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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE JOHN W. HOLCOMB, JUDGE PRESIDING
JONATHAN E. JAFEE,)
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Plaintiff,)
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)
)
Vs.) No. CV23-06224-JWH
)
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ADOBE, INC.,)
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)
)
Defendant.)
)
)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SANTA ANA, CALIFORNIA
TUESDAY, AUGUST 6, 2024

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1 SANTA ANA, CALIFORNIA; TUESDAY, AUGUST 6, 2024; 1:59 P.M.

2 ---

3 THE COURT: All right. Good afternoon, everybody.
4 Please have a seat.

5 THE CLERK: Calling item number one, case number
6 23-CV-06224, Jonathan E. Jaffe versus Adobe, Inc.

7 Counsel, please state your appearance for the
8 record, beginning with plaintiff.

9 MR. HANBA: Good afternoon, Your Honor.
10 Christopher Hanba and Joshua Jones on behalf of the
11 plaintiff.

12 THE COURT: Mr. Hanba and Mr. Jones, good afternoon
13 to you.

14 MR. HANBA: Good afternoon.

15 MR. DAY: Good afternoon, Your Honor. James Day
16 and my partner Winston Liaw on behalf of defendant Adobe.

17 THE COURT: All right. Mr. Day and Mr. Liaw, good
18 afternoon.

19 As you know, we're here for a hearing on claim
20 construction. I asked my clerk to circulate a tentative
21 yesterday. Did everybody get it?

22 I see nods all around. That's good.

23 So if you haven't heard me say this before, you'll
24 hear it now. It's truly a tentative. If I'd finally made up
25 my mind, we wouldn't be having a hearing. I wouldn't waste

1 your clients' money and your time to come in here and do
2 this.

3 So please feel free to push back aggressively if
4 you want to on anything as minor as a typo or as major as:
5 No, you completely misunderstood what we were arguing,
6 Your Honor. Let me try again.

7 As long as it's respectful, I want to hear it.

8 I see here on the bench a couple of, looks like,
9 three presentations. Two of them appear to be from the same
10 side. One is marked Markman hearing and the other technical
11 tutorial. From whom are these?

12 MR. HANBA: It's the plaintiff, Your Honor.

13 THE COURT: Okay. And then I assume the other one
14 is from the defendant, right?

15 MR. DAY: Yes, Your Honor.

16 THE COURT: Okay. So my thought was let's take
17 about a half hour each, 40 minutes. I think it's apparent
18 that I've reviewed the materials, so no need to go over
19 things that I've discussed or mentioned and demonstrated that
20 I understand in the tentative.

21 That having been said, tell me whatever you want to
22 tell me. I know some counsel want to go term by term. Let's
23 not do that.

24 Let's start with plaintiff. Tell me what you want
25 to tell me. Start wherever you want. Then we'll hear from

1 defendant. I'll give each of you a chance to respond after
2 that as well.

3 So, Mr. Hanba, are you going to go, or Mr. Jones?
4 Are you going to split it up in some fashion? which is fine.

5 MR. HANBA: Your Honor, we'll split it up. I think
6 Mr. Jones will take the first four. I'll take the second
7 four. To the extent we need to go -- we've kind of talked
8 amongst ourselves to decide certain of the terms we're good
9 with and certain of them, you know, we'd like to argue.

10 THE COURT: When you say amongst yourselves,
11 plaintiff and defendant?

12 MR. HANBA: Yes. Yes.

13 THE COURT: So is any of these -- anything
14 submitted to in terms of my tentative disposition?

15 MR. HANBA: I --

16 MR. DAY: I guess, Your Honor, what I think we
17 agreed to are that there are a number of terms that we don't
18 think we need to argue today that we would submit on the
19 papers.

20 THE COURT: And which ones are those?

21 MR. HANBA: So looking at Your Honor's order, that
22 would be said data stream --

23 THE COURT: Okay.

24 MR. HANBA: -- appended to said data file.

25 THE COURT: All right.

1 MR. HANBA: Am I right in saying said at least --
2 claim four?

3 MR. DAY: Yes.

4 MR. HANBA: Said at least one additional parameter
5 being generally the representative of a condition under which
6 said data stream is generated.

7 THE COURT: Okay.

8 MR. HANBA: CamID.

9 THE COURT: Okay.

10 MR. HANBA: And then Seq.

11 THE COURT: All right. So there are three that you
12 disagree on.

13 MR. HANBA: Yes, Your Honor.

14 THE COURT: All right.

15 MR. DAY: Well, Your Honor, we disagree on our
16 position set out in our papers. We don't believe that we
17 need to add to our position today in arguing those terms.

18 THE COURT: All right.

19 MR. DAY: They're not agreed terms. We maintain
20 our position, for instance, that some terms are indefinite,
21 but we don't need to argue further today.

22 THE COURT: I understand. You're not acceding.

23 MR. DAY: That's right.

24 THE COURT. In the sense that if this somehow goes
25 to the Federal Circuit, you're not on record as saying, oh,

1 no, we're fine with that?

2 MR. DAY: We're not waiving our arguments,
3 Your Honor.

4 THE COURT: Understood. Okay.

5 So maybe the hearing will be even shorter.

6 MR. HANBA: I think so. I think maybe we can
7 shortcut it even more, Your Honor. I know we have a tutorial
8 out there for you. I think reading Your Honor's tentative,
9 it's fairly clear that you understand the technology.

10 THE COURT: I'm certainly no expert in it, so I
11 don't want to curtail your presentation. I'll tell you, I
12 will look at this after the hearing to the extent that you
13 haven't reviewed it here at the hearing. Please do lodge
14 these materials with the Court so it is a part of the record.

15 Go ahead and start wherever you wish. Thank you.

16 MR. HANBA: Your Honor, I think we want to start
17 just a little bit with the tutorial just to give some context
18 of where we are and where we were --

19 THE COURT: Go ahead.

20 MR. HANBA: -- 24, you know, looking back -- this
21 patent was filed about 24 years ago today, so we are a long
22 ways into the past. So back then, if Your Honor remembers,
23 what we have is we have a situation where photographs and
24 movies and printed materials have historically been trusted
25 because most of them were on paper or hard to change. But

1 those early attempts at the altercation of photographs for
2 purposes of revisionist history were kind of comical.

3 You know, here you have the original, and then you
4 have a picture that's effectively painted in into the old
5 picture. And back then in 2000 where photographs, where
6 digital photographs were fairly new, you have recent
7 technological advancements back then have brought this
8 ability to the neophyte to change these photographs.

9 But if you had somebody that was an expert, you
10 could effectively make a child disappear, as in here, without
11 anyone even knowing. So what we have is this poses a
12 problem. Especially back then, what the inventors thought
13 about were chain of custody, of authenticity, legal evidence,
14 or accident scenes. I don't think we could have seen Twitter
15 or Instagram or something, you know, back in those days.

