

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

DH INTERNATIONAL LTD.,
Patent Owner.

IPR2024-01322
Patent 9,022,294 B2

Record of Oral Hearing
Held: December 18, 2025

Before KARL D. EASTHOM, BRIAN P. MURPHY, and
MARY C. HOFFMAN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ERIKA HARMON ARNER, ESQ.
KARA A. SPECHT, ESQ.
WILLIAM C. NEER, ESQ.
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
901 New York Avenue, NW
Washington, DC 20001
(202) 408-4000
erika.arnier@finnegan.com
kara.specht@finnegan.com
william.neer@finnegan.com

KENNETH MAIKISH, ESQ.
Google LLC

ON BEHALF OF THE PATENT OWNER:

ROBERT P. HART, ESQ.
GREGORY GULLIVER, ESQ.
AddyHart P.C.
401 N. Michigan Ave.
Ste. 1200-1
Chicago, IL 60611
(847) 984-3020
robert@addyhart.com
gbgulliver@addyhart.com

The above-entitled matter came on for hearing on Thursday,
December 18, 2025, commencing at 9:31 a.m., via video teleconference.

P R O C E E D I N G S

- - - - -

JUDGE MURPHY: All right. Welcome to the PTAB this morning. I hope everyone got here okay. We're starting a little earlier than we usually do, so apologies for that if -- but that's the schedule I was given. I'm Judge Murphy. We have Judge Easthom and Judge Hoffman with us this morning. This is the oral hearing in IPR2024-01322, Google LLC vs. DH International Limited. Petitioner is challenging the patentability of Claims 1 through 20 of Patent Owner's U.S. Patent Number 9,022,294.

Okay. Let's start with appearances for Petitioner, please.

MS. ARNER: Good morning. It's Erica Arner, lead counsel for Google. I'm joined here by backup counsel, Will Neer, as well as Kara Specht, and Google's representative here is their patent counsel, Ken Maikish.

JUDGE MURPHY: Good morning. Welcome to the PTAB. And for Patent Owner, please.

MR. GULLIVER: Gregory Gulliver, representing DH International, and I'm here with Robert Hart, partner, who's also on the --

JUDGE MURPHY: All right. Welcome to PTAB. Good morning.

All right. So each side will have 60 minutes to argue. Petitioner will argue first, may reserve rebuttal time. In a moment, you can let me know how much rebuttal time. Patent Owner will respond. Patent Owner may also reserve some limited rebuttal time, responsive to Petitioner's arguments.

Let's see, Counsel for both sides, we have your demonstratives, so

1 thank you for that. No objections have been noted. Remember, they're not
2 evidence, right? They're not to introduce new evidence. I know counsel
3 (INDISCERNIBLE) know that. So reminder, please do try to reference the
4 slide number when you can during your presentation. I know sometimes
5 that gets lost but -- okay. With that, if there are no questions, Ms. Arner,
6 how much time would you like to reserve?

7 MS. ARNER: About 20 minutes.

8 JUDGE MURPHY: Okay. All right. So I have 40 minutes.

9 MS. ARNER: Perfect.

10 JUDGE MURPHY: And the two-minute warning I'll try to give
11 you.

12 MS. ARNER: Thank you. Good morning and may it please the
13 Board. The petition and its evidence prove that the claims of the '294 Patent
14 would have been obvious over the Mooney reference alone, or Mooney in
15 combination with Lee. Patent Owner's arguments here mostly stem from the
16 fact that Mooney discloses much more than the '294 claims. But that does
17 not change the fact that Mooney would have rendered the claims obvious
18 alone or in combination with Lee.

19 I'd like to start with a brief overview of the '294 Patent and Claim 1
20 on Slide 5. The '294 Patent describes -- and we have annotated Figure 4
21 here on the slide -- a portable electronic device which is claimed as a
22 cellphone, and it communicates over multiple different communication
23 links. The patent explains and the claims describe two transceivers in the
24 phone, a first transceiver and a second transceiver, which we have color
25 coded as green and red, respectively.

26 The first transceiver is used to communicate with a first

1 communication link, which is shown in green as well, and the second
2 transceiver, a 122 here, is -- communicates over a second communication
3 link shown going to the internet in red. The phone decides which of those
4 different networks to use based on the state of a data conveyance switching
5 element, which we stated in orange on the slide. And the switching element
6 is set to either a first state or a second state. And that dictates whether it
7 uses the first transceiver or the second transceiver.

8 That state is set according to whether the phone receives what's
9 called an activation cue, something we'll be talking a lot about, by the cue
10 receiver in the phone. If the activation cue is received, then the switch is set
11 to the first state. If the activation cue is not received, it's set to the second
12 state. And then the appropriate transceiver and communication link is used.

13 Turning now to a brief overview of Mooney on Slide 6.

14 JUDGE MURPHY: Counsel, let me stop you there one --

15 MS. ARNER: Yes, please.

16 JUDGE MURPHY: So the activation cue, does that have to be
17 received by the electronic circuit before the data exchange is initiated?

18 MS. ARNER: Does the activation cue have to be received before,
19 in the claims?

20 JUDGE MURPHY: To set the state -- the switching?

21 MS. ARNER: The state of the phone has to be set.

22 JUDGE MURPHY: Before the data is exchanged.

23 MS. ARNER: Yes. Before the call is placed.

24 JUDGE MURPHY: Okay.

25 MS. ARNER: Yes, that's correct. And it is in Mooney. And I'll
26 show you how that's described specifically in Mooney. So Mooney

1 describes what they call a three-in-one or a multimode phone. And at issue
2 here are two of the three modes shown on Slide 6 as the cordless phone
3 mode which communicates over a Bluetooth link, or the cellphone mode
4 which communicates over a cellular network. And like the last slide, we
5 have highlighted those in green to represent the cordless phone over the
6 Bluetooth link being the first mode and then our first transceiver and then
7 the cellphone connection being the second.

8 Like the '294 Patent, Mooney describes deciding which of those
9 two communication paths is used based on what mode the phone is in. To
10 your question, Judge Murphy, throughout Mooney, when it talks about
11 placing a call or establishing a call, it talks about that being dependent upon
12 the state of the phone.

13 JUDGE MURPHY: Okay.

14 MS. ARNER: And we can talk more about the timing of that and
15 kind of where that's shown, but that's really what Mooney is about. And
16 Mooney describes in its background that in conventional three-in-one or
17 multimode phones, it would be a manual switch. The user would say, I want
18 to use my cordless base in the house perhaps, and I want to use a cellular one
19 when I'm leaving the house; and it would be a manual switch.

20 And what Mooney describes is automating that switch to make it
21 easier to use based on the signal -- the Bluetooth signal, and we'll talk more
22 about how that works. But that's really what's described by that automatic
23 switch over module. It switches between the modes or the communication
24 paths between the first and second, the cellphone and the cord -- or the
25 cordless and the cellphone.

26 I'll start with activation cue. To your point, Judge Murphy, the

1 questions will come around the activation cue. So I thought I'd start with the
2 claim construction of that term on Slide 8.

3 JUDGE MURPHY: Yeah, that's great. Thank you.

4 MS. ARNER: Okay. Perfect. So the parties primarily agree about
5 the meaning of the activation cue and that it needs to be something that is
6 recognized by the electronic device as being an activation cue. And that is
7 recited in Element [1.e], the cue receiver. And we'll talk about the mapping
8 to the cue receiver, but I wanted to make sure we got to the construction
9 here.

10 So the difference between the parties' constructions is primarily
11 whether the activation cue needs to be this predetermined indicator that the
12 Patent Owner urges. We have an excerpt from the '294 Patent here on Slide
13 8 that shows sort of what the -- what little the patent says about an activation
14 cue. It's in the form of a data communication of a specific type which will
15 be recognized by the phone as an activation cue, for example, a
16 predetermined bit sequence.

17 And so you can see both parties have followed that recognized
18 language as the construction. And then Patent Owner takes that example
19 and tries to import it into the construction. But --

20 JUDGE MURPHY: Yeah. Let me ask you about that --

21 MS. ARNER: Sure.

22 JUDGE MURPHY: -- kind of cut to the chase, at least for --

23 MS. ARNER: Please. That's what we're here for, your questions,
24 so I'm happy to give a speech. But really, I'd rather answer your questions.

25 JUDGE MURPHY: Much appreciated. So the notion is -- I guess
26 my question is, if the cue or signal is not predetermined, right, how would it

1 be recognized as an activation cue to set the switch?

2 MS. ARNER: Right. So there has to be something that is
3 recognizable. And so to the extent the Board thinks that predetermination is
4 required in some way, although I don't think that's the correct construction,
5 there must be something that is recognized. And if I can just take you ahead
6 to -- let's go to Slide 15. This addresses that point, I think, which is the
7 recognition of the cue.

8 And really, if you think about how can it be recognized if there's
9 not something known about it in -- before, I think you're right. I think there
10 must be something there. Does it have to be a predetermined bit sequence
11 which is something that Patent Owner has argued or specific format? I
12 mean, that's, you know, clearly an example.

13 JUDGE MURPHY: Well, I think they acknowledge that's an
14 example.

15 MS. ARNER: Mm-hm.

16 JUDGE MURPHY: So I think the more important issue is the
17 notion of predetermined.

18 MS. ARNER: Right. And I think what I would say there is the
19 predetermination is linked to the fact that it's recognized that it -- by being
20 -- it has to be something that's recognized. So that means there must be
21 some knowledge of what it's going to be. And so if we think about our
22 mapping in Mooney, the recognition of this -- the Bluetooth signal, it is
23 known. A Bluetooth signal -- the Bluetooth protocol is in both the phone
24 and the base. And so that is something that is arguably predetermined.

25 JUDGE MURPHY: I was wondering, if you think in terms of
26 Patent Owner's position on activation, are they arguing for a negative

1 limitation? In other words -- at least they can respond to that. But my
2 understanding of the argument is that it has to be a specific type of cue or
3 signal that's predetermined in some way so it's recognized as a, quote,
4 "activation cue," and it's not, if you will, an ordinary --

5 MS. ARNER: Bluetooth signal?

6 JUDGE MURPHY: Yes.

7 MS. ARNER: Yes. I think that is one of --

8 JUDGE MURPHY: Okay. Don't tell me --

9 MS. ARNER: I believe that is one of their arguments, that it has to
10 be -- among other things, one is that it has to be a predetermined. And I
11 agree it doesn't have -- I think they've even said it doesn't have to be a bit
12 sequence, but it has to be predetermined. It has to be only for the use as an
13 activation cue. It has to be the first thing received. We can get into the
14 timing maybe a little bit later. But I do think that's one of their arguments,
15 and that's not supported by the claims or the specification, which really talk
16 about it in terms of being something that is recognized by the phone that
17 causes whatever else is in the phone.

