

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC,
Patent Owner.

IPR2024-01256
Patent 11,740,727 B1

Record of Oral Hearing
Held: December 16, 2025

Before JEFFREY S. SMITH, MIRIAM L. QUINN, and SHARON FENICK,
Administrative Patent Judges.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

W. KARL RENNER, ESQ.
DAVID L. HOLT, ESQ.
Fish & Richardson, P.C.
1000 Maine Avenue SW
Suite 1000
Washington, DC 20024
(202) 783-5070
renner@fr.com
david.holt@fr.com

ON BEHALF OF THE PATENT OWNER:

EAGLE ROBINSON, ESQ.
Norton Rose Fulbright US LLP
98 San Jacinto Boulevard
Suite 1100
Austin, TX 78701
(512) 536-3083
eagle.robinson@nortonrosefulbright.com

The above-entitled matter came on for hearing on Tuesday, December 16, 2025, commencing at 10:00 a.m., via video teleconference.

P R O C E E D I N G S

- - - - -

THE BAILIFF: All rise.

JUDGE QUINN: Have a seat, please. Hello, everybody. We have a split hearing here today where Petitioner's counsel is in Madison and Patent Owner's counsel is at the Southwest Regional Office. We're going to start here shortly. I want to call a caption for the record.

This is Apple Inc. v. Smith Interface Technologies, LLC, IPR2024-1256. With me are colleagues, Jeffrey Smith in the Madison Courthouse. I'm Miriam Quinn here in Southwest Regional Office, and Sharon Fenick appearing via video.

I'd like to take appearances for the record. If you please speak to the microphone. We have our court reporter in Madison today and we need to make sure the audio is very clear.

MR. HOLT: Yes, Your Honor.

JUDGE QUINN: Yes.

MR. HOLT: It's David Holt of Fish & Richardson on behalf of Petitioner, Apple, Inc., and I'm joined today by Karl Renner. Good morning.

JUDGE QUINN: Good morning. Thank you. And for Patent Owner?

MR. ROBINSON: Good morning, Your Honors. It's Eagle Robinson with Norton Rose Fulbright on behalf of Patent Owner, Smith Interface.

JUDGE QUINN: So, Mr. Robinson, you're very soft-spoken, so - because I've had issues with the transcripts in these hearings, if you can speak a little louder. Make sure she gets you. Thank you.

1 All right. So we have here a hearing that's an hour for each side.
2 Petitioner, how many minutes would you like to set up for
3 rebuttal?

4 MR. HOLT: Fifteen minutes, Your Honor.

5 JUDGE QUINN: Okay. And, Mr. Robinson, how many minutes
6 would you like for rebuttal?

7 MR. ROBINSON: Fifteen minutes, please.

8 JUDGE QUINN: Thank you. I will be keeping clock here in
9 Dallas. I think it is visible on the screen. I've also set up the audible beep to
10 let you know when it is transitioning into your rebuttal time. As always,
11 please track of your time anyway, but I will let you know when you are into
12 your rebuttal time, if we get to that. Is that understood; is that okay?

13 MR. HOLT: Yes, Your Honor.

14 JUDGE QUINN: All right. Petitioner, you have the floor. You
15 may begin when you're ready.

16 MR. HOLT: Thank you, Your Honors. May it please the Board.
17 My name is David Holt and I am appearing on behalf of Petitioner, Apple. I
18 am joined today by lead counsel, Karl Renner, who may also offer remarks.

19 On slide 2, we direct your attention to two main issues and items
20 that we plan to address during today's presentation. The first item relates to
21 the progressively blurring limitation recited in Independent Claim 1, which
22 is the only independent claim in this patent. The second item relates to a
23 collection of issues, implicating various dependent claims that were raised
24 by Patent Owner in their POR.

25 There's one ground advanced in this proceeding, which is shown
26 on slide 4. The ground is a combination of Ahn and Chaudhri '842. Which

1 for the sake of brevity, I'll refer to just simply as Chaudhri today. This is a
2 very similar combination to the one advanced in IPR2024-01083, which is
3 focused on the related 413 Patent and IPR2024-01115, 1116, and 1119,
4 which are focused on the related 754 Patent. With that said, let's jump into
5 Issue 1 and discuss the combination.

6 On slide 6, we see Independent Claim 1. This is a relatively short
7 claim. The first two display and detect limitations are quite broad and
8 would've been present in almost all user interfaces leading to the critical
9 date. The crux of the claim, which is central to our first issue, is the third
10 blurring limitation highlighted in green and blue. This part of the claim
11 relates to blurring at least a portion of a user interface object based on a
12 change in a magnitude of a gesture detected on a touch screen.

13 Here, we find three notable conditions of the claimed blurring. A
14 first of which is where we see the dispute between the parties. Indeed, the
15 first condition speaks to blurring during detection of at least a portion of the
16 gesture before a completion of the gesture is detected. This is the feature
17 that Smith contends is non-obvious. By contrast, the second and third
18 conditions are not disputed. The second condition calls for the blurred
19 portion of the user interface object not being overlapped. And the third
20 condition calls for increasing a magnitude of the blur itself and not a
21 magnitude of an area of the touch screen as a function of the distance
22 magnitude of the detected gesture. Again, there is simply no dispute that the
23 combination of Ahn and Chaudhri would meet these limitations if the
24 combined system works, the way the petition explains it does.

25 And that is the first issue, the obviousness of the Ahn-Chaudhri
26 combination and whether a POSITA would've understood that combination

1 to blur during detection of at least a portion of the gesture before completion
2 of the gesture is detected, thus rendering obvious the claim and its first
3 condition.

4 To explore this issue, let's start with the teachings of Ahn. As we
5 see on slide 11, Ahn teaches a touch and drag operation in which a user
6 touches down near an edge of the touch screen and slides their finger to the
7 center of the touch screen while maintaining contact. This gesture results in
8 the opening of a menu associated with that edge of the screen. As we see it
9 left, Ahn also describes an identifier 1800 for notifying the user of the
10 presence of a menu and the start location for the touch and drag operation to
11 open that menu.

12 JUDGE QUINN: Counsel, can I ask you a question here? This
13 figure 18 is the one that we want to focus on. Does it - does Ahn describe
14 the graphic 1800 as a moving object? Does it actually move?

15 MR. HOLT: Yes, Your Honor. Thank you for that question. If
16 you'll turn to slide 12, we see Paragraphs 117, 118, and 119 of Ahn. And
17 here Ahn describes that, "As the user drags, the graphic shadow 1800, the
18 menu list 1500 can be displayed along the dragged graphic 1800."

19 From this we see reference to as the user drags, clearly detailing
20 that something happens, not just after dragging, but during the dragging
21 process. And -

22 JUDGE QUINN: So -

23 MR. HOLT: Yes, Your Honor.

24 JUDGE QUINN: I understand that that's what it says. Is this the
25 only instance in which graphic shadow 1800 could be inferred that it moves
26 because it says, "As the user drags"?

1 MR. HOLT: Yes, Your Honor. These are the three paragraphs in
2 which the graphic shadow 1800 is described in Ahn.

3 JUDGE QUINN: Okay. So two things, though. The dragging -
4 so the word drag in Ahn, there's an argument here that it is referring to the
5 actual gesture of the finger and what it does with respect to the touch screen
6 rather than any motion of any object on the screen.

7 Do you - is that your understanding as well?

8 MR. HOLT: No, Your Honor. I - the - Dr. Terveen, who is
9 Apple's expert explained that a POSITA would have read these particular
10 paragraphs of Ahn to have meant that the graphic itself is dragged. And -

11 JUDGE QUINN: Right. But - well, what my question was there
12 is - do you understand that there is a dispute as to whether drag in this
13 Paragraph 118 actually means to move the graphic?

14 MR. HOLT: Yes, Your Honor.

15 JUDGE QUINN: Okay. And the second question that I have is
16 Paragraph 119 says that graphic 1800 disappears on the display. So how can
17 it move and also disappear?

18 MR. HOLT: So it says, to be a little bit more precise, "Gradually
19 disappears". And so that could be implemented in a number of ways. One
20 of the ways described in the petition is in light of the disclosure of Chaudhri,
21 which talks about graphics fading out and other graphics fading in as you
22 change user interface states. And so if that particular graphic shadow 1800
23 were to fade out in that way, it could be moving along with the user's finger
24 as it's fading out.

25 The goal really is to help a user be able to see what is happening
26 and what's available to them. So the whole point of that particular graphic is

1 to indicate to the user that there is a menu associated with that edge of the
2 display. And yet once the menu's open, you don't really need that graphic
3 anymore. Now, how you get from a place with the graphic there to a graphic
4 completely gone, what we hear - what we see here from Ahn is that it
5 gradually disappears. And again, the teachings of Chaudhri give us at least
6 one way that would've been obvious to implement that as a fading out. And
7 so what would happen is as the graphic is being dragged and as the menu is
8 opening, it will slowly fade out.

9 Does that answer your question, Your Honor?

10 JUDGE QUINN: Yes. Thank you.

11 MR. HOLT: Okay.

12 JUDGE SMITH: But let me - I have a question. This is Judge
13 Smith. One of the points, you know, for Paragraph 118, the word drag, you
14 know, I understand like the normal meaning of the word drag, at least as I
15 understand it is whatever object follows the word drag is what's being
16 dragged. So here, the user drags the graphic shadow, which to me, the -
17 meaning of this means the shadow is being dragged along the screen, but
18 Patent Owner's argument in the petition and Patent Owner kind of
19 emphasizes this on - not in the petition. I'm sorry. And the Patent Owner
20 response is that the word drag used by Ahn doesn't really mean the object is
21 being dragged. It means that the user's finger is being dragged.

22 And one of the things that Patent Owner says on Page 33 of the
23 response, Patent Owner gives the example that Ahn describing figure 17
24 says that if the user touches - if the user - Ahn states that if the user drags
25 the touch screen 10 by a distance, the menu list is displayed. And then
26 Patent Owner says, of course, the user is not moving the touch screen itself,

1 but is performing a drag gesture on a touch screen. And Patent Owner is
2 saying -

3 But based on that description about figure 17, we can infer that the
4 description of figure - the description of figure 18 in Paragraph 118 means
5 that the user is not dragging the shadow, but it's dragging the finger along
6 the shadow.

7 Can you speak to that?

8 MR. HOLT: Of course, Your Honor. And thank you. That's a
9 great question. I think figure 17 at least is initially described in Paragraph
10 111 of Ahn. And I think it'd be helpful for us to actually look at what it
11 says.

12 It says, "Figure 17 illustrates an example of a screen for displaying
13 a plurality of menu lists according to a drag distance of a touch operation."
14 So here, we're speaking of the touch operation. And here's a key part, "For
15 example, if a drag distance of the detected touch and drag operation reaches
16 a distance D1, the controller controls to display first menu list 1700 and
17 display 40. If a touch operation drag to distance D1 reaches a distance D2,
18 the Controller 50 controls to display a second menu list 1710 in the display
19 40."

20 Here, what we see Ahn talking about is the distance of the detected
21 touch and drag operation. We're not talking about dragging object - objects
22 as you mentioned, Judge Smith.

23 JUDGE SMITH: In that paragraph, but in Paragraph 116, there's a
24 sentence. The fourth line of Paragraph 116, "If the user drags the touch
25 screen 10 by distance longer than" - and Patent Owner's argument is to your
26 point, Ahn doesn't mean literally dragging the screen. Ahn means what you

1 said, the dragging the finger to - along a touch distance.