16 Previous systems required knowledge of that
17 specific device that captured the image and used unique
18 encryption keys. So that brings us to the invention of kind
19 of where the inventors are.

20 This is about five years after those seminal Kodak
21 patents by Mr. Parulski. The inventors here, they filed it,
22 as I said, about 24 years ago -- the plaintiff Mr. Jaffe,
23 Dr. Goldhar, and Mr. Warot.

24 So what this patent effectively does is it creates
25 a digital signature based on a sample at least one parameter

1 of the condition. It then stores the sample conditions and
2 the signature together, and then it verifies the authenticity
3 by comparing a signature with the original. It might seem
4 easy today, but back then it was unheard of -- or so we
5 believe.

6 These recordings, as I think Your Honor noted in
7 your tentative opinion, it's broad. Right? It can relate to
8 digital images, data files, video recording, and even audio
9 files. So it's not limited to just images. But back then
10 the inventors thought, well, this could be useful in the
11 notary public sense or the electronic laboratory notebooks,
12 some way to authenticate the original with something new.

13 So I just want to, you know -- I'll jump through
14 this, Your Honor. But in its most simple form, the digital
15 signature creation, you create this digital signature based
16 on the sample and at least one parameter of the conditions.

17 So we have a number of, for example, conditions.
18 So we have these parameters. We have the various parameters.
19 On the right you have C-VIBE amended to the CamID, and that
20 creates a digital signature which is then appended to the
21 file or made a part of.

22 So all of that goes into this digital signature on
23 top of the image, that additional data from the camera, the
24 CamID, et cetera, and that to create the signature. It's
25 then saved into the memory. And then effectively we're --

1 whether or not that digital signature matches the re-creation
2 of the digital signature -- from the original images in
3 parameters, does that match the re-created digital signature?
4 If it does, it's authentic. If it does not, it is not
5 authentic.

6 So just overall that's what to keep in mind as we
7 move forward today. With that, I'll turn it over to
8 Mr. Jones.

9 MR. JONES: Thank you, Your Honor. I just wanted
10 to quickly address for the tight coupling term. While
11 Your Honor -- while the Court did state that kind of the same
12 device language was not part of the term itself, it's clear
13 that it, you know, is part of the reasoning and part of the
14 term. So I wanted to just raise a couple points about that.

15 So you can see on the left image there -- and I
16 apologize, Your Honor. So this image is not in the deck. We
17 had added this after the tentative and didn't have a chance
18 to print it out. So we'll file the pdf as you requested.

19 So on the left is that Fig. 1 which we submitted in
20 the briefing, which details the camera 255, and the 255
21 camera simulates the lens sensor set, so the sensor being in
22 that camera 255.

23 Then the microcomputer, the 252, contains within it
24 the floppy drive, the floppy drive not shown. It performs
25 the function of a recorder, floppy drive which -- so it's the

1 recorder there. So looking at that in conjunction with
2 Fig. 2A, so Fig. 2A then has the description there which says
3 that recorder, referring to Fig. 2A, floppy drive, and
4 removable of floppy diskette, is shown as the recorder and
5 recording media.

6 Other available recording options includes flash
7 RAM with removable memory modules and storage not internal to
8 the device via infrared, serial, Ethernet, USB, et cetera.
9 So you can see there then that the microcomputer, the RAM or
10 the recorder and the RAM are interchangeable there.

11 In the claim it's called memory, but I think in the
12 claim what they're talking about is it's something that
13 stores the image. The image is stored in memory just like it
14 can be stored in the recorder. So the recorder can be in the
15 microcomputer, i.e., RAM, and the sensor set in the camera.

16 So again we think that this is demonstrating that
17 the sensor set and the memory can be in two different devices
18 as contemplated by the claims.

19 Now, if we go onto the next slide, this is the
20 prosecution history that the Court, I think, found kind of
21 a -- found a disclaimer basically of any kind of remote
22 option. So I think, though, when you read the actual context
23 of this, you can see the words local or remote.

24 So if there was a disclaimer there -- and I don't
25 know that we agree that there is a disclaimer necessarily.

1 But to the extent there was a disclaimer, the disclaimer
2 would be local or remote, so a truly remote option. It was
3 not disclaiming local machines or local devices. And a local
4 device can be -- doesn't necessarily have to be the same
5 device.

6 So if we go back to the image there, you can see
7 the camera connected to the computer with the line there, and
8 the specification talks about USB fire wire. So those are --
9 you know, we all I think have experience of connecting our
10 iPhone to our computer, connecting a camera to a computer to
11 transfer files, and what have you.

12 And that can be local but not the same device.
13 It's -- it's local but not the same device, whereas a remote
14 device would be, you know, if I'm at home and I'm sending
15 images to my office or -- you know, I'm truly remote. I
16 think that's -- if anything was disclaimed, I think that's
17 what was disclaimed.

18 I don't necessarily think that the prosecution
19 history contemplated a disclaimer of, you know, it's local,
20 so hence it must be within the same device. I think Fig. 1
21 read in conjunction with Fig. 2A, you know, demonstrates
22 that.

23 Your Honor, if you don't have any questions, I
24 think that that's the primary point that, respectfully, I
25 wanted to make as far as the Court's claim construction as to

1 tight coupling. So then I think --

2 THE COURT: So you would still ask me to construe
3 tightly coupled or the full limitation a sensor which is
4 tightly coupled to said memory. You're still arguing for
5 plain and ordinary meaning, no construction requirement?

6 MR. JONES: Your Honor, I think we would be
7 agreeable to your construction even as it is. The issue I
8 guess we would have is that the opinion makes clear that
9 there is a within-a-device requirement even though it's
10 not -- the words aren't in the claim.

11 But I don't think we would contemplate making any
12 arguments that that's not a requirement with it being in the
13 opinion as it is. So I would -- I think we would ask that
14 that within-a-device language in the opinion, you know, not
15 be there to kind of be a limitation there. But otherwise the
16 construction is okay with us, I believe.

17 THE COURT: So to be specific here --

18 MR. JONES: Sure.

19 THE COURT: -- what aspect of the tentative -- what
20 paragraph would you have me remove?

21 MR. JONES: Sure. So I think on page 11 --

22 THE COURT: Yes.

23 MR. JONES: -- at the very last paragraph it says
24 that the fact that the tight coupling occurs vis-a-vis
25 conductive traces or leads, in amending the claims to add the

1 tight coupling language, the applicant disclaims scope. So I
2 think this whole paragraph starting on 11-19 and going to
3 12-5.

4 THE COURT: Is it "the applicant disclaimed scope"
5 that is bothersome primarily?

6 MR. JONES: I think that and the -- and more the
7 different device starting on that next sentence: Thus
8 Jaffe's different device arguments are unpersuasive when
9 considered in view of this prosecution history.