18 JUDGE MURPHY: It says it has to be "of a specific type
19 recognized by an activation cue." So the --

20 MS. ARNER: The specification, so then are you -- that would be
21 maybe importing other limitations instead of predetermined.

22 JUDGE MURPHY: Maybe.

23 MS. ARNER: Maybe then we're going to import that it needs to
24 be this specific type. But I think however you try and carve it up, the "only"
25 doesn't really make a lot of sense, besides the fact that that's not in the claim
26 language. It's not in the specification. I would argue that it's not -- it doesn't

1 say only used for an activation cue. It also wouldn't make sense because the
2 patent also says that the cue receiver -- which is where that activation cue
3 comes in, in the claim -- the cue receiver is the first transceiver. And so if
4 that's the case, the cue is coming into the transceiver. It's the same thing
5 receiving the cue.

6 It wouldn't really make sense to say that it can't also be things that
7 go through a transceiver because the patent says the transceiver is the cue
8 receiver. So I think that only argument, besides sort of contradicting the
9 claim language, not finding a real home in the specification, it also wouldn't
10 make sense in the case of the patent, the way the claims have evolved to be
11 very broad and say it's something that's received by the cue receiver and it
12 does what it needs to do in the -- it sets the state of the phone.

13 JUDGE MURPHY: Okay. Thank you.

14 MS. ARNER: All right. So as you were pointing out, most of the
15 questions I think will come around that. And because the Petitioner bears
16 the burden, I do want to start with the first of the disputed elements here on
17 Slide 12, just to summarize the disputed elements. Many are not disputed,
18 the mappings and the evidence, but the electronic circuit [1.a] is disputed
19 and then the cue receiver, activation cue, and the interactions there. So I'd
20 like to just touch on that briefly to make sure you have no questions and
21 you're comfortable with the mapping for [1.a] starting on Slide 13.

22 So [1.a], the claim language is there in the header of the slide, "an
23 electronic circuit capable of storing data therein, capable of processing data,
24 and capable of data input and output." And here, the petition and Mr.
25 Lipoff's declaration map this to multiple things in the reference, including
26 the three excerpts on this slide and other parts of the reference that show that

1 the phone of Mooney has an electronic circuit that's capable of doing all of
2 these things. And so that first excerpt explains the storing piece and one
3 example of storing described in Mooney, which is that these three-in-one
4 phones can store things like phone book data, call history, and user
5 preferences.

6 In addition, in that next excerpt, Mooney explains the multiple
7 different networks that are used by this phone and the different modes. And
8 so in that excerpt there, explains that a multimode cellphone 100 -- that's the
9 one we've been looking at in the diagram -- includes multiple functional
10 modes, cellphone mode, piconet cordless telephone mode, 100a and 100b.
11 Those are really the ones that we're talking about here.

12 JUDGE MURPHY: Right.

13 MS. ARNER: Right? And then in that last excerpt, the choice of
14 the mode or the assigning of the mode is described, and it explains that to
15 initiate, to establish, or to switch the phone to another mode, such as the
16 cellphone mode or for a cellphone call, it's determined it can be manually,
17 again, sort of the old school, switching the mode or automatically by a
18 processor. And so, you know, we have these disclosures showing that
19 Mooney has the phone and Mooney has all of these capabilities that are
20 recited in [1.a].

21 JUDGE MURPHY: All right. So the question for me on the data
22 is in terms of what the petition is alleging, right?

23 MS. ARNER: Yes.

24 JUDGE MURPHY: This data is not the data that's being
25 exchanged once an activation cue is received, at least that's my
26 understanding.

1 MS. ARNER: Right. So you're referring to their argument that it
2 has to be the same data that is stored and then sent later for the conveyance.

3 JUDGE MURPHY: Well, two questions; first question is, is the
4 petition asserting that the data being exchanged after the activation cue is
5 received is voice - real-time voice data?

6 MS. ARNER: Yes. Certainly, the data that goes over the
7 conveyance mechanisms is the call data. That is data, I would argue, in a
8 cellphone, that's what it's sending, but it's not sending the phone book data.
9 That's just one example of the storing --

10 JUDGE MURPHY: Right. Not sending stored data.

11 MS. ARNER: Which is not required by the claims.

12 JUDGE MURPHY: And the dispute as I understand it is regarding
13 the claim construction. Does it have to be stored data, or does it --

14 MS. ARNER: No. The claims do not require what kind of data,
15 no. There's no link in the claims between even the stored, the processing,
16 and the data input and output here. There's also no link in the data -- the first
17 data and the second data that's then sent the call data later.

18 JUDGE MURPHY: Okay.

19 MS. ARNER: Okay. All right. Any other questions on [1.a] or
20 data? All right. So then I'll turn to -- [1.e] and [1.f] kind of go together and
21 are intertwined. This is where the activation cue comes in, the cue receiver,
22 and the -- and then in [1.f], the activation cue setting or assigning the state of
23 the switch.

24 And so the mapping of the cue receiver, I mentioned this excerpt
25 before, but here it is so we can look at it together. On the bottom of Slide
26 14, where the '294 Patent explains that the transceiver is also a cue receiver.

1 And in particular in Claim 3, clarifies that the data transceiver can be -- or
2 the cue receiver can be that first data transceiver. And so there's really
3 nothing special about the cue receiver as far as how it maps. And that really
4 isn't the dispute. The dispute is really what it receives. Is it an activation
5 cue?

6 And the way that we have mapped it in the petition is that the
7 activation cue, this is a signal; it's signal-based switching. So the manual
8 switch is the -- what Mooney describes as the conventional way to switch
9 between the two modes. And then the innovation that Mooney describes is
10 making that switch automatic, based on coming into range with a Bluetooth
11 base or going out of the range of the Bluetooth base.

12 And so it is that signal but not just any communication or signal, it
13 is described in Mooney in a couple places as based on the quality or the
14 strength of the signal and the connection between the base and the handset or
15 the base and the phone. And so I'll just walk through a little bit of that
16 example from column 6. It's one that we look at and, I think, maybe one of
17 the places where this signal-based switching is helpful. And then there's
18 another one on a later slide I'll show you.

19 So again, the phone -- the multimode phone in Mooney has
20 multiple modes. And this describes the person is on their phone in cellphone
21 mode. And so when they arrive home, they sit down near their cordless
22 base, and the multimode phone is configured so that when a cordless
23 telephone link, for example, a Bluetooth link of good quality is established
24 with the base, which is the external source -- the base is external to the
25 cellphone, then the phone will allow the switchover to the cordless telephone
26 mode.

1 JUDGE MURPHY: So I have a question. So let me stop you
2 there.

3 MS. ARNER: I bet you do.

4 JUDGE MURPHY: I might have more than one.

5 MS. ARNER: That's fine. This is what I want to talk about.

6 JUDGE MURPHY: Well, time is limited, but, you know, we can
7 always extend that. But the way -- I want to make sure I understand the --

8 MS. ARNER: Please.

9 JUDGE MURPHY: Both sides' positions correctly, right? This
10 embodiment and moody -- Mooney, excuse me, is a switchover during the
11 call or mid-call.

12 MS. ARNER: Mm-hm.

13 JUDGE MURPHY: And as I understand Patent Owner's
14 argument, that does not suffice, if you will, to read on or teach an activation
15 cue that would cause the switch to set before data is exchanged.

16 MS. ARNER: Yes.

17 JUDGE MURPHY: And the reply as I understand it is saying
18 you're not relying on that embodiment. You're relying on the embodiment
19 where a call is initiated by Mooney from not during a call, this -- a switch
20 can happen when you initiate or establish a call.

21 MS. ARNER: Mm-hm.

22 JUDGE MURPHY: I want to make sure I'm understanding -- and
23 if I'm not right, please tell me.

24 MS. ARNER: I have thoughts --

25 JUDGE MURPHY: Okay.

26 MS. ARNER: A little bit of feedback. But yes, you're very

1 -- that's very close to what we're mapping.

2 JUDGE MURPHY: Okay.

3 MS. ARNER: They are not described as different embodiments in
4 Mooney. So we are not picking and choosing different embodiments.

5 JUDGE MURPHY: Okay.

6 MS. ARNER: They are different parts of Mooney, but the
7 example on column 6 here is one example where they are. The phone is in
8 the cellphone mode. They're on a cellphone call. They come in range. The
9 Bluetooth link is received and established. And then the switch is made.

10 That's an example of Mooney disclosing more than what the claims require.

11 The fact that there is a second phone call or that there's an existing
12 phone call does not change the fact that in Mooney, in multiple places -- and
13 I'll show you another one besides this -- it describes changing the mode of
14 the phone automatically, based on getting closer, having a strong signal or
15 not. And so in addition to this example where there's an existing phone call,
16 I might point you to Slide 16, which has that disclosure on the first excerpt is
17 that same one that we just talked about.

18 On the bottom one is another example of how the mode is
19 switched. And so in the bottom example, the multimode cellphone may
20 switch from cordless mode to cellphone mode when the user wishes to leave
21 proximity of the cordless base. And then it goes on to say, can be manual,
22 using the button or what we're mapping it to, it can be automatic. Here, it's
23 when the quality of the Bluetooth link is below a preset level, that may
24 initiate the switch to a cellular phone. And there's nothing here that says this
25 also has to -- it's not limited to just that there are phone calls going on.

26 And there are other disclosures in the patent, as well that Mr.

1 Lipoff pointed to, to explain that calls are placed in Mooney based on the
2 mode of the cellphone. And so it's an obviousness ground. And so, you
3 know, Mr. Mooney explains how the combination of those disclosures -- and
4 it's not just these. You mentioned establishment.