2 Can you reconcile how Ahn uses the word drag in Paragraph 116
3 with how Ahn uses the word drag in Paragraph 118?

4 MR. HOLT: Yes, Your Honor. I think in the context of these
5 several paragraphs discussing figure 17, what a POSITA would've
6 understood from this is that the user dragging the touch screen is the user
7 dragging their finger along the touch screen. Again, going back to that
8 Paragraph 111, it's talking about the drag operation, the touch and drag
9 operation, which is carried out by the user's finger.

10 So here, while that language may be somewhat imprecise, the
11 context in which it's used would've indicated to the reader that the actual
12 dragging here is with respect to the finger along the touch screen. And this
13 differentiates as Your Honor was noting the language used in Paragraph 118,
14 where it talks about if the user drags in a right direction, a graphic shadow is
15 displayed 1800. And it says that the user drags the graphic shadow 1800.
16 And so this language is different than the language we see with respect to
17 figure 17.

18 JUDGE SMITH: Thank you.

19 JUDGE QUINN: So a question about the close up of this graphic.
20 I see in the petition at 40 that you have created some graphics on how it
21 would look when the graphic shadow 1800 is merged with other figures that
22 have the menu actually on the display.

23 So are you saying you would modify Ahn to include that drag
24 graphic 1800 on menu items that don't use that graphic 1800?

25 MR. HOLT: What I would say, Your Honor, is that if you have -
26 if you look at Paragraph 117 of Ahn, it talks more generally about an

1 identifier for notifying a user that Ahn item list matched to the specific
2 direction is displayed in display 40. And so Ahn is saying that this particular
3 identifier can be associated with any of the item lists and any of the specific
4 directions. The examples are given with respect to figures 18(a) and 18(b)
5 and show the notifier on the left. But it - it's fairly clear from Paragraph 117
6 that Ahn was not confining the use of that type of an identifier to only the
7 left side of the display.

8 JUDGE QUINN: Oh, well, right. But the only embodiment we
9 have is to show it on the left. So you would say you would read 117, 118,
10 and 119 to me, that that would apply to all of the menus that are disclosed in
11 Ahn?

12 MR. HOLT: Yes, Your Honor. And I think I was hesitating to say
13 that this requires a modification of Ahn because it is our opinion and Dr.
14 Terveen's opinion that this is actually part of the teachings of Ahn and
15 therefore doesn't actually require a modification. Though it's not specifically
16 shown in the figures, it is described. But that being said, yes, the position is
17 that you would utilize that identifier icon on any of the edges, including the
18 right edges as shown in the figure, which I believe is on slide 17 is where it
19 is in the slides.

20 JUDGE QUINN: Okay. So one thing that troubles me is that this
21 graphic 1800 is disclosed only for purposes of assisting the user to let them
22 know where to start the touch, not necessarily caring about whether to end
23 the touch. But in your combination with Chaudhri, you do have the full
24 magnitude of the gesture that you're relying on. And that is not coming from
25 Chaudhri since the graphical shadow 1800 is not really taught to be there for
26 the full amount of the gesture. It disappears at some point, and Ahn is silent

1 as to when it actually disappears.

2 So I'm interested in knowing exactly how do you take Chaudhri's
3 teachings to supplement what Ahn teaches with respect to this object
4 moving, which is required by the claim to move and how you contend that
5 Chaudhri compliments what Ahn says about the starting position, and how
6 do you get to the end position?

7 MR. HOLT: Yes, Your Honor. Happy to address that. I would
8 like to first note that the movement you're speaking of of the object is in the
9 dependent claims. The independent claims do not require a movement of the
10 object. It simply requires the blurring as a function of the distance
11 magnitude of the gesture. And we are speaking there of the clock widget.
12 And so for Independent Claim 1, the operation and behavior of the graphical
13 shadow 1800 is actually not at issue.

14 That being said, Your Honor, what we would say is that when you
15 look at the claims, they do not suggest or require that the graphic shadow,
16 the object that is actually change its position for the entirety of the gesture.
17 The language of the claims, as often as it is not, actually only talks about the
18 initial portion of a gesture. And so long as the graphic is there for some part
19 of the gesture and is responding in correspondence with that gesture, it
20 would meet the claim language. It does not require that that particular object
21 be there the whole time. What is there the whole time and what is following
22 the user's finger throughout the gesture is the menu itself, which is an
23 indication of what is happening with the gesture and helps guide the user as
24 to what the operation is that corresponds to that gesture. And again, this
25 flows from both the teachings of Ahn with respect to Paragraphs 117
26 through 119 as well as Chaudhri.

1 JUDGE QUINN: But that can't be because you have to detect that
2 there's a gesture, that something's happening during the gesture, and before
3 the completion of that gesture, and that based on the magnitude of that
4 gesture, you're moving an object. So I mean, these are all things that are
5 interlinked in the claim. So to say that you don't have to complete a
6 movement would mean you also don't have to complete the gesture?

7 MR. HOLT: No, Your Honor. To be clear, the gesture continues
8 in order to open the menu. The point of the gesture is to open the menu. As
9 you noted, the graphic shadow 1800 is there to identify the start position for
10 the user as well as the fact that there is a menu there to be opened. The
11 graphic shadow, as we see in Paragraph 119 of Ahn is able to gradually
12 disappear. That would be at some point during the gesture. The claims
13 require that the object change its appearance. This is, I believe Limitation
14 2C, an aspect of its appearance during the gesture. That is the gradual
15 disappearance.

16 The menu continues to open and the gesture continues until the
17 menu is completely open. Again, that is the point of the gesture. But Ahn
18 tells us that during that gesture, the graphic shadow 1800 gradually
19 disappears. And taken in light of the teachings of Chaudhri, it would've
20 been obvious that that disappearance would be in correspondence with the
21 gesture. Whether that disappearance completes prior to the completion of
22 the gesture is not actually something that is required or not required by the
23 claims.

24 JUDGE QUINN: Yeah. But you've combined the functionality of
25 Ahn of the menus appearing on the screen through a gesture with Chaudhri's
26 showing visual cues on how to interact with the user interface to change

1 between two user interfaces, for example. And those embodiments show a
2 beginning of a gesture and the end of the gesture. And that's the whole
3 point. How do you know that you have completed your gesture? That's
4 what Chaudhri is about. So if you're - if you are using that teaching with
5 Ahn, that also comes with Chaudhri. It's that you're using that teaching of
6 Chaudhri, which tells you to begin and end the gesture and that things are
7 happening on the screen to alert you to the fact that you have finished your
8 gesture; is that not the case?

9 MR. HOLT: That is the case, Your Honor. Completely agree.
10 You have that absolutely right. And it is the totality of the graphics that are
11 shown in Ahn that provide that feedback. The start position is the graphic
12 shadow 1800 and it is dragged along with the user's gesture, but it's the
13 menu itself, opening in correspondence with the user's gesture that provides
14 additional ongoing feedback as to what the gesture is doing, that is opening
15 the menu, as well as when the user's gesture will have been completed. It
16 will be completed once the menu is fully opened.

17 And so it is both the graphic shadow and the menu that the petition
18 talks about providing that graphic feedback to the user as to what their
19 gesture is doing and when that gesture is complete.

20 JUDGE QUINN: All right. Let's talk about the feedback, because
21 you have relied, as part of your motivations to combine, that the - that
22 Chaudhri contributes this idea of changing the optical intensity that is also
23 related to the gesture. As the gesture is being completed, there is a change in
24 optical intensity. And I'm curious, Patent Owner's arguments about
25 Chaudhri teaching that it is in every embodiment, except perhaps for one,
26 Chaudhri is focused on increasing the optical intensity of the item that you

1 are activating on or focused on with the one in the foreground, for example,
2 but is not really interested in maintaining the intensity of the foreground
3 object and only fading out the background.

4 Can you speak to that?

5 MR. HOLT: Yes, Your Honor. I think that we have to look at
6 Chaudhri in the context of Ahn, which is the combination that was
7 advanced. And what Chaudhri teaches us is that it was known and obvious
8 that when you are changing optical intensities, you do so as part of a change
9 in state of the user interface, to do so in correspondence with the user's
10 gesture. What we have in Ahn as the starting place is that the clock widget
11 is fully visible at the start and it is blurred at the end.

12 And so Chaudhri provides at least one of the obvious ways of
13 accomplishing that. And it does so for the same benefits that Chaudhri gives
14 us, which is it helps the user understand what will be the outcome of their
15 gesture. Not only will the menu open, as we see in figure, for instance, I
16 believe it's 4(b). This is slide 7. I'm sorry. It's 3(a). We see that the clock
17 widget is fully visible. And then as you transition to 4(b) with the menu
18 open, the clock widget now is blurred. And so Chaudhri provides an
19 obvious way of accomplishing the actual disclosures of what is shown in
20 Ahn.

21 JUDGE QUINN: No, but so - but you're taking optical intensity
22 change to only mean blurring, but Chaudhri does not mean blurring.
23 Chaudhri means intensifying the intensity.

24 MR. HOLT: I believe, Your Honor, that Chaudhri actually is
25 about changing generally the optical intensity in order to facilitate a better
26 understanding of transitions between user interface states. Again, this is

1 slide 8. Chaudhri in Paragraph 6, one of its earliest paragraphs says, "More
2 generally, there is a need for more efficient user-friendly procedures for
3 transitioning such devices, touch screens in our applications between user
4 interface states." And it provides a couple of examples, but all of these are
5 simply examples.

6 And Chaudhri is at pains to reiterate that its teachings are intended
7 to be viewed broadly and they're intended to help a POSITA understand, at
8 least one obvious way to allow for a more natural and easily understood
9 transition between these user interface states. And so while those examples
10 often are talk about - are talking about increasing optical intensity, as Your
11 Honor noted, in the bottom clip of slide 8 in Paragraph 79, it does also talk
12 about fading out. Furthermore, there -

13 JUDGE QUINN: Yeah.

14 MR. HOLT: Go ahead.

15 JUDGE QUINN: Let me ask you about fading out embodiment.
16 And I think that's Paragraph 79; is that correct?

17 MR. HOLT: Yes, Your Honor.

18 JUDGE QUINN: Okay. When it's referring there to user
19 interfaces of the second application and the first application, we're talking
20 about two applications that are on a device and you're switching from one
21 application to the other. Are you taking the position that a user interface is
22 an object?

23 MR. HOLT: So user interfaces are made up of objects and I - this
24 is, again, in slide 8. Chaudhri tells us what the user interface states are In
25 Paragraph 48. It says, "A user interface state is a state in which the device
26 100 responds in a predefined manner to user input." And then Chaudhri

1 goes on to very broadly talk about user interface objects being the various
2 aspects of the user interface that are displayed to the user, some of which
3 may be interacted with and others of which may not.

4 JUDGE QUINN: That is a very long answer for one simple
5 question. Is a user interface an object, as you contend, sitting here today?

6 MR. HOLT: I would say, Your Honor, that a user interface is
7 made up of user interface objects.

8 JUDGE QUINN: And do you think when you refer to, in Ahn, as
9 the graphic shadow 1800, that is a single object; is that right? Just to keep
10 things straight here.

11 MR. HOLT: Yes, Your Honor.

12 JUDGE QUINN: Okay. I'm interested in something else. If we
13 can move to something here. One of the fourth rationale for your
14 motivations to combine, you've relied on - reliance on this is a finite - there
15 are finite ways in which to implement the blurring of Ahn. And you have
16 selected only two. Either it's binary at the end of a gesture, or progressively
17 varied as described by the claims.

18 Why aren't there more options than these two since Chaudhri
19 described so many other ways in which to have objects, or user interfaces, be
20 intensified, and faded in, and things like that?

