interrupt, because it's not necessarily, the device has a job to do. I think with
16 these claims, it's really important to think about it, not in terms of, I touched
17 my device, but instead, the device saying, I've detected something's
18 happened. And with that, it's asking, does that detection align with
19 something that requires a requisite action? And for this claim, what we've
20 said, what the petition is saying, is that when there is an interrupt, but it
21 doesn't meet any subsequent action, or it's not in -- it doesn't result in any
22 sort of action. We don't do anything. And that, a procedure would recognize
23 as the device saying, that wasn't intentional. That wasn't something that we
24 wanted to do. But when you do have an intentional touch, you do want to
25 perform an action. And Kim is explicit about that. It says perform other
26 action. It's not really -- it doesn't matter what the action is. It says when you

1 know it's intentional, you want to perform another action. We'll note that
2 [1.i] is similarly not specific, and, okay, it says perform another operation.
3 So the idea is the same. With something intentional, with something that's
4 over a threshold of an intentional touch, we're going to perform an operation
5 or another action.

6 JUDGE LEE: I think you may be moving a little too fast. The
7 paragraph 50 starts with, if an interrupt is not a request for activation of the
8 zoom mode, what would be a request for activation of the zoom mode?

9 MS. HUANG: According to Kim, Kim describes various ways that
10 one might activate the zoom mode, but it doesn't necessarily specify the
11 actions that would. Activate the zoom mode necessarily, but it's just looking
12 to see what is it that you're doing. Beyond that, I may have to speculate, and
13 I hesitate to do that here.

14 JUDGE LEE: So we don't know what's the request for activation of
15 the zoom mode, even though it's some kind of interaction with the display?

16 MS. HUANG: We know that the device is making some sort of
17 determination to figure out if that's indeed what it's doing, but it doesn't tie it
18 to a specific recognition or something like that here in Paragraph 50.

19 JUDGE LEE: Does that mean that the double tap and the long hold?
20 All of those zooming features, are they available only in the zoom mode?
21 That's correct. Are they available outside?

22 MS. HUANG: Yeah, they're available if the zoom mode is activated.
23 So the mapping [1.i] is directed to a different mode. The claims don't say
24 anything about modes. I'll stress that. It's just asking. It's saying that you
25 have a device that's configured so that when certain things occur, you have
26 corresponding functions.

1 JUDGE LEE: So your third “when” is actually outside of the zoom
2 mode then?

3 MS. HUANG: That's correct.

4 JUDGE LEE: Well, Patent Owner raises an argument that you have
5 chosen different gestures to meet these three different when's. And they say,
6 well, you may be able to do that, but they all have to start from a common
7 beginning point. I'm not sure what that means, because when you pick
8 different gestures, don't you start from the beginning of those gestures. So
9 I'm not really understanding what they're arguing. So, if you understand
10 what they're arguing, can you tell me and then tell me your response?

11 MS. HUANG: I have to be honest with you. Judge Lee, I don't know
12 that I understand what they're arguing either. There's a lot of, I know we're
13 being accused of inserting language into the claims. There's a lot of
14 inserting of language into the claims by Patent Owner and starting at a
15 common starting point. It's just an example of the kind of language that
16 patent owners are inserting into the claim language. It's not anywhere in the
17 claim. And it really goes to the questions that the Board asked in Paper 10
18 when it issued the order authorizing claim construction.

19 JUDGE LEE: I know that's not in the claim, but I really don't even
20 understand what they're saying. That the three things you pointed to must all
21 start from a common starting point. It just doesn't register with me, because
22 you've obviously picked different gestures.

23 They all have their own starting points. I don't understand why they must
24 all start from the same starting point. Do you have anything?

25 MS. HUANG: I also, yeah, I will say, Your Honor, that I also don't
26 understand why they all start from the same starting point. And to the extent

1 there's accusations of us not respecting antecedent basis. Our position, the
2 Petitioner's position, is that the individual conditional limitations fully
3 respect -- the antecedent basis that is laid out in element [1.e]. So this is a
4 device, in Claim 1, a device configured to detect a gesture. And you'll recall
5 that in the petition we say this device can detect various gestures. It can
6 detect a double tap, it can detect an intentional tap, it can detect a press and
7 hold.

8 And so, when you go to each of the "when" clauses, you go back to
9 the gesture that was detected at, the gesture that this device is capable of
10 detecting in [1.e]. And so, having this to come at a common starting point, I
11 don't understand how that is imported or injected into this claim. It's
12 nothing. There's nowhere in the claim language that would necessarily
13 suggest that we need to have a common starting point.

14 JUDGE QUINN: Well, if the claims say that each when refers to the
15 same magnitude, because it says when A magnitude and then when B
16 magnitude. And then when the magnitude, and that magnitude is a duration
17 of the gesture, which to detect the duration you have a beginning time frame
18 in which you start and an ending time frame. It makes sense logically that, if
19 you have the one gesture that you are trying to detect, that if you're testing it
20 against all of these conditions, that you're testing that same duration through
21 these three conditions to see which one you need.

22 MS. HUANG: Yeah, if that's how the claim were to be read. And I'll
23 note, too, that if --

24 JUDGE QUINN: Well, it is a logical reading of the claim. You may
25 be reading it in other ways as well that may be broader, so that you'll --
26 perhaps want to detect additional gestures more than one, and so now you're

1 detecting one or more. And then instead of saying when a magnitude, you're
2 detecting one or more magnitudes of the one or more gesture. I mean, I'm
3 just talking about the more simple way of reading this when you only have
4 one gesture. You are measuring against all the conditions, the same
5 magnitude.

6 MS. HUANG: Sure. Correct. Correct. If that were to be how you
7 read it. But, as the Board noted in its institution decision, and really, I think
8 the reasoning for why the Board authorized -- and I guess I won't suppose
9 why we were authorized.

10 JUDGE QUINN: Oh, yes. That we would follow it or that we would
11 do the same thing?

12 MS. HUANG: Sure. And I'll say that that's not where I was getting
13 to. I would say that the request for claim construction briefing, I think,
14 reflected a question as to, is this how we were supposed to do it? And that's
15 really where I was going to. I wasn't trying to say that the institution
16 decision was bad, of course.

17 JUDGE QUINN: That's okay. We want to explore that.

18 MS. HUANG: Yeah, yeah. And we certainly appreciated the
19 opportunity to have that briefing because there's a lot of words here and they
20 need to be talked about. And there's a lot of dependent claims that inform
21 that meeting, so to have the additional pages to be able to explain that was
22 much appreciated.

23 JUDGE QUINN: What is the best dependent claim that helps you
24 here?

25 MS. HUANG: It depends on which portion of it.

26 JUDGE QUINN: With this issue with the double tapping.

1 MS. HUANG: With double tap alone, or with using different
2 gestures?

3 JUDGE QUINN: Using different gestures and one of them including
4 the double tap.

5 MS. HUANG: I might give you, I know you said one. I'm going to
6 give you one more. I think 9, which the Board did point out in its institution
7 decision, 10 specifically calls out three gestures. It says a first, a second,
8 and a third gesture. That's another one that also suggests that here you have
9 the different conditions being explicitly met by a first, a second, and a third
10 gesture.

11 MS. HUANG: And, yeah, those are the first two that come to mind
12 just on that specific question. Thank you. Yeah. And I guess, since we're
13 talking about dependent claims, I want to talk a bit about the way that a lot
14 of language has been injected into the claims. And so, if you could turn to
15 Slide 22.

16 JUDGE SMITH: So here is -- actually, I'm sorry. Before we move on
17 from slide 13, let me just clarify this, at least in my mind, more than it is
18 now. I'm still kind of fuzzy on it. What I understand, I understand, like --
19 the double tap is one gesture. The tap and hold is a second gesture. And
20 then you have this interrupting when the device is in a different mode that
21 would be the gesture that meets the second magnitude. Threshold, I guess if
22 the device is in the zoom mode, it's only going to recognize the double tap or
23 the press and hold to either zoom.

24 JUDGE SMITH: zoom in or return to the original size is not, this last
25 limitation is not possible to be performed when it's in zoom mode. And yet
26 your petition says that. Even though it's not in the zoom mode, this third

1 gesture that that's not possible to be performed in the zoom mode still meets
2 the claim. Why would we agree with that?

3 MS. HUANG: I guess I would first say to hesitate to say that it's not
4 possible. It's just not explicit that we don't really know.

5 JUDGE SMITH: Let me ask you, is there any teaching of doing this in
6 a rumble in zoom mode? Is there any teaching either in the reference or in
7 your papers?

8 MS. HUANG: There's not an explicit teaching, but I would hate to.

9 JUDGE SMITH: Did you argue that in your papers? We did not.

10 MS. HUANG: No. Oh, okay. But I guess the second half of that,
11 Your Honor, is that the claim just simply doesn't say that the first two
12 conditions must be met in the same mode as the third condition. It just says
13 we have an apparatus claim in Claim 1 that says your device is configured to
14 detect a gesture. And then it's looking at these various conditions associated
15 with that gesture. There's not a mode requirement or something like that that
16 requires that these two or three even conditions must necessarily be met in
17 the same mode. It's just a device that has a certain configuration to be able
18 to perform corresponding functions when conditions are met.