5 So, you know, Mr. Lipoff talks about things like in column 1 at
6 lines 30 to 35, talks about -- I think you were referring to that, Judge Murphy
7 -- the establishment of a telephone call with a cellphone network or cordless
8 telephone, depending upon which mode is on. The user initiates. The user
9 makes calls. The user makes calls in cordless modes. Mooney, throughout,
10 talks about the choice of the network being dictated when the call is made by
11 the state of the phone.

12 JUDGE MURPHY: Okay. So then I want to ask you a question
13 from Patent Owner's response.

14 MS. ARNER: Mm-hm.

15 JUDGE MURPHY: Okay. This is at page 27 on the response.

16 MS. ARNER: Okay.

17 JUDGE MURPHY: And again, I want to make sure I understand
18 both sides' arguments, and I would like your response to their position.

19 MS. ARNER: Mm-hm.

20 JUDGE MURPHY: So on page 27 of the Patent Owner response,
21 they argue, thus no link exists, right, without a call being set up and
22 established. No quality of signal can be determined for a link until a call is
23 actually established. And then they're talking about once the call is set up or
24 established, then there's a two-minute timer that starts, okay?

25 MS. ARNER: Sure.

26 JUDGE MURPHY: So it's not a direct quote, but it's close.

1 MS. ARNER: Yeah.

2 JUDGE MURPHY: But my question is, what is your response to
3 that argument?

4 MS. ARNER: Absolutely. Thank you. And I think they're pulling
5 those arguments from this example.

6 JUDGE MURPHY: Yes.

7 MS. ARNER: And that's why I wanted to make sure we talked
8 specifically about that because I do think they are trying to limit Mooney to
9 what this example says, the timer and the link and the call. But even this
10 excerpt in Mooney -- and we have little arrows showing on the side -- it talks
11 about the link being established, the quality Bluetooth signal being
12 established, then the phone allows the switchover. And there is a link
13 established between the cellphone or handset and the base using the
14 Bluetooth protocol, as the patent explains.

15 Similarly in the next one, it talks about the link failing. And so
16 without the signal being received, the switch is automatically made from
17 cordless phone to cellphone. And so Mooney, in multiple places, talks about
18 the link being separate from the call and established before the call. And
19 actually, the Bluetooth specification, which I'm happy to get into as much
20 detail as you want, it's not really needed here because Mooney is what is
21 describing these things.

22 But the Bluetooth specification does -- and we point out in our
23 reply, it explains that of the Bluetooth protocol, the Bluetooth connection is
24 established not before every single call, that it is when you become within
25 range, that's when the Bluetooth connection is established. And so that
26 separation of the Bluetooth link -- the Bluetooth signal and the call is also

1 clear in the Patent Owner's own evidence. That's Exhibit 2003.

2 JUDGE MURPHY: So if a call is already on -- transpiring through
3 the -- say, the cellular, and then you want to go through the Bluetooth -- so
4 you come in close to the house, switch over to the Bluetooth -- is it your
5 position that even though you're still talking to the same person, that second
6 set of data that goes over the Bluetooth link is sufficient to meet the data
7 transference?

8 MS. ARNER: That's not what we're mapping for [1.h]. So maybe
9 if I can turn to that element -- that's where the data conveyance actually
10 comes in. We don't need the second call. The second call is superfluous and
11 kind of irrelevant to our mapping.

12 JUDGE MURPHY: Okay.

13 MS. ARNER: Maybe if we can look at [1.h] because that's really
14 where I think your question comes in, which is the phone is dialed, the
15 invariable activation command is sent, right, that's that -- setting up a call.

16 JUDGE MURPHY: Right.

17 MS. ARNER: That comes in. There's no talk in the claims. They
18 don't actually require switching the states ever. They do have something
19 called the switching element, but all it does is assign a first state or assign a
20 second state based on whether the cue is received. It never has to switch
21 anything. And likewise, the data or the calls being switched is not
22 something that's required by the claims.

23 And that's really where Patent Owner's crafting a lot of their
24 arguments, based on Mooney talks about all these other things. Mooney
25 talks about a call and then switching to another call and the phone number is
26 from caller ID. That's not what we're mapping. Our mapping is very simple

1 compared to what they're trying to argue.

2 We have the activation cue being received. The Bluetooth signal
3 quality, once it's quality, the link is established. That's what sets the mode in
4 the phone, and that's what's required by the claims. And then when you get
5 to [1.h], this is the -- to your original question, Judge Murphy, the mode is
6 already set in the phone when the call is placed.

7 And so the user dialing the phone is the trigger. That's in the
8 claims. The send or call button establishing that call is the activation
9 command. And it's invariable because it goes over whichever network is
10 already determined by the state that the phone is set in. And that's where we
11 look at some of those other pieces about initiating, dialing, making a call,
12 based on the state.

13 JUDGE MURPHY: Right. And that initiates the phone call or
14 switches the phone call if it's a continuing phone call to a different mode,
15 based on the switch, right?

16 MS. ARNER: Yes.

17 JUDGE MURPHY: Okay.

18 MS. ARNER: But the call switching is not actually required to
19 meet the claims. And the fact that there is this additional functionality in
20 Mooney that you could go from one call to another, that's extra, but that's not
21 even required by the claim. The signal is received whether you're on a
22 phone call or not. Maybe you're just coming, you dial the trigger, you send
23 the activation command, and the call goes -- you don't -- you're not choosing
24 the network at that point. The network is already set based on the mode of
25 the phone.

26 JUDGE MURPHY: And it's invariable because regardless of the

1 phone number you're dialing, the command is the same.

2 MS. ARNER: That's right.

3 JUDGE MURPHY: And the switch has been set.

4 MS. ARNER: That's right. It establishes the call. At that point,
5 the user is not choosing. It's going according to what phone -- and that's
6 where we go back to some of those -- you mentioned the citations to the
7 parts of Mooney that describe initiating, making calls, establishing them,
8 depending upon which mode the phone is in. And that's Lipoff in his
9 declaration 84.

10 That language was really used with respect to Element [1.b], which
11 is where the introduced -- where those terms are introduced. And that was
12 not actually disputed by the Patent Owner. So the fact that a phone call is
13 made by a user that triggers an invariable activation command, none of that
14 was disputed. That's the dialing is the trigger. The send or the establish the
15 call is the invariable command. And then when you get down to [1.h], it
16 goes to whichever network according to the state being set.

17 JUDGE MURPHY: Okay.

18 MS. ARNER: Just in case there is any question about whether
19 -- what we're talking about in Mooney being signal-based automatic setting
20 of the mode in Mooney, based on the Bluetooth signal being received or not
21 being received as you move towards or away from the base, that's the signal-
22 based mode setting in Mooney. In case there is any question in the mind of
23 an ordinary skilled artisan at the time of the invention, whether that signal-
24 based setting happens before a call, maybe they're confused by the same
25 thing that we're talking about, the existing call, that is where they may have
26 looked to Lee. And so I'd like to turn to the Lee secondary reference for just

1 a moment on Slide 23.

2 Lee describes a dual-enabled device that routes calls alternatively
3 over a Bluetooth or a cellular network. And Lee discloses specifically the
4 discovery process that it's called -- and we have the figure here on Slide 23,
5 where the phone determines whether or not there is a strong enough
6 -- without interference -- Bluetooth signal. And if so, then very clearly
7 shows if the signal is there, yes. Then you connect to the Bluetooth hub and
8 calls then go over Bluetooth.

9 If not, if there isn't the Bluetooth signal, so the signal is not -- the
10 activation cue is not there, then it goes to the cellular network and it
11 connects to something they call the base transceiver station, which then
12 communicates calls over cellular network. And so this determination based
13 on the strength or absence of a signal before calls are made is clearly taught
14 in this discovery process of Lee.

15 I'll just go briefly to Slide 27 which shows the motivation to
16 combine. And the one I'll focus on in particular is the presence or absence
17 of interference in the signal, which is talked about -- this is Mr. Lipoff's
18 declaration with the petition. And in that first excerpt, he talks about this
19 discovery process and looking at the -- whether the Bluetooth network is
20 used, for example, when the cell network is unavailable or subject to
21 interference, such as if you're within a building or vehicle, and then using
22 the cellular network when the Bluetooth network is unavailable or subject to
23 interference, and so -- such as when you're outside and you're out of range
24 from the Bluetooth base.

25 And so this is very similar to the signal-based decision and it's
26 reducing interferences -- interference in the signal or avoiding interference

1 in the signal. And that's one of the motivations to combine that was
2 proposed by Mr. Lipoff and the language there is shown in paragraph 133
3 from his declaration. And so to the extent there is any question about that
4 timing, specifically with respect to switching the modes of the Mooney
5 phone prior to the call being placed, when the switch is based on signals,
6 then Lee is available and would have been obvious to combine.

7 I'll touch just briefly on a few of the dependent claims that are
8 disputed. I think they're pretty clear from the briefing, but if there are any
9 questions, I'm happy to answer them and recognizing that Petitioner carries
10 the burden on all of the claims.

11 For Claims 8 and 16, these add the concept of the phone being in
12 close proximity when it is within range in order to receive the activation cue.
13 And the Patent Owner has proposed several different potential constructions
14 of what that might mean, close proximity. We think the mapping is clear.
15 The Bluetooth standard is what we're using for the within range of the base.
16 And the Bluetooth standard described in Mooney has this 20-to-100-foot
17 range which encompasses whichever of the -- if the Board decides to
18 construe it. We don't think any construction is needed. We think the
19 mapping is pretty clear.

20 JUDGE MURPHY: Isn't it really a functional description in the
21 spec -- in the '294 specification?

22 MS. ARNER: A functional description.

23 JUDGE MURPHY: Yeah. But close enough so you can --

24 MS. ARNER: Close enough so it works.

25 JUDGE MURPHY: Right.

26 MS. ARNER: Yes. And that's really why there is this range, right,

1 in a wireless, you know, scenario. And the Bluetooth is what's used in
2 Mooney. The range is there. And the whole mapping is about, are you in
3 close enough proximity for the signal to work or not and to have that quality
4 of the signal work or not?

5 JUDGE MURPHY: Okay.

6 MS. ARNER: Okay? And then briefly, Claims 13 and then 19,
7 Element [i], introduced a third data and a fourth data. Claim 13 introduced
8 the third data, and you -- it corresponds to or represents the first data. So if
9 you remember the first data is using the first transceiver, which is over the
10 cordless network in Mooney. And so when that third -- that first data is
11 conveyed in Mooney, then also forwarding third data to be displayed, that is
12 representing the first data.