21 MR. HOLT: Your Honor, I would posit that Chaudhri's various
22 ways of altering optical intensity are all progressive. They are progressive
23 and in correspondence with the user's gesture, which is one of the two
24 options.

25 Chaudhri also talks about color, and contrast, transparency, a
26 number of different options for optical intensity, but we were speaking

1 specifically to what is explicitly shown in Ahn, which is that the clock
2 widget goes from fully visible to very vague, and indistinct, which, under the
3 terms of the patent itself, is blurred.

4 And so that blurring of the object actually shown in Ahn, how that
5 is accomplished is either binary or progressive. And again, all of the options
6 that are talked about in Chaudhri are variations of progression. That is
7 changes that happen in correspondence with the user's gesture.

8 JUDGE QUINN: Right. So there's two things there. Not only is it
9 progressively varying, but now is a function of the gesture. Those are two
10 things. Because we have two arguments here, how it blurs, and in response
11 to what?

12 And I believe Ahn - Patent Owner is taking the view that in Ahn,
13 all of what happens on the screen occurs at the end of the gesture. There's
14 nothing during the gesture that we can see occurring on the screen. You
15 understand that as well, right?

16 MR. HOLT: Yes, Your Honor.

17 JUDGE QUINN: And then now you're saying that, with Chaudhri,
18 the only other option is to progressively vary it as a function of the gesture to
19 be during the gesture, but why isn't it - why aren't there other options?

20 I - I'm very worried that what we've done here is self-select the
21 pieces of prior art, and say, these are the only two ways of doing it. And,
22 you know, this is a programming art, so you can program pretty much
23 whatever you would like, but you'd have to have some suggestion that that's
24 what you would like.

25 And this seems to me, you're using the claims, really, to guide you
26 as to what would have been one of the options that we would like to try here.

1 MR. HOLT: Well, I know we're speaking about this particular
2 motivation, and I'm happy to stay here, but I'll note that it is the fourth
3 motivation, and that the first, and second motivations come directly from the
4 teachings of Chaudhri itself as to why varying these aspects of the user
5 interface display during the gesture itself is advantageous.

6 So I don't want to lose the fact that the benefits of utilizing
7 Chaudhri come from the teachings of Chaudhri. It is motivated by Chaudhri
8 itself.

9 The fourth motivation, though, comes from the knowledge of Dr.
10 Terveen, Apple's expert, who is a professor in computer science, and who
11 has a very long history in researching human-computer interaction, or HCI.
12 He's even been awarded a lifetime achievement award in this.

13 And so that particular motivation comes from his understanding
14 about how a POSITA would've understood the options for implementing this
15 particular combination. But again, that was the fourth motivation.

16 JUDGE SMITH: Let me just - while we're on this point, let me
17 just make sure I understand your point. So you're talking about - I'm
18 looking at Page 23 of the petition, and you say either a person of - you
19 wrote POSITA, but either a person of ordinary skill in the art could have
20 implemented the blurring effect. You're talking about the blurring effect of
21 the clock, right, or -

22 MR. HOLT: Yes, Your Honor.

23 JUDGE SMITH: - the background. So either implement the
24 blurring effect of the clock in a binary fashion, that is, instantly, will go from
25 an unblurred clock to a blurred clock. Or progressively vary the blur as a
26 function of the user's gesture as taught by Chaudhri. And so you're saying

1 those are the two options.

2 And just Patent Owner - on Page 49 of Patent Owner's slides,
3 Patent Owner cites the sur-reply. And Patent Owner has this paragraph from
4 the sur-reply that there are numerous ways to blur. I - and then Patent
5 Owner goes through a list of ways to blur.

6 I guess I have two questions about Patent Owner's argument on
7 this point. One, it - it's in the sur-reply. You - is there any reason for it to
8 be in the sur-reply? I guess this is a question for Patent Owner, but maybe if
9 you could - rather than Patent Owner's response, is this timely? And then if
10 it is timely, how should we address Patent Owner's arguments on this point?

11 MR. HOLT: Thank you, Your Honor. You're correct. It is not
12 timely. It did come in the sur-reply. Those various ways that Patent Owner
13 is talking about blurring are not supported by any expert testimony at all.

14 But again, if you were to consider that on the merits, the point that
15 we would make is that these are all variations, effectively, of either
16 progressive or binary. You're either doing it after the gesture is complete, or
17 you're doing it as a function of the gesture. And so while the exact way that
18 it is shown can vary, the mechanism by which that change happens, there are
19 only a limited number of options for that.

20 JUDGE SMITH: There are only two, right?

21 MR. HOLT: Correct.

22 JUDGE SMITH: But - and then, you know, one final question on
23 this point. The - when you say the - I don't know if this fits in here, but
24 when the menu - when your menu comes onto the screen, is it - so the - I
25 guess the object in the claim - I guess this is one question I have. The claim
26 talks about - Claim 1 talks about moving an object on the touch screen. So

1 there is some object on a touch screen that's moving, am I -

2 MR. HOLT: I believe it's the - at least one other object.

3 JUDGE SMITH: "To thereby" - so I'm looking at what you have
4 - I'm looking at your slide 6, what you have highlighted in green.

5 MR. HOLT: Yep. Sorry. Slide 6, you said?

6 JUDGE SMITH: Yes. What you have highlighted on screen,
7 "Thereby move the object on the touch screen."

8 MR. HOLT: Oh, yes, Your Honor. I'm sorry. I do believe then
9 the object - I'm sorry, I might have been mistaken in what I was saying
10 earlier.

11 JUDGE SMITH: Is it -

12 MR. HOLT: It is the graphic shadow there, though, that's moving.

13 JUDGE SMITH: The object that's moving is the shadow?

14 MR. HOLT: Yes.

15 JUDGE SMITH: It - it's not the menu?

16 MR. HOLT: Correct. Well, the menu - we're arguing that the
17 menu is opening, and moving with the gesture, but it's not the object, we're
18 not pointing -

19 JUDGE SMITH: The menu is not the object?

20 MR. HOLT: I don't believe so. No, Your Honor.

21 JUDGE SMITH: The graphic shadow is the object?

22 MR. HOLT: Yes. The graphic shadow is what's being blurred
23 because it's saying blurring -

24 JUDGE SMITH: Okay.

25 MR. HOLT: - at least a portion of - oh, I'm sorry, it's, "Blurring
26 at least a portion of the - at least one other object that has not overlapped."

1 So yes, the - at least one other object is being blurred, and that's the clock
2 widget, and it's the graphic shadow that is the object here.

3 JUDGE SMITH: That's being moved. Oh, okay. And then, you
4 know, just on this point about the graphic shadow moving. I understand Dr.
5 Terveen says, one of skill reads, dragged the - I forget the exact language.
6 What is it? Drags the shadow or something. The - yeah, "The user drags
7 the shadow," in Paragraph 118. Dr. Terveen is saying that means the
8 shadow is moving across the screen. Patent Owner's expert, I forget his
9 name, Dr. Rosenberg, I think?

10 MR. HOLT: Yes, Your Honor.

11 JUDGE SMITH: Rosenberg reads this - these same words, and
12 says the exact opposite. Is there any reason why we should prefer Dr.
13 Terveen's testimony to Dr. Rosenberg's testimony?

14 MR. HOLT: Yes, Your Honor. Setting aside what is the actual
15 language, which we believe is rather clear in the context of it. What Dr.
16 Terveen explains is that the reason you provide these visual feedbacks - and
17 in fact, the entire point of the graphic shadow is as a - an affordance, is what
18 they call an affordance, which is, basically, in user interface speak, a part of
19 the display that helps the user understand what gestures are available, as well
20 as how to do those gestures, and how to complete them.

21 You can kind of think of the graphic shadow as like a tab on a
22 folder. So if you had like a folder system where you were pulling a folder
23 out, that graphic shadow is kind of like a tab, and the menu is being pulled
24 out of the side of the screen.

25 If you waited until the end of the gesture to actually show the
26 menu moving and opening, and/or the graphic shadow moving and gradually

1 disappearing, the user would have no feedback during the gesture of what
2 was happening. So they would have to complete the gesture, and then,
3 suddenly, a menu would be there - and maybe they wanted that or maybe
4 they didn't.

5 But what Chaudhri teaches us is that providing feedback during the
6 gesture as a function of the gesture allows the user that active feedback. So
7 the -

8 JUDGE SMITH: Yeah, no, I understand your argument. I'm
9 asking you kind of specifically, is it just the fact that Dr. Terveen's analysis
10 is more logical than Dr. Rosenberg's or is there - is there a flaw? Is there -
11 is there something wrong with what Dr. Rosenberg's saying, or is it - or why
12 one over the other?

13 MR. HOLT: So I think it's a combination of - Your Honor, you're
14 correct that I - we believe that Dr. Terveen's testimony is more logical.

15 I think the other aspect of it is, if you can imagine - assuming that
16 the menu does open, not having the graphic move with the menu would have
17 the graphic holding in place while the menu opens. And that wouldn't make
18 a lot of visual sense.

19 Alternatively, even, again, if the menu is staying closed, if you're
20 dragging your finger, and you're not dragging the menu icon, you're not,
21 again, providing feedback during the gesture. So -

22 JUDGE SMITH: I guess what I'm getting at - I remember - and
23 forgive me for not being familiar with the facts on this. But I remember
24 reading it in one of the briefs, something about that Dr. Rosenberg gave
25 inconsistent testimony on these paragraphs. It - is that correct? Am I -

26 MR. HOLT: Yes, Your Honor. That - that's correct as well.

1 JUDGE SMITH: What - can you - can you fill me in on why you
2 think Dr. Rosenberg's testimony is inconsistent?

3 MR. HOLT: Yes, Your Honor. As we set forth in the reply when
4 Dr. Rosenberg was questioned about Ahn, and how it works, during his
5 deposition in a related proceeding, that - I would say, it was about two hours
6 of questioning that we encourage Your Honors to have a look through.

7 We, in the reply, tried to highlight key portions of that, but two
8 things became abundantly clear. Dr. Rosenberg didn't seem to have a
9 consistent view of exactly how Ahn does work in operation, and therefore
10 we don't believe that his testimony is as credible.

11 And the other piece of this is that it didn't seem that he had a good
12 understanding of the perspective from which he was actually viewing the
13 disclosures of the prior art, and how to assess obviousness. Again, if you
14 read the testimony that was highlighted - and frankly, look through the
15 entirety of the questions, you'll see Dr. Rosenberg struggling with the idea of
16 how to assess a POSITA's knowledge.

17 And so with those two things together, we do think that Dr.
18 Rosenberg's testimony is less credible.

19 JUDGE SMITH: Thank you.

20 MR. HOLT: I see that I'm at about 15:41. Is that until the 15
21 minutes, or -

22 JUDGE QUINN: Yeah, you're close to entering your rebuttal
23 time. You're about 30 seconds away.

24 MR. HOLT: Okay. Thank you, Your Honor.

25 With that in mind, I am going to skip down - well, I guess I'll stop
26 here. Are there any more questions about the Independent Claim? Okay.

1 There were a number of arguments made about the Dependent Claims.

2 We're obviously -

3 JUDGE QUINN: So I -

4 MR. HOLT: Yes.

5 JUDGE QUINN: Sorry, I do have a question for you on the

6 Independent Claim. I'm sorry. We were talking earlier about the -

7 Paragraph 79, embodiment, where Chaudhri refers to fading in a second user
8 interface, and fading out the first user interface; do you recall that?