10 THE COURT: Okay.

11 MR. JONES: And then I think the Court goes on to
12 explain that for the remainder of the paragraph.

13 THE COURT: So in your perfect world, that
14 paragraph would come out?

15 MR. JONES: Yes. I think so, Your Honor, yes.

16 THE COURT: All right. I understand your argument.

17 MR. JONES: Okay. Thank you, Your Honor. I think
18 we would go on to base ...

19 THE COURT: The second limitation that I analyzed
20 beginning with monitoring the integrity, I think I went with
21 defendant's proposed construction.

22 So do you want to argue that one? You can argue
23 whatever order you want.

24 MR. JONES: Sure. So again, whether or not
25 physical access has been gained to the connection between

1 said memory and said sensor -- or, the coupling. So we are
2 agreeable to that. You know, we're happy to get rid of the
3 connection for coupling.

4 I think these get back on track with -- let's see.
5 So, yeah, with tight coupling dealt with, you know, we
6 obviously agree that the tight coupling doesn't need to be --
7 you know, could be interpreted the same way as far as
8 monitoring the tight coupling.

9 So I -- so determining whether physical access has
10 been -- has been granted or has been gained, I would say that
11 -- so I think our primary argument here is the prosecution
12 history with -- this was something that the Court seemed to
13 rely on again, kind of a disclaimer argument where it says
14 the signal is generated if the device that prevents physical
15 access to the interconnections between --

16 THE COURT: Slow down just a bit.

17 MR. JONES: Excuse me -- between the sensor set and
18 memory is broken.

19 THE COURT: And where are you reading from?

20 MR. JONES: The prosecution history, Exhibit C.
21 I'm on slide, should be, 27.

22 THE COURT: Okay. I'm with you. And, I'm sorry.
23 What's the point?

24 MR. JONES: Sure. So the point there being mostly
25 that saying that it's an example. An example is that

1 physical access. So I -- we would disagree that this was a
2 clear disclaimer of scope that would make -- that physical
3 access is necessary or required in every instance. Again, I
4 think that's the primary point there.

5 THE COURT: So the tentative, as I said, adopts
6 defendant's proposed alternate construction. What -- given
7 that we're a little bit further than where we were when you
8 briefed this --

9 MR. JONES: Sure.

10 THE COURT: -- what are you now arguing the
11 construction should be?

12 MR. JONES: I would say determining whether there's
13 been a -- I guess I would have to think a minute to have the
14 precise language, but I think what I probably -- I think it's
15 the physical access that's probably the problematic part, so
16 determining whether access has been gained to the coupling
17 between said memory and said sensor.

18 THE COURT: So the word physical in the tentative
19 order here construing this limitation is what's problematic
20 for plaintiff?

21 MR. JONES: I believe so, yes.

22 THE COURT: So if I took out the word physical,
23 that would be acceptable to plaintiff?

24 MR. JONES: I believe so, yes.

25 THE COURT: And the reason I should take out

1 physical is because that's merely an example, as you've
2 indicated on slide 27 of your presentation?

3 MR. JONES: Correct. And I think the claims in the
4 rest of the prosecution history, you know, make clear that
5 the point of the tight coupling is to make sure that nothing
6 has been tampered with.

7 So, you know, that's the key there, is -- now,
8 whether that's a physical tampering or not I think could
9 introduce some potential confusion. So I think that's --
10 that's kind of the --

11 THE COURT: That's the gist of your --

12 MR. JONES: That's the gist of the argument,
13 Your Honor. Yes.

14 THE COURT: All right. Well, I'll think about that
15 some more. Thank you. Anything else on this limitation?

16 MR. JONES: Thank you, Your Honor. I don't believe
17 so.

18 MR. HANBA: Your Honor, I am in the more enviable
19 position. I get to agree with you on the -- based on
20 limitation. And here --

21 THE COURT: So not indefinite.

22 MR. HANBA: That is absolutely correct, Your Honor.
23 We do not believe that the term is indefinite. And it really
24 is -- I think what we see is it comes down to it's supported
25 by the claims. If you look at the claims, the claims are

1 very clear, utilizing said signature protocol to generate a
2 second signature based on said data stream. Before that, a
3 first signature based on said data stream and said at least
4 one parameter.

5 The second signature is based on at least one
6 parameter used in generating the first signature. I think
7 this is understood by defendant's expert. The defendant's
8 expert understood what this claim term meant but put it right
9 there in his opinion. Thus the term "based on means" must
10 mean that the second signature is generated.

11 So there is further no dispute as to the term
12 parameter, at least one parameter -- looking at the '828
13 patent, column 1, 54 to 57 -- at least one parameter that is
14 representative of at least one condition under which the
15 digital sample was acquired.

16 The specification provides a multitude of examples
17 of parameter. I don't think there's any disagreement --
18 date, time, latitude, longitude, camera identification, image
19 sequence, et cetera.

20 And it describes what the signature is based on.
21 Looking at, for example, the '828 patent, column 8, 20 to 22.
22 The GPS information may include latitude, longitude,
23 altitude, data, and time. Claim 5 also describes these
24 additional parameters in the GPS coordinates, Zoom settings,
25 auto focus, status, and focus.

1 So looking again at the specification, the
2 specification further clarifies that both the first and the
3 second signature are based on those parameters. It's fairly
4 clear.

5 I think going to what the Federal Circuit said in
6 Rhyne is that there is that familiar axiom that claims should
7 be construed if possible as to sustain their validity. So
8 the defendant argues that the "based on limitation" is
9 indefinite as an open-ended term. But I think, as Your Honor
10 found, that open-ended claims are not inherently improper.
11 Whether or not something is written poorly does not make it
12 indefinite or open-ended and indefinite.

13 As for all claims, their appropriateness depends on
14 the particular facts of the invention, the disclosure, and
15 the prior art. That is the Court in Anderson Corp.

16 So the parameters are clearly described in the
17 specification as a representative of at least one condition
18 under which the digital sample was acquired. If we look at
19 the '828 patent at column 1, 54 to 57, you know it's at least
20 one parameter that is representative of at least one
21 condition under which the digital sample was acquired.

22 A person of ordinary skill in the art would clearly
23 understand, clearly, this term in the context of the claims
24 and the specification. Adobe's own expert understood what
25 the claim term must include and must mean.

1 So, remember, we must read the claim. Phillips is
2 instructive. We must read the claim always in light of the
3 specification, and the specification makes clear that the
4 second signature is based on those same parameters.

5 So I think one of the issues we have is there's
6 that interplay always between 101 and the enablement
7 requirement and indefiniteness. Adobe's argument that the
8 second signature cannot be based on the same parameters as
9 the first signature, it's misplaced.

10 As the Court noted, if -- excuse me. If the claim
11 subject matter is inoperable, the patent may indeed be
12 invalid for failure to meet the utility requirement under 101
13 and the enablement requirement under 112. But that's not the
14 discussion now.

15 So the argument sounds in 101 an enablement rather
16 than indefiniteness. With that I think Your Honor's ruling
17 on this was correct.