19 MS. HUANG: Thank you.

20 JUDGE LEE: Counsel, are the grounds using Bowen as an additional
21 reference?

22 MS. HUANG: Yep.

23 JUDGE LEE: Are you using double tap as one of the "when"
24 conditions? Right.

25 MS. HUANG: Correct.

1 JUDGE LEE: Are you also using the second tap inside the double tap
2 as another condition?

3 MS. HUANG: In the Bowens-based grounds, we are using the double
4 tap for [1.f] only, and then we're using recognition of a single tap in Bowens
5 to in support of the last condition, which is [1.f], so I wouldn't say the
6 second tap is used for something it's the double tap is [1.i] and A, first tap is
7 [1.f] is how the mapping.

8 JUDGE LEE: Yes, but what I'm saying is while it's determining
9 whether it's a double tap, you're waiting for the second tap to happen. I think
10 somehow you've used that second tap as meaning one of the other two
11 "whens." Is that right?

12 MS. HUANG: Not entirely. Wait, let me run that question back
13 through my head. We're using the second tap to meet one of the two when's
14 -- yes. So for [1.i], if we're speaking about the same one. So for an
15 intentional touch in [1.i], the gesture corresponding to the [1.i] condition.
16 We have a single tap, and we know that it occurs because it's greater than a
17 threshold, and that threshold is one that would be defined by the device
18 detecting that it's actually a double tap if it happens again. So it's waiting.
19 There's a timeout and says, has enough time elapsed here, and we're doing a
20 comparison as between them to figure out, are we greater than that
21 threshold? And if it is, we have a single tap.

22 JUDGE LEE: Well, you know, in your petition, you brought over
23 teachings from Bowen. And then you've shown the, or maybe in Patent
24 Owner have shown the states of Bowen. And inside the states of Bowen,
25 when you're still within the two tap, the double tap determination, they're
26 saying you've somehow relied on something within the double tap as another

1 satisfaction and another condition. Maybe that's what they're saying about
2 your gestures don't all start at a common time, because I don't think they like
3 your using something within the double tap as a single tap.

4 MS. HUANG: To the extent I understand patent owners' arguments,
5 Your Honor, My understanding is that they're demanding a common starting
6 time because they are demanding a single gesture perform all of the actions
7 of the claim, and that is something that the Board and the institution's
8 decision raised and then said that Patent Owner just observed Patent Owner
9 actually hasn't found a single gesture that has three different durations that
10 perform three different actions. This came up in the briefing extensively and
11 certainly was related to many of the questions asked in the Board's order.
12 But that's my understanding as to why they're pushing that particular read.

13 JUDGE LEE: Yeah, I don't think I have a problem with you finding
14 three different gestures to meet three different conditions, but I may have a
15 problem with you using double tap to meet one, and then something within
16 the double tap to meet the other. Can you tell me precisely whether you've
17 done that?

18 MS. HUANG: Yes, we've done -- like I said, we've done the double
19 tap duration as a whole. And with that, we've pointed to Kim and the
20 obviousness argument that is supported by Dr. Cockburn's testimony in
21 saying that a POSITA would have understood that a double tap, the entirety
22 of the duration of a double tap, would be shorter than a gesture such as a
23 press-and-hold, which people know just to be longer, because double taps
24 are two taps and quick succession. Not much longer than a single tap, but
25 there's two points of contact.

1 JUDGE LEE: This is a long question, so a simple answer. MS

2 HUANG: Yes.

3 JUDGE LEE: Use double tap to meet one, and then contact within the
4 double tap, perhaps the second tap as meaning the other?

5 MS. HUANG: No. Yeah, okay, so I think I understand the point of
6 confusion perhaps. So we point to double tap for condition [1.f], and as to
7 the duration of the double tap, we map to both the duration of a single tap
8 within it, because a double tap comprises two taps from the way that the
9 device is detecting it. It's saying, was that a single tap or was that a double
10 tap? The device never detects a double tap necessarily as being, oh, it's a
11 single tap, so I'm going to do the single tap thing. It's waiting to see is this a
12 double tap? And so, when we mapped it, though, with the support of Claim
13 26, we know we can look at just a portion of a double tap, which would
14 comprise the physical act of just touching once and that duration, or the
15 duration of the entirety of the gesture. And then when we get to a single tap,
16 or what we call an intentional tap, that's mapped separately to [1.i]. Does
17 that answer your question?

18 JUDGE LEE: Well, not really. Why add Bowens, then? You've got
19 everything without Bowens, so what's the purpose of adding Bowens?

20 MS. HUANG: Bowens is added because it has more explicit
21 teachings of actual, of time thresholds. It's teaching, it's a more technical
22 reference than Kim, and it's really looking at what are these specific gestures
23 are. Kim isn't really as close to asking, how do I figure out what this gesture
24 is or how long has it been existing?' It just kind of takes for granted a gesture
25 it talks about. This was a press and hold, or this was a press and a move up,
26 or a double tap, but it doesn't ask, how do we know?

1 JUDGE LEE: I see. So is it fair to say you're adding Bowen for
2 additional details? That's correct? How double tap get implemented? All of
3 your three conditions are still met by the same gestures.

4 MS. HUANG: That's correct.

5 JUDGE LEE: So there's not that much difference between ground
6 with Bowen and without Bowen

7 MS. HUANG: That's correct.

8 JUDGE LEE: Except for how to calculate the duration, the events.
9 Three conditions are still met by the same contacts.

10 MS. HUANG: Yes. Yes. Bowen provides, Your Honor, the
11 additional technical kind of detail that a POSITA, I think, would naturally
12 look to. So it's still a natural combination, and it's sort of a background to
13 Kim as Kim has presented.

14 MS. HUANG: Thank you. You're very welcome.

15 JUDGE SMITH: Counsel, let me just -- this is Judge Smith. I'm
16 concerned when you say that you can rely on a portion of the double tap to
17 meet one of the gestures, and you're looking to claim 26 in order to rely on a
18 portion of the double tap. I'm concerned that you're relying on the inventor's
19 disclosure to teach the plane limitation, this idea that you can rely on a
20 portion of a double tap to perform an operation. Is there anything other than
21 applicants' patent that teaches using a portion of a double tap to perform an
22 operation?

23 MS. HUANG: Is there anything other than applicant's disclosure to
24 teach it?

1 JUDGE SMITH: Right. You're saying you're relying on a portion of
2 a double tap to perform an operation. What teaches doing that other than
3 applicants' disclosure, or then, or then?

4 MS. HUANG: Bowens, I think, does itself. Because Bowens asks,
5 you know, if there's contact first, that's a portion of the contact. But double
6 tap has two contacts.

7 JUDGE SMITH: So what action does Bowens perform? During the
8 first portion of the double tap, what action does Mahon perform?

9 MS. HUANG: A first contact. Yeah, sorry. A first contact followed
10 by a release. That would be a portion of a double tap.

11 JUDGE SMITH: Right, and so there has to be an operation
12 performed as a result of that. Where does Mahon teach performance as a
13 result?

14 MS. HUANG: Yes, and that we would go back to Kim for.

15 JUDGE SMITH: So no reference teaches performing an operation
16 after a portion of a double tap is performed. No reference teaches that.

17 MS. HUANG: Performing the operation after just a portion of it?

18 JUDGE SMITH: Right.

19 MS. HUANG: Yeah, I would have to give that a bit more thought.

20 JUDE SMITH: Okay. Yes. Thank you.

21 JUDGE LEE: Counsel, for two of the eight claims challenged, claims
22 30 and 62, they don't have these four wins. They're broader, and the issue
23 about them is the haptic feedback. And to meet that you've applied the
24 reference of Burroughs. And patent owner points out that Burroughs only
25 teaches providing vibration during a gesture. During the zooming, right?
26 And yet, one of these two claims says, subsequent to the performance of the

1 scale operation, vibrated the apparatus. So they say, well, the rule says
2 during. And the claim requires after, so that doesn't seem to match. That's
3 Claim 62. And Claim 30 doesn't say after. Claim 30 says, after at least a
4 portion of the scale operation, vibrate the apparatus and perform the action.
5 So, What was your response to that argument?

6 MS. HUANG: Sure. Can you turn to Slide 74 of the Petitioner's
7 demonstratives? I think the key here is really the claim language and then
8 remembering what the mapping is. And I don't know if that was missed.
9 But the claim says, after at least a portion of the scale operation, after you
10 scale, scaling is [1.g]. So after you scale, you vibrate the apparatus and
11 perform an action. And the mapping that we made to perform an action is --
12 so the scaling is done in response to the long press and hold. And we see
13 that in Kim's figure seven. And if you look in Kim's Figure 7, after a
14 zooming happens, on the far right, you see it says double tap, and you see it
15 return to a basic magnification level. That's the performant action that
16 Claims 30 and Claims 62 require.

