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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

OPTRONIC SCIENCES LLC,	)	
	)	
Plaintiff,	)	Case No.
	)	2:23-cv-00549
vs.	)	
	)	
BOE TECHNOLOGY GROUP	)	
CO., LTD.,	)	
	)	Marshall, Texas
Defendant.	)	

TRANSCRIPT OF MARKMAN HEARING
July 23, 2025

BEFORE THE HONORABLE ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

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1 Proceedings reported by stenotype. Transcript
2 produced by computer-aided transcription.

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4 (The following proceedings were held in open
5 court commencing at 9:00 a.m., reported as
6 follows:)

7 (Call to order of the Court.)

8 THE COURT: Good morning. Please be seated.

9 For the record, we are here for the claim
10 construction hearing in *Optronic Sciences v. BOE*
11 *Technology Group*, which is our Case No. 2:23-549.

12 Would counsel state their appearances for the
13 record?

14 MS. DERIEUX: Good morning, your Honor.
15 Elizabeth DeRieux on behalf of the plaintiff,
16 Optronic Sciences. And with me today, I have Paul Weiss
17 and -- Andrew Weiss and Paul Kroeger.

18 THE COURT: All right.

19 MS. DERIEUX: We're ready to proceed.

20 THE COURT: Thank you, Ms. DeRieux.

21 MR. UNDERWOOD: Good morning, your Honor.
22 Travis Underwood on behalf of BOE. With me is
23 Brian Erickson, Michael Saulnier, Alan Limbach, and
24 perhaps most importantly, your Honor, Mr. Jordan Murley
25 who is a summer associate law student with the DLA law

1 firm. And we're ready to proceed.

2 THE COURT: All right. Thank you,
3 Mr. Underwood.

4 I also want to note for the record that
5 earlier this morning we distributed to counsel for both
6 sides a set of preliminary constructions of most of the
7 disputed terms. The purpose of issuing those
8 preliminary constructions is not to prevent either side
9 from taking whatever positions they believe are
10 appropriate on these terms. Rather, the intent is to
11 let counsel know where the Court is initially after the
12 review of the briefing in the record so that you can
13 focus your arguments where you think the Court may have
14 most missed the mark. I do reserve the right to amend
15 these preliminary constructions and not uncommonly do
16 change them based on the arguments received at this
17 hearing. So I hope they'll be taken in that spirit.

18 I would like to hear the arguments on a
19 term-by-term basis, but I'm happy to take them in
20 whatever order counsel think is most efficient. I know
21 that they were briefed in different orders, and I think
22 we'll have time to get through all of the terms. But if
23 counsel want to start with particular terms out of
24 order, I'm fine with that as well.

25 And having said that, I'll turn it over first

1 to counsel for plaintiff.

2 MR. WEISS: Good morning, your Honor.

3 Andrew Weiss on behalf of Optronic -- plaintiff

4 Optronic. The first term I believe that we're going to
5 address is the Term A, as you've identified it, the
6 "substantially L-shaped structure." And I believe that
7 defendant is actually going to start off and is going to
8 combine that with one of the other terms as well, but
9 I'll let him explain.

10 THE COURT: All right. Thank you, Mr. Weiss.

11 MR. ERICKSON: Good morning, your Honor.

12 Brian Erickson for defendant BOE.

13 THE COURT: Good morning.

14 MR. ERICKSON: The first term, Term A,
15 relates to the interrelationship between the
16 "comprising" preamble transitional phrase and the
17 claimed term "substantially L-shaped structure." We
18 have a similar legal issue with respect to Term F, which
19 is the comprising preamble in combination with the
20 limitations "saw tooth opening" for the '801 patent and
21 "saw tooth pattern" for the '914 patent. In these
22 instances, the legal issue that's in dispute between the
23 parties is the same, specifically whether comprising
24 allows -- encompasses different shapes.

25 Moving to Slide 5.

1 We have the examples that BOE presented in
2 its brief of structures that have various shapes. The
3 structure on the left is clearly a substantially
4 L-shaped structure. Structures 2, 3, and 4 there are
5 not. The quote widely attributed to Michelangelo is:
6 "The sculpture is already complete within the marble
7 block, before I start my work. It is already there. I
8 just have to chisel away the superfluous material."

9 Comprising does not operate to go into the
10 body of the claim and allow the expert to look at the
11 prior art structure or structure in the accused product
12 and subdivide that structure into a different shape and
13 ask the jury to compare a subportion of that structure
14 for that subshape and ask the jury to decide whether
15 that subshape is substantially L-shaped. The experts
16 and the parties need to take the structures in the prior
17 art and the structures in the accused products as they
18 exist, and the jury's job will be to determine whether
19 that structure is substantially L-shaped, not a
20 subdivision of that structure or a subshape of that
21 structure.

22 The case law cited by both parties supports
23 BOE's position. On Slide 6, we have the *Outside the Box*
24 *Innovations* case and the *In re: Varma* case. Both of
25 them stand for the proposition that comprising means

1 additional components may be present, but it does not
2 change the elements that are recited in the claim
3 itself.

4 THE COURT: Mr. Erickson, comprising is in
5 the preamble of virtually every claim. Why is there a
6 different issue in this case than in any other?

7 MR. ERICKSON: In this case, your Honor,
8 based on the contentions that have been disclosed by the
9 parties, it appears that plaintiff is subdividing a
10 structure and is going to ask the jury to look at only a
11 subportion of the structure to determine whether or not
12 its substantially L-shaped. And here we have the legal
13 issue that usually is not disputed. We also have the
14 factual history here and the file history that -- where
15 it really highlights this exact issue that came up in
16 the file history and its resolution there, which is
17 relevant.

18 If we look at Slide 8, we have Claim 3, a
19 previous version of Claim 3, before the disputed phrase
20 was added. And you see on the left, there the fastener
21 had two portions and then the highlighted phrase was
22 "are substantially perpendicular to each other." The
23 examiner looked at the prior art and then found the
24 Kuwabarra reference and specifically Structure 22. Now,
25 on the right, we have Structure 22 highlighted. And for

1 the written record, Structure 22 appears to me to be a
2 backwards C or maybe a U shape that's tilted on its
3 side. That was the structure in the prior art. The
4 examiner found it satisfied the previous limitation.

5 Moving to Slide 9. In response, the
6 applicant amended the claim and it added the limitation
7 "a substantially L-shaped structure." That amendment is
8 shown on the top left box of Slide 9. In the bottom
9 left box, you'll see the remarks where they rely on the
10 substantially L-shaped structure amendment to
11 distinguish Kuwabarra. You see the bottom line, it's
12 not highlighted there, but they say that makes it
13 patentable over Kuwabarra. Now, on the right, again, we
14 have the figure, the Structure 22 from Kuwabarra, if
15 comprising operated to go into the claim and allow an
16 expert to say it is -- you know, we have this
17 Structure 22, I can subdivide it and say there's an L
18 and the rest of it is irrelevant additional material
19 under the law of comprising, then obviously they would
20 not have been sufficient to get around Kuwabarra.

21 So this amendment and argument disclaims any
22 claim scope that would use comprising in conjunction
23 with substantially L-shaped to read on something like
24 Kuwabarra.

25 THE COURT: So, in effect, a construction

1 that -- substantially L-shaped means substantially
2 L-shaped?

3 MR. ERICKSON: Yes, your Honor.

4 Reenforcing -- at least for the parties, whether or not
5 the Court writes that into its construction for the
6 jury -- explicitly instructs the jury that way is,
7 perhaps, a separate issue. But at least with respect to
8 the parties, they need to know that their expert needs
9 to take the structure in the prior art and the
10 structures in the accused products and apply those
11 structures to the limitation substantially L-shaped
12 structure, not a subdivision or subportion of the
13 structure.

14 THE COURT: This seems so much a question of
15 fact and perhaps one that can be decided by the Court on
16 a motion to strike or a motion for summary judgment
17 depending on how, I would say, egregious the expert's
18 opinion is. But I don't know what the Court can say
19 about this helpfully at this point other than I think we
20 all know what substantially L-shaped means. And without
21 knowing what the accused device is and how its laid out,
22 I'm not sure what more the Court can say about whether
23 or not that is a substantially L-shaped structure.

24 MR. ERICKSON: Okay. We understand, your
25 Honor, that it can be difficult to address these at this

1 stage of the case in the abstract. As long as that
2 issue is held open in the Court's mind as the Court has
3 described, we think deferring that to that later stage
4 of the case would be acceptable, your Honor.

5 THE COURT: I can tell you -- and I'll
6 certainly give the plaintiff a chance to be heard as
7 well. But I don't disagree with what you have said
8 about comprising; that it doesn't change what is
9 necessary to show infringement. It just allows
10 additional material. But I do know also that experts
11 are very good at finding different parts of the accused
12 device to point to, to satisfy limitations. And so I
13 would never try to rule in advance about what might or
14 might not satisfy that. But I don't -- I don't know
15 what more to add to that.

16 But I will give the plaintiff a chance to be
17 heard, if they think there is some issue here that's
18 different than in other cases about how they might meet
19 this limitation, I'll be happy to hear it.

20 MR. ERICKSON: Thank you, your Honor.

21 THE COURT: Thank you, Mr. Erickson.

22 MR. WEISS: Thank you, your Honor.

23 I think that plaintiff generally agrees with
24 your comments. The only thing that I would -- I would
25 point out that is not in the briefs, is that

1 Judge Gilstrap often has an instruction in his jury
2 instruction that talks about the meaning of comprising.
3 I believe he uses an example of a tabletop legs and
4 glue.

5 This is Slide 6.

6 So this issue, you know, should it get to the
7 jury, is often -- is often addressed, and we agree that
8 the issue -- the issue the defendant seems to be
9 addressing is one of fact about -- about what the actual
10 structure is, that the L-shaped is being applied to, and
11 that's a fact issue to be dealt with at a later time,
12 not on claim construction.

13 THE COURT: And you understand that
14 notwithstanding the use of comprising in the preamble,
15 that there is still a requirement of a substantially
16 L-shaped structure to meet this limitation?

17 MR. WEISS: Yes, your Honor. We understand
18 that.

19 THE COURT: Okay. Well -- all right. At
20 this point, I'm inclined to stick with the plain and
21 ordinary meaning construction.

22 What is the next term that the parties want
23 to argue?

24 MR. WEISS: So the next term, your Honor, is
25 "the second portion extending above the light guiding

1 plate," your Honor, Term B, which I understand the Court
2 has not issued a preliminary construction. So before I
3 get into that, I just wanted to inquire if the Court has
4 any particular questions or concerns that you'd like me
5 to address?

6 THE COURT: I would like to hear your
7 understanding of this term.

8 MR. WEISS: Okay. Slide 16.

9 Your Honor, with respect to this term, which
10 is from the '842 patent, I thought the first thing that
11 would be helpful is to get, sort of, a real world idea
12 about what the backlight package is that's being
13 claimed. So on the right-hand side of slide -- of this
14 slide, this is an example of a -- of what the claim is
15 talking about. This is taken from the website that's
16 cited in our briefing. This is someone who has a light
17 guiding plate with some films, and there are LEDs
18 attached to the top and the bottom. You can see where
19 the light -- you can see where the light is brightest.
20 And there's a light gliding plate at the bottom of that.