18 THE COURT: All right. You may have more to say
19 after we hear from defendant on this point.

20 MR. HANBA: Thank you, Your Honor.

21 THE COURT: I'd be happy to hear it at that time as
22 well. All right. Thank you, counsel.

23 Mr. Day.

24 MR. HANBA: Just for the record, Mr. Day has lent
25 me his dongle for the computer that counsel is using now.

1 THE COURT: Excellent.

2 MR. DAY: Happy to share, Your Honor.

3 All right. Good afternoon, Your Honor. Again,
4 James Day on behalf of defendant Adobe. We did prepare a
5 number of slides, and we're going to focus in on just a few
6 things.

7 I do want to start -- clearly the Court has
8 analyzed the patent and reviewed it, but I do want to start
9 with a bit of an overview of how we see the patent and focus
10 in on a particular technical point and make sure that we're
11 all on the same page with that.

12 So let me start with that. I don't want to belabor
13 some of the points that counsel just made. We know that what
14 we're doing is authenticating recordings, images, videos,
15 that sort of thing.

16 The patent -- I'm now looking at slide 5. The
17 patent is -- generally the specification is talking about a
18 digital camera, so we're generally talking about images that
19 can be authenticated.

20 If we go to slide 6, this is the summary of the
21 invention. You just heard about it. You are going to create
22 a digital signature -- basically when you capture the photo,
23 you're going to create a signature and put the signature in
24 the same file with the photo.

25 Then later on, if you want to determine if somebody

1 has monkeyed around with that photo, you repeat the process
2 and create a new -- a current signature. If they match, you
3 know nobody has changed the image. If they're different, you
4 know somebody did change the image. That's the basic
5 invention.

6 What we get to -- and I know in the tentative
7 ruling the Court noted that the only signature protocol --
8 I'm now looking at slide 7. The only signature protocol
9 that's identified in the patent is this thing called MD5.

10 The patent doesn't tell you what that is because
11 people of skill in the art would have known. Well, our
12 expert, we asked our expert: Can you explain this for the
13 Court? And he did so in his declaration. It's paragraph 31
14 of the declaration of Rajeev Surati, Dr. Surati.

15 He cited, you know, a textbook description of MD5,
16 and he cited some prior art that describes what that is. And
17 then he -- that paragraph says this is -- MD5 is a one-way
18 hash function. This is how they work.

19 What I'd like to do, Your Honor, is illustrate how
20 a hash function works and make sure that we all understand
21 what's going on. So on slide 8, if you look in the upper
22 left, we've got -- it's referred to as plain text. This is
23 your document. This is your image. This is, for example,
24 the digital photo you just took.

25 Now, if you were to run that through a hash

1 function like MD5, you're going to get something that's
2 sometimes called the digest. It's a fixed-length number. It
3 could be the hash value. I mean, it's referred to in a
4 number of different ways. The patent calls that a signature.

5 What's interesting and useful about these hash
6 functions is if I take, you know, a week later, two months
7 later, if I take that same document or image and run it
8 through that hash function, I will get exactly the same
9 digest or signature.

10 Why is that useful? Your Honor, here on the screen
11 on slide 8, I'm showing you, you know, sort of a few lines of
12 text. The input there could be a 500-page document. And
13 instead of having to compare the version of my 500-page
14 document from last week with the one I have now, I ran that
15 one through a hash function last week. I have a signature.
16 If I run the document through this hash function today, I
17 just compare; they're the same. I know nothing has been
18 changed.

19 THE COURT: With a high level of probability based
20 upon the length of the digest.

21 MR. DAY: Well, really the strength of the hash
22 function, that's right, which relates to the length of the
23 digest. That's right. MD5 our expert told us is no longer
24 all that secure, but in general this is how the hash function
25 works. And you're right, Your Honor.

1 The other reason a hash function can be very useful
2 is -- and I'm now looking at slide 9 -- if I change my input.
3 Here I've changed \$1 to \$10. I made one -- I made a change
4 of one digit. But imagine I changed one -- I have a 500-page
5 document, and I changed one character. Now when I run that
6 changed document through the hash function, I get an entirely
7 different signature.

8 That's what's going on here. Now when I compare
9 the two digests or signatures, I immediately know something
10 has changed. I don't know what it is, but I know something
11 has changed. That's what we're talking about with this MD5
12 hash function, the signature protocol that's identified in
13 the patent.

14 Then we go on, and the patent says what you're
15 going to do is create a digital function which is a function
16 of that signature protocol, so MD5, being used and the block.
17 What the patent is referring to is this block that's in 7A.

18 If you look on slide 11, we've got Fig. 7A. And
19 you can see on the left-hand side it says block and there's a
20 bracket that shows you that the block includes -- it always
21 includes the image, and optionally it can include these other
22 things as well, some additional parameters.

23 You run that through your signature protocol. You
24 create a signature, and you stick that signature in the same
25 file with the image and this other optional information. Now

1 you can come back a week later, a year later, you take that
2 file; you pull out the signature; you rerun the signature
3 protocol on at least the image, maybe some other things. And
4 if the signatures match, you'd validated. You've
5 authenticated. That's how the patent works.

6 Let me now -- I'm going to go to the disputed
7 terms. There's a few points I want to make about the tightly
8 coupled. Just to respond, frankly, Your Honor, we think, you
9 know, we maintain our position about indefiniteness, but we
10 do think, Your Honor, that you've identified the one example
11 in the prosecution history of something that is tightly
12 coupled, when you have the sensor and the memory connected by
13 a conductive trace or lead.

14 There are no other examples that we can look at,
15 and what I'd like to do is make one point, frankly, here.
16 That is that counsel pointed you to a page in the prosecution
17 history. This is Exhibit 2 in our materials, and the page
18 Bates number ends in 326. This is just the page that he
19 showed you.

20 I don't have this on a slide, but I'd point you to
21 that. Counsel said that, well, there's this distinction
22 between local and remote. I think the idea was local is sort
23 of in the same building or something and remote is somewhere
24 else. That's not what we're talking about.

25 What the prosecution says is, quote: If the

1 sensors are in fact remote from the processor, then it would
2 be impossible to prevent physical access to the
3 interconnections between the remote sensor and the local
4 processor, the processor on the device.

5 THE COURT: And you were reading from plaintiff's
6 slides?

7 MR. DAY: It's not. It's from our Exhibit 2, which
8 is the file history.

9 THE COURT: Hold on a second. I want to get that
10 in front of me.

11 MR. DAY: Sure.

12 THE COURT: Okay. Your Exhibit 2. And then where
13 do I look in here?

14 MR. DAY: It's page 332. It's a large exhibit,
15 Your Honor.

16 THE COURT: I'm there.

17 MR. DAY: So if you see -- it's six lines from the
18 bottom -- there's a sentence that starts sort of in the
19 middle of the page that says: If the sensors are.