17 With Burrough, if indeed Burrough is saying that vibrating is
18 happening during a zooming operation, we actually have two zooms, right?
19 We have two zooms because the scaling operation will cause a zoom, and
20 our position, I'll say, and it's briefed, is that the vibrating happens after that
21 zoom. But in addition, if we know about Burrough, we know that if they're
22 scaling over a zoom, we know there's also a vibrating. So there's two
23 vibrating's happening. And if we take a Patent Owner's position and say that
24 the vibrating just happens during the zoom, then you would still have two
25 zooms. I'm sorry, two vibrates and two zooms. You have a first zoom that
26 happens with the scaling operation with a press and hold. And then you

1 have a double tap that requires scaling and with Burrough, would also cause
2 a vibration. And therefore, after at least a portion or subsequent to the
3 performance of at least a portion of the scaling. So after the press and hold
4 where you scale, you double tap, which vibrates the device because you're
5 causing it to zoom back to its basic magnification level.

6 JUDGE LEE: Oh, I see. So you're counting the double tap. As
7 something that occurs after at least a portion of the scaling operation.

8 MS. HUANG: That's correct.

9 JUDGE LEE: And you're counting the double tap as subsequent to
10 the performance of the scaling operation as well.

11 MS. HUANG: That's correct. So there's two ways.

12 JUDGE LEE: And then you think a double tap is zooming.

13 MS. HUANG: The double tap will cause zooming because it brings
14 the image back to its basic --

15 JUDGE LEE: Do you regard double tap as scaling, as zooming?
16 Because Burroughs says vibrating only during zooming scale?

17 MS. HUANG: Yes, the action that double tap causes in our
18 combination is a zoom.

19 JUDGE LEE: It is, but they're saying, no, double tap is not scaling or
20 zooming. It happens instantly. It's not like the other zooming operations
21 where you gradually grow bigger or smaller. But your position is— it
22 absolutely is zooming, scaling, because it returns the size to whatever it was.

23 MS. HUANG: Correct. If I showed you a picture and then I was in
24 Adobe or something and then I went straight to, you know, 200%
25 magnification, you don't have to see it go all the way in, but I've zoomed.
26 That's my position, Your Honor.

1 JUDGE LEE: I see. What about the two claims the Patent Owner says
2 they're going to disclaim? Do you know – or asked them, that they filed it?
3 Is that still before us?

4 MS. HUANG: They have disclaimed it, so that's not a point of
5 dispute between the parties, Your Honor.

6 JUDGE LEE: They have filed it?

7 MS. HUANG: They have filed it. They filed the statutory disclaimer,
8 I believe, two days after filing its Patent Owner's response. So we're not
9 disputing that.

10 JUDGE SMITH: Thank you.

11 MS. HUANG: I note, Your Honors, that I'm already short on time. If
12 Your Honors are willing, I do note that I really want to make sure I'm here
13 for you and answering your questions if possible. If Your Honors would be
14 willing to perhaps permit both parties an additional five minutes so that we
15 can make sure that we fully address everything that needs to be addressed on
16 rebuttal.

17 JUDGE QUINN: That's fine.

18 MS. HUANG: Thank you, Your Honor. I'll save the remaining of the
19 time for a while.

20 MR. LEVENTHAL: I'm ready. Judge Lee, just to confirm, we are all
21 in agreement the statutory disclaimer was filed on April 29, 2025. And yes, I
22 looked that up last night because I also had that question. Your Honors, I
23 believe there are two claim construction issues here that fully resolve this in
24 Patent Owner's favor. And we appreciate that we got the seven questions
25 because they were all very helpful. We believe these two are key. And the
26 first question is: does the claim permit pointing to three different gestures?

1 And the answer is, from the plain language of the claim, no, because it says
2 the gesture, the gesture, the gesture. And, Judge Lee, I will almost
3 immediately get to your question of what we meant by common starting
4 point. But what we saw in the briefing from Petitioner is that they had two
5 reasons why they felt they were able to ignore the plain language of the
6 claims. And the first reason that Petitioner gave is because a single gesture
7 will not meet each of these three limitations. One gesture will not meet all
8 three “when's.”

9 One is the gesture, which is less than the magnitude, first magnitude.
10 One is the gesture, which is more than the magnitude. And, Your Honor, we
11 believe that starts from -- and, for that reason, they said, therefore, we can
12 overrule the plain claim language. And we can say it's gesture one, gesture
13 two, gesture three. We disagree because we think that starts from a false
14 premise. And if I could direct you to claim to slide 10 of my slides.

15 The false premise, Your Honor, is that Claim 1 and each of the
16 independent claims is referring to how a device acts in response to a single
17 instance of user contact. That is not what Claim 1 or any of the other
18 independent claims say. And I would direct you to element [1.a] of Claim 1
19 that says what we're talking about here are stored instructions. And then
20 Claim 1C, element [1.c], which says everything that follows is what those
21 stored instructions do. So what we have here is a description of these claims
22 that are described as code, and code that is intended to operate on multiple
23 instances of user conduct. But it's written down, it's in code. Every time it
24 has to react the same way. And a question that came up yesterday of what
25 does the word precondition mean, I apologize, I interjected that into the
26 discussion here because it comes from the Federal Circuit's 2025 *Sierra*

1 *Wireless* case, but the simple point is what these when statements say is:
2 these claims describe code. The code operates on numerous instances of
3 user input. But once you start that mapping, you have to be consistent. And
4 so if we could go now, Your Honor, to slide 16.

5 MR. LEVENTHAL: Dr. Madisetti, our expert, explained what I just
6 explained, and he gave this expert testimony on it, that the claim language
7 describes code, and that code operates on numerous instances of user input.
8 And I will note, Your Honor, that after Dr. Madisetti gave this testimony, Dr.
9 Cockburn, Exhibit 1022, issued a supplemental declaration. There is no
10 rebuttal to that. And quite frankly, we believe that everyone here in this
11 room understands computer science. We understand that the plain language
12 of the claim says this is instructions and they do something. And that means
13 what we're talking about is code. And the next part, we heard some not so
14 subtle allegations from the other side that, well, there's nothing in this patent
15 that has anything to do with these claims. Respectfully, the issue of written
16 description is not before the Board, but in terms of what is before the Board
17 is: does the specification support what Mr. Leventhal just said, that these
18 claims refer to computer science code that operates on a number of inputs?

19 We're going to take a different path each time, and the answer is
20 absolutely yes. And what the patent describes, and this is again what Dr.
21 Madisetti quoted, it's on slide 16 is that what this is about is a decision tree.
22 And so the fact that, in a single instance of user input, you're not going to hit
23 each of these three when conditions. That's not an excuse for ignoring the
24 claims. That's expected because this claim language describes computer
25 code that operates on numerous instances of user input.

1 And now let me get to the question Judge Lee had on what do we
2 mean by single starting point. If we could go to slide 17, please. What
3 we've done on slide 17, there's a decision tree on the right hand side. And I
4 want to be very clear, this is my attorney argument, this decision tree. It's
5 not a figure. I drew it. But what this shows is how this claim very easily
6 maps to a common starting point for all of these three when's. And so,
7 simple example, you have a smartphone, it has an icon for an application.
8 The gesture is the application you tap on, you press down your finger, and
9 that's the common starting point on a specific icon.

10 That, again, is once Petitioner creates a mapping, they have to
11 continuously do it for all the elements. So, if in the first instance of user
12 input there is a press upon the icon and then a release before the first
13 threshold, then you would hit that first diamond and you would say, okay,
14 I'm going to evaluate this after the release is done because otherwise, after
15 the gesture is done, because otherwise I don't know if the gesture is less than
16 the threshold. And was it? Yes. Perform an operation. That operation has
17 launched the application.

18 Now, if the answer is no, we're going to continue onward. It is the
19 exact same code. It has the exact same starting point, which is: I have
20 detected a user input. A start of a touch, finger down, on a first application
21 icon. I continue on. Did I pass a first threshold?

22 And that is something that's going to constantly loop as a matter of
23 computer science because you're trying to see if this gesture is continued on
24 past this first time threshold and if the answer is yes, you are going to
25 perform a scaling.

1 Now in this second instance of user input, you then lift off. And so
2 the third box asks, did you ever reach the second threshold? And the answer
3 is no. So you only perform the scaling. Now we have a third instance of
4 user input operating on the exact same code, which is what the claim
5 requires.

6 You hold down, you pass that first threshold so you do not hit the first
7 diamond, but you do hit yes on the second diamond. You continue to hold
8 down such that you pass the second threshold. You perform the scaling
9 when you hit the first threshold. And you pass the second threshold and you
10 perform another operation.

11 JUDGE LEE: I see, thank you. Thank you for that clarification. I
12 think I understand what you're saying now. You're not saying that all three
13 conditions have to be met. You're saying all three conditions have to be
14 checked.