21 And then this in -- in a monitor would then
22 be -- it would be packaged with other stuff and would
23 be -- eventually be what you're looking at. And in this
24 particular picture, as the author described it, he
25 actually has a piece of paper also taped over it.

1 That's what the green tape and white part is. But this
2 gives the Court an idea about what the real world claim
3 is talking about. And so this is -- this is the context
4 that we think a POSITA would understand what is being
5 talked about when it's talking about a light guiding
6 plate and a fastener and a light emitting device and a
7 circuit board.

8 And just like if someone describes a bike as
9 having a seat over the pedals, you don't have to have
10 the caveat of a -- that's only -- that only applies when
11 the bike is upright. It's just, sort of, assumed you
12 understand the natural orientation of when you're
13 describing a bike.

14 Can you go to the next slide, Paul?

15 So this is from the same website breaking
16 down, sort of, the layers that go into that -- that real
17 world device. The LED is shown on the left. He has it
18 labeled, "edge illumination source." And I've
19 highlighted the light guiding plate in red. In this
20 case, it's, sort of, a triangular shape in this drawing.
21 And then the black arrows I added, which is where the
22 light is escaping from the light guiding plate, and when
23 you're looking at your monitor, how you're looking at
24 light escaping.

25 And this is the orientation that we think a

1 POSITA would understand from -- to evaluate the second
2 portion extending above the light guiding plate. And
3 then the bottom, I added poorly -- I'm sorry for my poor
4 PowerPoint skills. But I added, sort of, a rough
5 example of a -- of an L-shaped fastener with a second
6 portion extending above the light guiding plate as the
7 light travels. So we don't believe that there's any
8 indefiniteness issues. Here we believe the meaning of
9 the claim is certain, and BOE's argument about, well,
10 you know, you could put this on its side, you could turn
11 it upside down, and you'd never know what was above and
12 what wasn't. We don't believe that that applies. We
13 understand that they have some arguments based off of
14 what our constructions do or don't say, but we don't
15 think that changes the meaning of claim construction
16 here.

17 THE COURT: So your position is that above in
18 this art would always be understood to mean the
19 direction in which the light is traveling or what is
20 your understanding of above?

21 MR. WEISS: When it's referring to in this
22 context of a -- the fastener extending above the light
23 guiding plate, we believe that the context would be how
24 you would naturally look at and consider one of these
25 devices, which is what we've -- you know, which is what

1 we believe Slide 17 shows.

2 THE COURT: Well, this is a side view, I take
3 it, what you're showing on your Slide 17?

4 MR. WEISS: Yes.

5 THE COURT: And in the side view, you're
6 saying that above would be understood to be the top of
7 the device?

8 MR. WEISS: I think the -- it's as the -- the
9 way you would evaluate it is as the light is traveling
10 to the eye in this particular device. And the side view
11 makes it easier to see what we're talking about. The
12 top view -- you know, perspective wise would make it
13 harder to see above -- above or not, but it doesn't
14 change the meaning of the term to a POSITA.

15 THE COURT: The device would typically be
16 used with the screen facing the user, right?

17 MR. WEISS: Yes.

18 THE COURT: So in that orientation, above
19 would mean toward the user?

20 MR. WEISS: Yes. I think that's correct,
21 your Honor.

22 THE COURT: And what do you think the best
23 evidence of that understanding by a person of ordinary
24 skill is in this record?

25 MR. WEISS: I believe, your Honor, that we

1 have the declaration of Dr. Bretschneider.

2 THE COURT: Uh-huh. And does
3 Dr. Bretschneider's declaration identify what the person
4 of ordinary skill would understand above to mean, or
5 does it -- does he just say a person of ordinary skill
6 would understand it?

7 MR. WEISS: No. He provides us an
8 explanation similar to the one that I provided just now.

9 THE COURT: All right. Thank you, Mr. Weiss.

10 MR. WEISS: Thank you, your Honor.

11 MR. ERICKSON: Your Honor, the law requires
12 that the claims provide objective boundaries. That's
13 lacking here. The claim, as shown on Slide 15, is to a
14 backlight package. It's just that backlight package
15 component. It's an apparatus claim. It's not a claim
16 to how the backlight package is used or oriented by an
17 enduser. It's just the backlight package. And the
18 highlighted phrase, "the second portion extending above
19 the light guiding plate" provides no objective
20 boundaries of how a person of ordinary skill in the art
21 would determine whether that one component is above the
22 other.

23 Dr. Baker addresses this in his declaration.
24 He says a POSITA would find nothing in the claims that
25 establishes a frame of reference for above. And in

1 plaintiff's opening brief, and as we -- it's stated that
2 claims do not expressly provide a further frame of
3 reference. Today in their argument and in their
4 briefing, we did not hear them point to the claim for
5 any frame of reference. So we believe it is undisputed
6 that the claims themselves do not provide the frame of
7 reference necessary for determining whether the second
8 portion extends above the light guiding plate.

9 Moving to the specification, your Honor. It
10 is undisputed, again, that the specification provides no
11 guidance. There is only one disclosed embodiment. It's
12 illustrated in Figure 4, which is produced here on
13 Slide 16. And in the only disclosed embodiment,
14 Figure 4 illustrates the claimed second portion is
15 44B -- that's highlighted in yellow -- and it
16 illustrates that below the light guide plate 48. Now, I
17 use the word "below" there. I'm referring to just how
18 it is illustrated on the page. It doesn't discuss or
19 use the word "below." It doesn't discuss above. It
20 doesn't discuss where the display would be. Where this
21 backlight package that's illustrated here in Figure 4 --
22 it doesn't say where the display would be. Would it be
23 above as illustrated here or below as illustrated here?
24 It doesn't disclose or discuss which direction the light
25 will be emitted or where the viewer is. It doesn't

1 discuss any of that. This is an apparatus claim to just
2 this backlight package.

3 Now, what it does say, and the text that
4 describes this figure in the only disclosed embodiment
5 is in the lower, left-hand corner of this slide. It
6 states, "The second portion 44B of the L-shaped fastener
7 extends behind the light guiding plate 48." So this
8 provides absolutely no guidance to a person of ordinary
9 skill in the art of what above would mean. It says
10 behind.

11 I think from what we've seen from plaintiff
12 in their argument today is that they've illustrated
13 something and shown -- towards the user, I think, was
14 their response to the Court's question. Well, that --
15 to the extent behind means anything -- and I'm not
16 sure -- there is no explanation in the specification by
17 what they mean by behind, but that would seem to be
18 perhaps the opposite. If there's a context of the front
19 of the thing and a behind of a thing, perhaps -- you
20 know, what they're arguing now -- and perhaps this is
21 the opposite of that. I don't know. No one is pointing
22 to the specification as providing any kind of objective
23 guidance as to what above means.

24 In plaintiff's reply brief, they, in fact,
25 call this Figure 4, which is the illustration of the

1 only disclosed embodiment, they actually say it's
2 irrelevant. They say that this cross-section is cut in
3 the wrong direction for this limitation, so it is
4 irrelevant. So it is undisputed that there's no
5 guidance in the specification of -- objective guidance
6 in the specification for above.

7 As we heard here from counsel today, the
8 ordinary English meaning of above that the jury is going
9 to walk into the courtroom with is not applicable. In
10 other words, you know, normally if you hold an item out
11 to the jury and you say, is one part of this item above
12 the other part of the item, the jury would apply their
13 understanding -- normal, ordinary meaning and
14 understanding of above and just look at how it's
15 oriented. And if you turn it the other way, the answer
16 would be no. If you turn it this way, it could be yes.
17 Everyone agrees, or at least the experts agree, that
18 that's not the relevant meaning of above. So the jury,
19 when they walk into the room claiming the ordinary
20 meaning of above, that's not the relevant meaning and
21 should not be applied. So that doesn't solve the issue.

22 Finally, we heard plaintiff today refer to
23 their expert's declaration. None of those
24 illustrations -- I understand those were in a website.
25 None of those illustrations are discussed by the expert

1 in his declaration. What we show here on Slide 19 is
2 the entire substance of the expert's declaration on this
3 issue. And it's one sentence. It states, "A structure
4 is therefore above another if, in the line through which
5 light travels from the display to the eye, it is above."

6 So it's -- that's the sentence. And then the
7 plaintiff has used attorney argument to take that and go
8 from there to try to breathe life into this above
9 limitation or breathe some certainty in the above. The
10 first thing we noticed about this sentence is that it's
11 circular. It defines above and it uses above in its
12 definition. It also introduces this concept of a
13 display and the way light travels from the display to
14 the eye. These things are not in the claim, and they're
15 not in the specification. And there's no corroborating
16 evidence of this. Not a single example, even in the
17 website that's cited by plaintiff. Nowhere has anyone
18 ever used the word "above" to describe the relationship
19 they're trying to describe. There's just no evidence of
20 even a single example in the art where -- to back up
21 this one sentence from their expert.

22 The following sentence in the declaration is
23 shown on the next slide. He states, "The specification,
24 discussed below, is consistent with the understanding of
25 a POSITA. In the two-dimensional cross-sectional views

1 in the specification, above is in the up direction."

2 Well, the specification issue here -- remember the only
3 disclosed embodiment is Figure 4. So in the orientation
4 that's illustrated, it's actually below. And when we
5 asked him in his deposition about this figure, his
6 testimony is in the lower right. I asked him: "Do you
7 have an opinion, sitting here today, whether the second
8 portion, 44B, is below the light guide plate 48?"

9 "ANSWER: Again, I did not offer that opinion
10 because it's talking about the light guide plate. The
11 rest of the display isn't there."

12 All right. On Slide 21, we have plaintiff's
13 expert -- I'm sorry -- plaintiff's argument where they
14 attempt to fill this void, and they've repeated and
15 expounded on that argument today. Again, they're
16 focused on how the LED -- I'm sorry -- the backlight
17 packages are designed to be used in a display. And they
18 state they have a natural orientation. Well, their
19 expert didn't use these words "natural orientation."
20 Their own expert didn't really back this up. The expert
21 only had that one sentence that we looked at.

22 And then plaintiff, again, as they argued
23 today, they say the back of the display is the bottom
24 and above refers to the direction the light would travel
25 to the observer of the screen. You know, there's just

1 no evidence of this anywhere in the intrinsic or
2 extrinsic record other than the circular sentence stated
3 by their expert with no support whatsoever.

4 Finally, your Honor, earlier in the case
5 before this issue was raised -- I think this is very
6 telling that subjectively plaintiff didn't have this
7 interpretation in mind because in their reverse
8 engineering of the completed devices that do have a
9 display, they do have an intended direction -- this is a
10 laptop -- so they could argue we know where the viewers
11 should be. When they cut the cross-section of the
12 product, they had both directions as up. They said, you
13 know, this could be up or this could be up.