9 MR. HOLT: Yes.

10 JUDGE QUINN: So one of the - one of the things I want to - I
11 want to ask you about is - so obviously we need - we need the - we need
12 the fading out kind of activity sort of to match what the clock is doing in
13 Ahn, but we don't - we don't really need the fade-in feature of that
14 embodiment.

15 Is that right? Is that a correct assessment?

16 MR. HOLT: I think that is correct, Your Honor. In this particular
17 instance, the part of the second user interface state that is coming onto the
18 screen is the menu. And what we're saying is that the menu would actually
19 follow the user's finger, and be dragged onto the screen. And so Chaudhri is
20 providing at least, again, one obvious way of accomplishing the fading out
21 of the clock widget that we see in Ahn.

22 JUDGE QUINN: But wouldn't a logical application of Chaudhri's
23 Paragraph 79 would be that Chaudhri's fading in complements the fading
24 out, and therefore, you would implement both to accomplish what Chaudhri
25 wants, rather than just take the part that you like? Because that's what the
26 claim says, and not the other that you don't need.

1 MR. HOLT: I think it would not be wrong to potentially
2 implement the combination such that the menu fades in as an alternative.
3 That's not discussed in the papers. But the goal of having the menu emerge
4 from the side of the display, again, is to provide the visual feedback to the
5 user of the outcome of the gesture, as well as when to complete the gesture.

6 Fading, as opposed to dragging in, would potentially accomplish
7 that as well. But again, Your Honor, we believe that in light of the total
8 teachings of Chaudhri, which includes the moving graphics, that the idea of
9 the change in optical intensity is just to provide additional feedback to the
10 user about what is happening.

11 And in the context of that particular example, where you are
12 changing from one application to another, it makes sense to fade in the
13 second user interface state, but that's not consistent with the example of Ahn
14 and its two user interface states.

15 So Dr. Terveen's position is that in light of the total teachings of
16 both references, this is the most logical way of implementing that
17 combination.

18 JUDGE QUINN: Okay. Thank you.

19 MR. HOLT: Okay. There were a number of Dependent Claims
20 for which arguments were raised. We think the majority of those are fairly
21 straightforward, especially if you go back to the petition, and you read what
22 the obviousness explanation was for those.

23 We think it's probably worth talking, though briefly, at least, about
24 Dependent Claim 6. This is slide 44. This claim recites that, "During at
25 least a part - at least an initial portion of the change in the distance
26 magnitude, an entirety of a virtual display layer in which the object is

1 displayed is blurred." Again, the object here is the graphic shadow 1800.
2 So during the initial part of the gesture, an entirety of a virtual layer -
3 display layer in which the graphic shadow 1800 is displayed is blurred.

4 As Your Honors noted at Page 4 of the institution decision, the
5 '727 Patent describes that, quote, "A virtual display layer refers to a
6 collection of display elements, which have all been assigned the same
7 apparent depth within the 3D layered user interface. Virtual display layers
8 give the appearance of depth through the use of 3D depth queues. An
9 example of a depth queue is a blur operation in which layers located at
10 successively greater depths appear blurrier than those closer to the user."

11 And as we discussed previously, with respect to Independent
12 Claim 1, Ahn already teaches that in some embodiments, the graphic shadow
13 1800 gradually disappears. And in light of the teachings of Chaudhri, this
14 could be implemented as the graphic shadow 1800 fading out. This is
15 consistent, again, with the '727 Patent family members discussion of blurring
16 as becoming less distinct.

17 And so there is clear disclosure here in the combination of Ahn and
18 Chaudhri that the graphic shadow 1800 would be gradually fading out and
19 that it's being blurred as the user performs the gesture and drags it.

20 In Paragraph 117 of his original declaration, Dr. Terveen explained
21 that, quote, "A POSITA would've understood, and found obvious, that the
22 menu identifier icon, e.g., graphic shadow 1800, would've been displayed in
23 a virtual display layer as that term is broadly used in the '727 Patent. And
24 that the virtual display layer containing the menu identifier icon would've
25 been displayed on at least one other virtual display layer that contains the
26 standby screen 300."

1 Again, we see the background image, as well as the clock widget
2 being kind of at a lower level, and the clock - and I'm sorry, the graphic
3 shadow 1800 being displayed above that.

4 And how a user might implement - or I'm sorry, a POSITA might
5 implement this is exemplified, for example, in Exhibit 1008. This is at least
6 one obvious way to provide this effect in the context of Ahn and Chaudhri.
7 And this is on slide 46.

8 This particular exhibit is a paper that talks about semantic depth of
9 field, and it provides an explanation about how various user interface objects
10 can be assigned different apparent depths. And that the blurring of those
11 various objects in the display may be blurred depending on where the focus
12 - what depth the focus the user is at.

13 And so the example that we see here on slide 46 is that there are
14 four user interface objects, and they are at three different apparent depths.
15 You have a blue circle, which would be closer. Two red circles, which are
16 the plane of focus, which are at a consistent depth. And then a blue
17 rectangle, which is at a further semantic depth, effectively. And this allows
18 the user interface to draw attention to what should - the user should be
19 focusing on and away from things that are less important.

20 The key here is that the objects themselves are seen to be at layers,
21 but it is not an entirety of the display that's being changed, it's the objects at
22 those distances. And so what we see on this is that, for instance, the two red
23 circles are at the same virtual layer, but if you were to blur, for instance -

24 JUDGE QUINN: So I'm asking you this - you're running out of
25 time here. So are you contending that graphic shadow 1800 is the object that
26 is also blurred because it fades out? And what is the virtual display layer in

1 which that object is on? That would include the menu?

2 MR. HOLT: No, Your Honor. As it gradually disappears and
3 fades out, it is not at the level of the menu because the menu is still
4 completely in focus. So -

5 JUDGE QUINN: So are you saying that the layer in which graphic
6 shadow 1800 is located, is the - is - that is the only virtual - that is the only
7 object in that virtual layer?

8 MR. HOLT: Yes, Your Honor. That's correct.

9 JUDGE QUINN: Okay. Thank you.

10 MR. HOLT: I see I have about five and a half minutes left, so I'll
11 ask whether Your Honors have any further questions. Okay. I'll reserve the
12 remainder of my time.

13 JUDGE SMITH: Thank you.

14 MR. HOLT: Thank you.

15 JUDGE QUINN: Just let me know when you're ready, Mr.
16 Robinson.

17 MR. ROBINSON: Ready when you are.

18 JUDGE QUINN: We're ready. Thank you.

19 MR. ROBINSON: Good morning, Your Honors. Eagle Robinson
20 for Patent Owner. I will start with the same place that Your Honors'
21 questions started, and that is whether the graphic shadow 1800 of Ahn
22 moves?

23 First, I'd like to note that I think Petitioner's Counsel took the
24 position that Independent Claim 1, specifically Limitation [1.d.i] does not
25 require movement of the object. If that was the position taken today, that is
26 not a position that was taken in the -

1 JUDGE SMITH: I think I - let me interrupt real quick. I think he
2 clarified it towards the end that he did initially, but then later, I asked him
3 about it, and he said it does require movement of an object.

4 MR. ROBINSON: Okay. Thank you, Your Honor.

5 So then the parties are in agreement that Limitation [1.d.i] requires
6 movement of the object. The object that's mapped in the petition is the
7 graphic shadow 1800. If you look at the petition, there really isn't much of a
8 theory in terms of modifying Ahn. So the petition points to Chaudhri as sort
9 of a reference to say, of course, we knew that images moved, but doesn't
10 suggest a modification to Ahn because the entire ground is built on the
11 premise that Ahn's graphic shadow 1800 moves when that drag gesture is
12 completed. So I'll start there.

13 First, it's important to note that there are two different sets of
14 gestures in Ahn's Paragraphs 118 and 119. In 118, the graphic shadow is
15 dragged to the right. In 119, the graphic shadow is dragged to the left and
16 then subsequently pressed.

17 Now that's key because figures 18(a) and 18(b) in Ahn show the
18 finger moving, they do not show the graphic shadow moving. And so
19 briefly, I'll refer to figures - I believe it's 3(c) and 3(d) and 3(e) in Ahn, in
20 which Ahn shows user interface elements, or objects on the screen moving
21 when it wants to show movement of an object on a screen.

22 So when figure 18(a) and figure 18(b) show the finger moving, and
23 graphic shadow not moving, that is consistent also with what Ahn says in
24 Paragraph 98, which is, quote, "The touch and drag operation indicates
25 movement of an external object on the touch screen 10."

26 So looking at all of Ahn's teachings consistently, Ahn discusses

1 drag as external objects operating on the screen. And user interface
2 elements that are shown on the screen, Ahn does not use drag to indicate
3 motion of those objects. That's consistent with what's shown in figures
4 18(a), and what's not shown in figure 18 - and 18(b).

5 JUDGE QUINN: So how do you - how do you read then the
6 disclosure what it says, that there's a drag, you're dragging the shadow, or
7 that the - this menu is displayed along the dragged shadow? If you're using
8 the word drag there consistently, why does it - why does it apply to the
9 object and not just a gesture?

10 MR. ROBINSON: Well, Your Honor, because that is how Ahn
11 uses the term drag consistently throughout the application. Throughout its
12 disclosure consistent with what it shows in its fingers, meaning that a drag of
13 a finger across an area of the screen moves the finger, but it doesn't move the
14 object.

15 So the second thing that I would point out is, if you look at
16 Paragraph 119, it also says that the user touch-drags to the left on the
17 shadow, as you can see in figure 18(b), that the menu can be displayed. It
18 goes on to say in more detail, "In this case, as the user may press the graphic
19 with a finger, the graphic gradually disappears." So it's being dragged and
20 then it's being pressed.

21 If the graphic shadow moves to the left off the screen as it's being
22 dragged to the left in that 18(b) embodiment, there's nothing left there then
23 to press to make it disappear. Now that fundamentally is consistent with
24 also -

25 JUDGE QUINN: So how does that look like in your theory? So
26 the graphic shadow 1800 appears on the screen, the user can see it, then the

1 user can start the drag motion on the screen; and then what? What does
2 shadow 1800 do?

3 MR. ROBINSON: Your Honor, so I'll start with how the menu
4 appears. So consistently throughout Ahn's disclosure, it talks about this
5 being a binary. So once the gesture is completed, then it displays a menu.
6 And so the menu appears, and, you know, it - in the programming world, it
7 - I think it becomes semantics a bit as to what happens to the graphic
8 shadow. What we know is once that gesture is complete, that the menu
9 appears, and the graphic shadow no longer appears. So you know -

10 JUDGE QUINN: So I understand that's your position with the
11 menu. I'm just focusing more on 118 and 119 that go to the graphic shadow
12 indicator. When it - when it's there, it's telling the user, there's a menu that
13 you can pull here, right? So how do you contend 118 and 119 teach the drag
14 operation as described without moving the graphical shadow?

15 MR. ROBINSON: Well, Your Honor, as Your Honor's question
16 suggested earlier, the explicit purpose of that shadow is to show the start
17 position of the gesture. That's it. These aren't complicated gestures. It's a
18 drag to the right or to the left, followed by a press.

19 And so what Ahn described is that shows you where to start the
20 gesture. You drag it to the right. And just as is shown in figures 18(a) and
21 18(b) -

22 JUDGE QUINN: When you say "drag it to the right" what are you
23 talking about?

24 MR. ROBINSON: You drag the finger or the input device on the
25 screen. You drag it across the shadow, just like what is shown in 18(a) and
26 18(b).