20 THE COURT: Sorry. I'm not seeing that. I'm on
21 page -- it's Exhibit 2, and it's page 332 at the bottom,
22 correct?

23 MR. DAY: Yeah. And if you go six lines up.

24 THE COURT: I see it now. Okay. Thank you.

25 So I'm looking at that sentence.

1 MR. DAY: Okay. Two points there, Your Honor.
2 First, when it's talking about remote, it's saying remote
3 from the processor. It's not talking about being remote from
4 the device. It is talking about being remote from the
5 processor which is on the same device.

6 If the sensor is outside the device, then what they
7 say in other places in the prosecution history is then you
8 could fool the device by supplying the authentication
9 information from the outside of the device.

10 So, point one, I think the disclaimer is clear.
11 This is -- there is an on-device limitation, as the Court
12 said in the tentative ruling.

13 Second, if you look at this sentence, it's talking
14 about making it impossible to prevent physical access to the
15 interconnections between the sensor and the processor. This
16 goes to a point that counsel made about taking the word
17 physically out of the construction for monitoring.

18 That's what the inventors said, Your Honor. They
19 used that word to describe what the tight coupling is.
20 Similarly, if you look on the next page -- this is Exhibit 2,
21 page 333 -- there's a sentence -- counsel brought this up --
22 this means that, for example, a signal is generated if the
23 device that prevents physical access to the interconnections
24 between the sensor and the memory is broken.

25 I mean, physical access, those are words that the

1 inventors used to distinguish prior art in order to get their
2 patent issued. Those are disclaimers.

3 Then my final point before I move on, Your Honor,
4 is this. In the tentative ruling you said -- the tentative
5 ruling states: Although the Court declines to adopt the same
6 device language. So we proposed the construction that says
7 the tight coupling, the sensor, the memory, are on the same
8 device. You said: Although the Court declines to adopt the
9 same device language, the coupling here is physical, which
10 imposes a same-device restraint.

11 THE COURT: So what page and line are you on in the
12 tentative?

13 MR. DAY: Yes, Your Honor. Page 12, starting at
14 line 3.

15 THE COURT: Okay.

16 MR. DAY: So I agree with your analysis,
17 Your Honor. I believe that the way that you have construed
18 the words tightly coupled means there's a physical
19 connection, and it means they're on the same device. I think
20 the prosecution history also confirms that.

21 I have -- perhaps it's just an observation,
22 Your Honor. I believe that your statement here is very
23 clear. I believe that there is a same-device restraint
24 because that's what your order says.

25 However, I've had cases, Your Honor, where I

1 thought the judge was very, very clear in their reasoning but
2 didn't include a limitation in the construction of a term,
3 and I found myself nine months later arguing the same point.

4 So, Your Honor, in order to avoid unnecessary
5 debate down the road, it may be prudent to include that
6 limitation in the claim as the Court ultimately construes it.

7 THE COURT: So again, now we're further down the
8 road than we were when you initially proposed the
9 construction for this limitation. What are you proposing
10 now? How would you change my tentative construction in your
11 perfect world?

12 MR. DAY: Well, again, Your Honor, we're not
13 waiving the indefiniteness argument. What I'm proposing is
14 -- you could do it in two different ways.

15 One, you could add the words after traces and leads
16 "in the same device." Another would be to simply include the
17 language you have on lines 3, 4, 5, as frankly a separate
18 clause in the construction saying that: The coupling here is
19 physical, which imposes a same-device restraint.

20 I think the first option is clear enough. Either
21 one of those I think would avoid the debate down the road
22 where we end up talking about a tight coupling that goes from
23 one device to another, which I think is contrary to the
24 Court's tentative construction and I know is contrary to the
25 prosecution history.

1 THE COURT: All right. Thank you. I understand
2 that argument, I believe.

3 MR. DAY: Okay. Now if you would give me just a
4 second, I would like to talk about the "based on" issue.

5 THE COURT: Did you want to say anything about the
6 second limitation? I mean, you can come back to that one if
7 it's --

8 MR. DAY: Your Honor, I did make the point that --
9 so just to be clear in the record, I did make the point that
10 on the two pages of the prosecution history that I pointed
11 you to, the inventors actually used the word physically
12 accessed or to prevent physical access.

13 THE COURT: Yes.

14 MR. DAY: So we do think that the construction
15 ought to track what they said to the Patent Office.

16 THE COURT: Plaintiff's counsel pointed out that
17 that sentence which appears in your Exhibit 2, page 333, and
18 you've referred to it a moment ago, plaintiff's counsel made
19 the point that the sentence says "for example." So perhaps
20 it's not limiting, is the conclusion that I think plaintiff
21 wants me to reach.

22 MR. DAY: I think that's right, Your Honor. I
23 think that's the conclusion the plaintiff would like you to
24 reach. This is the only example we have, which means it's
25 appropriate to limit to the example. This is the only thing

1 that was argued to the Patent Office.

2 So the limitation -- it is a disclaimer, though
3 they use the word "for example."

4 Second point, Your Honor, if you go back to
5 page 332, the sentence that we walked through is not -- it
6 doesn't say it's an example. It says if the sensors are in
7 fact remote from the processor, then it would be impossible
8 to prevent physical access to the interconnections between
9 the remote sensor and the local processor.

10 That's not an example. Those are the words they
11 used to say what it is that's different about the prior art,
12 and they specifically said the prior art can't prevent
13 physical access to the interconnections.

14 THE COURT: Okay. Thank you.

15 MR. DAY: I'm having a technical problem here, Your
16 Honor.

17 THE COURT: It's not an easy fix. I have your hard
18 copy, so you can direct me to that.

19 MR. DAY: I want to start with slide 58, which is
20 just the section on the based-on term.

21 THE COURT: Does plaintiff's counsel have a hard
22 copy or an electronic copy? I want to make sure you can
23 follow along. Okay. You're nodding.

24 MR. HANBA: Yes.

25 THE COURT: Okay. I'm on page 58 of your

1 presentation.

2 MR. DAY: Okay. We can move ahead to page 60.
3 What page 60 shows, Your Honor, is the language of claim 1
4 all together, and we've highlighted -- I'm back up on the
5 screen, Your Honor. We've highlighted the language around
6 creating the first signature.

7 And just to orient us in what I want to talk about,
8 the steps above that highlighted language. You're going to
9 store the data stream, then you're going to generate this --
10 at least one internal and unique parameter.

11 Now we get to the highlighted language, and it
12 says: Utilizing a signature protocol to generate a first
13 signature. Then we see the words "based on" said data stream
14 and said at least one parameter. And then it goes on from
15 there.

16 Then the next step is utilizing -- and this can be
17 the next day, the next month, this next step can occur. Now
18 we've created the first signature. We put it in the file
19 with the image. Now we come along and we want to
20 authenticate that image. So what do we do?

21 We create a second signature based on the data
22 stream. Then in the final limitations, we compare the first
23 signature and the second signature. If they're different,
24 then the image is not authenticated. If they're the same,
25 the image is authenticated. That's how the claim works.