15 MR. LEVENTHAL: I am saying, yes, Your Honor.

16 JUDGE LEE: For the same input. Is that right?

17 MR. LEVENTHAL: Exactly, Your Honor. It is computer code. Once
18 you start, and then I'll go to the next set of questions that you had for
19 counsel, because we'll start with the double tap, which was mapped to the
20 “when.”

21 I don't care what they map the double tap to, what they map to that
22 first “when.” They are the master of their mapping. But once they do so,
23 they're stuck with it for everything else. And so if the start of the gesture
24 defined in [1.e] is going to be the finger down on the start of the first double
25 tap, then we get to the question of a duration. And Your Honor, I absolutely
26 agree. And I apologize. I don't remember if it was Judge Smith or Judge

1 Lee who said this. But as it relates to [1.f], there is again flexibility in the
2 mapping. It says a duration.

3 We do not dispute that there could be many durations associated with
4 the gesture. And I will tell everyone we have in a number of these
5 proceedings filed the claim construction briefing -- order from a related
6 patent, the '754 patent. Did not file it in this one because we didn't see
7 anything that overlapped, but there was an issue in terms of what does a
8 length duration mean in that one. So I will file it in this one to make sure it
9 is there.

10 JUDGE QUINN: Yes, thank you. We do want to be aware of all
11 related --

12 MR. LEVENTHAL: Absolutely. And like I said, we filed it in four of
13 the ten because the terms overlapped. I just apologize— I didn't appreciate
14 that there was an overlap.

15 JUDGE QUINN: How soon can you do that?

16 MR. LEVENTHAL: I can do it this afternoon.

17 JUDGE QUINN: Okay. Thank you.

18 JUDGE LEE: So that's great. It's logical. But that seems to put into
19 the claim a requirement of chronological order for determining these three
20 conditions, like going through a state machine. First, this, then this, then
21 this. What is it in the specification that would support reading the claim this
22 way?

23 MR. LEVENTHAL: Your Honor, let me answer that in two parts
24 because I just want to make sure we don't merge arguments together. We
25 have a separate argument that the first magnitude threshold should be read to
26 be less than the second magnitude threshold. But that's not my primary

1 argument I'm making here. You can take or leave that one. So I would say,
2 assume you rule against me on that. I'm not suggesting that there is an order
3 of these. I'm saying that you have computer science that does these three
4 things. I drafted this particular flow chart to assume that the first threshold
5 was higher than the second, but you could kind of also have the first and
6 second in parallel. I think there is an order of operations in terms of
7 determine is it below the first threshold or is it above the first threshold?
8 Because once you pass the first threshold, it can no longer be below the first
9 threshold.

10 JUDGE LEE: I see. Yeah. Maybe I was too narrow. You're just
11 saying, regardless of the order, these three conditions have to be checked.

12 MR. LEVENTHAL: Correct.

13 JUDGE LEE: For the same contact.

14 MR. LEVENTHAL: Correct. The same contact. And again, we are
15 not saying that there's some restriction on Petitioner or, quite frankly, on
16 Patent Owner when we assert this claim in litigation on how you define
17 [1.e]. But once you define [1.e], you're done. Because [1.f], [1.g], and [1.i]
18 each state the gesture and ultimately that is the huge problem that we find
19 with this mapping because, as Your Honors pointed out in questioning of
20 counsel, you're not even in the same mode. I mean, not only are these not
21 the same starting point, I mean it's not even physically possible. There's just
22 two different computer science logic things going on. One when you're in
23 select mode and one when you're in zoom mode. And they've mixed and
24 matched. And we believe that's inconsistent with the claim.

1 JUDGE LEE: Right, so the specification is there. Anything in the
2 spec that's more consistent with your view than their view? I mean, do you
3 ever in the spec rely on different instances?

4 MR. LEVENTHAL: There is. Your Honor.

5 JUDGE LEE: Of a contact to meet these --

6 MR. LEVENTHAL: Yes, Your Honor, there is, and we have a decent
7 amount of that on slides 7 and 8. Just for purposes of time, I'll take you
8 directly to, well, actually, where we were previously on slide 16, I think one
9 of the key points is the decision tree. The description of this as a decision
10 tree. That, to me, is just overt. A decision tree means you have a common
11 starting point. And you take different branches. So we think the reference
12 to a decision tree is absolutely supportive of us, but if we go back to --

13 JUDGE QUINN: It was very vague on the decision tree, and it
14 doesn't really walk you through the decision points so that we can really
15 check that you do have forks in the road that all stem from the same first
16 detection.

17 MR. LEVENTHAL: Understood, Your Honor. I would suggest slide
18 8, which has figure 24 of the incorporated by reference provisional, which is
19 Exhibit 2010. And what we see in slide eight, Your Honor, is that you have
20 this idea of intermediate operations. And we think that, again, it reinforces
21 the idea here that you're not done. And these are multi part gestures. And
22 the idea is you go one place and then you go another. And that, for example,
23 is what we said with a single instance of user touch. You can hit the second
24 and third when elements. You need not. You could only hit the second one.
25 You could hit both. You can't hit the third without hitting the second, just
26 because of the way it's written. So we do --

1 JUDGE SMITH: Counsel, this is Judge Smith. Let me ask you this
2 claim. Petitioner's argument, to the extent I understand it correctly, and if
3 not Petitioner, please correct me on rebuttal, but the claim, looking at Slide
4 17, you have the claim there. It says an apparatus comprising, which is an
5 open-ended transition phrase, which means that this claim encompasses
6 additional limitations that are not expressly claimed. So, for example, when
7 do you detect a gesture on the touch screen, on the object. And then, so
8 when you're in zoom mode, you know, in between E and F, there could be,
9 you know, when in zoom mode, you know when a magnitude of the gesture
10 is less than or greater than a threshold, zoom in or out. And then, between G
11 and I, there could be another limitation when not in zoom mode -- when not
12 in zoom mode, do [1.i]. So you still -- the prior art still meets the claim even
13 if we adopt your proposed construction. Isn't that right?

14 MR. LEVENTHAL: No, Your Honor, that is not correct because -- let
15 me start from your original premise, and completely agree it is open-ended,
16 completely agree there can be different functions in between that are
17 performed by either the prior art or the accused device, they're just not
18 mapped to the claims. The problem is there has to be a consistent mapping
19 of what is recited. And so, again, if we start from the idea that the first when
20 is mapped to this double tap. And let's just go with both parts of the double
21 tap. I understand there's two mappings. Just for simplicity, we'll go with
22 both of the double taps. The step of detecting a gesture on the touch screen
23 has now been locked in and mapped to, I'm detecting that double tap. I'm
24 detecting the touch that began with that double tap.

25 And when we get to [1.f], you have now locked in, what is the A
26 duration? Well, it's the start of the double tap to the end of the second tap, I

1 believe. So now we've locked in A duration. It starts at the start of the
2 double tap. The mapping to [1.g] and [1.i] are not consistent with the
3 mappings of [1.e] and what is the duration. And so it falls apart and [1.g]
4 and [1.i] cannot be mapped to the claim language with the antecedent basis
5 of the duration and the gesture.

6 JUDGE SMITH: I don't understand why it falls apart. I mean, you
7 have a double tap, which is less than the first magnitude. Then you have a
8 press and hold, which is greater than the first magnitude. Then you have
9 some other gesture in a different mode that meets the second magnitude
10 threshold. You're detecting a gesture. So, whatever gesture you detect,
11 you're detecting either the double tap, the press and hold, or some other
12 gesture. But you're still detecting a gesture and comparing that duration to
13 these thresholds? I don't understand.

14 MR. LEVENTHAL: Your Honor, I agree with what you just said.
15 You are detecting a gesture. If we could go to slide 19.

16 This is slide 19, which shows again, and this is at the bottom of the
17 slide is my attorney's argument, but showing visually what we're talking
18 about. This reflects what I believe Your Honor just said, which is in order to
19 map [1.f], we're going to create a first version of [1.e] and detect a first
20 gesture and then evaluate that.

21 In order to map [1.f] we're going to create a new step that does not
22 exist in this claim and solves the problem that we're now inconsistently
23 mapping. And I'm going to say I get to start over, and I get to do a gesture
24 again. And here we detect a second gesture. As Your Honor said, the first
25 one's a double tap. The second one was, I think, a press and hold.

1 That's not what this claim says. And in order to accept Petitioner's
2 mapping, the claim has to be rewritten to allow [1.e] to no longer be, detect a
3 gesture, and then it is the gesture for F and G and I. You now have to have
4 [1.e] version 1. [1.e] version 2 and [1.e] version 3 allow you to restart over
5 with a gesture. And we don't believe the plain language requires that. We
6 don't believe that's consistent.

7 JUDGE SMITH: How do you reconcile that with Claim 10? That
8 says that the three gestures can be different gestures.

9 MR. LEVENTHAL: To answer that, Your Honor, if I could ask you
10 to turn to Exhibit 1001, which is the patent and PDF page 89, which should
11 get you a view of 1 and 10 next to each other. And let me pause so everyone
12 can get there.