1 JUDGE QUINN: But the shadow is - it stays stuck in the same
2 position on the screen.

3 MR. ROBINSON: That's exactly what figures 18(a) and 18(b)
4 show.

5 JUDGE QUINN: Okay.

6 MR. ROBINSON: Yes.

7 JUDGE QUINN: And then - but then it says that the menu list
8 can be displayed along the drag graphic. So the graphic must move at some
9 point to make space for the menu that appears?

10 MR. ROBINSON: No, Your Honor. I think that the reading of
11 that that's consistent with what is shown in Ahn's other figures. For
12 example, in figure 15, it shows that menu appearing after the gesture is
13 complete. Is that the shadow is along that edge. The menu appears, you
14 know, in place of it along that same region in which the graphic shadow was
15 before.

16 JUDGE QUINN: Right. But that figure doesn't have graphic
17 shadow 1800. So if you added graphic shadow 1800, how do you read the
18 description that the graphic shadow 1800 - as a user drags graphic shadow
19 1800, the menu list 1500 can be displayed along the drag graphic 1800.

20 So what does that - what does that mean?

21 MR. ROBINSON: Well, Your Honor, I would start with figures
22 15(a) and 15(b) where it shows similarly a gesture in figure 18 - 15(a),
23 excuse me, the finger dragging from left to right. And then in 15(b) it shows
24 the menu appearing. And comparing 15(b) to 18(a) or 18(b), frankly, the
25 position of that graphic shadow, the menu appears along that same region of
26 where the shadow is.

1 JUDGE QUINN: So alongside does not mean abutting the
2 dragged graphic?

3 MR. ROBINSON: We - Your Honor, in the interest of precision,
4 the description in Ahn doesn't say alongside. It says along. And that along,
5 unfortunately, it - the language obviously is not as precise as it might have
6 been -

7 JUDGE QUINN: Yeah.

8 MR. ROBINSON: - but what we have to understand what that
9 language means is the figures.

10 JUDGE QUINN: So by along, you would say that it is in the same
11 plane as the - or along the same direction as where the finger motion
12 occurred?

13 MR. ROBINSON: Yes, Your Honor. Yes. It - we know that it
14 appears along that same region in which the graphic shadow is.

15 JUDGE QUINN: Okay. And then at some point it disappears. So
16 when does it do that?

17 MR. ROBINSON: Presumably the same time or slightly before
18 the menu appears, right? Along suggests that the menu appears sort of while
19 the shadow is still there, and so I guess at the same time or slightly after.

20 JUDGE QUINN: Yeah.

21 MR. ROBINSON: It would effectively disappear if the menu - as
22 in 15(b) appears over the shadow, right? The shadow is then essentially
23 blocked by the menu.

24 JUDGE QUINN: Okay. So you contend that in 118, 119, the
25 graphic shadow 1800 is non-movable, is fixed on the screen up until the
26 point it disappears?

1 MR. ROBINSON: Yes, Your Honor. That's the only thing
2 consistent with what - the way that Ahn uses both the terms "drag" and "as"
3 consistently in other places of the specification. It's the only interpretation
4 that's consistent with Ahn showing the finger moving but not the graphic
5 shadow moving, when we know from other figures, like 3(c) through 3(e),
6 that when Ahn was describing the movement of an object, it knew exactly
7 how to show the movement of the object.

8 JUDGE QUINN: Then you would say the same thing about the
9 menu. The menu just appears. There's no progressive sliding in or anything
10 like that?

11 MR. ROBINSON: Your Honor, what I would say about the menu
12 from Ahn's disclosure is that every single disclosure and description in Ahn
13 of the menu appearing, is that it doesn't appear until after the gesture is
14 complete. And so whether the menu sort of slides out or gradually appears
15 is sort of not directly on point in terms of whether the menu appears or
16 blurring happens during a gesture. And that's what's explicitly required by
17 Independent Claim 1, that the blurring has to occur before completion of the
18 gesture is detected. Whereas Ahn does not show any blurring or depiction
19 of a menu before a gesture is completed.

20 JUDGE SMITH: But it - I mean, the rights of - I guess I - I'm
21 having a hard time. I mean, I know you say it doesn't show a figure of it, but
22 it literally says along the dragged graphic. I mean, those are the literal
23 words. So it's - we just don't give meaning to those words, just because
24 there - there's no figure that shows it.

25 Is that what you're suggesting?

26 MR. ROBINSON: Well, Your Honor, what I'm suggesting is that

1 the figure shows what's happening to the graphic. That those literal words
2 that Your Honor is pointing to also explicitly refer to these figures. And
3 these figures unambiguously show that that graphic shadow stays in the
4 same place as the finger drags it.

5 JUDGE SMITH: And the phrase in Paragraph 119, the menu list
6 can be displayed as emerging from the left side. We're to read that as going
7 from not appearing to completely appearing?

8 MR. ROBINSON: Well, Your Honor, it - frankly, it doesn't
9 matter how you read that. And here's why. Figure 119 says that, "First, you
10 drag that graphic to the left and then you press that graphic. And it's not
11 until after you press that graphic and the graphic starts to disappear that the
12 menu is shown as emerging from the left side."

13 JUDGE SMITH: Well, I mean, it matters in the sense that you're
14 saying none of these figures show these objects as gradually appearing on
15 the screen. But you're saying, you know, reading Paragraphs 118 and 119
16 consistent with the rest of Ahn, these objects are either onscreen or they're
17 offscreen. And then - so I'm asking you about a - the menu can be
18 displayed as emerging from the left side.

19 And you're saying, even if that's the case, it doesn't matter?

20 MR. ROBINSON: Well, Your Honor, I guess I would say that
21 figure 18(b) shows a subset of the actions that are described in Paragraph
22 119. Figure 18(b) clearly shows the finger dragging to the left.

23 JUDGE SMITH: Right. So I'm asking you about the menu can be
24 displayed as emerging. What meaning do we give to that in light of the rest
25 of what Ahn says?

26 MR. ROBINSON: In light of emerging, I think that it is - one, if

1 you just look at that phrase in isolation, could potentially be ambiguous. I
2 think, if you look -

3 JUDGE SMITH: How is it ambiguous? I mean, the word
4 emerging has meaning in the English language. That means that, you know,
5 it goes from not appearing to gradually appearing to completely appearing.
6 That - that's not - I don't see that - how is it ambiguous?

7 MR. ROBINSON: Well, Your Honor, if you look at figure 15(b),
8 for example, the style of these menus is menus that emerge from the sides of
9 the screen. So two ways you could read that: One is, you could absolutely
10 read that emerging as consistent with just being a menu and the style that
11 extends from a screen, right? It doesn't have a clearly defined boundary of
12 the menu between the edge of the screen and the menu itself.

13 The second way that you can read that is that - and this goes back
14 to, I think, Judge Quinn's question a moment ago, is sort of even if it were to
15 kind of slide out gradually, it doesn't do that until after completion of the
16 gesture. And so that does not fall within what the claim requires, or at least
17 what this has been mapped to, of sort of this blurring being -

18 JUDGE SMITH: I mean, I know you keep saying that, but, I
19 mean, the literal text of Ahn - I mean, it uses phrase such as "as the user
20 drags." And then, you know, along the dragged graphics. So you - you're
21 saying none of this happens until it's done. I mean, the text itself says it -
22 these things are occurring during the gesture.

23 MR. ROBINSON: So, Your Honor, the - I'll find that page in just
24 a moment. But the patent owner response goes into some detail about not
25 only the other places where Ahn uses the word "drag" but also the other
26 places where Ahn uses the word "as." And so unambiguously binary

1 operation where there is just a button, it says, "As you push the button, then
2 the menu appears."

3 And so - I think the reading of drag, in which drag explicitly says
4 in Paragraph 98: "Drag is an external object acting on the screen, the touch
5 and drag gesture. Consistent with sort of drag used repeatedly throughout in
6 ways that do not mean dragging an object that is shown on the screen,
7 combined with figures that show when an object is moving and figures that
8 clearly show when an object is not moving." That the words absolutely if
9 you isolate them far enough, you could read them in the way that Petitioner
10 has tried to present them.

11 But when you read those words in the context of Ahn's overall
12 disclosure of what Ahn actually depicts as being what it's describing, 18(a)
13 and 18(b) unambiguously show a finger moving and a shadow not moving.
14 And if we take that one step further, just logically, if the whole purpose of
15 moving the shadow is to show progress of the menu sliding out, then the
16 menu sliding out does that on its own. So there - there's no logical need for
17 the graphic shadow to move either.

18 JUDGE QUINN: So I'm interested in the Paragraph 119, how it
19 works, and it seems to suggest that there is a fade-in and fade-out situation
20 that, you know, calls to mind what is happening in some embodiments in
21 Chaudhri.

22 But 119 here, when it's giving you the graphic 1800, it's doing it
23 there only to tell you that there is a further menu that you could obtain if you
24 wanted it. Not necessarily that you need to complete a gesture, because in
25 119, all you have to do is swipe on the area, right?

26 MR. ROBINSON: Well, Your Honor, 119 actually describes two

1 steps. So if the user touch-drags to the left, and then in this case, the user
2 would press the graphic. That seems to say in this case, you've got to swipe
3 left and press the graphic. But ultimately, yes, it's the starting point. It's,
4 hey, there's a gesture here that's available that - it's not progress. It's not
5 completion. It's not any of those things.

6 JUDGE SMITH: Let me just ask you one last question about these
7 paragraphs. What - the meaning of these Paragraphs 118 and 119 before we
8 move on. The - we have testimony from your expert. We have testimony
9 from Petitioner's expert. The experts say the exact opposite of each other.

10 And I - I'll ask you the same question I've asked Petitioner: Why
11 should we defer to your expert's testimony on this point rather than
12 Petitioner's expert's testimony?

13 MR. ROBINSON: Well, Your Honor - I'm sorry. I didn't mean to
14 interrupt -

15 JUDGE SMITH: No, go ahead. Go ahead. I'm - I -

16 MR. ROBINSON: Okay. Yes. Your Honor, it's because Dr.
17 Rosenberg read the entirety of the disclosures of Ahn. When you look at his
18 testimony in this, he goes through the uses of as, and he goes through the
19 uses of drag. He goes through what the figures show and do not show. And
20 he says, "Here is what sort of the totality of the disclosure of Ahn says."

21 What Dr. Terveen says is, "If we look at this one phrase in
22 isolation and we squint a little, we can interpret it. And we also don't look
23 too closely at figures 18(a) and 18(b). We can interpret those words as
24 meaning something without going into detail of the overall disclosure and
25 what those words mean as they are used by Ahn consistent with what is
26 shown in the figures."

1 JUDGE SMITH: Okay. And was your - was your expert
2 inconsistent in his testimony?

3 MR. ROBINSON: No, Your Honor, he was not. That was
4 addressed in some detail in our sur-reply. Ultimately, quotes were taken a
5 bit out of context. It was a lengthy series of questions, which of course
6 there's going to have some language that could go either way. There - the
7 point of if it's taken out of context. The point of sort of the confusion about
8 the definition of a POSITA is that at one point the verbiage had sort of
9 strayed into whether a POSITA - you know, some language of a POSITA
10 being sort of multiple people versus one person.

11 And it was Dr. Rosenberg actually who said, "But we need to get
12 back to sort of the POSITA being this one person with ordinary skill in the
13 art to avoid confusion." And so he had a conversation in the context of this
14 deposition, but ultimately, his opinions have been consistent throughout and
15 they are explained in his declaration.

16 JUDGE QUINN: Why would that be relevant to whether Ahn can
17 be interpreted in the way that he interpreted it?

18 MR. ROBINSON: I'm sorry. Why would what -

19 JUDGE QUINN: Why would the opinion or confusion about
20 whether a POSITA is one person or multiple persons - and I'm
21 summarizing. Why would that be relevant to his opinions on whether Ahn
22 behaves in the way that he testified?