14 So for them to come back in hindsight after
15 this issue has been raised and say, no, no, we're all
16 certain which way is up, it's toward the viewer, well,
17 that's belied by their earlier position in the case
18 where they didn't use that, they didn't apply that.
19 They just said either way could be up.

20 Finally, your Honor, I would just like to
21 emphasize this is an apparatus claim. It's just to the
22 backlight package, not to the completed product. There
23 is no guidance in the claim, the specification. There's
24 no evidence in the art other than the single unsupported
25 statement from their expert. Even in the illustrations

1 that they showed the Court today, there's just no
2 evidence that above -- one of ordinary skill in the art
3 would understand that the backlight package, a person
4 making and selling just the backlight package, would
5 have any idea whether that backlight package would be
6 used in the orientation in the display in a way to
7 practice the claims.

8 So, accordingly, we respectfully suggest that
9 the Court hold this claim invalid.

10 Thank you, your Honor.

11 THE COURT: Thank you Mr. Erickson.

12 MR. WEISS: May I respond?

13 THE COURT: Yes.

14 MR. WEISS: Thank you, your Honor.

15 THE COURT: And, Mr. Weiss, I'd appreciate it
16 if you could point out what you think the most
17 instructive testimony or declaration of
18 Mr. Bretschneider would be for this term.

19 MR. WEISS: Yes, your Honor. I think if you
20 look at Paragraph 78 of his declaration here, contrary
21 to what defendant represented, he does have a
22 description consistent with what I -- with what I talked
23 about. And I think if you look at some of the testimony
24 that BOE cited in context, you'll see that he's not
25 addressing the claim construction issue that they're

1 arguing. He's actually talking about how in his -- in
2 his opinion, the orientation of a monitor, whether it's
3 mounted on a wall or laying on a desk, doesn't change
4 the meaning of above because it has an ordinary meaning.

5 And, you know, as -- as I talked about in my
6 opening remarks -- we've shown you a picture of what one
7 of these claimed devices is likely to look like. As far
8 as I know, BOE has not presented a similar example where
9 they say that it could just be simply manipulated.
10 And -- like a phone turned upside down and then suddenly
11 the battery is above the screen. Like a bike or a phone
12 or any number of things. In today's -- in today's
13 society, there is a natural orientation to -- to things
14 that will define above unless you -- unless you
15 expressly say otherwise.

16 THE COURT: Figure 4, as I understand it, is
17 a figure that depicts a backlight package?

18 MR. WEISS: Yes. I mean, a simplified
19 version of one with 48 being the light guiding plate.
20 And I've put up my Slide 18 to just illustrate the
21 reason that -- you know, it doesn't describe above
22 because it's just from -- it's from a different
23 orientation. Instead of being a cross-section, like the
24 image I showed you previously, which is reproduced on
25 the bottom of this slide, this is looking at the light

1 plate from a different direction. So it's harder to
2 tell whether the second portion is extending above or
3 not from this particular view. It doesn't mean,
4 however, that a POSITA would have a problem
5 understanding what above is in the context of the claims
6 in the technology.

7 THE COURT: Mr. Bretschneider testified that
8 he could not tell from looking at Figure 4 where the
9 monitor would be?

10 MR. WEISS: I believe, your Honor, that he --
11 I believe that he testified that he couldn't figure out
12 whether or not the second portion extended above from
13 Figure 4 because it's a perspective issue. But that
14 doesn't mean that the term doesn't have a plain and
15 ordinary meaning or that it's not disclosed by the
16 POSITA based off of the specification disclosure.

17 THE COURT: All right. But you think that
18 Paragraph 78 of his declaration is the one that you
19 would point to, to support your position?

20 MR. WEISS: Yes. And I think the -- if you
21 look at the context of the cites that they provide, he's
22 not providing testimony that -- that they're suggesting.
23 I think his testimony that they're citing is consistent
24 with his opinion and the argument I presented here.

25 THE COURT: All right. I will look at it

1 further.

2 MR. WEISS: Thank you, your Honor.

3 THE COURT: Thank you, Mr. Weiss.

4 MR. ERICKSON: If I may briefly, your Honor.

5 THE COURT: All right.

6 MR. ERICKSON: Paragraph 78 just doesn't get
7 them there. Paragraph 78, if your Honor will go back
8 and look at that paragraph in whole, originally that
9 paragraph is addressing an entirely different patent.
10 And then later he comes back and in Paragraph, I think,
11 80-something of his declaration, he says, oh, yes,
12 everything I said about the other patent applies here.

13 In his declaration, he never even addresses
14 the level of ordinary skill for the '842 patent. And
15 you'll see that he incorporates three different
16 theories, Paragraphs, I believe, 77, 78, and 79. At his
17 deposition, he then says, well, 77 and 79 don't apply,
18 but I'm going to stick with 78. So I believe we've gone
19 over Paragraph 78 in the briefings and I did earlier.
20 It just doesn't get them there.

21 And, more importantly, your Honor, there is
22 no corroborating evidence. We know they're motivated to
23 try to find a possible meaning here in hindsight, but
24 that meaning doesn't exist in the art. There is just no
25 evidence other than what their expert said. Even all of

1 the figures that they've drawn and pulled out from the
2 website, they don't even show the backlight package.
3 They just show the illumination device. Counsel had to
4 draw in the backlight package. It's not even in that
5 figure.

6 And so to say that that figure would support
7 that one would know how to look at a backlight package
8 in isolation and know what is above something else,
9 there's just no support for that proposition, your
10 Honor.

11 THE COURT: All right. I will look at it
12 further with the arguments in mind. Thank you.

13 Does either side think there are additional
14 arguments necessary on the next term in the '509 patent?

15 MR. WEISS: Yes, your Honor.

16 THE COURT: All right. Then go ahead.

17 MR. WEISS: So turning to the "above" and
18 "side of" terms in the '509 patent. The '509 patent is
19 in the semiconductor art. So it is in a different art.
20 And on Slide 15, I've reproduced some of the examples of
21 defendant's own expert Dr. Baker referring to various
22 layers as above another layer, again, using a substrate
23 as a context, which is the argument that we have
24 presented in our -- in our briefs. It's --

25 THE COURT: How does one locate a substrate

1 in the claim we're talking about, Claim 1?

2 MR. WEISS: Pardon me, your Honor. I
3 believe, your Honor, that it's -- because of the art
4 that's involved, a POSITA would understand that these
5 devices are built on a substrate. The substrate itself
6 is not a claim element, but in terms of understanding
7 what a layer above another is, the -- within the
8 semiconductor arts, it is -- a POSITA would understand
9 that the layers are on top of one -- one another and
10 that one layer -- the layer on top of -- a bottom layer
11 is above it. And that is the way that Dr. Baker uses in
12 his book. That's also the way that Dr. Baker understood
13 the same term in IPR and explained to the PTAB; that it
14 had a plain and ordinary meaning and he adopted that
15 plain and ordinary meaning, which is consistent with
16 judging it as above from the substrate.

17 THE COURT: So where the substrate says,
18 "disposed above the first auxiliary electrode," you're
19 suggesting that it would be understood that that
20 auxiliary electrode is in a certain layer?

21 MR. WEISS: The auxiliary electrode, yes,
22 would be built out of the relevant layers to make it --
23 to make an electrode. And I think, your Honor, if I'm
24 correct, in this specification, it describes having --
25 having a substrate. I believe it calls it 102. I am

1 looking to try to find your Honor a cite. So, for
2 example, when describing Figure 2 in column -- in the
3 '509 patent, Column 3, Line 44, pixel structure 100
4 includes a substrate 102 and then various layers built
5 on top of that.

6 THE COURT: All right.

7 MR. WEISS: So, your Honor, again, like I
8 described before, we believe that a POSITA understands
9 there's a natural orientation to the claimed pixel
10 structure. And when it describes a structure being
11 above another structure or layer, that the natural
12 orientation of such a description is to judge it from
13 the -- from the substrate building up and that is the
14 same plain and ordinary meaning that their own expert
15 has used outside of this litigation and their own expert
16 has used even in this litigation in the IPR where none
17 of -- where none of these issues were raised and the
18 expert didn't raise any problem understanding the term.

19 THE COURT: All right.

20 MR. WEISS: Thank you, your Honor.

21 THE COURT: Thank you, Mr. Weiss.

22 MR. LIMBACH: Good morning, your Honor.

23 Alan Limbach for BOE.

24 THE COURT: Good morning.

25 MR. LIMBACH: Okay for me to proceed?

1 THE COURT: Yes.

2 MR. LIMBACH: Fantastic. So I'd like to
3 start with the case law because I think it's very
4 illustrative here. It's very clear that it's not enough
5 to identify some standard, which is what plaintiff has
6 done. The claims themselves must provide the objective
7 boundaries, and those objective boundaries are simply
8 not in Claim 1.

9 So on Slide 27 is Claim 1. And as the Court
10 has just identified, the substrate is not in Claim 1.
11 And worse, there's nothing in Claim 1, no claim element
12 that's there, that provides the orientation of how to
13 measure the direction above.

14 And this is important because the alleged
15 novelty of this invention is the auxiliary electrode,
16 and all it says about it is its electrical connection
17 and its relative position. So this is not a trivial
18 term. The positioning of the electrode is essential to
19 the claim and it's ambiguous. Now, the figures show the
20 substrate and the figures show an orientation. And if
21 you look on Slide 28, that's Figure 3. And so it shows
22 the light emitting device that's in blue. It shows the
23 first auxiliary electrode in red. It has an orientation
24 to it printed on a page.

25 So you can apply this, or at least as an

1 orientation -- natural orientation using plaintiff's
2 language to a printed figure. But the claims are
3 directed to a pixel structure, not to figures, and
4 that's where Claim 1 is indefinite. So if you just talk
5 to -- talk about pixels -- if you just consider pixel
6 structures, there's nothing in Claim 1 to differentiate
7 the light emitting device being disposed above the first
8 auxiliary electrode versus below it versus any other
9 orientation because the pixel structure just floats in
10 space. You can flip it upside down, orient it in way
11 you want.

12 THE COURT: Why shouldn't the Court look at
13 this as describing this structure in the way that
14 semiconductors are always described as being built in
15 layers from the substrate up?

16 MR. LIMBACH: I'll get to that. But the
17 short answer is there's no one answer. Because you can
18 form layers on both sides of the -- both major surfaces
19 of a substrate. So if you do that, which way is up?

20 THE COURT: Do you disagree that it is
21 conventional in claiming the structure of a
22 semiconductor to refer to layers as they are added on to
23 a substrate as going from lower to higher?

24 MR. LIMBACH: Not always. First of all, this
25 is an apparatus claim so now you're looking -- you have

1 to look at the order of manufacturing steps. When you
2 form layers on both sides of the substrate, you now have
3 two opposing directions. There are also devices that
4 have multiple substrates. So now you have to figure out
5 which to use. You also have products that don't have a
6 substrate. You form layers and then you remove the
7 substrate and then you continue processing.

8 So I would disagree that there is a natural
9 orientation in the field of semiconductors. And if --
10 and, again, we're talking about an unclaimed element.
11 If they wanted to set that clear, they would have put
12 substrate in the claim and they did not.