13 JUDGE SMITH: Okay.

14 MR. LEVENTHAL: Okay, so Your Honor, again, on the left hand
15 side, column 97, I went over the first thing I mentioned is that the way Claim
16 1 starts is that it talks about storing instructions. And that you execute
17 instructions. That is what the steps are describing, and 'steps' is the wrong
18 word, but the elements after the 'execute instructions' to colon is describing
19 the code that is going to operate on multiple instances of user input.

20 Now, if we go over to column 96 and you see Claim 10, and I think
21 the same conclusion follows from Claim 11, but let's focus on Claim 10.
22 This claim, Claim 10, does not say I'm further describing the instructions. It
23 does not describe more instructions. It does not say it's doing anything about
24 describing what the stored instructions do. Instead, it says where in the
25 apparatus is configured such that the magnet, and then it goes on. And so
26 here, this is describing.

1 The disembodied view from above and how those instructions are
2 going to do it. And we think Claim 10 is extremely consistent with what
3 we've said for two reasons. Reason number one is here it says a first
4 gesture, a second gesture, a third gesture.

5 Patent Owner knew how to say a first gesture, a second gesture, a
6 third gesture, and if that's what was intended by Claim 1, it could have been
7 there. It's not. It was a gesture, the gesture, the gesture. But the second part
8 is what those three: a first gesture, a second gesture, and a third gesture are
9 describing here. Those are individual instances of user contact.

10 What Claim 10 is describing is exactly what I narrated with my
11 diagram. It's describing: If you have a first instance of user touch, and you
12 let go after the first thing, you're going to cause the operation. If you have
13 the first instance of user touch, you hold through the first threshold, but you
14 let go before the second, you're only going to do the scaling. You're not
15 going to do the another operation. If you hold down to a third instance of
16 user input, if you hold down through the second threshold, through the first
17 and through the second, you're going to do both the scaling and the another
18 operation. And so, we think Claim 10 is entirely consistent. I'm not
19 suggesting this is the model of clarity, because we use the word 'gesture' in
20 Claim 1 and Claim 10.

21 But if you look at the introduction language to both: In Claim 10, it's
22 from the perspective of the code that is going to operate on multiple
23 instances of user input. Excuse me. In Claim 1, it is from the perspective of
24 the code that is operating on multiple instances of user input. In Claim 10, a
25 first gesture, a second gesture, a third gesture. Are referring to those three

1 instances of user input, all that operate on the same code that was described
2 in Claim 1.

3 JUDGE QUINN: Then how is Claim 1 broader then? If we take your
4 viewpoint and you go through these decision points, and Claim 10 basically
5 identifies with more wording the same operation, then how is Claim 1
6 broader than Claim 10?

7 MR. LEVENTHAL: Claim 1 requires that the code exist. Claim 10
8 specifies that each of those three possible user touches actually happened.

9 JUDGE QUINN: I'm not understanding that.

10 MR. LEVENTHAL: So Claim 1 is requiring that code exists on the
11 machine. And as we know, for apparatus claims, we're talking about
12 capability. The steps don't actually have to be performed. It's just the
13 functions are there. Whereas Claim 10, and I guess let me withdraw that.
14 That's not right, because Claim 10 says configured also. That was not the
15 correct answer. Let me withdraw that.

16 JUDGE QUINN: Okay.

17 MR. LEVENTHAL: So, the answer, Your Honor, is because it is
18 more words, because it's describing it in more detail, I think it is the other
19 shoe dropping in terms of how it would operate. But it is describing the
20 same thing in more detail. And I would also just note, Your Honor, that we
21 have a different view than Petitioner on the role of dependent claims,
22 because our view is: If there is a conflict between the plain and ordinary
23 language of the independent claim and the dependent claim, the conclusion
24 is that dependent claim violated 112 for not providing a narrowing. The
25 conclusion is not: I'm authorized to override the plain and ordinary meaning
26 of the claim language in the independent claim. And at bottom, Your Honor,

1 and I apologize, I meant to say this in my initial windup, we believe
2 Petitioner's position is that they are asking the Board to rewrite the claim.
3 They're not honoring antecedent basis.

4 And, Judge Smith, I think you said it very well, that it requires
5 rewriting the claim to say a gesture, a gesture, a gesture each time you start
6 over. To pair it with one of the three when's, that's not what it says.

7 JUDGE SMITH: I guess I'm not really clear on what a gesture is
8 then, because it sounds like what you're saying a gesture is— a user can
9 touch the screen like a tap, that would be a gesture. A user can... touch the
10 screen and continue to touch the screen for a duration, like a tap and hold,
11 that would be a gesture. And then the user can touch the screen and hold it
12 for an even longer amount of time. And that's all. I mean, those to me
13 sound like, I mean, I guess. A, is that what you're saying? And B, if that is
14 what you're saying, how are those three different gestures the same gesture?
15 They sound like three different gestures to me.

16 MR. LEVENTHAL: Well, let me start at the last thing you said.
17 They absolutely are three different gestures. That's the problem. The Claim
18 1 only allows one gesture. A gesture, the gesture, the gesture, the gesture.

19 JUDGE SMITH: So how can you have a gesture that is less than a
20 threshold and greater than a threshold and the same gesture?

21 MR. LEVENTHAL: And now let me answer. I apologize. I jumped.
22 I should have answered the first part of your question first. The specification
23 is clear, and we cited this in the briefing, that gesture is a broad term. And,
24 I'll go even further, Your Honor. The specification talks about multi part
25 gestures. And so, if one had a sequence of 'I'm going to first hold down and
26 then I'm going to pick up.

1 And then I'm going to swipe to the side on something that was
2 displayed after I picked up. And then I'm going to tap something else, and
3 all of that was part of a defined sequence of user inputs. That can be a
4 single, multi part gesture. We are not suggesting otherwise. That's
5 consistent with all the different claims across all these 10 ones that we're
6 dealing with here, all these 10 family members. What we are saying is that
7 this claim starts with the idea of you detecting a gesture. And that is wide
8 open as far as you can see at the start before someone has mapped it. But
9 you have to provide a mapping. You have to define what your gesture is.

10 JUDGE SMITH: So look, I'm sorry to interrupt. I want to be clear on
11 this. A tap versus a tap and hold are the same gesture or not the same
12 gesture?

13 MR. LEVENTHAL: They are not the same gesture, Your Honor, but
14 my point is that when the Claim says 'detect a gesture' It is within the plain
15 meaning of gesture that you could say, 'I am looking for a gesture that starts
16 with a first component that's a tap, and then you let go, and then you have a
17 second component, which is a tap and hold, and then you let go, and then
18 there's a third component that is a drag.' You can define a gesture in any way
19 you want. It can have multiple parts. You can lift up in between. But the
20 point is, you have to define it at the beginning of the mapping, and you have
21 to use it consistently.

22 JUDGE SMITH: But Claim 1 doesn't have to. I mean, it sounds like
23 you're asking us to rewrite Claim 1 to include gestured means. A gesture
24 comprising multiple sub components and then detecting the first sub
25 component of the gesture.

1 MR. LEVENTHAL: Well, Your Honor, I respectfully disagree
2 because the parties are in agreement that Claim 32, which does say 'first
3 component, second component, third component,' is interchangeable with
4 Claim 1 of the gesture.

5 So, I do think, again, and I'm just trying to be clear that I'm not trying
6 to narrow this claim. I'm not suggesting it's narrow. My only point is, once
7 you define what you are defining as the gesture, be consistent. And there –
8 and I want to be very clear on this. There's no dispute in the briefing that
9 unless the Board, and the Board can do what the Board does, it's ultimately
10 the Board's decision, but unless the Board provides, I would call it a rewrite,
11 but if the Board believes it's a construction, that's up to the Board, that it can
12 point to three different gestures, there is no alternative mapping in the
13 petition.

14 It's conceded that the three different gestures that are being pointed to,
15 they're in different modes. They don't start at the same time. They're not the
16 same gesture. And what I've shown, Your Honor, is how the plain language
17 explicitly --

18 JUDGE SMITH: When you say -- I'm sorry to interrupt, this is Judge
19 Smith. When you say they don't start at the same time, I don't understand
20 why they don't start at the same time. You've got a screen, and you either tap
21 it, double tap, or tap and hold.

22 MR. LEVENTHAL: Well, Your Honor, let's --

23 JUDGE SMITH: What's a different time figure?

24 MR. LEVENTHAL: Sure. I mean, let's talk about the lifetime of how
25 this works in the two different modes in KIN. You start in the select mode.
26 You then hold down.

1 And you hold down at a long hold, and that's how you get into the
2 zoom mode. So, if Petitioner desires to map the hold down, which they do
3 as the second of the three wins, then they have defined the gesture as starting
4 when you're in select mode and you hold down. They can't then go back to
5 the other two ones and say, 'Okay, but now you're in zoom mode, and it's a
6 completely different gesture that started at a different time.'