23 MR. ROBINSON: Patent Owner does not believe that there was
24 anything in that deposition testimony that would undermine any of his
25 opinions or explanations really of what Ahn is disclosing. Certainly, it
26 needs to be interpreted from the perspective of one of skill in the art.

1 But as you'll see in his declaration testimony, the patent owner
2 response, it goes through in detail exactly what Ahn says, in exactly what
3 context, and why those uses of as and drag are consistent with what Patent
4 Owner is presenting in terms of what Ahn means. And its disclosures with
5 Paragraph 17 through 19 in the context of figures 18(a) and 18(b).

6 JUDGE QUINN: So given the disparity of viewpoints of how Ahn
7 behaves with respect to this graphic shadow 1800, it seemed like, we have
8 two diametrically opposed positions by experts, and both are technically
9 feasible. It's a question of what is more probable between what Ahn teaches
10 and what could be interpreted by it. If the - if it becomes an issue of this is
11 50/50, because Ahn is, you know, ambiguous, and we can read into it both
12 positions.

13 How do you contend we square who wins in this situation?

14 MR. ROBINSON: I mean, it's - at the end of the day, no matter
15 what else happens, it's Petitioner's burden. So if it is 50/50, the petitioner
16 has to lose. There - there's - I don't think any other way to frame that. I
17 would say, just in the context of the question, that I don't think this is as
18 simple as two experts taking different positions and then both being equally
19 feasible.

20 And that's because Patent Owner's expert, Dr. Rosenberg
21 testimony speaks for itself. It looks directly into all of the uses of those
22 words within Ahn. Whereas Petitioner's expert says, "This is what this feels
23 like, and based on my experience" - he doesn't go through that same
24 analysis of Ahn. He doesn't try to interpret that in the context of Ahn's
25 overall disclosure.

26 And so, you know, Dr. - Dr. Terveen is certainly qualified. I'm

1 not going to sit here and take shots at him. I'm just saying that his testimony
2 does not go into that level of detail. It doesn't consider and explain honest
3 disclosure in the overall context of Ahn.

4 JUDGE SMITH: So you don't think it - you don't think this is the
5 case where both experts could be right, depending on how you look at it?
6 You think - that this is the case where one is right and the other is wrong?

7 And I understand your position is your expert is right and
8 Petitioner's is wrong. But it - it's either black or white, it's not 50/50; is that
9 right?

10 MR. ROBINSON: I think the - Your Honor, I think the gray ends
11 when you look beyond Paragraphs 118 or 119, to the figures, to the other
12 uses of the same words. And when you compare the two sets of expert
13 opinions, one of which is very closely rooted to Ahn itself. And the other
14 attempts to sort of read things into Ahn's words that are not supported by the
15 other parts of Ahn. So I don't believe it's that gray. No, Your Honor.

16 JUDGE SMITH: But just one last question in that - I won't ask
17 any more questions about this. But why would we look to Ahn's description
18 of other figures and other features to interpret language where he's
19 describing something else? Why would we think descriptions of other
20 figures sheds light on Paragraphs 118 and 119?

21 MR. ROBINSON: Well, Your Honor, the key issue here is
22 whether the graphic shadow moves. If you read the words 118 to suggest
23 that the graphic shadow moves, then there's necessarily an inconsistency
24 with what figure 18(a) shows. So if you start from the premise -

25 JUDGE SMITH: Well, I mean, I'm asking you about the other
26 paragraphs. I understand your points about the figures, but I - but I'm - I

1 mean, you mention if we look at these other paragraphs of descriptions of
2 other things, we can infer a meaning to Paragraphs 118. Why would we do
3 that?

4 MR. ROBINSON: Well, I'm - I guess that's where I'm trying to
5 get - and I'm also -

6 JUDGE SMITH: Okay. Okay. Sorry. Okay.

7 MR. ROBINSON: So if you start with just the text of 118 and you
8 compare that to 18(a) - if you interpret that text of 118 to mean that the
9 graphic shadow moves, there is an inconsistency with 18(a). And so I think
10 from there, we have to take a step back and say that that language has to be
11 broadened up to at least cover what's in 18(a).

12 And so then the question becomes: Is that language broadened up
13 to sort of cover both, or does Ahn use that language in a way that suggests
14 graphic shadow affirmatively doesn't move like what's shown in 18(a)? And
15 so that's the reason to go out to these other paragraphs of Ahn, and say, all
16 right. What does Ahn say about drag? What does Ahn - how does Ahn use
17 as?

18 Ahn, in Paragraph 98, explicitly says, "The touch and drag is an
19 external object acting on the screen." So that's a fairly broad statement of
20 what drag means. And then you look at how Ahn uses those words in other
21 places, and they are all consistent with the interpretation that 118 should be
22 read consistent with 18(a), which is, "As the finger drags, the graphic
23 shadow stays still."

24 Now, what happens to the graphic shadow after that, you know, is
25 essentially irrelevant to whether it meets the claim of moving with finger.
26 And we can look at 18(a) and the consistent use of that same language from

1 118 in Ahn and show that, at least while that finger is moving, the graphic
2 shadow is not.

3 JUDGE SMITH: Thank you.

4 JUDGE QUINN: Can we jump to Chaudhri and talk about the
5 motivations to combine? I understand that you - you've got quite a few
6 arguments, but I - I'm interested in the arguments that you've made about
7 how the optical transitions or changes in Chaudhri are to increase intensity.

8 The optical intensity changes are to increase intensity, not so much
9 to blur. I'm summarizing, obviously, but if you can - if you can go into - in
10 - into that more - in more detail, because I want to square that with
11 Paragraph 79 of Chaudhri, which the Board relied on in the position on
12 institution to show that there was a fade-out situation.

13 MR. ROBINSON: So maybe if we were starting briefly with
14 Paragraph 79 -

15 JUDGE QUINN: That's fine.

16 MR. ROBINSON: The petition does not cite Paragraph 79 for
17 limitation [1.d.i].

18 JUDGE QUINN: Well, it sets it generally. It's in there. It
19 describes it.

20 MR. ROBINSON: So it does not cite it for the blur. It ends up in
21 [1.d.ii] as, I guess, tangential - attempting to support this notion of [1.d.ii].
22 But in [1.d.i], when you're looking at, okay, what are the teachings of
23 Chaudhri that we're going to look to blur the clock? Paragraph 79 is not
24 cited for that limitation. It's not. The - and I can point you to the pages that
25 Petitioner -

26 JUDGE QUINN: Well, I mean, they cited a range of - for [1.d.i],

1 they did cite a range of paragraphs from like 70 to 79 generally.

2 MR. ROBINSON: So that actually makes more sense to me now.
3 And I think I can explain what happened here. For [1.d.i], the first thing we
4 cite is Exhibit 1003. That's actually their expert's declaration, Dr. Terveen,
5 Paragraph 70 to 79. They don't actually cite to Paragraph 79 of Chaudhri,
6 which I believe is 1005.

7 JUDGE QUINN: I see that. Yes.

8 MR. ROBINSON: So -

9 JUDGE QUINN: But then in Page 42, at the end of - yes. Page
10 42, they do cite specifically Paragraph 79. But you're saying that is for
11 limitation [1.d.ii]?

12 MR. ROBINSON: Yes, Your Honor.

13 JUDGE QUINN: Okay.

14 MR. ROBINSON: That was for a different limitation.

15 JUDGE QUINN: All right.

16 MR. ROBINSON: Ultimately -

17 JUDGE QUINN: Nevertheless, the Board looked at that at
18 institution and noted that involvement.

19 MR. ROBINSON: So a very important development today is that
20 Petitioner's Counsel conceded that the fade-in, Paragraph 79, in Chaudhri is
21 not consistent with Ahn's user interface states.

22 So Your Honor asked the question - posed the question:
23 "Petitioner's Counsel, aren't we just taking the fade-out and leaving the fade-
24 in?"

25 And - "Yes."

26 "Why?"

1 "Because the fade-in is not consistent with Ahn. It doesn't fit."

2 So that's a great sort of example of -

3 JUDGE QUINN: Well, it makes sense to me that what he said
4 was, if you're starting with Ahn, and you know where you want to get to
5 with Ahn, which is, you see a menu and at this - and at some point there's a
6 blurring of the object. Then the only teaching you're looking for is how does
7 the blur happen, not necessarily how does the menu appear. That's how I
8 understood what he was saying.

9 MR. ROBINSON: Okay. Well, if all we're looking at is, how
10 does the - how does the blur happen? I guess, then - I mean, it matters how
11 we phrase the question, I guess. And so I'll start there.

12 JUDGE QUINN: Okay.

13 MR. ROBINSON: If we narrow it down to how does the blur
14 happen, then we - we've got to look at, why does the blur happen? What
15 does it do? And that leads to the motivations. The motivations are sort of,
16 you know, because there's blur. Well, you know, because of the -

17 JUDGE SMITH: Because - I'm sorry. I didn't hear that. Can you
18 repeat that? Because of what?

19 MR. ROBINSON: Sorry, Your Honor. So the first motivation is,
20 why do we need to go to Chaudhri? And it's because there's blur, and we
21 don't know how it happens. Well, respectively, it shows that the blur
22 happens when the menu is open to - ostensibly to distinguish the menu from
23 the clock that's behind it.

24 And so that's limitation - or sorry, motivation 2 and 3 largely is,
25 now you've got this blur to distinguish, but Ahn's already got the blur to
26 distinguish. And then it's to show progress of a gesture. But when you dig

1 into what Chaudhri shows for progress of a gesture, it's never blur by itself,
2 right? It's got this unlock image. It's got the unlock image 402 that moves.

3 The motivations, say, oh, look at the visual cues. But the visual
4 cues that Chaudhri describes along with that unlock image 402 - because it
5 says, "Unlock image 402 and visual cues," which is the channel in which it
6 moves, the external arrow that shows you which way to move it. But they
7 don't bring any of those external cues over from Chaudhri. It's sort of words
8 that feel like they belong, but nowhere do they consistently bring over the
9 teachings of Chaudhri.

10 And, Your Honor, I'm sorry, I strayed a little bit. But to get back
11 to your initial point of sort of they explicitly rely on the language in
12 Chaudhri that says, "We are increasing the optical intensity of the objects
13 associated with the second user interface state." Explicitly. And they don't
14 explain. There's no explanation of why would we then apply that to the
15 clock? Which is undisputedly associated with the first interface state in
16 Ahn.

17 So it's - it's - I guess, ultimately, they're not pulling a teaching of
18 Ahn of fading out the background except in Paragraph 79, which only came
19 in via the reply and which is only part of Paragraph 79.

20 The other thing I'll point out about Paragraph 79 is it's talking
21 about transitions between different applications. And it, again, is a fade that
22 happens after the gesture is complete. So even if we start with Paragraph 79
23 -

24 JUDGE QUINN: How do you know that?

25 MR. ROBINSON: So let me -

26 JUDGE QUINN: Because Petitioner said that all of Chaudhri's

1 embodiment, all of them, including 79, refer to a progressive change of
2 intensity; something that happens progressively during the gesture?