13 THE COURT: What is your reaction to
14 Mr. Bretschneider's opinion on this?

15 MR. LIMBACH: Well, Dr. Bretschneider gave
16 two standards. And I can jump ahead to that.

17 THE COURT: All right.

18 MR. LIMBACH: On Slide 32, he said -- I'm
19 sorry. On Slide 33, he said, "A structure is therefore
20 above another if, in the line through which light
21 travels from the display to the eye, it is above." So,
22 first of all, the direction of light travel is not
23 claimed. The position of the eye is not claimed. So
24 the claim itself does not have the objective boundaries.

25 But, more importantly, I've got illustrations

1 here -- the LEDs come in two flavors; top emission and
2 bottom emission. Top emission devices, the light
3 travels away from the substrate. Bottom emission
4 devices travel toward and through the substrate. So
5 using this standard, Dr. Bretschneider's standard, if
6 it's a top emission device, above is away. If it's a
7 bottom emission device, it's towards. And this is --
8 second standard directly contradicts plaintiff's
9 construction that there's this natural orientation
10 that's just away. If there's a natural orientation
11 that's just away, then why did Dr. Bretschneider give us
12 a second alternative that directly contradicts it? The
13 answer is because it's ambiguous.

14 So I'd like to go back and -- just on
15 Slide 30 and just reiterate the standard -- the
16 objective boundary is not in the claim. They are
17 looking at an unclaimed element. So right there we
18 should stop and say that doesn't meet the standard
19 that's set forth by the Federal Circuit. The objective
20 boundary has to be in the claim. And now we're looking
21 at an unclaimed element. We also think that, because
22 they're tying it now to a substrate, their plain and
23 ordinary meaning definition should not be adopted. A
24 jury is not going to know what to do with that. A jury
25 is not going to walk in and look and say, oh, there's a

1 substrate, it's going to be away. That's not the plain
2 and ordinary meaning and a lay jury is not going to
3 understand that.

4 THE COURT: Well, isn't the issue whether a
5 person of ordinary skill would? A plain meaning is not
6 a plain meaning to the jury.

7 MR. LIMBACH: Right. But it is still going
8 to be looking at something that's outside of the claim.

9 THE COURT: Okay.

10 MR. LIMBACH: And as we look at 31, Slide 31,
11 there's no one direction that's away from the claim --
12 away from the substrate. I've only shown four arrows
13 here. There's another arrow into the screen. There's
14 another arrow out of the screen. And maybe plaintiffs
15 are going to come up with arrows that are different
16 angles. There is no one direction that's away from the
17 substrate. So it's not a standard that defines a single
18 direction.

19 So when Dr. Bretschneider was confronted with
20 this contradiction that he gave in his declaration, he
21 was instructed not to answer. The question was very
22 simple. "So in a bottom-emission LED, which way is up?"

23 Counsel: "I'm going to object and instruct
24 you not to answer."

25 Because there's no good answer. And, at

1 best, later all of the expert would say is, well, okay,
2 I don't have an opinion. He couldn't even address the
3 contradiction in his own declaration. Further, he
4 couldn't identify the above direction for devices having
5 two substrates. He couldn't do it where layers are
6 built on both sides of the major surfaces of the
7 substrate. He couldn't do it where it didn't have
8 planar surfaces. He could not apply the plaintiff's
9 construction. I think that's just really strong proof
10 that it's ambiguous.

11 And then there are their infringement
12 theories. So in their complaint, they have one
13 allegation. And it's illustrated on Slide 35. And this
14 is a -- this is a cross-section of the accused device
15 flipped opposite of the orientation of all of the
16 figures in the '509 patent. The substrate is at the
17 top. They had to do that because it's the only way to
18 get the light emitting device to be above what they
19 claim is the first auxiliary electrode. Disposed above
20 is toward the substrate here, not away from it. This
21 allegation is in direct contradiction to what they're
22 now arguing to the Court a POSITA would know.

23 And then in their infringement contentions,
24 they have two alternating theories. They have theory
25 one where the substrate is at the bottom. Now, this is

1 consistent with the direction above being away from the
2 substrate. But they kept theory two, flipped upside
3 down with the direction toward the substrate. The above
4 direction being toward the substrate. Now, with all due
5 respect to counsel and plaintiff, if a POSITA would know
6 that the only direction is away from the substrate, then
7 they wouldn't have filed a complaint where their sole
8 allegation of infringement was the exact opposite. And
9 they wouldn't have kept it in their infringement
10 contentions.

11 And, lastly, counsel really just all talked
12 about Dr. Baker and applying the above direction to
13 figures. So I want to talk a little bit about figures.
14 Figures have a natural orientation and actually the '509
15 patent is a great example of this. If you look at
16 Slide 37, Figures 3 and 4, it is a natural orientation.
17 It's how it is printed on the page, and all of the
18 annotations, all of the lettering and all of the numbers
19 and the titles of the figures, all go in one direction.
20 So you orient the page and you know how to orient a
21 figure.

22 Take a look at Figure 5. Now, the lettering
23 on the top is just the title. But all of the
24 annotations and the title of Figure 5 go to the right.
25 A POSITA would know, and, frankly, anyone knows, you'd

1 rotate the figure 90 degrees and that's your natural --
2 that's the natural orientation of the figure. And
3 that's exactly what Dr. Baker did in his books, in
4 proceedings outside, and within this case. You can
5 apply Claim 1 to figures, but it's ambiguous if you try
6 to apply it to a pixel device, which is the whole point
7 of Claim 1.

8 There's also "disposed at a side." This
9 suffers all of the same issues. They also claim that
10 it's relative to the substrate in direction parallel to
11 it. Again, this is outside Claim 1. So the bounds that
12 Claim 1 does not have clear objective boundaries and,
13 again, we're going to say that -- plain and ordinary
14 meaning is not appropriate for the jury.

15 That's all I have on this unless you have any
16 questions.

17 THE COURT: Not at this time. Thank you,
18 Mr. Limbach.

19 MR. LIMBACH: Thank you, your Honor.

20 MR. WEISS: May I understand, your Honor?

21 THE COURT: Yes.

22 MR. WEISS: I want to keep my responses
23 brief. I just thought there were a few points that I
24 thought that merited some response. The first thing I'd
25 like to point out is the majority of defendant's

1 argument is based off the idea that there could be
2 multiple substrates, that the substrates could have
3 structure built on it in various directions, et cetera,
4 but what we're missing is the connection from that
5 hypothetical to a pixel structure and that a POSITA
6 would understand that these types of pixel structures
7 would exist with the multiple substrates with layers
8 built in, in every direction, as defendant posits.

9 The evidence isn't there in their -- in
10 Dr. Baker's declaration other than just to suggest --
11 declaring that. The other thing that I'd like to point
12 out about Dr. Baker's declaration is there's the dispute
13 that we briefed about the ordinary level of skill and
14 Dr. Baker's description of the ordinary level of skill
15 being too broad that, I think, would play into some of
16 his opinions that the only thing a POSITA would look at
17 would be gravity and gravity alone.

18 THE COURT: How do you think having a degree
19 would change the opinion of a person of ordinary skill?

20 MR. WEISS: The -- the dispute is actually
21 around the -- what the experience is with. The
22 experience that's described by Dr. Baker is electronics
23 or optoelectronics, which is a very, very broad area
24 which could extend to, you know, even like an alternator
25 for a car or anyone that works with anything in -- in

1 electronics in any manner.

2 The other thing I wanted to point out is that
3 BOE talked about Dr. Bretschneider's testimony about the
4 light traveling to the eye. And he explained at
5 deposition that there was a bit of an unclear -- an
6 unclear bit of drafting in his declaration. And he
7 talked about the same semiconductor point of view that
8 I -- that I talked about briefly, and I believe the
9 Court commented on as well and that that is what applied
10 to these claims, not as -- not as the eye travels. So,
11 you know, even though the -- as the light travels to the
12 eye is consistent with, I believe that there is some
13 clarity involved in his declaration -- in his
14 deposition. I believe it starts around Page 74 of
15 Exhibit DD -- Defendant's Exhibit DD.

16 The last thing I wanted to point out was
17 defendants made a -- defendant made a big deal out of
18 the instruction not to answer at his deposition. And I
19 think within -- within context, the problem with the
20 question, and many ones like it, at Dr. Bretschneider's
21 claim construction deposition in this case is that
22 defendants were attempting to use the deposition to
23 support IPR arguments where Dr. Bretschneider is also an
24 expert. And that was where a lot of the issues arose in
25 that respect. It wasn't that Dr. Bretschneider couldn't

1 address the question. It was just a matter of the --
2 the context it came up in.

3 THE COURT: You know, the circumstances under
4 which counsel is permitted to instruct a witness not to
5 answer are pretty limited. And I don't see how they
6 apply in that case. That's not an issue that's before
7 me right now, but I would urge you to look at the local
8 rules concerning depositions and be careful with
9 using -- using instructions not to answer.

10 MR. WEISS: Okay.

11 THE COURT: If you don't have a privilege or
12 if you're not enforcing a limitation already provided by
13 the Court, it's not proper to make that instruction.
14 Anyway, I'm just noting that because it was pointed out.

15 MR. WEISS: Thank you, your Honor.
16 Understood.

17 THE COURT: All right. And have you
18 identified what you think the clearest testimony or
19 declaration from Dr. Bretschneider is on this issue?

20 MR. WEISS: Yes, your Honor. I think it's in
21 the -- in our briefing as well.

22 THE COURT: Well, I understand it's in the
23 briefing, I guess. Is there something you can point out
24 in addition to that?

25 MR. WEISS: Yes, your Honor. Give me one

1 moment.

2 THE COURT: All right.

3 MR. WEISS: Your Honor, in the Bretschneider
4 declaration, Paragraph 79 to 82.

5 THE COURT: All right. And so those are
6 paragraphs where he also addresses other limitations of
7 this claim?

8 MR. WEISS: No. I believe this is
9 specifically addressing the above.

10 THE COURT: All right. I know Paragraph 78
11 was referred to in the last discussion.

12 MR. WEISS: Yes.

13 THE COURT: Which was a different patent.

14 MR. WEISS: These -- these terms, as they
15 were briefed, were, sort of, addressed in unison.

16 THE COURT: All right. I'll take a look at
17 that further. Thank you.

18 MR. WEISS: Thank you, your Honor.

19 MR. LIMBACH: Your Honor, if I could make
20 just two minor points really quickly.

21 THE COURT: All right.

22 MR. LIMBACH: Just very quickly, your Honor.
23 Counsel tried to explain away Dr. Bretschneider's
24 conflicting opinions. You can't unring the bell. He
25 rendered an opinion and now they're trying to backtrack.

1 It's there. He said that's what a POSITA would
2 understand.

3 The other thing is there was no response to
4 the complaint infringement contentions. And I'd just
5 like to reiterate that we believe the plaintiff has
6 exploited the indefiniteness of Claim 1 to bring lawsuit
7 and maintain it, and I think that's clear from the
8 allegations in the complaint.