13 And so in our mapping, we pointed out that Mooney discloses
14 when the cellphone switches modes that there can be data sent to the user
15 using, for example, the dual tone or multifunction tone 7 and 9, that those
16 tones could be given to the user. They even say it could represent S and W
17 for switch. So when that phone is - you know, the data is going to be sent
18 over the Bluetooth, that'll be that first transceiver that the user could be
19 given a tone to notify them of that switch.

20 And the language in the claims is broader than that. It's display.
21 And so Mr. Lipoff said that it would have been obvious to display the words
22 switch or Bluetooth -- I guess is the example we gave. Because it would
23 also convey data for the same reason. And that's consistent actually if you
24 look in the '294 Patent itself. It says that its display could also be replaced
25 by a speaker and that any input to be displayed could be translated into
26 speech and displayed that way.

1 So this mapping is similar to that and is for Claim 13, where it's
2 third data, which is about the first data going over the cellular -- or sorry, the
3 cordless mode. And then on the next Slide 31, [19.i] parallels that, but it's
4 got fourth data based on representing the second data. And remember, the
5 second data is the cell data.

6 JUDGE MURPHY: Right.

7 MS. ARNER: But otherwise, it's the same here and the mapping is
8 the same, that those tones would have been obvious to use when switching
9 from cell onto your Bluetooth. If there are no other questions then I'll
10 reserve the rest of my time.

11 JUDGE MURPHY: Any questions from other -- no? Okay.
12 Thank you.

13 MS. ARNER: Thank you.

14 JUDGE MURPHY: So you'll have 25 in reserve.

15 MS. ARNER: Thank you.

16 JUDGE MURPHY: All right. Counsel, do you wish to reserve
17 some surrebuttal or --

18 MR. GULLIVER: I'd like to reserve 10 minutes.

19 JUDGE MURPHY: Okay. All right. I'll start you on 50, and then
20 we'll go from there.

21 MR. GULLIVER: Good morning, Your Honors. My name is
22 Gregory Gulliver, and I represent the Patent Owner, DH International. I'm
23 here today to address five points and answer your questions: point one will
24 be the number of receivers; number two, link quality is not a received
25 activation cue; three, claim construction of close proximity; four, the
26 invariable activation command; and five, Dependent Claim 13.

1 I think some of your questions, Judge Murphy, dealing with link
2 quality will be answered when I get to point number two.

3 JUDGE MURPHY: Okay. Yeah. We'll take it as it comes, so.

4 MR. GULLIVER: In addressing point number one, the number of
5 receivers, we'll start with Patent Owner's Slide 15. Slide 15 is of Claim 1.
6 I'm going to be talking about the claim language since that's what matters in
7 this proceeding. We have three distinct receivers claimed in Claim 1 and all
8 the independent claims. We have a first data receiver, which is up there in
9 red. We have a second data transceiver, shown in blue. And we have a third
10 cue receiver; three separate receivers in every independent claim.

11 JUDGE MURPHY: Now, why does it have to be separate?

12 MR. GULLIVER: Because they're claimed as separate. They're
13 not claimed as together.

14 JUDGE MURPHY: Well, it says the cue receiver is operatively
15 linked to the electronic circuit for receiving the activation.

16 MR. GULLIVER: But there's three separate elements in the claim.

17 JUDGE MURPHY: Agreed.

18 MR. GULLIVER: And if you look at Dependent Claim 3, that's
19 where they say the first receiver can include -- or includes, I should say, it
20 doesn't say may, it says, "includes the cue receiver." That's where they get
21 combined. That's the only claim in the patent that combines them. And the
22 specification does support independent cue receivers. Support for three
23 separate receivers is found in the '294 Patent in column 5, lines 37 through
24 45.

25 JUDGE MURPHY: So if Dependent Claim 3 can include the
26 receiver, why wouldn't Claim 1 be broad enough to also --

1 MR. GULLIVER: Because it's claimed as a separate, independent
2 receiver. If you're going to say, well, why can't the cue receiver be
3 combined? Well, why can't the second receiver? All of a sudden, this claim
4 with three separate receivers has two claim -- or two receivers read out of
5 the claim. That's improper claim construction.

6 JUDGE MURPHY: Well, they're not being read out of the claim.
7 If the functionality is mapped, the question is, does it have to be a separate
8 device structure or --

9 MR. GULLIVER: Because the claim states "a first data
10 transceiver." A separate element. "A second data transceiver," that's a
11 separate element. "A cue receiver," that's a separate element. I mean, we do
12 have some active -- "for receiving an activation cue from a source external."
13 But the actual cue receiver in every independent claim is separate. And the
14 specification supports them being separate.

15 JUDGE MURPHY: All right. Tell me where that supports that in
16 the spec, please.

17 MR. GULLIVER: In the specification, column 5, lines 37 through
18 45; and column 6, lines 5 through 8.

19 JUDGE EASTHOM: I guess my question is, why are you saying
20 the cue receiver is not disclosed in Mooney, separate from the transceiver?
21 The way I understand your friend's position is that the cue receiver receives
22 his piconet functionality, so that would be a separate functionality from the
23 transceiver.

24 MR. GULLIVER: Mooney describes using the mapping that
25 Petitioner has, a first data receiver receiving all the Bluetooth.

26 JUDGE EASTHOM: Right.

1 MR. GULLIVER: Mooney has all the Bluetooth going to that
2 receiver.

3 JUDGE EASTHOM: Mm-hm.

4 MR. GULLIVER: The second data receiver has all the cellular
5 data going to that one.

6 JUDGE EASTHOM: Mm-hm.

7 MR. GULLIVER: Mooney has nothing going to the cue receiver.
8 The cue receiver receives the activation cue. If you include that in the first
9 receiver, that activation cue then goes to the cue receiver. It's not saying
10 take the data that was going to the first data receiver and call that -- what
11 was going to the cue receiver. That activation cue needs to be received.
12 And this is where we get into the claim construction of why there has to be
13 something that's -- I called it predetermined.

14 But there has to be something for this activation cue that goes to
15 the cue receiver, something that shows this can go there. And someone like
16 the Petitioner can't just say, well, the first data receiver is receiving
17 Bluetooth data. Lo and behold, that's going to be an activation cue. An
18 activation cue has to have some redefinition, some -- something that is being
19 received to cause the action.

20 JUDGE MURPHY: Well, does it have to be, for example, a
21 predetermined signal?

22 MR. GULLIVER: It has to be something that when the activation
23 cue receives it, it knows it's an activation cue. That's what predetermined
24 -- I mean by predetermined. The activation cue has to know it's receiving
25 the activation --

26 JUDGE MURPHY: Well, beyond receiving the signal to perform

1 whatever the functionality is, why isn't that sufficient?

2 MR. GULLIVER: If it's sufficiently defined to be received by an
3 activation -- by a cue receiver to cause that activation, then that would be
4 sufficient. But was it defined to be received by the cue receiver which can
5 be included -- included is the term -- with the first receiver?

6 Or are you taking something that's received by the first receiving
7 -- receiver normally, and this is now saying the activation cue is now part of
8 that so everything that the first data receiver receives, any of that stuff, can
9 now be a cue -- activation cue? And you're basically reading out -- or
10 you're expanding what was received by the first data receiver?

11 JUDGE MURPHY: Well --

12 MR. GULLIVER: Are you receiving activation -- any signals and
13 calling that signal an activation cue when it wasn't intended to be an
14 activation cue? Because the claim still requires an activation cue.

15 JUDGE MURPHY: What's the function of the activation cue?

16 MR. GULLIVER: When the activation cue is received, some
17 action occurs.

18 JUDGE MURPHY: Yes, what is that?

19 MR. GULLIVER: For the activation cue, it'd be setting up the
20 activation of the data to be transmitted. So does that answer your question
21 or --

22 JUDGE MURPHY: Well, the way I'm reading the claim is that the
23 activation cue, once it's received, assigns a first state to the data conveyance
24 switching element.

25 MR. GULLIVER: Yes, that's exactly right. A first state is being
26 assigned to that switching element. So a state is being assigned --

1 JUDGE MURPHY: So state signal is received and a switch is
2 assigned or set to a first state which allows a data communication to occur.
3 Why isn't that sufficient?

4 MR. GULLIVER: If the activation -- just setting the state, you've
5 read reception of an activation cue out of the claim, if you just say, well,
6 receive a message at the first data receiver, and then we cause the switching
7 later on, you've read the term, receiving an activation cue from an external
8 source. Oh, you've now moved that up to a message received by the first
9 data receiver. Now, there may be cases where that could happen, but we're
10 looking at the reference of Mooney.

11 Mooney receives all the Bluetooth data at the first data receiver,
12 and there's nothing received at the cue receiver or the independent claims.
13 So talking specifically about this case with Mooney as the reference, there's
14 not an activation cue. So that's the subtlety. There may be a case where
15 you're describing that could, but we don't have that evidence here. And it's
16 the Petitioner's burden to establish that. That has not been established here.

17 JUDGE EASTHOM: Can I -- I'm just still trying to follow your
18 argument, I'm sorry. So you're saying that Mooney -- Petitioner didn't map a
19 separate transceiver and a separate cue receiver. Is that the argument?

20 MR. GULLIVER: For the independent claims, they did not map a
21 separate cue receiver.

22 JUDGE EASTHOM: Okay. Well, I mean, I'm looking at their
23 figure, and they say the cue receiver. And then that's -- they point to a
24 transceiver and a cue receiver. The way I understand a transceiver is it's
25 something behind the antenna that receives the data, right?

26 MR. GULLIVER: A transceiver is a transmitter receiver.

1 JUDGE EASTHOM: Right.

2 MR. GULLIVER: Yeah.

3 JUDGE EASTHOM: And so it's receiving all kinds of data, right?

4 It's receiving the cellphone data. It's receiving voice data -- not cellphone,
5 but it's receiving the voice over the piconet.