1 But if you look at slide 63, there's a problem with
2 the way the claim is written, and I want to focus on that
3 problem because that's what we're trying to get at. The
4 problem is the claim language tells you to generate a first
5 signature based on said data stream and said at least one
6 parameter. That's the internal and unique parameter that we
7 generated a few steps ago. So the first signature is based
8 on two things, Your Honor.

9 Then when we're going to authenticate our image,
10 the claim says generate a second signature based on said data
11 stream, one thing. What's the problem? The problem there,
12 Your Honor, is if you do exactly what the claim tells you to
13 do, you're always going to get two different signatures.
14 You're always going to get a negative result even if the data
15 stream has not changed. Why?

16 If you look at slide 64, it goes back to what I was
17 talking about earlier, just the way a hash function works.
18 If the signature protocol is a hash function and if I put the
19 data stream plus the parameter in to create the first
20 signature, and then if I just do what the claim tells me,
21 which is I just put the data stream in to create the second
22 signature, the input is different. The second -- sorry. The
23 second signature will always be different than the first.

24 So there's a problem with the way the claim is
25 written, Your Honor, and we laid out this problem in an

1 expert report during discovery as we were required to to the
2 plaintiffs.

3 Then we sent them an interrogatory saying, well, do
4 you think that based on means that you have to create that
5 second signature based on something more than just the data
6 stream? That's where we get this interrogatory response that
7 we've talked about in our briefing, Your Honor.

8 What the plaintiff contends, the way the plaintiff
9 believes that you should read the claim, is that the term
10 "based on" means that the second signature is based on said
11 data stream and said at least one parameter. I think that
12 was the point that counsel was trying to make when he was up
13 here a few minutes ago.

14 The problem, Your Honor -- and frankly, I will say
15 that proposed language is closer to what the specification
16 tells us. The specification talks about creating a second
17 signature based on or using the image and a parameter. The
18 problem, Your Honor, is that's not what the claim says.

19 If you look at the claim language on the left, it
20 does not say "and said at least one parameter." It simply
21 refers to the data stream. What's wrong there? Well,
22 Your Honor, what plaintiff is trying to do is --

23 THE COURT: Okay. I understand your argument. If
24 you think of this as a function, in the first utilizing box
25 from looking at your page 63, Z is equal F of X and Y, right?

1 MR. DAY: Yes.

2 THE COURT: X is the data stream, said data stream,
3 and Y is at least one parameter.

4 MR. DAY: Yes.

5 THE COURT: There may be Y1, Y2, Y3. Z is F of
6 X and Y.

7 MR. DAY: Yes.

8 THE COURT: And then the second utilizing says Z is
9 equal to F of X.

10 MR. DAY: Yes.

11 THE COURT: And you're saying Z is never going to
12 be the same --

13 MR. DAY: Correct.

14 THE COURT: -- because of the way -- the way "based
15 on" works. Based on is a function.

16 MR. DAY: It's not the way based on works. It's
17 the way the signature protocol works.

18 THE COURT: So what applicant should have done is
19 applicant should have said in the second utilizing box based
20 on said data stream and said at least one parameter, just
21 like applicant did in the earlier utilizing limitation box?

22 MR. DAY: That's -- yes. We think there are
23 actually some problems with that. But, yes, Your Honor, that
24 would make more sense than what's written here.

25 THE COURT: That would fix the problem that you're

1 identifying?

2 MR. DAY: It would address -- we don't think it
3 perfectly solves the problem, but, yes, it would. I think it
4 would, and it would be consistent with what the specification
5 is talking about. Yes, Your Honor.

6 THE COURT: So maybe applicant just made a big
7 mistake here. Claim 1 --

8 MR. DAY: Maybe, Your Honor.

9 THE COURT: Where I'm going is don't you have a
10 noninfringement argument? I presume the way you do the
11 method or something close to this method, you probably don't
12 concede you practiced this method. But to the extent that
13 the plaintiff is going to make that argument, can't you say,
14 well, wait a minute. When we do that second utilizing step
15 to the extent we do it at all, we do Z is equal to F of X
16 and Y .

17 MR. DAY: The problem there, Your Honor, is that
18 only -- we would only have that argument if based on is
19 closed-ended. That would only apply if the claim -- the
20 second signature is based on only said data stream. I don't
21 think that's -- plaintiff is not proposing that as far as I
22 can tell.

23 So what we've actually got is based on, because
24 that's open-ended, means the second signature can be based on
25 the data stream alone; it can be based on the data stream and

1 some parameters; or it can be based on the data stream and
2 frankly anything else. So it can be Z equals F of X or F of
3 XY, or F of XF or ABC. It can be anything. That's where we
4 run into the problem that we have, Your Honor.

5 I don't want to cut off any question you might
6 have, but I have just a couple of points to make on this.

7 THE COURT: I'm just wondering. If I buy your
8 argument completely, what's the therefore? Is the therefore
9 this claim is indefinite. Is the therefore you've got a
10 great noninfringement argument? Is the therefore, oh,
11 there's lots of prior art that's going to invalidate this
12 claim? Which way are you going?

13 MR. DAY: Your Honor, if you -- if you believe the
14 problem that I've identified -- and I frankly think both
15 parties see the same problem -- the claim is indefinite. If
16 you're looking for sort of a backup, then it would be that
17 based on is actually closed-ended and that second signature
18 has to be based on the data stream and nothing else.

19 We don't think that that's correct, but that is --
20 that's where the noninfringement argument you're thinking
21 about, Your Honor, would come from. We think in fact you
22 can't fix this problem, and the claim is indefinite.

23 THE COURT: Okay. I'm going to think about this.

24 MR. DAY: So what we think the plaintiff is -- the
25 way the plaintiff would fix the problem is to add a

1 limitation, make the claim make more sense by adding a
2 limitation. And if you look at slide 66 in our briefing, we
3 cited the Federal Circuit cases saying, hey, you can't do
4 that. You don't get to rewrite the claims even if that's
5 necessary to preserve their validity.

6 And frankly there's a second problem here with what
7 -- with the way we think the plaintiff would like to read
8 this language; and that is, it's contrary to the prosecution
9 history. This is in our brief, but I'd like to quickly walk
10 through what I'm saying.

11 On slide 68 we have language from the original
12 application. So this is the way the application was filed.
13 It had a method claim. It talked about generating a first
14 signature. And then I've highlighted some language on slide
15 68 that says generating a second signature from said data
16 stream and parameters. So that was their original language.

17 If you look at slide 69, Your Honor, what happened
18 is the examiner rejected all those claims. So it was the
19 claims were anticipated by this piece of prior art. So if
20 you go to slide 70, what did the applicants do? They
21 canceled all their claims and they rewrote them and put in
22 new claims.

23 And if you look at the new claims, there was a
24 method claim. It's claim 9. That's what issued as claim 1.
25 We've highlighted the language where they say utilizing said

1 signature protocol to generate a second signature based on
2 said image.