9 Thank you, your Honor.

10 THE COURT: All right. Thank you,
11 Mr. Limbach.

12 MR. WEISS: So with respect to the next term
13 "fastener," your Honor, I believe the parties have
14 agreed to stand on the tentative. Or unless your Honor
15 would like to hear further argument on the term.

16 THE COURT: If there is a dispute that the
17 parties think is not resolved by that preliminary
18 construction, I would like to hear about it, but,
19 otherwise, I'm fine.

20 MR. WEISS: No. I think at this time, your
21 Honor, we don't believe there is a dispute that should
22 be resolved on that term.

23 THE COURT: And the defendants are in
24 agreement with that?

25 MR. ERICKSON: We agree, your Honor. We

1 would accept the Court's preliminary construction.

2 THE COURT: All right. Thank you.

3 MR. WEISS: With respect to the next -- well,
4 it's two terms combined, Term E in the tentative. The
5 parties have conferred and --

6 Do you want to say it, so I don't
7 misrepresent your position?

8 MR. ERICKSON: The parties were focused on
9 the briefing. The issue that was really relevant to the
10 dispute was whether the first portion of the preamble is
11 limiting. So for the '801 patent, that's the phrase "a
12 sealant region pattern," and for the '914 patent, that's
13 "an encapsulating structure." That was the issue that
14 was important to the parties to determine whether that
15 was limiting. I believe the parties are in agreement
16 that they would accept the Court's preliminary ruling
17 that that portion of the preamble is limiting. And the
18 parties -- there's no reason to go and address the rest
19 of the preamble, I believe.

20 So we're -- BOE is the one that sponsored
21 this, said the preamble was limiting. We don't see an
22 issue in dispute with the second half of the preamble.
23 So if the Court would order that the first portion of
24 the preamble is limiting, that would be sufficient to
25 resolve all of the disputes between the parties.

1 THE COURT: And by that, you mean that the
2 reference to "liquid crystal display" would not be
3 limiting?

4 MR. ERICKSON: Correct, your Honor.

5 THE COURT: And that's an agreement from both
6 sides?

7 MR. WEISS: Yes, your Honor. Optronix
8 agrees.

9 THE COURT: All right. Then I will adjust
10 the order to reflect that.

11 MR. ERICKSON: Thank you, your Honor.

12 MR. WEISS: With respect to the next terms,
13 which would be the "formed on" terms labeled G, I
14 believe that we've agreed for BOE to go first.

15 MR. SAULNIER: Thank you, your Honor.
16 Michael Saulnier on behalf of defendant BOE.

17 THE COURT: All right.

18 MR. SAULNIER: So, your Honor, we
19 respectfully understand that the Court's preliminary
20 construction for all of the terms was "formed in a
21 manner directly touching the layer below." We don't
22 dispute that that's appropriate for the '801 patent.
23 However, we think that -- we respectfully believe that
24 it's a -- for the '121 and '117, the "directly formed
25 on" terms, a slightly more narrow construction than

1 "directly touching" is appropriate.

2 THE COURT: All right. Tell me about that.

3 MR. SAULNIER: Yes. Just give me one second.

4 So I think fundamentally parties dispute -- still
5 dispute the scope what directly formed on means.
6 Specifically, it is -- defendant argues that there's a
7 limit on what is formed on versus what is directly
8 formed on. And the specification and intrinsic evidence
9 in the prosecution history and to make that -- directly
10 formed on means without any intervening material.
11 The '121 patent specifically uses both "formed on" and
12 "directly formed on" in Claim 1. And it's unclear what
13 plaintiff is pointing to as the difference between what
14 "directly formed on" versus "formed on." It's clear
15 that there's some difference, but it's unclear what
16 plaintiffs believes the scope of that difference is.

17 In the specification, I think it's best
18 highlighted by this example. So if you break down the
19 claim language, the first conductive layer and the
20 fourth conductive layer are directly formed on the gate
21 oxide layer. An important piece to this that I didn't
22 necessarily put in the slide is that this is about what
23 it formed on in a specific. So you'll see there is area
24 A and area B. Both of these disclosures show that
25 directly formed on has no intervening materials for both

1 the first layer -- conductive layer and the second
2 conductive layer.

3 THE COURT: Why would we read in that kind of
4 detail from a figure?

5 MR. SAULNIER: And, your Honor, I think that
6 it's not necessarily directly from the figure, but the
7 prosecution history helps to explain this.
8 Specifically, Optronics's construction of plain and
9 ordinary meaning is inconsistent with the prosecution
10 history.

11 In the November 17th, 2008, amendment, the
12 patent owner included the conductive wiring in Yamazaki
13 is not directly, quote, formed on the gate oxide layer
14 (allegedly the gate insulating film 205 in Yamazaki).
15 And I think the figure below there really drives --
16 helps drive the point home. You'll see that the
17 conductive wire 229 is directly touching the gate
18 insulating layer 205 and so some kind of direct contact
19 wasn't -- was enough or -- excuse me. Let me rephrase
20 that.

21 The -- the limitation was added to get around
22 this -- this shown direct touching and said directly --
23 the two are directly connected to each other. And so
24 this, taken in context with the disclosures in the
25 specification where there is no intervening material

1 between the two layers, means that there has to be some
2 extra meaning to directly formed on beyond just a layer
3 and maybe intervening layers are only a part of the
4 material touching because a part of the material
5 touching between two layers was specifically described
6 as not being directly connected to.

7 And I think that this is further highlighted
8 by plaintiff's construction because there's no
9 indication of the plain and ordinary meaning. In fact,
10 they specifically point to two layers, the silicon
11 nitride and organic layers, in the '121 patent that are
12 not claimed as directly formed on. There you can see in
13 Region A -- and we care about these specific regions.
14 The -- there's only a part of the two layers -- one --
15 that is directly formed on the other.

16 And we specifically think that the
17 preliminary construction offered by your Honor reads
18 directly onto the Yamazaki differentiation that was made
19 in prosecution history because technically they are
20 directly touching. And so we respectfully think that
21 the intrinsic evidence requires a slightly narrower
22 construction for what directly means.

23 THE COURT: And that slightly narrower
24 construction is what?

25 MR. SAULNIER: Our construction specifically

1 was "formed on without any intervening material."

2 THE COURT: Uh-huh. All right.

3 MR. SAULNIER: Unless you have any questions,
4 that's all I have, your Honor.

5 THE COURT: Why would that apply beyond the
6 '121?

7 MR. SAULNIER: So the '121 patent and the
8 '117 patent share a common specification. And,
9 additionally, the '117 patent shows the exact same kind
10 of -- it discloses the same thing in the specification.
11 So Claim 1 of the '117 patent notes that there's a gate
12 oxide layer in the first area that is formed directly on
13 the substrate. As you can see in the image above, the
14 gate oxide layer, the blue layer, is formed directly on
15 the substrate without any intervening materials. And
16 you'll notice that the important part -- piece of this,
17 too, is this is in a specific area.

18 You'll notice in area B, the gate oxide layer
19 is not what we would -- under defendant's construction
20 would not be directly formed on the substrate because
21 there's an intervening layer in between. And so our
22 belief is that the two specifications are both
23 consistent with this.

24 THE COURT: You're relying on disclaimer for
25 the '121 patent. Why should that apply beyond that

1 patent?

2 MR. SAULNIER: So the '117 patent claims
3 priority to the '121 patent. And so any narrowing of
4 the '121 patent -- disclaimer for the '121 patent should
5 also be applicable to the '117 patent.

6 THE COURT: All right.

7 MR. SAULNIER: Thank you, your Honor.

8 THE COURT: Thank you, Mr. Saulnier.

9 MR. WEISS: Your Honor, I just wanted to
10 briefly touch the disclaimer element issue. First of
11 all, just to make sure the record is clear, your Honor
12 was asking about the scope -- the -- whether disclaimer
13 should apply. And I wanted to point out that the '801
14 patent with the "formed on" language is from a
15 completely different family. So this disclaimer should
16 not extend to the "formed on" 'in 801 if the Court
17 should find disclaimer.

18 But turning to the actual disclaimer itself,
19 I have also on my Slide 32 reproduced the color -- the
20 colorations of Yamazaki that BOE used. And the red wire
21 as can be seen in the -- in the purple dotted circle is
22 not formed on that green insulating film. It's passing
23 through. So we believe that your Honor's construction
24 is correct and that it doesn't -- and that the Yamazaki
25 argument in the file history doesn't change that because

1 what's being distinguished here is a wire that's passing
2 through a layer, not being formed on the layer.

3 Unless your Honor has any questions, that's
4 all I wanted to say.

5 THE COURT: All right.

6 MR. WEISS: Thank you, your Honor.

7 THE COURT: Thank you, Mr. Weiss.

8 MR. SAULNIER: Nothing further from
9 defendant, your Honor.

10 THE COURT: Thank you.

11 Go ahead, Mr. Weiss.

12 MR. WEISS: For the next term, Term H, "a
13 predetermined material layer formed on the first
14 substrate," we've agreed that BOE would start.

15 MR. SAULNIER: Thank you, your Honor.
16 Michael Saulnier, again, for BOE. May I proceed?

17 THE COURT: Yes.

18 MR. SAULNIER: So the Court issued a
19 preliminary construction of plain and ordinary meaning,
20 but I think this still doesn't resolve the substantive
21 dispute between parties regarding the scope of this
22 claim. Specifically, does predetermined require the
23 layer to be there at some point before another material
24 layer is formed on top of that? And we think that the
25 plain language of the claim is really clear in this

1 regard. As you can see on --

2 THE COURT: So why does it require
3 construction if it's clear?

4 MR. SAULNIER: I'll skip right to that. So
5 the -- I think our biggest -- plaintiff's largest issue
6 is specifically because defendant -- sorry --
7 defendant's issue that plaintiff contradicts itself in
8 its briefing. Specifically, their purported plain and
9 ordinary meaning reads out this predetermined
10 requirement that it happens before. Plaintiff
11 acknowledges, and I think we have been discussing this
12 before, these devices are built by depositing one
13 material layer on top of another. And then in the next
14 breath, plaintiff argues that it does not matter if the
15 predetermined material is formed before, after, or at
16 the same time as the organic layer. And that's in their
17 opposition brief at 16.

18 We respectfully submit that if its
19 predetermined, it can't be formed after because then it
20 wouldn't be formed on. And if it's formed at the same
21 time, you have the issue of potentially two materials
22 mixing together. It's kind of like if you have spray
23 paint. You spray a layer on and then you do etching,
24 and then you spray another layer on and then you do,
25 etching potentially. So if you spray two spray paints

1 at the same time, they're just going to mix. And at
2 that point, there's no defined different layers.

3 THE COURT: But in your understanding, does
4 predetermined have anything to do with this issue, or is
5 it just one layer being formed on another?