6 MR. GULLIVER: Right.

7 JUDGE EASTHOM: It's the voice data --

8 MR. GULLIVER: A voice data and it's a Bluetooth signal that's
9 being encoded (PHONETIC).

10 JUDGE EASTHOM: And it's also receiving the Bluetooth signal
11 connection handshaking process.

12 MR. GULLIVER: Yeah.

13 JUDGE EASTHOM: Right?

14 MR. GULLIVER: All the Bluetooth --

15 JUDGE EASTHOM: It's got two functions, at least. It's got the
16 cue receiving function and the data receiving function.

17 MR. GULLIVER: It includes a cue receiver to receive the
18 activation cue.

19 JUDGE EASTHOM: Right.

20 MR. GULLIVER: Remember, first --

21 JUDGE EASTHOM: That's what I'm saying. I'm saying --

22 MR. GULLIVER: Let's say it was separate.

23 JUDGE EASTHOM: -- Mooney --

24 MR. GULLIVER: And then Mooney, they only talk about all the
25 Bluetooth data.

26 JUDGE EASTHOM: They're not saying the Bluetooth data and

1 the Bluetooth activation signal that tells you the signal level -- they're not
2 saying those are the same functional components of this receiver. They're
3 different. One receives a different --

4 MR. GULLIVER: The receiver in Mooney receives all the
5 Bluetooth information.

6 JUDGE EASTHOM: And that's fine because your Claim 3 says
7 that the transceiver includes a cue receiver.

8 MR. GULLIVER: Includes, but what does a cue receiver receive?
9 It receives the activation cue.

10 JUDGE EASTHOM: Right.

11 MR. GULLIVER: So the activation cue is separate from the
12 Bluetooth data.

13 JUDGE EASTHOM: Right.

14 MR. GULLIVER: I mean, so you include them -- that data. You
15 have the Bluetooth data. You have the cellular data. And you have this
16 activation cue. That activation cue still has to be received at that first data
17 receiver that includes the cue receiver.

18 JUDGE EASTHOM: If we can go to their Slide 6, I guess, they
19 have this transceiver, and it's a cue receiver. And the way I understand,
20 they're showing is the cue receiver receives the level -- the signal level from
21 the piconet, right?

22 MR. GULLIVER: No.

23 JUDGE MURPHY: It says -- okay.

24 MR. GULLIVER: Let me --

25 JUDGE MURPHY: So --

26 MR. GULLIVER: This brings us to one of my other points. They

1 receive -- Mooney teaches receiving a link of quality for two minutes.

2 JUDGE EASTHOM: Okay. And that's what I'm saying is
3 separate.

4 MR. GULLIVER: A quality link for two minutes. They don't
5 mention the word signal. Signal is not used. Signal is RF. You receive an
6 RF signal.

7 JUDGE EASTHOM: That's a signal. It's a signal. You can't --

8 MR. GULLIVER: Yeah. Mooney teaches a link, the link, a
9 quality link for two minutes. So it receives -- and quality is a measurement.
10 It doesn't receive quality. It measures quality. That measurement is
11 happening on the cellphone for two minutes. That's a timer. That's a timer
12 on the cellphone. That's not received. The claim language is receiving an
13 activation cue. So if a quality link, which is a measurement, for two
14 minutes, which is a timer, are on the cellphone, it's not received.

15 JUDGE EASTHOM: I don't understand that.

16 JUDGE MURPHY: What's being measured?

17 JUDGE EASTHOM: Yeah.

18 MR. GULLIVER: The quality.

19 JUDGE MURPHY: Of what?

20 MR. GULLIVER: The quality of the link.

21 JUDGE MURPHY: And what's the link?

22 MR. GULLIVER: The link is a set of bits, ones and zeros, on the
23 carrier, which is the signal.

24 JUDGE MURPHY: So that's a bit sequence?

25 MR. GULLIVER: So you're receiving bits. You're receiving
26 messages saying, yes, we're able to talk. We have this link and we can put a

1 call on this link for two minutes. But it's a determination within the
2 cellphone. There is nothing in Mooney that says the base unit, after two
3 minutes, sends any type of message, indication, or anything that, okay, we've
4 been good for two minutes. It occurs on the cellphone. And in Mooney, it
5 even mentions -- let me --

6 JUDGE EASTHOM: So is that a separate argument, and there's
7 not a -- oh, I thought you were saying there's not a separate cue receiver in
8 the cellphone?

9 MR. GULLIVER: There's not a separate cue receiver taught in
10 Mooney.

11 JUDGE EASTHOM: But the cellphone receives two different
12 types of signals. It receives the piconet stuff that establishes the link, the
13 handshaking business, whether you want to call it the signal first, it also
14 receives data. So it's receiving two different types of signals.

15 MR. GULLIVER: It's receiving the piconet data.

16 JUDGE EASTHOM: Mm-hm.

17 MR. GULLIVER: And it's receiving, you said, like voice data. Is
18 that what you're saying?

19 JUDGE EASTHOM: Yes.

20 MR. GULLIVER: That's being carried over the piconet Bluetooth
21 link. It's Bluetooth data. It's voice data encoded as Bluetooth data.

22 JUDGE EASTHOM: I understand one's a control signal and one's
23 data. That's --

24 MR. GULLIVER: Yeah. Once you establish the link, you have --

25 JUDGE EASTHOM: You have a separate cue receiver to receive
26 the control data, and you have another receiver that receives the data -- the

1 voice data.

2 MR. GULLIVER: But Mooney only teaches two receivers. So
3 you're saying there's --

4 JUDGE EASTHOM: No. That's over the piconet part. And then
5 the cellphone has another set.

6 MR. GULLIVER: But the piconet is the Bluetooth receiver.

7 JUDGE EASTHOM: Right.

8 MR. GULLIVER: It's receiving all the Bluetooth data -- the
9 Bluetooth-encoded voice data and there's a second -- there's only two
10 receivers for the independent claims. Now, if we're talking dependent Claim
11 3, yes, that's where you move up the cue receiver.

12 JUDGE EASTHOM: Yeah. Why don't you -- I think you
13 answered -- I don't understand.

14 MR. GULLIVER: Okay.

15 JUDGE MURPHY: I have -- I'm not recalling, excuse me, where
16 in your briefing you argued that a cue receiver has to be a separate --

17 MR. GULLIVER: We argued in the sur-reply that there's three
18 receivers in --

19 JUDGE MURPHY: Okay.

20 MR. GULLIVER: So I'm just talking about the claim language
21 requiring three receivers and then -- in sur-reply pages 3 and 5.

22 JUDGE EASTHOM: Are you saying that --

23 MR. GULLIVER: And then where we cite the Petitioner's reply,
24 page 12, is where we mentioned --

25 JUDGE EASTHOM: And so are you saying that Claim 1 requires
26 three receivers and then Claim 3 only requires two; is that --

1 MR. GULLIVER: I'm saying -- yes.

2 JUDGE EASTHOM: But you can't have that.

3 MR. GULLIVER: Well, we have three separate receivers in the
4 independent claim. And then you can combine -- the cue receiver can
5 include -- it's not saying it's in place of, it includes --

6 JUDGE EASTHOM: Oh, Claim 3 still has three receivers too,
7 you're saying.

8 MR. GULLIVER: But it's included, so it can use some of the
9 electronics in that. But it's included. If you look at the claim language, it's
10 include.

11 JUDGE EASTHOM: It's narrower than Claim 1, right?

12 MR. GULLIVER: Yeah. Because it --

13 JUDGE EASTHOM: So --

14 MR. GULLIVER: Because it's now being included with that one.

15 JUDGE EASTHOM: Claim 1 --

16 MR. GULLIVER: But it doesn't say it doesn't exist -- it doesn't
17 say it's replaced, it says it's included.

18 JUDGE EASTHOM: Okay.

19 MR. GULLIVER: Okay. I think we've covered a couple of my
20 points. But I'd like to cover the claim construction of close proximity.
21 Close proximity, Patent Owner's Slide 36 I'm going to go to if you bear with
22 me. We have in claim -- and close proximity only appears in Dependent
23 Claim 8 and Dependent Claim 16.

24 "A cellphone, as defined in Claim 1, wherein said first data
25 transceiver comprises a proximity transceiver for accomplishing a wireless
26 data exchange with the first external data exchange device through a direct

1 link representing said first communication link where the cellular phone is
2 conveyed towards a close proximity of the first external data exchange
3 device and within a range to receive the activation cue."

4 There's two parts there. The claim requires a close proximity and
5 within range. Petitioner has covered the within range, 20 to 100 feet in
6 Mooney. That's within range. But they did not address close proximity.
7 And it isn't just proximity, it's close proximity.

8 JUDGE MURPHY: So where is close proximity described in the
9 spec? I found two spots, but you tell me if there's more. Okay. I see a
10 discussion of close proximity at column 13, if you're with me, in the '294
11 claim --

12 MR. GULLIVER: Yes, I'm with you.

13 JUDGE MURPHY: -- at lines 30 -- it looks like 34, 35 through 37.
14 So let's start with that one.

15 MR. GULLIVER: Let me grab -- I have it here. So column what,
16 Your Honor?

17 JUDGE MURPHY: Column 13.

18 MR. GULLIVER: Thirteen.

19 JUDGE MURPHY: And I'm in the '294 Patent.

20 MR. GULLIVER: Yup. Okay.

21 JUDGE MURPHY: Exhibit 1001.

22 MR. GULLIVER: And you're saying lines --

23 JUDGE MURPHY: Starts around line 34 -- 33 --

24 MR. GULLIVER: Thirty-four.

25 JUDGE MURPHY: Yes.

26 MR. GULLIVER: And one embodiment will communicate with

1 links through, for example, a proximity transaction wherein devices 102, 104
2 are physically close to one another.

3 JUDGE MURPHY: Yes.

4 MR. GULLIVER: Yes. So my portable electronic device will
5 communicate with a second -- so they're physically close to each other. So
6 we know they're --

7 JUDGE MURPHY: And they're close to each other for the
8 purpose of carrying out a proximity transaction.

9 MR. GULLIVER: Yes.

10 JUDGE MURPHY: And that means they're close enough to carry
11 out the transaction, right?

12 MR. GULLIVER: Yeah, you are correct. And there is no
13 measurement of what close proximity is in the patent. I admit that. But
14 without reading in limitations to the patent but looking at all the examples
15 and identifying what is meant to help clarify what close proximity, we do
16 have a payment card holder approaches a debit machine on column 11, lines
17 23 through 24, I believe. We have -- allows data transmit within limited
18 range. So we have a limited range. It isn't the range where you can just
19 make the communication, but it's a limited range.