3 Now, this time it doesn't refer to any parameter.
4 It doesn't say it's an image and a parameter. It doesn't say
5 it's the data stream and a parameter. So they've changed
6 what they had in their original claims that were canceled.
7 And that language -- based on that language and with that
8 language, the patent issued, Your Honor.

9 Then if you go to slide 71 ...

10 THE COURT: Thank you for pausing. Yes.

11 MR. DAY: Of course. If you go to slide 71, now,
12 the patent has issued with the language I was just pointing
13 you to. No mention of parameters. The inventors went back
14 to the Patent Office and said, hey, we need to correct that
15 same language. And they did.

16 You'll see on slide 71 that they changed the
17 language to say you're utilizing said signature protocol to
18 generate a second signature based on said data stream. So
19 there's still no mention of parameters. So this limitation
20 that the plaintiff is suggesting we should imply into the
21 claim language the inventors themselves excluded from the
22 claim language twice.

23 THE COURT: When -- this is probably a better
24 question for plaintiff's counsel, but when the applicant went
25 back and got -- or the patentee got the certificate of

1 correction, why didn't the patentee correct that limitation
2 to say -- instead of merely changing image to said data
3 stream, why didn't they change image to said data stream and
4 said at least one parameter?

5 MR. DAY: Your Honor, I don't know.

6 THE COURT: Is there anything in the prosecution
7 history that --

8 MR. DAY: There's -- well, I don't believe there's
9 a direct answer to your question. I believe the prosecution
10 history at least suggests. They may not have gotten the
11 patent in the first place if they hadn't changed that claim
12 language.

13 So saying the second signature is based on just the
14 image or just the data stream is a material difference from
15 the original claims. That said, there's nothing in the
16 prosecution history that explains why they didn't do what you
17 just said.

18 THE COURT: Okay. I understand.

19 MR. DAY: On slide 72 we've cited a few cases
20 saying, look, the claims have to be construed based on the
21 way they're written, that sort of thing.

22 Then finally -- so now, Your Honor, if you get to
23 the slide 73, we can't fix the claim the way that the
24 plaintiff proposes because you can't rewrite the claim to add
25 a limitation, and in the prosecution history they explicitly

1 removed that limitation.

2 So what we've got are claims that are -- this claim
3 is broken. It doesn't work the way it's written. We think
4 that renders it invalid as indefinite because you can't know
5 what that second signature -- frankly, you can't know what
6 either signature is based on because it tells you something
7 in the claim, but it doesn't tell you the full scope of the
8 claim.

9 So if you look at slide 74, our expert walked
10 through this kind of an analysis. He says, you know, the
11 fact that based on is open-ended, as it needs to be, is a
12 problem because the claim does not specify what other input
13 data beyond the data stream might be used to generate the
14 second signature. That's a problem.

15 If you look at the bottom of that quote, he says,
16 you know, therefore, a person of skill would not know the
17 full scope of the claim with reasonable certainty. And,
18 Your Honor, as we all know, that's the standard. That's
19 Nautilus, right? You have to know the full scope. You have
20 to know what can be included in that second signature, and
21 you have to know what is outside the scope. That's the
22 notice function of a patent, and it's not met here for the
23 reasons that I've explained.

24 Then finally, Your Honor, I guess the final point I
25 want to make is in your tentative decision, you say let's

1 rely on the plain and ordinary meaning. I think given the
2 problems that we've identified in the claim, that would be
3 essentially giving to the jury a broken claim and saying:
4 You guys figure out what it means.

5 So I think that that's -- there's a problem with
6 that approach. I think this is something we need to resolve.

7 With that, Your Honor, I'll sit down.

8 THE COURT: All right. Thank you very much.

9 Would plaintiff like to respond to any of Mr. Day's
10 arguments?

11 MR. JONES: Yes, Your Honor. Thank you.

12 Your Honor, on the screen there -- again, this is
13 the prosecution history ending in 326 that you were reviewing
14 with defense counsel before.

15 I think the important thing to pick out here is
16 that the remote versus local issue that is being discussed is
17 between the processor and -- the processor and the sensor,
18 the sensor and the processor, whereas the claim we're talking
19 about here is talking about the tightly coupling, the tight
20 coupling between the sensor and the memory.

21 So if we go back to -- yeah. The figure -- sure.
22 So we've got kind of a bigger -- the figure popped up there
23 for 2A. If you see on there, again the lines, they're going
24 between the sensor set, lens CCD sensor set, and the
25 processor. Then there's another connection or coupling that

1 the line goes from sensor set, processor, recorder, floppy
2 disk. And as we talked about before, the memory is akin to
3 the recorder or the floppy drive or the disk, what you're
4 writing the data to.

5 So again I think that's an important distinction to
6 make here, is that the tight coupling is -- it doesn't have
7 to be within the same device here because we're talking about
8 the memory or recording thing being outside of the thing that
9 has the sensor and the process.

10 To the extent that anything has to be in the same
11 device, perhaps that would be this thing that has the
12 processor and the sensor. That may have been -- you know, to
13 the extent anything was disclaimed, it may have been that,
14 but we don't believe that it was disclaiming the tight
15 coupling between the memory and the sensor.

16 So that -- that was the point on that that we
17 wanted to bring.

18 Then I think we've got something to discuss on the
19 based on. Thank you, Your Honor.

20 THE COURT: One question. You talked earlier about
21 the for-example language --

22 MR. JONES: Yes.

23 THE COURT: -- which is on -- I happen to be
24 looking at defendant's brief. That Exhibit 2, page 332, was
25 the language that you showed on the screen a moment ago.

1 MR. JONES: Uh-huh.

2 THE COURT: And page 333 has the for-example
3 language.

4 If you were writing this sentence for the applicant
5 today, what other example could you give that wouldn't be
6 problematic in terms of this physical access issue?

7 MR. JONES: Sure. So I guess I would say -- well,
8 that would prevent perhaps monitoring of the coupling.
9 That's what, you know, the claim does talk about.

10 THE COURT: Say that again. I'm not sure I
11 understood.

12 MR. JONES: Sure. I'm saying -- so I would say --
13 again it's that prevents someone hacking into the system or,
14 you know, that prevents -- again, I think the prosecution
15 history also talks about, you know, preventing -- you know,
16 this makes it tamperproof or it makes it, you know, so that
17 one can't, you know, can't tamper with -- makes it impossible
18 to tamper with it, things along those lines.

19 I've -- I think that would -- again, I don't know
20 that it would need to be a physical access. It would be a --
21 you know, that prevents a, you know, just access even, you
22 know, or either just anything that -- that accesses or
23 tampers.

24 THE COURT: So physical is kind of gratuitous in
25 that, in the language that the applicant actually used?

1 MR. JONES: Well, I mean, again this is an example.
2 So again, in that example, that is one example. But again,
3 if I were to do it again, I would maybe not have the physical
4 there. I do agree with Your Honor. I think that's a bit
5 gratuitous there.