6 MR. SAULNIER: I think -- I think we would be
7 okay as long as they agree that the layer below is
8 preexisting or predetermined at some point in time prior
9 to the layer that's being formed on top of it. This is
10 highlighted, I think, in their expert's claim
11 construction -- claim construction declaration where it
12 notes that a predetermined material there was built at
13 the same time as the organic pattern material layer
14 during manufacturing. The resulting device would still
15 infringe if the resulting device had an organic material
16 pattern layer formed on the preexisting material layer.

17 And so it seems to us that there has to be
18 some kind of material layer down there. And so arguing
19 that it's built at the same time isn't possible, at
20 least in the context of the claims. So we respectfully
21 submit that predetermined has to mean something, and we
22 agree that the plain and ordinary meaning is pretty
23 clear of what that is. But there's still -- we
24 respectfully request that the Court clarify that
25 predetermined means predetermined.

1 THE COURT: Well, I'm just not sure how
2 predetermined has anything to do with the order in which
3 the layers are created. It's hard to imagine that a
4 manufacturing process uses anything that's not
5 predetermined.

6 MR. SAULNIER: And, your Honor, we agree.
7 But, again, this is from -- from plaintiff's arguments
8 that you can put things together at the same time or
9 afterwards. And so -- but we just respectfully submit
10 that that can't be encompassed by the plain and ordinary
11 meaning.

12 THE COURT: Would your understanding of this
13 term be different if the word "predetermined" was not
14 there?

15 MR. SAULNIER: I don't necessarily think so.
16 I think that predetermined, preexisting -- I think that
17 the only -- the only piece of that is there needs to be
18 a point in time prior to the next layer that it's being
19 laid.

20 THE COURT: I mean, if your point is that one
21 layer cannot be formed on another layer unless that
22 other layer is there --

23 MR. SAULNIER: That's exactly my point, your
24 Honor.

25 THE COURT: All right. If the plaintiff has

1 a different understanding of that, then that's what I
2 need to hear about.

3 MR. WEISS: So, your Honor, from plaintiff's
4 point of view, the issue is that the language that BOE
5 seeks to add, adds a process limitation to a product
6 claim and that we would -- in order to prove our claim,
7 we would have to prove how the product is built in a
8 particular order, which isn't inherently in the claims.
9 And that was the point that we were trying to make in
10 what BOE called contradictory statements in our briefing
11 was simply that the claim is evaluated from the
12 resulting device, not from how those layers were built
13 in the manufacturing process. And that's where our
14 concern lies.

15 THE COURT: Well, these claims of a variety
16 of these patents use this -- use this phraseology of one
17 layer formed on another layer. And I haven't heard this
18 issue except with this claim that uses the word
19 "predetermined." And I'm just not sure how
20 predetermined factors into this issue.

21 MR. WEISS: Your Honor, we agree we don't
22 understand how predetermined factors into it. I'm
23 not -- I'm not certain whether that was addressed in the
24 briefing. But we believe the predetermined material
25 layer doesn't -- you know, doesn't really factor into

1 this. What concerns us is the introduction of the
2 process step or what sounds like a process step.

3 THE COURT: Tell me how this can be
4 understood that one layer is formed on another layer if
5 the other layer is not there?

6 MR. WEISS: So, your Honor, I think that
7 we're speaking a bit more in hypotheticals. My
8 understanding about how these -- you know, not being an
9 expert, my understanding about how these devices are
10 built is that there is a layer and then another layer
11 formed on top of it. The concern here is if a new -- if
12 there is, in fact, a new process or a different way to
13 do it where the layers are formed at the same time, for
14 example, that this language that BOE proposes would
15 exclude such a device even though, from our point of
16 view, that's not excluded by the claim language as it's
17 written.

18 THE COURT: So what you're concerned about is
19 that if their formed simultaneously there could still be
20 one above the other?

21 MR. WEISS: Correct. Yeah. A process --
22 even though they're formed -- even though they're formed
23 at the same time, the resulting device has a
24 predetermined material layer with an organic layer
25 formed on top of it. That would still infringe even if

1 the layers were laid at the same time.

2 THE COURT: Uh-huh. All right. Thank you,
3 Mr. Weiss.

4 MR. WEISS: Thank you, your Honor.

5 Mr. Saulnier, as long as one layer is above
6 the other layer, whether they were formed simultaneously
7 or serially, doesn't seem to me to be an issue that is
8 set out or claimed here.

9 MR. SAULNIER: And, your Honor, respectfully,
10 I just think that the language that you're pointing to,
11 "formed on," again, it's not formed simultaneously.
12 It's not formed before or after. It's formed on. And
13 so I think that that is clear. If you have two things
14 that are manufactured at the -- put in at the same time,
15 one would necessarily not be formed on the other.

16 THE COURT: I can't imagine a situation where
17 you have two layers being laid down at the same time,
18 one above the other. And I don't see why that wouldn't
19 still satisfy formed on as long as there is one layer
20 above the other.

21 MR. SAULNIER: And, respectfully -- we
22 understand, your Honor. But we think that the
23 predetermined aspect of the claim language and the fact
24 that it needs to be formed on --

25 THE COURT: What is predetermined is the

1 material itself, not the order in which it is laid down.

2 MR. SAULNIER: But it's -- again, it's the
3 predetermined layer. But we understand, your Honor,
4 and -- and respectfully submit that -- and, similarly,
5 as you said, it doesn't say above, right? Formed above
6 is not the claim limitation. It's formed on.

7 THE COURT: And you think that formed on
8 means something different than formed above?

9 MR. SAULNIER: I think that that context of
10 above brings us into a lot of issues that we were
11 talking about earlier with the indefiniteness claims, so
12 I won't necessarily go there. But I think that -- we
13 believe that formed on is clear and a predetermined
14 layer that's form on is clear as well.

15 THE COURT: All right.

16 MR. SAULNIER: Thank you, your Honor.

17 THE COURT: Before we go to the next term,
18 we'll take the morning recess. Fifteen minutes.

19 Thank you.

20 (Recess taken.)

21 THE COURT: Thank you. And please be seated.
22 I think we're ready to proceed with the next term.

23 MR. WEISS: Yes, your Honor. So the next
24 term would be the term you identified as I, "wherein the
25 sealant is adapted to contact the first material layer

1 and the second material layer through the opening and
2 the sealant has substantially flat contact bottom
3 surfaces with both the first and second material layers
4 via the opening." We understand your construction, your
5 Honor, but there is one point we wanted to raise by way
6 of confirmation, which is that the use of the term "via"
7 in the construction in the last line is being used
8 according to its plain and ordinary meaning.

9 There was -- there appeared to be some
10 dispute among the parties that the contact bottom
11 surfaces both had to be within the opening, which we
12 think is a narrowing of the term "via," and we just
13 wanted to make it clear that we were not agreeing that
14 that is the plain and ordinary meaning of this term.

15 THE COURT: Do you believe that via has a
16 different meaning in this claim than through?

17 MR. WEISS: No, your Honor. I think through
18 would be -- would be appropriate. The concern would be
19 that the bottom layers had to -- that the bottom contact
20 surfaces had to be within the opening as opposed to the
21 sealant forming the contact layers through the -- the
22 sealant forming it through the -- or by way of the
23 opening. So, you know, for example, if I say that I
24 went to Bob's house and Mary's house via Main Street, it
25 doesn't necessarily mean that either Bob or Mary live on

1 Main Street, but I was saying my route went through or
2 by way of Main Street. And that's our understanding of
3 how the term is being used.

4 THE COURT: All right. I may understand
5 better if there's a dispute when I hear from the other
6 side. But I'll give you a chance to respond. Thank
7 you, Mr. Weiss.

8 MR. WEISS: Thank you, your Honor.

9 MR. ERICKSON: Thank you, your Honor.
10 Brian Erickson for BOE. Since plaintiff is not
11 disputing the aspects of the Court's construction about
12 both, I'll skip past these slides. I'll start on
13 Slide 78. This is a very long phrase and the second
14 half of the phrase refers to the flat contact bottom
15 surfaces that counsel just referred to. I have the --
16 on the left the claim. You'll see the opening is
17 defined earlier in the claim. That's underlined in
18 blue. It's "the second material layer includes an
19 opening." And then the highlighted portion here is the
20 second portion of the disputed phrase; that's "the
21 sealant has substantially flat contact bottom surfaces
22 with the first and the second material layers via the
23 opening."

24 It appears we are now in agreement -- I have
25 agreed and disputed here on the slide in the right, but

1 the second point, "the sealant has substantially flat
2 contact bottom surface with the second material layer
3 via the opening," that on its face now appears to be
4 undisputed. However, there's -- a dispute, which I
5 don't really fully understand, about the word "via." I
6 think the dispute is manifest really with plaintiff's
7 slide that was not displayed. Plaintiff's Slide 41 --
8 I'm sorry, your Honor. I apologize. Before I go to
9 that, I'll use our Slide 81, which is discussing the
10 same figure.

11 Slide 81 in Figure 1 as seen in the patent,
12 there is a sealant 14. So we have sealant 14. That's
13 the hash mark in the middle. And remember we have the
14 second material layer, that's material layer 16, and
15 remember we have that opening, the claimed defined
16 opening, that's opening No. 4 in the figure. It's
17 labeled No. 4 that you see second -- material layer and
18 it has an opening formed in it, opening No. 4. And then
19 you have the first predetermined layer below it, which
20 is No. 20.

21 So keeping that in mind, your Honor, let's
22 look at plaintiff 's Slide No. 41. Plaintiff's slide
23 No. 41 has Figure 1C reproduced again. You'll see that
24 they mislabeled sealant 14 as opening 14. There is no
25 opening 14. In the specification, the opening is No. 4,

1 and, remember, the claim defines it as that opening in
2 the second material layer. What's illustrated here on
3 plaintiff's Slide 41, you see you have one flat bottom
4 contact surface that's via the hole. That's the one at
5 the bottom. But they've also illustrated two other
6 substantially flat bottom contact surfaces. Those
7 surfaces are not via the hole for -- they're outside of
8 the hole.

9 So whatever -- I think counsel initially
10 agreed with the Court's question that via meant through
11 the hole. So maybe you could go through the hole and go
12 somewhere else perhaps and have a flat contact bottom
13 surface. I don't know what they mean. But certainly
14 what's illustrated on plaintiff's Slide 41, those two
15 flat bottom contact surfaces up top, those would not
16 satisfy the plain and ordinary meaning of the claim.
17 The relevant flat bottom contact surfaces must be
18 through or via the hole. And in that figure, there's
19 only one. That's the one that's illustrated there at
20 the bottom of that hole.

21 THE COURT: All right.

22 MR. ERICKSON: So I think that
23 encapsulates -- to the extent I understand this new
24 dispute, your Honor, that encapsulates it.

25 Thank you, your Honor.

1 THE COURT: Thank you, Mr. Erickson.

2 MR. WEISS: Your Honor, so I believe this
3 does -- you know, Mr. Erickson did highlight the dispute
4 that we were raising. And to use slide -- Slide 41,
5 the -- there are flat contact bottom surfaces with both
6 the layers, as Mr. Erickson identified it, via the
7 opening because in order to get to both of those
8 surfaces, it need -- the route needs to pass -- of the
9 sealant needs to pass through the opening.