20 That has to be something less than just being able to register on a
21 network, such as within several meters, for example, which I believe is
22 column 15, 56 through 57. We talk about an appeal on page 41, a portable
23 electronic device is close to merchant exchange device, 16, 11 through 14.

24 JUDGE MURPHY: Yeah. That's the other place that I found a
25 discussion is in column 16, starting at line 11, and the patent says, quote, "If
26 portable electronic device 102 is close to a merchant data exchange device

1 104 and initiates a transaction through the communication thus established
2 with data exchange device 104, initial transaction data is first communicated
3 between them."

4 MR. GULLIVER: Yeah.

5 JUDGE MURPHY: Again, it's a functional description.

6 MR. GULLIVER: Right. We're looking to the spec to try to get
7 an idea of - we know there's two ranges. There has to be something closer
8 than the initial range. So we're just trying to gear that. And then we had our
9 expert that we relied on in POR, on page 41, that say the electronic device is
10 described as communicating with a data exchange device, such as an
11 automatic teller machine, computer interface machine, and cites to column 9,
12 8 through 11, the '294 Patent.

13 The '294 Patent also describes a proximity transaction wherein
14 device 102, 104 are physically close, which we're just talking about. In all
15 these examples, a person is physically close to the machine, and our expert is
16 saying to see the interface or operate the machine. So therefore, a POSITA
17 would consider close proximity to be 1 meter. So the expert is saying a
18 POSITA would know -- he's saying 1 meter, but you're close.

19 JUDGE MURPHY: Wait a minute. On page 8 of the Patent
20 Owner's response, you're asking us to construe close proximity to be 10
21 meters or less.

22 MR. GULLIVER: That's the first one. And then he further
23 construes it for the close proximity. He wasn't --

24 JUDGE MURPHY: When you say he, you're referring to your
25 expert?

26 MR. GULLIVER: I'm sorry, yes, our expert.

1 JUDGE MURPHY: But your expert witness -- or at least in your
2 Patent Owner's response, you're not citing to any description in the
3 specification to support that limitation, because there is none.

4 MR. GULLIVER: In the POR, we cited to page 41 or the section
5 we just read where we did cite to the -- or the expert cited to the patent, since
6 we're relying on the expert who was saying what a POSITA would
7 understand that to be.

8 JUDGE MURPHY: All right. Hang on one second.

9 JUDGE EASTHOM: So just while he's -- we're talking about you
10 have two elements in Claim 8. You're saying you have close proximity and
11 within a range, and they have to be different. Is that what you're saying?

12 MR. GULLIVER: Yes.

13 JUDGE EASTHOM: Okay.

14 MR. GULLIVER: Within a range is to receive the -- you're able to
15 --

16 JUDGE EASTHOM: And the range is smaller than the close
17 proximity?

18 MR. GULLIVER: The close proximity is smaller.

19 JUDGE EASTHOM: Than the range. Okay.

20 MR. GULLIVER: And we're saying the Petitioner has met the
21 range, but they haven't provided any evidence for close proximity even if --

22 JUDGE EASTHOM: But this is a system claim. So you don't
23 have to go anywhere with the -- as long as you're able to do that. Now,
24 maybe you want to argue about your method claim. Is that what you're
25 arguing?

26 MR. GULLIVER: Eight and 16, we're arguing.

1 JUDGE EASTHOM: Okay.

2 MR. GULLIVER: So like I said, it requires two. And even if you
3 disagree with the exact measurement, there's still -- they've only met one
4 limitation. They have the burden to meet both limitations. And the
5 invariable activation command is actually our fourth point. I'd like to move
6 on to that if you don't have any further questions.

7 JUDGE EASTHOM: Sure.

8 MR. GULLIVER: With the invariable activation command,
9 Petitioner has said they make a call, and it chooses a link. An invariable
10 activation command means it's not going to be changed once it's set. The
11 '249 Patent, column 10, lines 46, explains that the invariable activation
12 command will be decisive as to the type of data conveyance that will occur.
13 But Petitioner in the -- let's talk about the references of the Petitioner. The
14 Mooney reference describes where --

15 JUDGE EASTHOM: What is it again? An activation command is
16 something that the user can --

17 MR. GULLIVER: Invariable activation command is something --

18 JUDGE MURPHY: I'm sorry. Are you talking about a claim
19 construction argument?

20 MR. GULLIVER: I'm talking about how the invariable activation
21 command -- so it would be a claim construction because I'm saying the plain
22 meaning or -- that once it's selected, it's an invariable. You can't switch it.
23 And column 10, lines 46 through 51 state the invariable activation will be
24 decisive as to the type of data conveyance. But the person talking on their
25 phone walks a short distance, and it switches. It's not invariable. To be
26 invariable, it's decisive. You're going to use that type of link.

1 JUDGE EASTHOM: They're relying on the activation cue to do
2 the switching, I thought.

3 JUDGE MURPHY: They are.

4 MR. GULLIVER: They are, but it's an invariable activation cue,
5 meaning it's decisive. It's not going to change. But yet a person can walk,
6 and it changes. It's not invariable. What they're saying is an invariable
7 activation cue is just an activation. It's not an invariable activation. Claim
8 words have meaning.

9 JUDGE MURPHY: Well, look, you don't raise an invariable
10 activation command claim construction argument in your response. It's not
11 there.

12 MR. GULLIVER: Yeah. I'm not --

13 JUDGE MURPHY: So I want to understand.

14 MR. GULLIVER: Yeah.

15 JUDGE MURPHY: So are you arguing --

16 MR. GULLIVER: I'm saying --

17 JUDGE MURPHY: -- that Mooney doesn't teach --

18 MR. GULLIVER: An invariable activation command.

19 JUDGE MURPHY: That's because why?

20 MR. GULLIVER: Because it's not decisive where once it's
21 chosen, it's fixed. It can change.

22 JUDGE MURPHY: What can change?

23 MR. GULLIVER: The type of data conveyance can change once
24 it's been picked. The data conveyance is Bluetooth, voice data, according to
25 their interpretation, which I'm not going to -- do we agree or not, but that
26 changes to cellular data conveyance.

1 JUDGE MURPHY: Correct. And it uses the automated
2 switchover module to do that in --

3 MR. GULLIVER: But if it's invariable, that term has to mean -- it
4 means it has to be -- it has to stay on Bluetooth.

5 JUDGE MURPHY: The invariable activation command doesn't
6 set the switch. The activation cue sets the switch, right?

7 MR. GULLIVER: It sets the switch, but it's invariable. What
8 would invariable mean if it doesn't set and fix the data conveyance? And
9 how can it be decisive, as explained in column 10, line 46 through 51?

10 JUDGE MURPHY: But the invariable activation command is
11 triggered by a user pressing a button on the control device --

12 MR. GULLIVER: Mm-hm.

13 JUDGE MURPHY: -- which is separate from receiving an
14 activation cue with the cue receiver.

15 MR. GULLIVER: Yeah. But --

16 JUDGE EASTHOM: Are you conflating two different elements as
17 one? It seems to be you're arguing two different things and get them one to
18 one.

19 MR. GULLIVER: No. I'm not coming across as clearly as I want.

20 JUDGE EASTHOM: I think it's my mistake --

21 MR. GULLIVER: So I apologize for that.

22 JUDGE MURPHY: Look, Limitation [1.b], if we look at Claim
23 [1.b] on column 19, line 1 of Exhibit 1001, it's recited, quote, "user-triggered
24 control device operatively linked to said electronic circuit, said user-
25 triggered control device configured to be operated by a user via one of a
26 button, a keypad, et cetera, being operated -- after being operated, issue an

1 invariable activation command." So the control device when it's operated by
2 a user, issues the invariable activation command, right?

3 MR. GULLIVER: Yes.

4 JUDGE MURPHY: And that's not the receipt of an activation cue
5 at a cue receiver --

6 MR. GULLIVER: Right.

7 JUDGE MURPHY: -- for setting the switch of a data conveyance
8 switching element, right?

9 MR. GULLIVER: Right.

10 JUDGE MURPHY: And so the Petitioner's position with regard to
11 Mooney is that when a user dials a phone number, that triggers a command
12 to initiate a phone call based on the state of the switch and whether a quality
13 Bluetooth signal has been received or not received. What's wrong with that
14 argument?

15 MR. GULLIVER: Okay. Yes. What's wrong with that is it's
16 initiating -- dialing numbers is initiating a Bluetooth phone call. That
17 Bluetooth link is already there. Well, the virtual connection is there, and the
18 phone call establishes the link for two minutes. So all that's happening in all
19 this communication -- communication is already happening between the
20 base unit and the cellphone before you dial those numbers.

21 You have data going back and forth supporting a call that hasn't
22 been made yet because Bluetooth you registered, you're pinging, you know
23 that that data is happening. So when they're saying you're finally switching
24 voice data, well, you've already been sending data back and forth. You've
25 already been -- so you're just not starting. You're starting on type of data,
26 but that's going over the Bluetooth. I don't know if that answers your

1 question or not, but --

2 JUDGE EASTHOM: And then how does that not meet the claim,
3 but -- I mean, the fact that there's already handshaking going on before you
4 make the call? Which part of the claim --

5 MR. GULLIVER: Because the data has already been going before
6 --

7 JUDGE EASTHOM: And what the claim --

8 MR. GULLIVER: -- but just have been dialed, you've already
9 been communicating data. That's one of our arguments that we have in our
10 --

11 JUDGE EASTHOM: That's right. So you're saying you're not
12 -- because I was looking for that on your Patent Owner response, and I'm not
13 --

14 MR. GULLIVER: I believe --

15 JUDGE EASTHOM: Was it in your sur-reply?

16 MR. GULLIVER: It is --

17 JUDGE MURPHY: I think, page 27 of the response --

18 MR. GULLIVER: Yeah.

19 JUDGE MURPHY: -- where I started this morning.

20 MR. GULLIVER: Yeah.

21 JUDGE MURPHY: Are you saying that the data is being
22 exchanged before the call is initiated?

23 MR. GULLIVER: Yes. You have --

24 JUDGE MURPHY: But when the -- a form of data which is
25 communication with the Bluetooth/piconet base unit, right?

26 MR. GULLIVER: Right.

1 JUDGE MURPHY: There's back and forth in that.

2 MR. GULLIVER: There's data to support the call.

3 JUDGE MURPHY: But the call data is not exchanged.

4 MR. GULLIVER: It's just additional data that is being exchanged.

5 JUDGE MURPHY: So the question is, why doesn't that additional
6 data satisfy the claim? That's what they're saying, right?