3 MR. ROBINSON: So Paragraph 76: "Upon completion of the
4 unlocked gesture, the device unlocks and displays on the touch screen user
5 interface objects associated with normal operation of the device." That is
6 the -

7 JUDGE QUINN: You just read from which paragraph?

8 MR. ROBINSON: That was Paragraph 76, Your Honor.

9 JUDGE QUINN: Of Chaudhri.

10 MR. ROBINSON: Of Chaudhri. Yes. And Paragraph 76 is in the
11 same section, "Unlocking a device via gestures," at 79. And so when you
12 get down to Paragraph 79, it is talking about different ways to sort of
13 execute that transition. So it's an unlock gesture transition specifically. And
14 it - it's really just describing the ways in which that transition can happen.

15 But we're in this unlock section. That transition doesn't happen
16 until the unlock gesture is complete. So even if the petitioner has gone
17 directly to Paragraph 79, Chaudhri doesn't have any suggestion of sort of
18 fading anything out before a gesture is complete.

19 JUDGE QUINN: I don't see how this Paragraph 79 makes clear
20 that this is only during - sorry. It's only happening after the unlock gesture?
21 Are you implying that because at this point in time you are in an application
22 and switching to another application, and therefore you must be unlocked in
23 order to access those applications?

24 MR. ROBINSON: Yes, Your Honor. I mean, that - that's the -
25 really the point of the unlock gesture. There's two things. So at the end of
26 Paragraph 79, there is a new section heading that somehow got merged from

1 the end of 79. It says, "Indication of progress towards satisfaction of the
2 user input condition." That's the heading for the next section that includes
3 the - some of the other paragraphs, I think 87, that were cited. Before that,
4 what it's talking about is these unlock gestures. So beginning - Paragraph
5 52, it's - the heading is, "Unlocking a Device Via Gestures." So there is
6 another paragraph - another figure here if we're able to find it. And that -

7 JUDGE QUINN: Okay. But it says - Paragraph 79 says that,
8 "The predetermined time interval may be in accordance with the unlock
9 gesture, such as the time it takes the user to perform the gesture." And that
10 is the time interval at which you are having the fade-in and fade-out occur.

11 So if it is happening during the unlock gesture, then it's really not
12 after the gesture is completed, is it?

13 MR. ROBINSON: It has to be after the gesture is completed.
14 There is no way for that interval to be predetermined for a gesture until the
15 gesture is completed. It just - it cannot be predetermined before the gesture
16 is completed. And that's consistent with figure 3, which shows a flow chart
17 that maintains the device and user interface locked state until the contact
18 correspond to unlock gesture using the image. So it's not until the gesture is
19 completed that it transitions.

20 JUDGE SMITH: Why would they have the fade-in and fade-out
21 have a time period that's the same as the time period of the unlock gesture if
22 it's not at the same time?

23 MR. ROBINSON: Your Honor, there - I don't believe that's
24 addressed in the record, but if I'm going to stand here today and speculate,
25 it's because the speed with which that gesture is completed may be an
26 indication from the user of how quickly they want to transition. This is

1 similar to - I guess, I would think of it as being similar to PowerPoint slide
2 transitions, where you click the button and, you know, one slide might fade
3 out, the other one fades in. But none of that happens until you complete the
4 transition.

5 JUDGE SMITH: Well, let me ask you this, then: What evidence
6 is there in the record to show that Paragraph 79 is talking about fade-in and
7 fade-out occurring after the gesture is completed?

8 MR. ROBINSON: Your Honor, I'd refer you back to the language
9 that Judge Quinn just quoted, which is the predetermined time length. If the
10 gesture is a user input, that - the length of that gesture can't be
11 predetermined until it's complete. And that - again, that reading is
12 consistent with the rest of this photo in Chaudhri, an unlock gesture being
13 complete before then -

14 JUDGE SMITH: The - let me make sure I understand what you're
15 saying. You're saying that the time interval can't be predetermined. So the
16 - this device is receiving a gesture, figuring out how long that gesture took,
17 and then applying that time interval to the fade in and fade out. Is that what
18 you're saying?

19 MR. ROBINSON: That's the only way that the time interval
20 accordance with the unlock gesture can be predetermined.

21 JUDGE SMITH: Okay. And the evidence that you have to
22 support that conclusion is just the language itself, and that's it?

23 MR. ROBINSON: I believe that Dr. Rosenberg addressed that in
24 his declaration. I will need to find that Paragraph -

25 JUDGE SMITH: Okay. Okay. That's fine.

26 MR. ROBINSON: - when I sit down.

1 I guess briefly on the fourth motivation, the - Judge Smith, to your
2 question earlier, Page 28 of the Patent Owner Response, and I believe it was
3 Paragraphs 81 through 82, which were cited there of Dr. Rosenberg's
4 declaration specifically called out the false binary -

5 JUDGE SMITH: I'm sorry, what - can you - one more time,
6 which pages of the response?

7 MR. ROBINSON: Page 28 of the Patent Owner Response.

8 JUDGE SMITH: Oh, okay.

9 MR. ROBINSON: Specifically called out that fourth motivation as
10 being a false binary, meaning there are many more options than just blur
11 during the gesture, or blur on/off after the gesture.

12 Ultimately, even setting that aside, the foundational question as per
13 the Grunenthal case that's cited in the sur-reply, at least, it was Petitioner's
14 burden to show that there was a design need or market pressure, and it's not
15 there. What instead we've got is a contrived question of if we are going to
16 blur this during the gesture, do we do it gradually or in a binary fashion.
17 And, in fact, it's not even - it - it's even worse than that, because they set it
18 up as saying we can only do this gradually during the gesture or we can do a
19 binary after the gesture. And there's absolutely nothing to support that those
20 are the only two options.

21 For example, it could be binary, it could be gradual after the
22 gesture is completed, consistent with what Chaudhri describes. It could be
23 all kinds of different options that just - there - there's no credible evidence
24 to show that that binary choice is an actual.

25 JUDGE QUINN: What about the other motivations to combine? I
26 mean, this - I think Counsel sort of pointed to these other ones rather than

1 go deep into that one, and referred to them as the visual cue ones or things
2 that provide some kind of indication. What about those? I mean, in the end,
3 Chaudhri does have a very broad teaching of varying the optical intensity in
4 association with a gesture or something to that effect. Why shouldn't we just
5 take that as a motivation?

6 MR. ROBINSON: Well, Your Honor, the Patent Owner Response
7 goes through these in details, and I absolutely will as well. I want to start
8 with sort of the framing of the question, which is that Chaudhri has a broad
9 teaching of varying optical intensity. Chaudhri actually has a very specific
10 teaching of varying the optical intensity. The object associated with the
11 second interface state. So that would've been - in the combination, that
12 would've been the menu, not the clock.

13 The - so first one is that Chaudhri lacks implementation details of
14 how to blur. While Ahn says that you are going to blur, right? It shows it
15 blurred after the gesture is complete. So there's not really a - there - there's
16 nothing missing there. So if we're going to look to Chaudhri for
17 implementation detail, it's got to bring something else to the table, or it
18 wouldn't have motivated a POSITA to even look to Chaudhri in the first
19 place.

20 JUDGE QUINN: So are you saying that just because Petitioner is
21 using it as, say, general teaching of providing visual differentiations between
22 two states is a reason why you would look to Chaudhri? That because you
23 already have visual differentiation in Ahn and you want more details, that
24 you really need to go into the embodiments themselves of Chaudhri to know
25 how to implement those embodiments into Ahn? Is that what you're saying?

26 MR. ROBINSON: Not -

1 JUDGE QUINN: Inartfully, but as a general -

2 MR. ROBINSON: Your Honor, I think I understand your
3 question. I just noticed that the screen -

4 JUDGE QUINN: Oh, yes.

5 MR. ROBINSON: - went out, so I'm wondering if Judge Fenick
6 is still on?

7 JUDGE QUINN: Wait, let me check. Make sure that we don't
8 have a technical problem here.

9 I'm going to pause the clock here.

10 My apologies. We're still trying to solve the issue.

11 All right. We have regained our colleague.

12 JUDGE FENICK: Thank you.

13 JUDGE QUINN: You're good to go, Judge Fenick?

14 JUDGE FENICK: Thank you. Sorry.

15 JUDGE QUINN: No worries. I will resume then. Okay. I hope
16 you remember where we were because I certainly forgot what I said.

17 MR. ROBINSON: Thank you, Judge Quinn. I think you were
18 asking about the motivation to look to Chaudhri and what it was that
19 Petitioner asserts would've brought a POSITA to look from Ahn to Chaudhri
20 for implementation details.

21 JUDGE QUINN: Right.

22 MR. ROBINSON: I think I'll address the first and the third
23 motivations together. The first says there is a blank on the blurring and how
24 blurring is achieved. The third says that transparency translucency/blurring
25 help draw users' attention to the most relevant parts of the user interface. So
26 I guess common theme across those two is Ahn already shows the blurring

1 of the clock. That sort of drawing attention to the menu overlying the clock
2 does not depend on how that blurring occurs or the transition. So that part is
3 already accounted for in Ahn in terms of differentiating the menu from the
4 clock underlying.

5 The second motivation, which is, I think the only one that we
6 haven't addressed, I guess, explicitly yet, is to provide sensory feedback of
7 the progress in transitioning between the user interface states. Patent Owner
8 Response and Dr. Rosenberg's declaration go through in some detail to
9 explain and depict what that would look like. But the blurring of the clock
10 as a function of the - as a function of a gesture, and whether that would
11 actually indicate progress to a user. And it would not in the context of Ahn's
12 device.

13 JUDGE QUINN: Yeah. And I will premise this. My question
14 was more directed to an overarching principle and I do want you to address
15 Claim 6 since your opposing Counsel brought it up.

16 Just to close with that, I want to know what is your best argument
17 that what you are arguing concerning the motivations to combine with
18 Chaudhri? How is that not arguing that it's a bodily incorporation of
19 embodiments or that - yeah. Why don't we address it that way?

20 MR. ROBINSON: Sure. So it's not a bodily incorporation
21 argument. I'll start there. The - ultimately it comes down to - we've got to
22 start with the teachings of the references. So we start with the teaching of
23 Ahn. We start with the teaching of Chaudhri. And at some point, the
24 teachings of Chaudhri, in the context of Petitioner's theories, have sort of
25 been abstracted out beyond what Chaudhri discloses.

26 And so I guess I would start with the - kind of the premise of

1 Petitioner's theory of, does Chaudhri really have this broad teaching that
2 would have motivated any and all changes that the petition has articulated?
3 And I think that is where obviousness (INAUDIBLE) slips into hindsight,
4 right? As we start with the claims, we start with Ahn - okay. What do we
5 need to go look for? And I'm saying this is what the petition does.

6 What do we need to go look for? We'll go to Chaudhri. Well,
7 Chaudhri doesn't quite say that. Chaudhri says something else in a different
8 context. So what - how - we can abstract that out into sort of something
9 broader as a pretext for not only in sort of taking the teachings of Chaudhri,
10 but for dissecting the teachings of Chaudhri in ways that Chaudhri doesn't
11 suggest, right.

12 Fade in and fade out is a very sort of specific in a heading of
13 transitioning between user interface states. Very specific in sort of a specific
14 context, and said, well, okay, now we can look at this, you know, indicating
15 of progress towards satisfaction of the user input or the input gesture. I'm
16 paraphrasing a bit. And we'll look at that and say, oh, there's a transition in
17 optical intensity to the second user interface state. Well, that's not what we
18 need either.

19 We need it of the first user interface state. And not the whole
20 thing, just part of it. And so we're - we've now dissected kind of not only
21 from different volumes, different sections of Chaudhri. We've taken bits and
22 pieces of each one, all under this sort of umbrella of broad teaching of
23 optical intensity, to import this dynamic change into Ahn that Ahn itself
24 doesn't have. And I just - it's a little bit whack-a-mole in the sense that it
25 takes bits and pieces from so many different places that it's hard to
26 succinctly say why that doesn't do it.