10 Just to use my example and my -- to pick up
11 my neighbor Bob and then reach Mary's house via
12 Main Street, but it doesn't mean that Bob has to live on
13 Main Street also for that to apply. And the inventor
14 didn't use a narrow word like within, which seems to be
15 the argument that BOE is making here.

16 I'd also note that Figure 1C is never
17 described as either having or not having the claim in --
18 wherein limitation here. Defendants -- the defendant
19 has just decided that this is a non-infringing example.
20 So it's not really -- you know, their example is not
21 really consistent with the intrinsic evidence either.

22 But the crux of the point here is Optronic
23 believes it should have its plain and ordinary meaning,
24 which seems to be broader than what BOE is suggesting it
25 to be.

1 THE COURT: And your understanding of the
2 plain meaning of via would be by way of or through?

3 MR. WEISS: Correct, your Honor.

4 THE COURT: All right. I'm having trouble
5 seeing how that definition would be met by something
6 that looks like Figure 1C in Slide 41, but I don't think
7 that there's a claim construction issue here. I think
8 the language is clear and it's just a question of
9 whether or not a particular device would satisfy it.

10 MR. WEISS: Okay. Thank you, your Honor.

11 THE COURT: All right.

12 MR. ERICKSON: Your Honor, I -- I -- I
13 understand the Court's holding that it's hard to address
14 this as a matter of claim construction. I do think that
15 concrete example, to the extent plaintiff's going to
16 maintain that there's a claim construction issue, the
17 claim should be interpreted in a way that would
18 encompass that concrete example. I agree that -- it's
19 certainly our position that that example does not fall
20 within the scope of the ordinary meaning of the claim.
21 It also doesn't fall within the interpretation of
22 through the hole. Those other two have nothing to do
23 with the hole. They're outside of the hole.

24 So I find -- I find we're in a similar spot
25 that we've been in today a couple of times where is this

1 a matter of claim construction or application of the
2 claim. I just want to make sure we haven't left any
3 claim construction issues unresolved here. That example
4 certainly would not practice, and our position is does
5 not practice or did not satisfy, the plain language of
6 the claim.

7 Thank you, your Honor.

8 THE COURT: All right. Thank you,
9 Mr. Erickson.

10 MR. WEISS: Your Honor, the next term that
11 the parties are going to address is identified as J,
12 "each pixel/each pixel area." And I believe BOE will
13 start this off, and my colleague Mr. Kroeger will be
14 taking the remainder of the argument.

15 MR. LIMBACH: May I, your Honor?

16 THE COURT: Yes.

17 MR. LIMBACH: And if we could switch to the
18 other presentation.

19 Thank you.

20 So your Honor has adopted plain and ordinary
21 meaning, which is the construction proposed by Optronix,
22 and we still think there's some ambiguity here that
23 warrants discussion. And if we just go to the
24 *Skvorecz* -- I believe that's how it's pronounced --
25 *Skvorecz* case. That's a case where -- it had similar

1 claim language. And the Federal Circuit said, when you
2 say there's a plurality of something and you say each
3 has certain limitations, they interpret that as each and
4 every. They didn't say each and every, but that's how
5 they said -- they faulted the board for saying you
6 applied it to only some of the wire legs. You can't do
7 that. The "each" needs to be to all of the wire legs.

8 THE COURT: Well, it's all of the plurality
9 of pixels.

10 MR. LIMBACH: Right.

11 THE COURT: And so to the extent the
12 plaintiff is pointing to pixels as satisfying or meeting
13 the limitation of the claim, that plurality of pixels,
14 each and -- you can say each and every -- I think each
15 is just as clear -- but each of those must meet the
16 limitation.

17 MR. LIMBACH: And I still think there's a
18 little bit of ambiguity and -- so I'll give the example,
19 if they look at a BOE device that's got a million
20 pixels, can they point to just two of them? And so if
21 the answer is yes, if that's how the Court sees it,
22 which is not what the *Skvorecz* case did, they did the
23 opposite. But if plaintiff can look at just two pixels
24 out of a million, and each of those pixels meet the
25 limitation, I think that is a claim construction issue

1 and it should be resolved here with a construction
2 that's not just plain and ordinary meaning.

3 THE COURT: Well, the construction then would
4 be that each of the claimed plurality of pixels must,
5 because that's what I think it means. It -- if you
6 think that you can justify a construction that means
7 that even unclaimed pixels would have to meet that
8 limitation, tell me about it.

9 MR. LIMBACH: Well, it doesn't say a
10 plurality of pixels. It says, "a plurality of pixels
11 formed on a substrate." So can they look at just two of
12 the pixels on the substrate? Whereas, the *Skvorecz* case
13 said, no, it has four legs. Those -- you can't -- you
14 can't just look at two. You have to look at all four.
15 And so, you know, this case is a little different than
16 just saying a plurality of pixels. It says, "a
17 plurality of pixels formed on a substrate." Can they
18 look at just two of the pixels on the substrate?

19 THE COURT: Are you saying that the *Skvorecz*
20 case was construing a plurality of the wire legs?

21 MR. LIMBACH: I believe it is a plurality of
22 wire legs. I don't have the case in front of me.

23 THE COURT: All right. That is the issue
24 that we're dealing with here.

25 MR. LIMBACH: Yeah. I apologize, your Honor.

1 I do not have a copy.

2 THE COURT: All right. Well, I'll certainly
3 look at that.

4 MR. LIMBACH: Okay. I think that's all of
5 the points that I wanted to make.

6 THE COURT: All right. Thank you,
7 Mr. Limbach.

8 MR. KROEGER: Good morning, your Honor.
9 Paul Kroeger for plaintiff.

10 I'm not going to attempt to pronounce the
11 case that starts with S, but -- that we see on the
12 slide, but our understanding -- my memory is this was
13 comprising wire legs, and the board found that as long
14 as there were some wire legs and some legs that didn't
15 have wires, it didn't meet the claim term. And the
16 Federal Circuit said that was wrong. All of the -- each
17 of the wire legs -- each of the legs at the table had to
18 be wire legs and that was it. There couldn't be no wire
19 legs. It did not hold that the plain and ordinary
20 meaning of each is each and every.

21 And we just think that adding "every" could
22 just lead to jury confusion here. What the claim says
23 is there has to be a plurality of pixels and that each
24 pixel in the plurality must meet the limitation. And we
25 think each is clear enough and adding every might lead

1 the jury to, sort of, imply there -- that every single
2 pixel and device has to be covered, and we don't think
3 that's a fair reading of the claims.

4 THE COURT: I think the real issue that I'm
5 hearing here is whether it has to be all of the pixels
6 that are formed on the substrate or whether it just has
7 to be -- whatever plurality of pixels the plaintiff is
8 pointing to, to meet the limitation, then have to --
9 have to meet the rest of the limitation. And that is
10 something I will definitely look at the *Skvorecz* case
11 and see what the Federal Circuit teaches on that.

12 MR. KROEGER: Yes, your Honor. But our
13 position would be the claim is a plurality of pixels
14 formed on a substrate. It doesn't say all of the pixels
15 formed on the substrate. I believe we can point to a
16 group -- a number of them as being the plurality and
17 then each of the plurality has to meet the requirements,
18 and we think that's what the law requires.

19 THE COURT: That is what my -- what my belief
20 is at this time, but I stand to be corrected if the
21 Federal Circuit has said otherwise.

22 MR. KROEGER: And I don't believe the case
23 that starts with an S stands for anything different,
24 your Honor.

25 THE COURT: All right. What's the next term

1 the parties want to address?

2 MR. LIMBACH: The next term that we'll be
3 dealing with is the defining the first, second, and
4 third areas. And let me know when your Honor is ready
5 to proceed.

6 THE COURT: I'm ready.

7 MR. LIMBACH: Okay. Great. So the -- this
8 just boils down to whether the claimed areas need to be
9 distinct, meaning that they're nonoverlapping. And we
10 appreciate your Honor has expressly objected that, but
11 I'd like to go through the arguments and believe -- let
12 you know why we believe they really should be
13 nonoverlapping.

14 THE COURT: I added that note just so that
15 you would understand that if nobody changes my mind,
16 that will be reflected in the order. The jury would
17 just be given a plain and ordinary meaning construction.
18 But, anyway, so go ahead.

19 MR. LIMBACH: Yes. And that is very helpful.
20 It let's us know exactly what issue to address today, so
21 thank you.

22 So it's about -- this is a method about
23 forming pixels but defining first, second, and third
24 areas. The third is in brackets because one of the
25 claims doesn't have it. The other claim does. And,

1 again, this is the '117 patent and the '222 patent.
2 They both share the same specification and drawings.
3 One is a continuation of the other. And so then the
4 claims after they define the three areas or two areas,
5 they further recite forming different layers and
6 components in each of the respective areas. And so it's
7 our position that if the claims could overlap or be
8 co-extensive, then the claimed areas are superfluous and
9 meaningless, and I'll explain why.

10 The specification -- and this is on
11 Slide 91 -- describes the areas distinctly. There is an
12 area A and that's for capacitors. And that's colored in
13 green. There is an area for -- the area for the
14 transistor, which is area B, and then there is an area
15 for the OLED and that's area C. And in these three
16 areas, the capacitors and the transistors control the
17 OLED. The whole point of this device is the OLED. So
18 you want to maximize the area for the OLED, minimize the
19 areas A and B for the capacitors and transistors so that
20 you get a higher aspect ratio. You get more of the
21 surface of the substrate emitting light.

22 The entire concept of these areas, they're
23 shown and they're described as not overlapping. And the
24 patent talks about the tradeoffs in this concept are the
25 aperture ratio. The capacitor and transistor are light

1 blocking, so you can't have them overlapping with the
2 OLED. They're in distinct areas. They're away from the
3 LED so they won't block the light. The problem is, if
4 you want to make capacitor bigger in terms of more
5 capacitance, then you have to increase its area, which
6 means you decrease the aspect ratio. You decrease the
7 area reserved for the OLED. And then the specification
8 talks about the solution. The solution is increasing
9 capacitance without increasing area A. So that the
10 aperture ratio, which is relative to area C, is not
11 decreased.

12 So both the problem and the solution are
13 described with respect to areas, areas A, B, and C. And
14 they're always talked about, both the problem and the
15 solution, as distinct, nonoverlapping areas.

16 Now, Claim 17 --

17 THE COURT: I'm sorry. Is there something
18 that uses nonoverlapping in the -- either specification?

19 MR. LIMBACH: They don't use the term
20 "nonoverlapping" that I'm aware of. They talk about the
21 concept that you don't want them overlapping because you
22 don't want the transistors and the capacitors to block
23 the light. So it's kind of baked in to defining three
24 distinct areas, but I don't recall there being anything
25 in the specification that says the word "separate."

1 THE COURT: My concern with a term like
2 "nonoverlapping" is it excludes anything at the margins
3 and "defined" to me just is requiring that there be
4 limits provided. One could occupy a zone 1 through 5.
5 The next could occupy zone 4 through 8. You would have
6 two defined zones, but they would overlap for one
7 section. And so that's basically a negative limitation
8 to be built in, and I haven't seen support for that.
9 And I don't think the word "defined" means that you
10 can't have an overlap.