7 MR. GULLIVER: Because --

8 JUDGE MURPHY: There's data --

9 MR. GULLIVER: -- you're already been sending data across the
10 communication path, and you're sending additional data across the
11 communication path.

12 JUDGE MURPHY: So you're not meeting the will be initiated
13 clause? Is that the clause in [1.h]?

14 MR. GULLIVER: Yes.

15 JUDGE MURPHY: Is that on -- okay. Well, you know, you need
16 to be specific with us. We are struggling.

17 MR. GULLIVER: I apologize, Your Honor. I --

18 JUDGE MURPHY: All right. So do me a favor, pull up the
19 patent, and let's just go to Claim 1 in column 19. All right. And what the
20 parties have identified as Limitation [1.h] begins with the wherein clause,
21 right, which is, quote, "Wherein upon said control device being selectively
22 triggered by the user to issue said invariable activation command," close
23 quote. Are you with me, Counsel?

24 MR. GULLIVER: Yep.

25 JUDGE MURPHY: And the way this works is that if the
26 switching element has received an activation cue and is in a so-called first

1 state, right, the invariable activation command, right, will initiate a first data
2 -- excuse me, quote, "a first data conveyance operation will be initiated
3 through the instrumentality of said first data transceiver for sending data
4 from said electronic circuit to the first external data exchange device," close
5 quote.

6 And my understanding of the Petitioner's argument is that when a
7 user dials a number on the cellphone, it triggers a command that initiates a
8 phone call and data is exchanged based on the triggering event of dialing a
9 phone call, initiating a command that's invariable because it establishes a
10 phone call through which data is exchanged, meaning voice data. So why is
11 that not correct? In your opinion or in your argument, why is that not right?

12 MR. GULLIVER: Because the data change has been occurring to
13 set everything up before the data is actually switched over and set. I mean,
14 it's supposed to -- when it's issued, it's supposed to send the data. But it's
15 already been sending data. You're sending more data --

16 JUDGE EASTHOM: You're arguing that because they sent
17 control data, the sending of voice data --

18 MR. GULLIVER: Bluetooth doesn't know -- I mean, it's data. It's
19 being transferred.

20 JUDGE EASTHOM: Well, in your patent, you have the same
21 situation. You send over a -- you know, something that's recognized before
22 you set up the call, and then you make -- well, before you set up the data
23 transfer of the money to the machine, right?

24 MR. GULLIVER: You --

25 JUDGE EASTHOM: It's still data. I mean, you're sending over
26 data.

1 MR. GULLIVER: We're receiving.

2 JUDGE EASTHOM: And it's receiving data. Well, I don't see
3 what the difference is. You're still -- the cue is data in your patent. Why
4 isn't this Bluetooth --

5 MR. GULLIVER: Because in our patent, when you set up that
6 communication path, you can't -- it's invariable. You can't walk away and
7 have it changed to something else. It's invariable. And that's kind of the
8 point I was making. I muddled everything up here. I apologize for that
9 again.

10 JUDGE EASTHOM: That's okay. We're all trying to figure it out.

11 MR. GULLIVER: Yeah. But if there's no --

12 JUDGE MURPHY: Yeah. Let me get at it a different way. Are
13 you saying that the data being exchanged is not data stored on the electronic
14 circuit?

15 MR. GULLIVER: Well, our argument there was what the
16 Petitioner said was data, they were pointing to stored data, in the same claim
17 term, the data would have to be the data that is sent. I mean, you can't use
18 one type of data for the data in one part of claim and then switch to a
19 different type of data.

20 JUDGE MURPHY: Yeah. But your claim doesn't say that. I
21 mean, that was -- this was -- I'll tell you, we had a discussion of this, and we
22 wrote what we wrote in our institution decision because we don't see in the
23 claim language. The issue here is, what does the claim say, right?

24 MR. GULLIVER: Yes.

25 JUDGE MURPHY: And the first element says the electronic
26 circuit is capable of storing and processing data. But when it comes down to

1 -- later in the claim, to the operation of the device, it just says sending data
2 or exchange. It doesn't say the data or stored data or a user's data or any
3 particular type of data. To me, that's the central issue that you're raising, that
4 you raised in the preliminary response and you raised in your reply.

5 MR. GULLIVER: Mm-hm. But it's --

6 JUDGE MURPHY: And it comes down to a claim construction
7 argument.

8 MR. GULLIVER: So --

9 JUDGE MURPHY: And you need to explain to me by looking at
10 the claim and telling me where in the claim it requires stored data to be
11 exchanged after the switch is set and an invariable activation command
12 trigger.

13 MR. GULLIVER: Okay. I understand what you're asking.

14 JUDGE MURPHY: No. I want you to do it right now.

15 MR. GULLIVER: Yeah, I know. I understand what you're asking
16 there. So the way that Patent Owner is interpreting the claim is element and
17 electronics are capable of storing data. And then later on, we have a first
18 data transceiver actually linked to said electronic circuit.

19 JUDGE MURPHY: You have to slow down, Counsel.

20 MR. GULLIVER: So we have the element of first data transceiver
21 operatively linked to said electronic circuit, said first data transceiver being
22 for exchanging data. So you're storing, quote, "data." You're exchanging,
23 quote, "data" between said electronic circuit and first external data exchange
24 device.

25 JUDGE MURPHY: Right. So do you agree with me that that does
26 not say said data or the data or otherwise provide -- or require antecedent

1 basis from the data that's stored in the electronic circuit?

2 MR. GULLIVER: I admit --

3 JUDGE MURPHY: Yes or no, do you agree?

4 MR. GULLIVER: -- that there's not antecedent basis there.

5 JUDGE MURPHY: There is not, right?

6 MR. GULLIVER: Yeah. Since we are capable of storing data,
7 processing data -- but like I said, Patent Owner's interpreting data as being
8 the same data that is exchanging data, data being plural, and not separate
9 -- storing data separate from processing data which separates from capable
10 of data input and output.

11 JUDGE MURPHY: Well, let me --

12 MR. GULLIVER: So I totally understand your position.

13 JUDGE MURPHY: Well, I'm not finished, all right? So we're in
14 Limitation [1.c] and it says, "First data transceiver being for exchanging data
15 between said electronic circuit and a first external data exchange device."
16 Why, in your opinion, does that require the exchange of stored data in the
17 electronic circuit?

18 MR. GULLIVER: The element was a first data operatively linked
19 to said electronic circuit for first linked to -- first data operatively linked to
20 said electronic circuit, said first data transceiver being for exchanging data.
21 Because like I stated, Patent Owner's view or data is it's the same data that is
22 --

23 JUDGE MURPHY: I'm not asking -- I want to know what the
24 claim can -- why the claim requires the exchange of stored data. Why does
25 the claim language recite that?

26 MR. GULLIVER: It's reciting the link capable of storing -- it's

1 reciting it because it's the same data is our interpretation. But even if the
2 Board uses its interpretation, we still have the other issues that I've brought
3 up of the three receivers and the independent claims.

4 We still have the other issues that I brought up of two different
5 ranges, and only one has been supplied, which still support Petitioner -- or
6 Patent Owner's position, where Petitioner has met their burden. So like I
7 said, I'm not willing to concede, but I do recognize that even if the Board
8 disagrees with Patent Owner here, it's not dispositive for our claims to
9 survive.

10 JUDGE MURPHY: Okay. Understood.

11 MR. GULLIVER: If there's more questions, I just have more time.

12 JUDGE EASTHOM: I think I understand your position. I
13 appreciate it. Thanks.

14 JUDGE MURPHY: Thank you.

15 MR. GULLIVER: Okay. At this time, I'd like to reserve any
16 remaining time for my -- and add it to my surrebuttal.

17 JUDGE MURPHY: So you'll have 16 minutes --

18 MR. GULLIVER: Okay.

19 JUDGE MURPHY: -- 14 seconds.

20 MR. GULLIVER: Thank you very much, Your Honors.

21 JUDGE MURPHY: Thank you, Counsel.

22 MR. GULLIVER: And I apologize again for the confusion I
23 caused on the invariable activation.

24 JUDGE MURPHY: No, not a problem. That's what this is for.

25 JUDGE EASTHOM: I think I get confused with every hearing I
26 have. Just to start, so -- (INDISCERNIBLE). Sorry.

1 JUDGE MURPHY: Yeah. We have 25 minutes.

2 MS. ARNER: Okay.

3 JUDGE EASTHOM: Your friend's arguing that you didn't point
4 out where there are three separate receivers are. Could you address that,
5 please? I'm sure you were planning to, but I was curious.

6 MS. ARNER: I'm happy to. I think that's pretty clearly improper
7 under Section 112 of the statute, which requires that dependent claims
8 narrow independent claims. And Dependent Claim 3 depends from Claim 1,
9 and therefore Claim 1 encompasses Claim 3, including the limitation that the
10 cue receiver is the first data transceiver.

11 JUDGE EASTHOM: But don't you think that those three things
12 -- there has to be three different functions?

13 MS. ARNER: The mapping has shown how the transceiver -- first
14 data transceiver receives the activation cue. And I can show you that on -- I
15 think you went to --

16 JUDGE EASTHOM: No. I think I remember.

17 MS. ARNER: Okay.

18 JUDGE EASTHOM: I think I understand that.

19 MS. ARNER: Okay. Also, just for the sake of the record, I'd like
20 to just note an objection that that receiver's argument, I couldn't find it. We
21 were having a hard time finding where it's been made in the record before,
22 the three separate receivers in all independent claims. And so just for the
23 record's sake if I could lodge an objection to that one.

24 And also, for the record again, I would object to the new argument
25 made -- I think for the first time today -- on the claim construction proposed
26 for invariable activation command, just to preserve this on the record.