7 JUDGE LEE: Counsel, yeah, this whole thing about common starting
8 point, same gesture, at first it was very hard to understand, but I finally do
9 think I get what you're saying. Correct me if I'm wrong, you're saying
10 there's no inconsistency between Claim 1 and 10 because Claim 10 is just
11 saying, in the circumstance where that detected gesture actually meets the
12 first when, we're going to call it the first gesture.

13 And then in the circumstance where that detected gesture meets the
14 second when, we're calling that second gesture. And in the circumstance
15 when that detected gesture meets the third when, we're calling that the third
16 gesture. I think, if we look at it that way, then there's no inconsistency. Is
17 that what you're saying?

18 MR. LEVENTHAL: Your Honor, I agree with that. I was saying
19 something slightly different, which I think would also be equally valid,
20 which is simply that we're looking at instances of touch. That's both Kim,
21 the patent, anything else, write computer science that is intended to operate
22 on a number of instances of user touch. And yes, as you said, Your Honor,
23 we're just pointing to three different instances of user touch that do
24 something in a certain way, and we're just describing how it would react in
25 accordance with Claim 1.

1 JUDGE LEE: So there are three instances of different gestures, three
2 instances of what that one detected gesture turned out to be.

3 MR. LEVENTHAL: Yes, Your Honor. I think that's correct.

4 JUDGE QUINN: Well, I see it a little different. I see the
5 identification of claim in Claim 10, the first, second, and third gesture, as
6 something that you know beforehand, and you've got to have at least three to
7 meet the claim limitations. So they've got to be indexed somewhere or in a
8 state machine so that you are able to run through the decision points, and
9 find whether you have the first, second, or third gesture somewhere in there.

10 MR. LEVENTHAL: Your Honor, push back on that just a little
11 slightly, is what I would say is how I view Claim 10. I view Claim 1 as
12 describing the state machine, and I view Claim 10 as the experiment. So
13 noted that you've written the code, you've loaded it onto your device, it's
14 sitting there, and now it's the test protocol. If I wrote this code right, I can
15 press down here, and if I let go... it better do the operation if I let go before
16 the first threshold. If I, now in my test protocol put my finger down again, I
17 hold it past the first threshold, but I let go before the second threshold, then
18 you would perform the scaling. If I hold down, and this is my third test case,
19 I hold down. Pass the first threshold, boom, the scaling happens. I continue
20 holding. I get past the second threshold, another operation happens. So I
21 think it's describing how three things you could do to test it from the
22 perspective of the actual user and how it should react, consistent with the
23 state machine that Claim 1 defines.

24 JUDGE QUINN: Right, but I don't think you need Claim 10 to get
25 there either.

1 MR. LEVENTHAL: I agree, Your Honor. And I was just answering
2 how Claim 10 and Claim 1 relate. They're just the same thing from two
3 different perspectives.

4 Your Honor, I will, and so just to, and I want to go on to the
5 Schulhauser issue. That won't take me very long. But what I want to just
6 make sure I've emphasized here is that we read, number one, our position is.
7 Patent Owner's understanding of the claim is the plain and ordinary
8 meaning. Petitioner's is a rewrite. That's not something that is before the
9 board. The Board is looking at the plain and ordinary meaning. From the
10 point of view of a person of ordinary skill in the art, at the time of the
11 invention, there's no disavowal, there's no lexicography, so it's plain and
12 ordinary meaning. So that's number one.

13 JUDGE QUINN: I will tell you that you have a method claim here,
14 right? Claim 34?

15 MR. LEVENTHAL: Yes.

16 JUDGE QUINN: And so, I mean, that is, we look at whether the prior
17 art has the detecting steps. And once you have met the detecting steps, then
18 you stop the method because it's over for that gesture. Any other steps that
19 need to be performed?

20 MR. LEVENTHAL: That is the Schulhauser issue. That's where I'm
21 going, so let me just go right there now.

22 JUDGE QUINN: Okay. Let's go with that.

23 MR. LEVENTHAL: Okay. So, if we could go to slide 21, please.
24 And again, both sides, I know, very much appreciate the questions from the
25 Court. And so the agreement is for Claims 1 and 32, both sides agree, all
26 conditional limitations need to be present because it's an apparatus claim.

1 Schulhauser doesn't apply to apparatus claims. There is a dispute as to
2 whether all need to be met. For 34 and 64, and the dispute is as follows,
3 Your Honor. There are four relevant cases here. There is Schulhauser,
4 which says you don't have to do it. There are three cases that distinguish
5 Schulhauser, and our position is that these three cases better fit these claims.
6 And I'm not suggesting any of those four cases are the model of clarity, but I
7 want to explain why, because we do think this is a close call here. And so if
8 I could go to slide 24.

9 In the briefing, we pointed out three different cases, and I'm going to
10 go through all three of them. Petitioner's claim construction brief only
11 addressed one of the three cases, so I want to start with that one. And this is
12 the *Hytera* case. It's a Federal Circuit case. It's federal appendix, so it's
13 however the Federal Circuit says today to treat non precedential decisions.

14 But, what they talk about here is that in Schulhauser, each of the
15 alternative conditions could be reasonably construed as a standalone method.
16 And Your Honor, getting exactly to what you just said, Judge Quinn, I don't
17 think that's a reasonable assumption here, because if that was the case, we've
18 drafted a claim that can read on detecting a tap.

19 This is -- 2011 is the priority date here. We were not drafting a claim
20 that would be met by simply detecting a tap. And so, we think that the better
21 interpretation is that all three of these need to be performed. In order --
22 when the claimed prerequisite condition happens. The point of this claim is
23 that, from this computer science perspective, this decision tree that all three
24 of them happen.

25 And if we go backwards one slide, Your Honor, this is the *Sierra*
26 *Wireless* case on slide 23. This is a 2025 Federal Circuit case. Here it said

1 the plain and unambiguous claim language requires that you have these two
2 steps, and they're both conditional.

3 And we have the same thing here. You're not going to have one
4 instance of input that causes all of them to do it. The Federal Circuit said we
5 don't care. It's clear that what it says is when, and this is where the word
6 'precondition' came from. When that precondition happens, you do it. And
7 what they emphasize— the italics in the quote on the left hand of the side—
8 is original. That's from the Federal Circuit. They said, look, and now if you
9 look on the right side, Your Honor, we can see that there is an 'and' in each
10 of these steps. So we think that this is much closer to the case in *Hytera* and
11 *Sierra Wireless*. And if I could then go --

12 JUDGE SMITH: Let me just -- this is Judge Smith. The *Sierra*
13 *Wireless*, the step of stopping the timer and then the step of transmitting the
14 status report after the timer expires, I mean, that implies that the timer, after
15 being stopped, is going to be restarted. It's not just stop the timer and you're
16 done. To meet the claim, the timer implicitly has to be restarted. Whereas
17 you're giving us Claim 1, which is an apparatus claim. I think Judge Quinn
18 asked about Claim 34, which is the method claim. But depending on how
19 these magnitudes are defined, if the -- if I have these thresholds, if the
20 threshold for the second magnitude threshold is -- I'm trying to do this off
21 the top of my head, forgive me, but it's possible to meet just one of these
22 conditions in the claim to be done with the claim. Isn't that right?

23 MR. LEVENTHAL: Your Honor, first of all, I do apologize. You are
24 absolutely correct. It should have been Claim 34 on each of these slides, not
25 Claim 1. The parties have agreed. They're all the same. We've cited in the
26 briefing to the experts agreeing on that point in terms of how they're

1 structured. But no, I do not agree with that point, Your Honor, that it would
2 be done because, again, that suggests that in 2011, it was pointed out
3 yesterday that this specification incorporates older Apple patents. The
4 iPhone had been on the market for a number of years.

5 JUDGE SMITH: Counsel, excuse me, sorry to interrupt, let me just
6 rephrase my question. Is meeting just one of these limitations within the
7 scope of the claim? I mean, it's possible to have a magnitude of a duration
8 of a gesture that's greater than the second magnitude, but still less than the
9 first magnitude threshold, in which case, you know, for the method claim,
10 none of the operations for [1.f] or [1.g] would be performed, isn't that right?

11 MR. LEVENTHAL: Your Honor, I do understand your question.
12 And the answer is, in order to infringe -- or excuse me, infringe or be
13 invalidated by the prior art from either direction, you would have to have
14 something like Claim 10, where there were actually three stimuli that were
15 different and each of them occurred such that you met each one.

16 So, yes, if there was a single -- and that is consistent with why we do
17 not think they met the mapping, which is it's not good enough to point to one
18 instance of user input that meets one of the three when's. You'd have to
19 point to other test user inputs that you can do and all three of them being
20 performed before the method is met. So I would agree with you on that
21 point, but point out that it's not good enough to meet the claim; it just means
22 that multiple stimuli have to be presented before the method could be fully
23 performed.

24 JUDGE SMITH: I think I was saying the opposite. I was saying if
25 you have a second magnitude threshold that's less than the first magnitude
26 threshold, so your touch passes the second magnitude threshold, but it stops

1 before the first magnitude threshold, the only operation performed would be
2 the other operation of [1.i] .