11 MR. LIMBACH: I appreciate that. In looking
12 at Claim 1 of the '117, I don't know how that works,
13 though. Because it says "forming a semiconductor layer
14 over the second layer without over the first area." If
15 the areas could overlap, how does that work? And I
16 think this claim is very illustrative of the intent of
17 the patent. It only talked about distinct areas. It
18 only described distinct areas. It only claimed distinct
19 areas. And so I don't think there's any basis to say
20 that they could be overlapping.

21 THE COURT: And I guess what I need is a
22 basis to say they can't. That you are seeking a
23 negative limitation and typically claims aren't read
24 that way. So if there's something that indicates that
25 there can be no overlap, that -- I guess that's what I'm

1 looking for.

2 MR. LIMBACH: And I think the response I
3 would say there is the -- the patentee had the option to
4 just claim components. You just describe components,
5 their layout, and you claim their relative position, but
6 they didn't do that. They decided, no, this invention
7 is all about area. They defined it in terms of area,
8 and they claimed it in terms of area. They could have
9 claimed it without these distinct areas. They could
10 have just not gone with the area. They could have just
11 gone with the capacitor doesn't block the light or the
12 transistor doesn't block the light, but they framed the
13 entire discussion on distinct areas and they claimed it
14 with distinct areas.

15 So I think it's fair that the negative
16 limitation be there, especially given the fact that if
17 the areas could be overlapping, that's not enabled.
18 That's not even contemplated. And so I think that
19 stretching it beyond what we see as a natural negative
20 limitation that belongs in the claim, I just don't think
21 there's any support for it.

22 THE COURT: Is it -- do you have a concern
23 that the plaintiff is seeking to read this on
24 co-extensive areas or just overlapping?

25 MR. LIMBACH: I -- that's probably a good

1 question for the plaintiff.

2 THE COURT: Well, I think there's a
3 difference in -- I understand the argument throws
4 together overlapping and co-extensive. I'm not sure
5 that from a scope viewpoint those are really the same,
6 but --

7 MR. LIMBACH: I think the danger there is
8 if -- if it were to be allowed to be overlapping but not
9 co-extensive, you could just arbitrary shift one
10 slightly different relative to the other. And so I
11 think they're both problematic. It's really a box
12 drawing exercise. It's arbitrary. And I don't think
13 this patent was ever intended to allow that given the
14 ways the area are distinct and they're claimed
15 distinctly.

16 THE COURT: Well, it seems very unlikely
17 that -- in view of the arguments, that it wouldn't work
18 without substantial distinctness of these areas that
19 there would be any claim that they could be
20 co-extensive. But in any event, I'm -- I'm asking
21 questions that you don't need to answer.

22 MR. LIMBACH: Okay. Thank you, your Honor.
23 I think those are all of the comments I would like to
24 make at this time. Thank you.

25 THE COURT: All right. Thank you.

1 MR. KROEGER: It probably won't surprise you
2 to hear that we agree with your Honor's comments that
3 nonoverlapping is not a concept that's mentioned in the
4 claims. There's been no argument of lexicography or
5 disclaimer, and they're simply seeking to write a
6 negative limitation to claims based on how the preferred
7 embodiment works. So we think nonoverlapping should be
8 rejected and the claim should be left to its plain and
9 ordinary meaning.

10 THE COURT: Do you take the position that
11 these areas could be co-extensive?

12 MR. KROEGER: I don't think it's excluded by
13 the claims, your Honor.

14 If I could have the Elmo, please?

15 I will note he mentioned the without over
16 limitation and that's a separate limitation down here.
17 So to the extent there is any requirement for
18 distinctness, we think that's already written into the
19 claims. But in terms of defining the areas, the term
20 we're construing, there is nothing about the patent
21 specification that would necessarily -- that would
22 require importing a limitation.

23 THE COURT: I have not tried to investigate
24 and fully understand all of the forming limitations that
25 are in these claims to see whether any one of them would

1 exclude something like co-extensive, but it -- that
2 would concern me more than just this issue of whether
3 there could be some overlapping. But I don't know that
4 there's a dispute presented on that issue at this time.

5 MR. KROEGER: We agree, your Honor.

6 THE COURT: All right. Thank you,
7 Mr. Kroeger.

8 So we're on to the "is electrically
9 connected" term?

10 MR. KROEGER: Yes, your Honor. And I will be
11 speaking to that. So at this point, your Honor, I don't
12 think we're going to contest that there was any
13 disclaimer of "is electrically connected to," which I
14 believe is what your Honor's proposed construction must
15 be based on, where you're saying is electrically
16 connected to is connected such that electric conduction
17 current can flow to.

18 THE COURT: The Koo reference?

19 MR. KROEGER: Correct. We would note that
20 generally there's no dispute that electrically connected
21 to is broad, and BOE changed their construction several
22 times. In their brief, they actually offered an
23 alternative construction, where instead of affirmatively
24 claiming electric conductive current, we have the
25 negative limitation where it is not limited to

1 capacitive connections -- yeah -- capacitive connection.
2 We think -- or capacitive coupling. We think that the
3 alternative construction, the alternative limitation,
4 would more appropriately capture what was disclaimed.

5 So what -- all everyone's point of disclaimer
6 is this statement: "Further, Koo's second electrode 143
7 is not electrically connected to the gate electrode
8 131." And we see that in the figure of Koo right here
9 by this insulator that -- that separates the purple 143
10 from the blue 131 on my Slide 60. That is a capacitive
11 connection and that's what we said is not electrically
12 connected to. That's what the patentee said was not
13 electrically connected to.

14 There is nothing affirmatively in the
15 prosecution history limiting it to conduction current.
16 I don't even think the phrase "conduction current" is
17 used in the patent. So we don't think there would be
18 any basis for an affirmative disclaimer of only
19 conduction current being allowed to satisfy electrically
20 connected. We think the negative disclaimer, a negative
21 phrasing of this, of not covering capacitive connections
22 is all that was disclaimed in the file history and
23 that's what it should be limited to.

24 THE COURT: And by capacitive connection, you
25 mean a connection that involves a capacitor?

1 MR. KROEGER: In this case, the capacitive
2 connection is two electrodes separated by an insulator,
3 which is a form of capacitive connection. But -- yes.

4 THE COURT: So what you're proposing then
5 would be what construction of "is electrically connected
6 to"?

7 MR. KROEGER: This is similar to their
8 alternative construction, but that's -- electrically
9 connected to does not encompasses connection solely by
10 capacitive coupling.

11 THE COURT: All right.

12 MR. KROEGER: Thank you, your Honor.

13 THE COURT: Thank you, Mr. Kroeger.

14 MR. ERICKSON: Thank you, your Honor. We
15 understand that there's no longer a dispute; that the
16 claim will be construed using one of the forms of
17 proposed disclaimer. We think -- we slightly prefer the
18 Court's current and our primary construction because in
19 the context of these claims, the claims are talking
20 conductive layers and insulators or what they call a
21 dielectric later.

22 And so in the context of these claims,
23 they're laying down these layers and building up these
24 components using conductors and dielectrics. And so in
25 the context here when they say Koo does not -- is not

1 electrically connected, I think in the context of this
2 record, it's just because it's not a conductive. It's
3 not a conductor and the type of -- I'm sorry -- the type
4 of conduction would be conduction current. It's a type
5 of current in a completely different unrelated art where
6 you could have a high speed alternating current signal
7 and get a totally different type of conduction through
8 an insulator.

9 And so we prefer the Court's and our primary
10 phrasing of this limitation and construction because
11 it's consistent with how the rest of the claim reads.
12 There are conductive layers and insulating layers. And
13 so this disclaimer that says Koo's second electrode 143
14 is not electrically connected to the gate electrode 131
15 should be construed, you know, with consistent claim
16 language.

17 THE COURT: And do you believe that the
18 plaintiff's alternative proposal just indicating that it
19 does not encompass solely capacitively coupling is wrong
20 in any way?

21 MR. ERICKSON: I believe -- as a matter of
22 electronics and physics, I believe we're saying the same
23 thing, your Honor. I believe the phrase would best be
24 phrased as we have it here with electric conduction
25 current. But you'll notice, we have here -- on Slide

1 97, we have that alternative as well.

2 I just hesitate to agree because I don't
3 understand from a matter of electronics and physics what
4 the difference is and why they would prefer the other
5 one. But I won't stand on ceremony on that, your Honor.
6 I think it would be preferable to use a construction
7 that's more consistent with the rest of the plain
8 language just from the jury's perspective, but because I
9 don't see any difference from an electrical perspective,
10 I don't think there's any difference in the
11 construction.

12 THE COURT: So that if the Court sticks with
13 the preliminary construction, the order can reflect that
14 you do not dispute that it means the same as plaintiff's
15 current proposal?

16 MR. ERICKSON: That's correct, your Honor.

17 THE COURT: All right. Thank you,
18 Mr. Erickson.

19 MR. ERICKSON: Thank you.

20 THE COURT: Mr. Kroeger, do you have other
21 argument you want the Court to consider?

22 MR. KROEGER: We would be fine with what --
23 what your Honor just suggested, if you stuck with the
24 tentative, but left the note that it didn't refute
25 capacitive coupling. The only thing I have to say is if

1 you're looking at in terms of disclaimer, the standard
2 is still clear and ambiguous. And I think in terms of
3 what was clearly and unambiguously disclaimed, it was
4 simply two electrodes separated by an insulator, i.e.,
5 capacitive coupling as opposed to affirmatively claiming
6 conduction.

7 THE COURT: All right. I will look further
8 at that. Thank you, Mr. Kroeger.

9 MR. SAULNIER: And in terms of the final
10 term, the parties have agreed to submit on your
11 tentative.

12 THE COURT: All right. And just so I'll
13 understand, does that mean the parties agree or they're
14 submitting on their briefs?

15 MR. KROEGER: We're submitting on our briefs,
16 your Honor.

17 THE COURT: All right.

18 MR. ERICKSON: BOE agrees with your
19 tentative, your Honor.

20 THE COURT: Thank you. Those are all of the
21 issues that I am aware of for today.

22 Does either side have anything else that they
23 want the Court to take up?

24 MR. WEISS: Not from plaintiff, your Honor.

25 MR. ERICKSON: Nothing for defendant, your

1 Honor.

2 THE COURT: All right. Then thank you. The
3 arguments have been very helpful, and I'll endeavor to
4 get a claim construction order out promptly.

5 Thank you. And we're adjourned.

6 (Proceedings adjourned at 11:24 p.m.)

7 * * *

8 COURT REPORTER'S CERTIFICATION

9 I hereby certify that on this date,
10 July 24, 2025, the foregoing is a correct transcript of
11 the record of proceedings in the above-entitled case.

12
13 
14 APRIL D. HARGETT
15 Certified Realtime Reporter
16 Eastern District of Texas
17 Beaumont, Texas
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