1 JUDGE MURPHY: Yeah. And on this issue of the cue receiver --

2 MS. ARNER: Yes.

3 JUDGE MURPHY: -- if I could direct your attention to column 9
4 in the patent, please. And at column 9, I'm looking at -- I guess it's line 22.

5 MS. ARNER: Yup.

6 JUDGE MURPHY: And that first sentence, column 9, line 22
7 says, quote, "Transceiver 18 is also a cue receiver, whereby an activation
8 cue can be received by electronic device 10 from data exchange device
9 transceiver 9a," close quote. So in your view, what is that describing?

10 MS. ARNER: So that is describing -- you mean in the patent or --

11 JUDGE MURPHY: Yeah, in the patent -- in the '294 Patent, yes.

12 MS. ARNER: I mean, it says that it is -- the next sentence, I think,
13 explains the activation cue is a data communication of a specific type that
14 will be recognized by the activation cue. And during his response, I think
15 Patent Owner's counsel said the meaning of predetermined, it's
16 predetermined because the cue receiver has to know what it is. And that's
17 exactly the point that we've made.

18 And I'll point you to Slide 15, where we make that kind of -- again,
19 looking back at the Mooney, why the Bluetooth signal in Mooney, which is
20 the activation cue -- so we have the transceiver in Mooney that is
21 communicating with the base station. The signal is received. And so the
22 activation cue is the thing that -- the claims require is the thing that sets the
23 state. And Mooney describes in a couple of places where if the signal is
24 being received in a -- if it's a quality signal being received, it's set to a
25 cordless mode. If it's not being received, the user's leaving the proximity.

26 JUDGE MURPHY: And I guess just to address, Counsel, I'm

1 reading this patent saying the cue receiver can be part of the transceiver.

2 MS. ARNER: It absolutely says that.

3 JUDGE MURPHY: Right. It's a functional description.

4 MS. ARNER: That's absolutely right. The function is there and
5 the claims require that they can be the same thing because Claim 3 has to
6 narrow Claim 1. It has to include that.

7 JUDGE MURPHY: Okay.

8 JUDGE EASTHOM: And each of those transceivers that you
9 pointed out receive voice data, right?

10 MS. ARNER: That's right, yes.

11 JUDGE EASTHOM: I mean, I think there are three separate
12 receivers, if you will, that we point to.

13 MS. ARNER: I don't think they have to be structurally separate --

14 JUDGE EASTHOM: Right. They're software.

15 MS. ARNER: -- which I think is what they're trying to argue.
16 They're software, but there are different things, right? There is the
17 establishment of the Bluetooth link using the Bluetooth protocol.

18 JUDGE EASTHOM: That's what I --

19 MS. ARNER: That's right. That's cue receiver, right, and then
20 there's the call data that is sent over either -- and you had referred, I think, to
21 Slide 6, which I think is a good one to get the base. So we tried to color
22 code it basically with our mapping to be as clear as we can. And it is that,
23 you know, the Mooney talks about these different functionalities
24 communicating over the different networks, and we've shaded those in red
25 and green. And so the Bluetooth signal, the -- when it is a (INAUDIBLE -
26 TECHNICAL DIFFICULTY) automatic switch so that it sets the mode

1 appropriately when the call will work.

2 JUDGE EASTHOM: Right. I mean, the argument that there must
3 be three receivers, I think we're showing that a little bit.

4 MS. ARNER: Certainly in the functional way that they're claimed.
5 The claims don't say separate. And just legally, that couldn't be the way that
6 they should be read, based on the dependencies. Unless there are further
7 questions, it seems that, Judge Murphy, you described our mapping pretty
8 clearly earlier, and I'm happy to answer more questions, though, if there are
9 things lingering.

10 JUDGE MURPHY: Unless you think I said something incorrectly.
11 Okay. Thank you. Judge Hoffman, anything?

12 JUDGE HOFFMAN: No, thank you.

13 JUDGE MURPHY: Okay. Thank you, Counsel.

14 MS. ARNER: Sure.

15 MR. GULLIVER: Your Honors, I'll try to keep this brief. And I
16 just want to mention, if the Board does combine the cue receiver and the first
17 data receiver together, the claim still had -- using the Mooney mapping or
18 the Mooney reference, all the Bluetooth data and voice data goes to the first
19 data receiver. All the cellular data and voice data goes to the second. Our
20 claims have an activation cue that is received by the cue receiver.

21 If you combine them, you still have this activation cue that is going
22 to that receiver, trying to take Bluetooth information via voice data or other
23 data that Mooney only describes as being received by what's mapped as the
24 first data receiver and then clawing part of that out and sticking it as a cue
25 receiver when it's not meant to be -- and being an activation cue when it's
26 not meant to be an activation cue.

1 Mooney only teaches all Bluetooth data going to the first data
2 receiver. And the way the claims are, even if you say that those can be
3 together, it's a separate activation cue that somehow has to be identified or
4 considered to be an activation cue --

5 JUDGE EASTHOM: But all your --

6 MR. GULLIVER: -- isn't already being received.

7 JUDGE EASTHOM: But all your data goes through one transfer
8 receiver too for that activation cue data.

9 MR. GULLIVER: But the key is the activation cue meant to be an
10 activation? That's why the term matters because it's received by the
11 activation cue. If you combine them, it's received. But Mooney only
12 teaches all the data being received by two receivers. And then the mapping
13 that Petitioner has done is, oh, there's a cue -- so we can take some of that
14 data that's received by the first data receiver and say, now, oh, that's received
15 by the cue receiver. There has to be an activation cue somewhere.

16 JUDGE EASTHOM: That's exactly what your Claim 3 says,
17 though. I mean, that's --

18 MR. GULLIVER: But I'm talking about the independent claims.
19 Well, Claim 3, it can include the cue receiver that in the claim element is a
20 cue receiver that receives an activation cue. So if it's combined -- and it's
21 combined in Claim 3. And if the Board combines it for the independent
22 claims, that claim element still says the activation cue is being received.

23 JUDGE EASTHOM: We understand --

24 MR. GULLIVER: And the mapping of the activation cue is not
25 present in Petitioner's mapping. They're taking normal Bluetooth data that
26 Mooney describes as being received by the first data receiver. And they're

1 calling that out and calling that, well, since it's at that receiver, we can now
2 just relabel it.

3 But that's only being received, according to Mooney, at the first
4 data receiver. So the cue receiver, if it's combined, okay, it's combined, but
5 the claim element is -- still is receiving the activation cue. It has to be
6 something more than what's already being received.

7 JUDGE EASTHOM: Do you agree that the voice data and
8 Mooney's Bluetooth, that's going to go to a separate place in Mooney's
9 receiver than the control data, right?

10 MR. GULLIVER: No.

11 JUDGE EASTHOM: Okay. Well, let's --

12 MR. GULLIVER: Because you have a Bluetooth transmitter.

13 JUDGE EASTHOM: Ultimately --

14 MR. GULLIVER: If you look at the Bluetooth specification,
15 ultimately, Bluetooth data is encoded Bluetooth data and sent between a
16 transmitter and a receiver. The base unit --

17 JUDGE EASTHOM: Well, is the --

18 MR. GULLIVER: -- is not a separate --

19 JUDGE EASTHOM: Let's get this, is the control data going to go
20 to the speaker on the phone?

21 MR. GULLIVER: But we're talking about the data being
22 transmitted across the communication link.

23 JUDGE EASTHOM: It's going to go -- it's not going to accept the
24 control --

25 MR. GULLIVER: Voice data is going from the speaker through
26 the encoder, the codec, and encode it, and it may go through a couple of

1 different types. And according to the --

2 JUDGE EASTHOM: It's going to be a separate path for the voice
3 data to go -- to get to the speaker, right?

4 MR. GULLIVER: Now, you're talking --

5 JUDGE EASTHOM: When I'm talking to you on my phone, I get
6 voice data through the speaker?

7 MR. GULLIVER: Yeah. Are you talking your own data within
8 the phone? Or are you talking about the data coming from the base unit of
9 someone talking on their phone?

10 JUDGE EASTHOM: Yeah. I'm talking about the latter, that that
11 data is going to go over through the Bluetooth link, through the transceiver,
12 and then it's going to have a separate path than the control data.

13 MR. GULLIVER: But it's one transceiver. You just mentioned it
14 goes through the --

15 JUDGE EASTHOM: That's okay because --

16 MR. GULLIVER: Yeah. It goes --

17 JUDGE EASTHOM: -- it can have one transceiver.

18 MR. GULLIVER: Yeah. So it goes through one transceiver. And
19 if the cue receives the same transceiver, it's going through that transceiver.

20 But the point is, Mooney teaches Bluetooth data going through its
21 transceiver, dealing with Bluetooth. And our claim requires an activation
22 cue that was going to this third receiver that's combined that needs to now go
23 up there. There has to be something that's an activation cue. It can't be the
24 Bluetooth data that's already Bluetooth -- that Mooney has already been
25 sending back and forth. There's no activation cue.

26 That's why the claim construction activation cue is it has to be

1 something -- I said predetermined, but it has to be something you can
2 identify that isn't already going back and forth to that first data receiver. It
3 has to be something, or you've read it out of the claim. If you just say, well,
4 we received something, Bluetooth data at the first one, we're going to just
5 call that activation data. Well, if receivers are separate, you have this
6 separate activation cue being received. And now, even though you combine
7 them, it still has to be an activation cue being received. That's all I have,
8 Your Honors.

9 JUDGE EASTHOM: Thank you.

10 JUDGE MURPHY: All right. Thank you, Counsel. All right.
11 Thank you everyone for your presentations today. We will take the matter
12 under advisement, and we will issue our final decision in due course.

13 MR. GULLIVER: Thank you very much, Your Honors.

14 JUDGE MURPHY: Thank you.

15 (Whereupon, the above-entitled matter went off the record at 11:08
16 a.m.)

PETITIONER:

Erika Arner
Kara Specht
Safiya Aguilar
Christopher Anderson
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
erika.arner@finnegan.com
kara.specht@finnegan.com
safiya.aguilar@finnegan.com
christopher.anderson@finnegan.com

PATENT OWNER:

Robert Hart
Meredith Addy
Gregory Gulliver
ADDYHART P.C.
robert@addyhart.com
meredith@addyhart.com
gbgulliver65@gmail.com