3 MR. LEVENTHAL: So, Your Honor, I am agreeing with you that a
4 stimulus that was in the middle of the two thresholds would only meet one
5 of the two. What I am saying is that, under all these three cases that
6 distinguish Schulhauser, that's not good enough. In order to perform the
7 method you would have to subject the -- you'd have to perform, in response
8 to multiple stimuli, such that you've performed each step.

9 JUDGE LEE: Counsel can you please look at Claim 34? The method
10 claim.

11 MR. LEVENTHAL: Yes, Your Honor. I have it.

12 JUDGE LEE: If you say Schulhauser does not apply, that means all
13 of the three conditional circumstance activities would have to be performed,
14 right?

15 MR. LEVENTHAL: No, Your Honor. Not in response to an
16 individual stimulus. And that's the point that the Federal Circuit made in --

17 JUDGE LEE: Because they can't, because at least two of them are
18 mutually exclusive.

19 MR. LEVENTHAL: Correct.

20 JUDGE LEE: So that leads to what's inescapable: That you need
21 another instance of the gesture.

22 MR. LEVENTHAL: Yes, Your Honor.

23 JUDGE LEE: So that undermines all the arguments you gave earlier.
24 Because here, page 34, you need at least another one that meets the other
25 condition.

1 MR. LEVENTHAL: Your Honor, it does not undermine what I said
2 earlier, because what I said earlier is that Claim 1 defines the computer
3 science logic that will operate on numerous --

4 JUDGE LEE: Claim 1 is apparatus. I understand that. You've got to
5 have circuitry, programming that's prepared, configured to take on the
6 possibility of the first when and the second when and the third when. But
7 I'm talking about Claim 34, which is a method claim. It is possible to meet
8 this when you have just one gesture that only meets the first when and that's
9 it. And the other two are not performed.

10 MR. LEVENTHAL: Your Honor, I understand your point, and I
11 certainly would say that the apparatus and method claims do not rise and fall
12 together. I would just point you to *Sierra Wireless*, Your Honor, which was
13 the first line in our quote, says the Board held limitations 1[c] and 1[d] are
14 mutually exclusive, cannot occur in response to the same set of stimuli, what
15 we both agreed to here. And they said, we don't care. You still have to do
16 both because it says "and."

17 JUDGE LEE: So there is tension. You can see, right?

18 MR. LEVENTHAL: I do.

19 JUDGE LEE: Between what you're arguing here versus what you're
20 arguing for the apparatus claims.

21 MR. LEVENTHAL: Your Honor, I'm not sure there's tension between
22 the two, but I will say this. I do not envy your -- I don't think Schulhauser
23 and these three cases -- I think they're talking past each other, and, like I
24 said, I think it's a close call.

1 JUDGE LEE: No, no, no. This is really important. When you look at
2 it, you say, somehow all of these have to be performed, then you absolutely
3 need more than one gesture.

4 MR. LEVENTHAL: No, Your Honor, you don't need more than one
5 gesture. You need it to operate on more than one set of stimuli.

6 JUDGE QUINN: And that's the way *Sierra Wireless* was working as
7 well. I was in that case, so I understand the patents. And it was a situation
8 where you needed more than one transmission to test it against the
9 conditions. It was a very difficult case to decide.

10 MR. LEVENTHAL: As I said, Your Honor, I feel very strongly about
11 our position on, no, you cannot have three gestures. On this one, I'm not
12 sure the courts have given us a huge amount of guidance. I'm just telling
13 you, I think we're closer to these cases than Schulhauser.

14 JUDGE LEE: So tell me again why there's no conflict. If we were to
15 rule for you for the apparatus claims, and then also rule for you here on no
16 Schulhauser, why don't those two conflict?

17 MR. LEVENTHAL: Your Honor, because I think that's what *Sierra*
18 *Wireless* was about, was simply saying, look, yes, you have to do it twice,
19 it's just if they occur. And just again, Your Honor, I think you've said
20 everything perfectly. I don't disagree with anything. You've said, for the
21 apparatus, it's computer science. Everything you said is perfect. On this
22 one, all I'm saying is you'd have to sit there and watch it for a while and see
23 how it performs on multiple sets of stimuli before you could say, okay, the
24 claim's been met.

25 JUDGE SMITH: I don't -- this is Judge Smith. I'm looking at *Sierra*
26 *Wireless*, on your Slide 23. The quote that you have. I don't see *Sierra*

1 *Wireless* as having the conditional limitations that you have in Claim 34. I
2 mean, *Sierra Wireless*, it doesn't just say, because it says "and," we don't care
3 that they're conditional. That's not what it is.

4 It says stopping the timer and transmitting the status report after the
5 timer expires. So you do have to stop the timer. And then at some point
6 restart the timer. And then, after the timer expires, transmit the status report.
7 So there's no -- there are no mutually-exclusive conditions in *Sierra*
8 *Wireless*.

9 MR. LEVENTHAL: Your Honor, I will confess that I read that case
10 in detail when writing this briefing, and I apologize, I did not last night in
11 preparing, so I don't have a response to that. I would like to reserve a little
12 bit of time.

13 JUDGE LEE: Okay, okay.

14 JUDGE QUINN: Thank you.

15 MR. LEVENTHAL: Thank you.

16 JUDGE QUINN: Thank you. Let me know when you're ready.

17 MS. HUANG: I'm ready. Thank you, Your Honors. I just want to
18 clarify a point here. We talked about a gesture, the gesture, and we were all
19 coming to that, I think, just now. There is tension here, and Your Honors
20 have noticed that, with Claim 34.

21 I'm here to say that we perhaps have relieved that tension because,
22 despite this discussion of Schulhauser and *Sierra Wireless* and *Hytera*,
23 Petitioner has, in fact, mapped all three of the gestures to all the limitations.
24 You see that there's -- there's performance of actions, or non-performance
25 because conditions aren't met.

1 So when a Patent Owner is talking about the logic that performs these
2 comparisons, we are comparing them. And when they're not happening,
3 when the conditions aren't met, those actions aren't met. So there's not an
4 ignoring of those limitations. We made each comparison. We made them on
5 each gesture. And then, perhaps, this issue of case law is potentially avoided
6 here.

7 The other thing I want to --

8 JUDGE SMITH: This is Judge Smith. Can you speak to the
9 Petitioner's point that there's only one gesture. You touch, and it's below a
10 threshold, and you keep touching, and it's above a threshold, and then you
11 keep touching more than that, and it's above another threshold. And that's
12 not different gestures. Those are different, what do you call it, different
13 components of a gesture?

14 MS. HUANG: Yeah, so, I would say, Judge Smith, I completely
15 agree with what you said during Patent Owner's direct. And this is really
16 kind of reflected in Patent Owner's slide where it had the decision tree,
17 which he told you that he made it himself. And, Judge Quinn, you said that
18 that spec is very vague on the decision tree. So Patent Owner had to make
19 his own slide up.

20 And in making up that slide, he's manufactured what a gesture is.
21 And, Judge Smith, you nailed it. Because, if you put your finger down, you
22 have -- it's not a single gesture. And I think this is potentially why -- and
23 this is in the paper, so I won't belabor the point -- but this is potentially why
24 a Patent Owner has really avoided and been really evasive with respect to
25 the Board's questions about whether a single detected gesture could meet
26 limitations [1.f], [1.g], and [1.i]. Because, in responding to that question, it

1 ignores the idea of what a gesture is. It keeps talking about what is an
2 instance of user input. It talks about -- we just heard opposing counsel talk
3 about a stimulus. We don't care about that. We care about gestures.

4 And Judge Smith's instinct was correct. These are different gestures.
5 You might have a single contact. A single contact that, at some point, would
6 be less than the first magnitude threshold; at some point, it's greater than the
7 first magnitude threshold; and, at some point, it's greater than the second
8 magnitude threshold.

9 That's three different gestures, and then you have a problem. And I
10 think that's why, potentially, the Patent Owner is really leaning on and
11 avoiding using the word "gesture" and continuing to talk about stimulus or
12 talking about a single instance of user input. Because a gesture, I'll remind
13 you, is characterized by its inputs, flags, and signals.

14 All right? So, at any given instant, those inputs, flags, and signals are
15 different at one second than they are at two seconds, because at least the
16 duration is now longer, right? And so with a longer duration, the device may
17 be detecting now maybe the same contact. But now saying that's a different
18 gesture than what I detected a second ago. And, for that reason, it is
19 Petitioner's position that you cannot have one single gesture that would meet
20 all three limitations.

21 It's a physical impossibility, in the absence of a time machine, maybe,
22 but I don't even know that you could do it with that. A single gesture is
23 defined by its corresponding inputs, flags, and signals. And one of those
24 inputs or flags or signals has to do with what is the duration at that instant.
25 Because this is a gesture being detected. What was the magnitude of the

1 duration of that? That's a scalar, that's a number, it's 5. You can't have 5 be,
2 you know, both greater than and less than a single number.