1 And so the way that we've sort of tried to focus that discussion in
2 the Patent Owner Response is to say, one, they're slicing and dicing
3 Chaudhri's teachings. They've premised the whole thing on a faulty
4 interpretation of Ahn. And now if we take their motivation one by one,
5 either they're already addressed such that important pieces of Chaudhri or
6 modifying it with Chaudhri's teachings, however you want to phrase that.
7 Doesn't actually add anything for the purported motivations and/or sort of
8 works counter to what Ahn and Chaudhri both said.

9 So for example, if the whole - if one of the motivations is to show
10 progress towards satisfaction of a gesture, you're not going to take a piece of
11 Chaudhri that doesn't accomplish that goal in furtherance of that motivation,
12 right. So the visual cues, for example, for the unlock image moving on
13 Chaudhri. The unlock image in Chaudhri is 402. The visual cues are
14 actually all the things around it that let you see how far along you are in that
15 channel. You know, are you 10 percent done? Are you 50 percent done?
16 Are you halfway through the channel? They haven't brought over any of
17 those visual cues for the graphic shadow that they want to move. They just
18 said, okay, we're going to blur it because that's all we need.

19 And it sort of divorced that from everything else in Chaudhri.
20 From the context. From the things that it goes with. For the reasons to do it.
21 It just said, hey, we're going to show progress. And we - again, Patent
22 Owner Response and Dr. Rosenberg's declaration go through in some detail
23 to explain why that doesn't actually show progress of anything if you
24 implement it the way it's ever been implemented.

25 A few - unless there are any other questions on the independent
26 claims. I do want to touch on two dependent claims.

1 JUDGE QUINN: If you would like to.

2 MR. ROBINSON: Okay.

3 JUDGE QUINN: You are very short on time.

4 MR. ROBINSON: So -

5 JUDGE QUINN: I think the only claim you addressed was six.

6 And I think the only question I have for you on that one is about
7 the virtual layer. Whether it -

8 MR. ROBINSON: Why don't we start with that? I've got a few
9 others I want to touch on briefly, but -

10 JUDGE QUINN: Okay. Well, you asked - you saw my question
11 that I asked about whether the graphic shadow 1800, that is the only object
12 on that virtual layer. That's their contention. Is that consistent with the
13 claim and the disclosures of your patent?

14 MR. ROBINSON: So - all right. I'm trying to find the language
15 of the claim so I can speak directly to your - I think the - there it is.

16 I don't think the petition takes a position on the graphic shadow
17 being the only thing on the virtual display there. I think the petition sort of
18 waves its hands a bit and doesn't actually look to what is on the virtual
19 display there. I think the patent, if I remember correctly, says that a virtual
20 display layer is the one or more objects with the same apparent depth. I'm
21 paraphrasing a bit. So I don't - in the abstract, I don't know that a virtual
22 display layer needs to have more than one object, but I also don't think that
23 the petition has shown that the graphic shadow is the only object on its
24 virtual display layer.

25 JUDGE QUINN: Did you contend that there are more objects in
26 the virtual layer and therefore they should fade as well, if that is the case

1 with Claim 6?

2 MR. ROBINSON: What we argued for Claim 6 spanned Pages 67
3 and 68 of the Patent Owner Response. And it - it's maybe a little bit
4 different way of coming at this, is just to say that there is some inconsistency
5 with the petition's positions with respect to Claim 6 and its positions with
6 respect to Claim 2D.

7 JUDGE QUINN: Okay.

8 MR. ROBINSON: So I think I'll refer you briefly to Petitioner's
9 slide 43.

10 Now, this relates to Claims 5 and 17 that both depend upon Claim
11 2. Claim 2 requires the object to - I'm paraphrasing a bit - be nearer the top
12 than the bottom. There is quite a bit of back and forth in the briefs about
13 what that means. Whether the top edge is the top edge versus the right edge.
14 The menu that they've mapped to the right edge - the menu that they've
15 mapped is on the right edge. And for Claim 2, when it says it's got to be
16 closer to the top edge, they just - they turn it.

17 They turn the device and they say, well, it would've stayed - they
18 implied that it would've stayed locked and that the, you know, the view
19 wouldn't have changed. I think that's a little bit silly. If you look at it from
20 the device perspective that the right edge is still the right edge. If you look
21 at it from the viewer perspective, you know, you turn your head 90 degrees
22 to go with it. The right edge is still the right edge.

23 Ultimately, though, even if you look past all of that, when you get
24 to Petitioner's slide 43, Claims 5 and 17, dependent upon Claim 2, and so we
25 have to be talking about the top side. But your obviousness theory depends
26 on those implementations where the menu is displayed as emerging from the

1 left side. Full stop. No motivation. It - they explicitly map it to a menu
2 emerging from the left side instead of the top. All that they point to for sort
3 of trying, even if you don't - they say, even if you don't like the orientation,
4 well, it was known to put menus at the top.

5 The problem is Ahn had menus at the top. And these C3 again,
6 that don't blur the clock. You remember the premise of reading Ahn in the
7 first place was, how do you make the blur happen? But if the blur doesn't
8 happen, it all falls apart. There's no motivation to replace those menus with
9 a different menu that wouldn't blur the clock. It just - it all falls apart when
10 you start looking at the position of the menu relative to the - or the position
11 of the object and the claims relative to the screen.

12 With that, I'll save 38 seconds for rebuttal, just in case.

13 JUDGE QUINN: Thank you. I mean, we'll be fair. We'll let you
14 wrap up, but.

15 I'm glad we don't have any more technical difficulties.

16 Petitioner, you have five minutes and 20 seconds remaining.

17 MR. HOLT: Thank you, Your Honor.

18 I'd like to step back just for a brief moment and make sure we're
19 seeing the forest for the trees. The various displays in Ahn are set by Ahn to
20 be non-limiting examples. In fact, if you look at Ahn's own description of
21 its figures in, for instance, Paragraph 16 through 26, what you see again and
22 again and again, is the word example. These are examples of how you
23 might implement the menus being opened through a touch and drag gesture.

24 But the main point of Ahn is to show the benefits of opening those
25 menus from the edges of the display with a touch and drag operation.
26 There's no teaching in Ahn that would be rendered inoperable or otherwise

1 be inconsistent with the combination of Ahn and Chaudhri as it was
2 expressed in the petition. The movement of the menu, the movement and
3 dragging of the graphical shadow 1800, the gradual fading of the clock
4 widget in correspondence with the user's gesture, none of that changes the
5 underlying point and operation of Ahn as it's described.

6 That being said, to not do those things would be directly counter to
7 the teachings of Chaudhri. The entire point of Chaudhri is to provide visual
8 feedback in correspondence with the user's gesture. And that it's desirable to
9 have that because it's helpful to provide a better user interface experience. I
10 believe I heard my colleague say that we were abstracting out the teachings
11 of Chaudhri. But if you look at Paragraph 6 of Chaudhri, the very last
12 sentence says, "There is a need for sensory feedback to the user regarding
13 progress towards satisfaction of a user input condition that is required for the
14 transition to occur." This is a design need outlined specifically in Chaudhri.
15 You don't have to believe the experts. You don't have to take our word for
16 it. It is in the words of Chaudhri itself.

17 Chaudhri is telling us there's a need for this and Chaudhri is
18 providing ways in which you can accomplish that. And when you apply
19 those teachings in the context of Ahn, you have the graphical shadow and
20 menu following the user's finger, and the clock widget slowly fading out and
21 changing in its optical intensity in correspondence with the gesture. And I
22 believe I heard my colleague acknowledge that in Chaudhri, it's never just
23 about blur itself. He agreed, very helpfully, that it's blur and moving objects
24 in Chaudhri that are providing the feedback to the user. And that's entirely
25 our point. That's the -

26 JUDGE QUINN: (CROSSTALK). I think he was referring to a

1 very particular embodiment for the lock and unlock the screen. But I would
2 like for you to address, since you only have two minutes, the concept that,
3 you know, if Ahn has menus on all of the sides that you need to have menus
4 that are called for in the claims, in the only menu that Ahn shows that would
5 do any blurring is the one on the left-hand side. There are many other things
6 happening in Ahn with respect to other menus or even icons that are being
7 moved on the screen, and they don't blur anything.

8 So, you know, taking that as, you know, we see what we see in
9 Ahn and we can make inferences of what we see in that disclosure. But why
10 would we go from Ahn showing only the clock blurring when that one menu
11 comes in to the left and then start looking at how other menus do the same
12 thing when they're not described as doing the same thing?

13 MR. HOLT: Your Honor, I believe what I would say in answer to
14 your question is that we see certainly explicitly the clock widget being
15 blurred in Ahn, but we get an understanding of why that is, from Chaudhri.
16 Chaudhri tells us that it is beneficial to be able to differentiate between the
17 user interface objects that are of focus and those that are not. And we can
18 see in Ahn's figure that the very reason for that is at least the menu on the
19 right, when opened, would in fact be over top the clock widget. And if it
20 were not to be blurred, it would be hard to distinguish between the edges of
21 the menu and the clock widget. That concept would apply were it - the
22 clock widget to be with respect to any of the particular menus, whether it be
23 top, right, bottom, or left. And so it's Chaudhri that actually provides us the
24 rationale for that, Your Honor.

25 JUDGE QUINN: Okay. You're out of time. Thank you.

26 MR. HOLT: Thank you, Your Honors.

1 MR. ROBINSON: So ready?

2 JUDGE QUINN: Okay.

3 MR. ROBINSON: Yes. The point earlier about Chaudhri moving
4 images, was that Chaudhri's moving image by itself doesn't do anything. It
5 has to have a channel or some reference point. The last - the answer to the
6 last question is pretty emblematic of the petitioner's theories of the sort of
7 Ahn shows one figure with the clock for - under a menu so that he can infer
8 from that based on Chaudhri that Ahn would've blurred its clock when it
9 opened any of its menus. Ahn unambiguously disabuses us of that notion.
10 Figures - and if I briefly can put it?

11 JUDGE QUINN: Yes, you can put it.

12 MR. ROBINSON: Thank you. Figures 3(c) through 3(e) show
13 menus emerging from the top edge that do not blur the clock widget. Okay.
14 Figure 7(b) shows a menu emerging from the left edge that does not blur the
15 clock widget. And so it - again, it is - it was Petitioner's job to show that
16 these things were present in these references. And for the reasons discussed
17 today and explained in the Patent Owner Response, the Petitioner fails to do
18 so in several places for the independent claims as well as for numerous
19 dependent claims.

20 Thank you.

21 JUDGE QUINN: Thank you. All right. This concludes the oral
22 argument. Thank you to the parties for the very spirited discussion. It's
23 been very helpful for us to wrap up some of these cases. This matter is
24 submitted for final written decision preparation. I thank you again for
25 accommodating our technical difficulties and the audio issues, if there were
26 any. And we are now adjourned. Thank you.

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

IPR2024-01256
Patent 11,740,727 B1

PETITIONER:

W. Karl Renner
David Holt
Kenneth Darby
Jennifer Huang
FISH & RICHARDSON, P.C.
axf-ptab@fr.com
dth@fr.com
kdarby@fr.com
jhuang@fr.com

PATENT OWNER:

Eagle Robinson
Daniel Leventhal
Chad Wallis
NORTON ROSE FULBRIGHT US LLP
eagle.robinson@nortonrosefulbright.com
daniel.leventhal@nortonrosefulbright.com
chad.wallis@nortonrosefulbright.com