3 And this is a question that the Board posed to Patent Owner. It's a
4 question that Patent Owner claimed it answered when the Board asked, can
5 you tell me, is there any disclosure in the '114 patent of a single gesture
6 having three different durations that cause action of three different gestures?
7 And regardless of what Patent Owner --

8 JUDGE QUINN: I don't think that that's what they're saying. What I
9 heard today and from the briefing is that, whatever gesture you're pointing
10 to, you know what you want to do with that gesture beforehand. You
11 programmed it to behave a certain way. And that once you start contact with
12 the screen, you're testing whether the timing is the characteristic of that
13 gesture that you're going to be doing something with. But that you're testing
14 that touch or that thing that you're detecting against the three criteria. And if
15 you meet one of them, obviously, you're done with that gesture. And you
16 may meet another gesture that you're going to go through, and go through
17 the same three criteria and see where do they fit in that three "when"
18 limitation criteria, but that every time that you're going through it, it's the
19 one gesture.

20 MS. HUANG: And Petitioner's met that three times. I'll say there's
21 three gestures, and you see when we have satisfaction of a condition, we
22 have the corresponding action being performed. Even if that's -- if that's the
23 take on it, we have, in fact, mapped that.

24 JUDGE LEE: Counsel?

25 MS. HUANG: Yes.

1 JUDGE LEE: This is Judge Lee. Is it okay for the apparatus claims
2 to say you need to have only a single gesture? And then -- but for the
3 method claims to say, no, the three different steps, conditional steps, may be
4 met by different detected gestures.

5 MS. HUANG: No, I do not believe they can. These claims should be
6 written -- especially given the language that's used in them, they should be
7 read the same. There is an outstanding question, that's the *ex parte*
8 *Schulhauser* question, as to whether we require satisfaction of each of those,
9 but the question of whether the same gesture is required of each of the
10 conditions, it should be consistent across the claims.

11 And the way that the Petitioner is putting forth -- or the way that -- the
12 Petitioner's position is that you can map it to different gestures, and that is
13 how you could satisfy, that's how the claim could actually be satisfied where
14 you have mutually-exclusive conditions.

15 JUDGE LEE: Thank you.

16 JUDGE SMITH: I guess -- this is Judge Smith. I think to be clear,
17 when I was asking questions; I wasn't actually expressing an opinion. I just
18 wanted to make sure I understood his argument and reconcile it with your
19 arguments. And I want to continue that. His arguments about, Claim 10
20 says that the three gestures -- or Claim 10 has the gesture can be one of three
21 different gestures, I'm not sure I understood entirely his explanation, but he
22 was able to reconcile that these three different gestures of Claim 10 are
23 consistent with having one gesture for Claim 1. Can you speak to that?

24 MS. HUANG: Yes, I can. Thank you, Your Honor. And thank you
25 for the question. I don't agree with Patent Owner's position. We know that
26 Claim 10 must be within the scope of Claim 1. So if you practice Claim 10,

1 you practice Claim 1. We have satisfaction of Claim 1 through Claim 10,
2 which expressly recites three different gestures meeting those three different
3 conditions. It seems to be that the dependency -- or the relationship with
4 dependent claims and independent claims isn't entirely appreciated by
5 opposing counsel. But Claim 10 does inform the scope, and it says that you
6 can have three separate gestures that satisfy those conditions.

7 There was also a comment on Claim 10 that, because of the way that
8 Claim 10 was written, it said it was configured. It wasn't -- not part of the
9 processor with instructions executed to perform certain steps. I will say, I
10 don't know that -- it seemed to be a suggestion that those instructions weren't
11 in the logic. I don't know how this apparatus would work without that. And
12 these are instructions that would be within the logic that really are very
13 similar to how Petitioner are mapped the claims with three different
14 gestures.

15 JUDGE QUINN: I think he corrected himself.

16 MS. HUANG: Okay. Thank you.

17 JUDGE QUINN: That's how we understood it.

18 MS. HUANG: Okay. I may have been writing something down, so
19 apologies for that. And I see I'm running a little bit low. I don't know if --
20 yeah, if you'll indulge, Mr. Renner say a few words.

21 JUDGE QUINN: You have 40 seconds.

22 (Laughter.)

23 MR. RENNER: I was going to say, I'll try to make this 30-second
24 words. I just wanted to make the one point. I thought Your Honors were
25 appreciating the notion of the difference between a condition that is in fact
26 being performed. Code, for instance, even expressing the condition that is in

1 fact being performed. That is, you take a condition, you run it through a
2 detected gesture, you compare it against each of the three. That you've
3 compared it and it didn't end up satisfying the condition is still performing
4 that function. And, in that way, we have demonstrated three different
5 instances of the gestures that, when you run them through, you find
6 satisfaction, and therefore a performance of only one.

7 I'm out of time. Any questions would be certainly welcomed, but
8 otherwise we'll rest.

9 JUDGE QUINN: I think we're good.

10 MR. RENNER: Thank you, Your Honors.

11 JUDGE QUINN: Thank you.

12 MR. LEVENTHAL: I'm happy to answer questions. Otherwise, I'm
13 not going to use my whole four minutes.

14 Number one, our answers to the Board's questions were not evasive.
15 What we made sure what we were explaining is, if the question from the
16 Board is, can a single instance of user input meet all three of these when's,
17 the answer is no. So, plain as day. But our point is, that's not what the word
18 "gesture" in Claim 1 means. I think we made that clear here today. So, no,
19 we were not evasive. We were making sure we were being precise.

20 I did not hear -- point number two is, I did not hear, in rebuttal just
21 now, any dispute that Claim 1 describes code, and that code is going to
22 operate on multiple instances of user input. So that's now something we put
23 in the briefing and went and responded to in the briefing. We raised it here
24 again today. It was not disputed, and we think that's the heart of the beast.
25 That's how you interpret Claim 1. It's why the first point that I made, made
26 sense.

1 And the final thing, Your Honor, as I noted, counsel said, you cannot
2 have a single gesture that meets all three. And it was made in the context of
3 that's why Petitioner's view of these claims should be adopted. And,
4 respectfully, again, our point is, this is not an operation in rewriting the
5 claim language. If there is an argument that you cannot perform all three,
6 which we agree is true for a single instance of user input, that means that's
7 not the right way to interpret Claim 1. The right way to interpret Claim 1 is
8 what we said, and what was undisputed, that it is computer code, operates on
9 numerous instances.

10 JUDGE LEE: Thank you, Counsel. I agree with you there, but what
11 about Claim 34? It's not in the same boat.

12 MR. LEVENTHAL: As I said, Your Honor, I'm -- I apologize. I
13 don't know how to reconcile Schulhauser and the other cases. I don't think
14 the appellate courts have done a great job of providing guidance on that.
15 And so I'm not going to urge Claim 34 with the same level that I've urged
16 the apparatus claims.

17 JUDGE LEE: Wouldn't you agree you need at least multiple gestures
18 or stimuli to meet 34?

19 MR. LEVENTHAL: Yes, Your Honor. You need multiple. Yes, Your
20 Honor. And I'll just flip it the other way, again, just to be hypothetical. If
21 we were accusing an Apple iPhone of infringing this claim, which they're
22 infringing contentions in this case we did, if a user tapped, and that's all that
23 happened, that claim would not be met. We'd have to prove that a user
24 tapped, and then a user held past the first threshold, and then a user held past
25 the threshold, second threshold, and all three of those things happened. So
26 in complete agreement there, Your Honor.

1 JUDGE QUINN: Or at least all three conditions were tested.

2 MR. LEVENTHAL: Yes, Your Honor.

3 JUDGE QUINN: Because the action may not happen today.

4 MR. LEVENTHAL: Yes.

5 JUDGE LEE: So if there is conflict, what do you urge us to do? To
6 go with --

7 MR. LEVENTHAL: Your Honor, we think the apparatus claims --

8 JUDGE LEE: To go with 34 and to go with 1? If we decide we can't
9 reconcile --

10 (Simultaneous speaking.)

11 MR. LEVENTHAL: Yes, Your Honor. Understood. So, Your Honor,
12 Claim 1 is abundantly clear. That is what we would say the Board should
13 start with. And, again, the parties are in agreement. There is no Schulhauser
14 for Claim 1. So we think you start from the apparatus claims. And we do
15 not dispute at all that the method claims present a tougher call. But we think
16 you start with the apparatus claims.

17 JUDGE LEE: Thank you.

18 MR. LEVENTHAL: Thank you.

19 JUDGE QUINN: All right. I think we're done. Thank you,
20 everybody. This concludes the oral arguments for IPR2024-1091. This
21 case is considered submitted for preparation of the final written decision,
22 which we will issue in due course. We thank the parties for the spirited
23 discussion and going over time. That's when you know you're having fun.

24 (Laughter.)

1 JUDGE QUINN: And we will see you again tomorrow. I believe the
2 timing for tomorrow begins at 9:00 a.m., as well. So, thank you, everybody,
3 and we are adjourned.

4 (Whereupon, the above-entitled matter went off the record at 1:15
5 p.m.)

IPR2024-01091
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