6 THE COURT: Okay. I understand your argument.
7 Thank you.

8 MR. JONES: Thank you, Your Honor.

9 MR. HANBA: Excuse me, Your Honor. A few quick
10 points based on the "based on." One of the things that we
11 heard was that based -- that this works based on the way
12 signature protocol works. I want to step back here. What we
13 see is that -- and remember, this isn't just limited while
14 MD5 is the only thing that's named in the patent. Right?

15 There are other signature protocols, homegrown
16 signature protocols, Adobe signature. Everyone has a
17 signature protocol, and so -- it's not just to that. I mean,
18 it uses it here. The signature protocol used in this device
19 is the commercially available MD5, but the signature protocol
20 is not limited to the MD5. So we're going to have to step
21 back. What do the claims say?

22 I think Your Honor had it right in that the Court
23 does not find that the term based on indefinite -- excuse me.
24 The Court does not find the term based on indefinite merely
25 because it is open-ended. A claim can be open-ended, and

1 that's -- kind of what we talked about, is it enablement? Is
2 it an infringement? Is it a 101 issue?

3 So to, I guess, maybe answer Your Honor's question
4 with regards to the certificate of correction, I think if the
5 certificate of correction was not here, then maybe we'd be
6 actually arguing indefiniteness and it would be a different
7 issue as to indefiniteness.

8 There's a concurrent Japanese patent which used
9 that language. Didn't use the said image. It used said data
10 stream. That's why it was changed. And I think if you were
11 to say said image in that context, I think there might be an
12 indefiniteness problem because there's no mention of image
13 before that.

14 So I just wanted to make those quick points for
15 Your Honor.

16 THE COURT: But if applicant could go back in time
17 and tinker with this claim a little bit, wouldn't applicant
18 make the language after based on in these two utilizing
19 limitations the same?

20 MR. HANBA: I -- I don't know. I don't know
21 because, as counsel noted, this is in response to a
22 rejection. So this language was added in response to a
23 rejection. The examiner accepted this language in response
24 to the rejection, and the parties moved on.

25 It's open-ended. The examiner accepted it as

1 open-ended in response to the rejection.

2 So this -- would I, as the litigator in front of
3 Your Honor? Probably. But I don't prosecute patents. I
4 haven't in quite some time, but maybe I would 24 years ago.
5 You're right.

6 THE COURT: So let's say for the sake of argument I
7 stick with the tentative or something close to it and say,
8 well, it's not indefinite, as I said in the tentative, merely
9 because. But if I understand the language the way that
10 defendant is arguing, don't you have a big noninfringement
11 problem?

12 MR. HANBA: I don't know. Again, Your Honor, I
13 don't know because I haven't seen Adobe's source code. So I
14 don't know how, for example, the various Adobe products do
15 it. I assume that this is, you know, where the problem lies
16 going forward. That may be the issue, but I haven't seen it.

17 It's open-ended. It can be -- there is no "only"
18 in that claim. The examiner did not require the word only in
19 there. It's open-ended. So we can assume that based on and
20 overcome that rejection that the examiner saw it as such.

21 THE COURT: Okay. So if I stick with the tentative
22 or something close to it, or at least if I don't say this
23 limitation is indefinite, rendering the claim indefinite,
24 plaintiff lives to fight another day.

25 MR. HANBA: Yes.

1 THE COURT: Okay, but I don't want to cut you off.
2 Was there --

3 MR. HANBA: Nothing further, Your Honor.

4 THE COURT: Okay.

5 Mr. Day, do you want to say any more?

6 MR. DAY: If I could, Your Honor, just two quick
7 things.

8 THE COURT: Yes.

9 MR. DAY: Thank you. First, on the tightly coupled
10 and is it within a device, I wanted to point Your Honor to
11 our Exhibit 2, page 317. This is the prosecution history.

12 THE COURT: Okay. I'm there.

13 MR. DAY: There's a paragraph in the middle of the
14 page that starts with: The Schipper patent teaches no such
15 tight coupling.

16 THE COURT: I'm there.

17 MR. DAY: And if you go down a bit in that
18 paragraph, the applicants, the inventors distinguished
19 Schipper by saying it's relaying -- the line starts with
20 comparison of position information, but they say essentially
21 Schipper is different because it relies on comparison of
22 position information which must originate from devices
23 external to the camera -- and it goes on.

24 So the distinction the inventors were making was
25 between something that happens, you know, this tight coupling

1 inside a device, versus something where the information comes
2 from outside the device. So there is a single device
3 limitation. I just wanted to point you to this because it
4 further supports -- and frankly, I alluded to this earlier,
5 but I wanted to give you the citation.

6 I'm satisfied to submit on the based on, unless you
7 have further questions for me, Your Honor.

8 It's not the most straightforward argument. I
9 think it's a serious problem, but I understand that it's not
10 readily apparent.

11 THE COURT: This isn't necessarily directly related
12 to the based-on limitation, but is defendant going to raise a
13 101 challenge here?

14 MR. DAY: Your Honor, if the claim is read -- if
15 the terms that we were talking about are to be read based on
16 their plain meaning, I believe there's a 101 problem and I
17 believe there's an enablement problem, and I believe there's
18 a written description problem.

19 THE COURT: So we have those fights yet to come.

20 MR. DAY: Or not, if the claim --

21 THE COURT: Or you can win now.

22 MR. DAY: -- is indefinite, Your Honor, if we find
23 the claim indefinite now.

24 THE COURT: Okay. No, I don't have any more
25 questions.

1 MR. DAY: Thank you.

2 THE COURT: I want to -- as you may know, I let
3 counsel argue and make your record. Anybody want to --
4 plaintiff, do you want to respond any more?

5 MR. HANBA: No, Your Honor.

6 THE COURT: Okay.

7 Well, counsel, thank you very much. You've given
8 me some more things to think about, and I appreciate that.
9 It's very interesting.

10 I'm going to think about those things and try to
11 get you an order out as quickly as I can. I think I have
12 not -- I didn't set the rest of the case schedule, correct?

13 MR. DAY: That's right, Your Honor.

14 THE COURT: We only went this far.

15 Let me get the order out, and in that order it will
16 probably say: Counsel, please meet and confer and propose to
17 me a case schedule. If you agree, I'll probably adopt it.
18 If you don't, then I might bring you back to discuss it.

19 Good. Thank you.

20 What else do we need to accomplish here today in
21 this case?

22 MR. HANBA: Nothing, Your Honor. Thank you very
23 much.

24 MR. DAY: Nothing for us, Your Honor. Thank you.

25 THE COURT: Thank you.

1 Counsel, as I said, it's very interesting. I
2 appreciate the hard work that you've done and all the
3 briefing. I'll do my best to get this out as quickly as I
4 can.

5 Thank you. Have a good rest of the day.

6 MR. HANBA: Thank you.

7 MR. DAY: Thank you, Your Honor.

8 THE CLERK: This Court is adjourned.

9 (Proceedings adjourned at 3:22 p.m.)

10 CERTIFICATE

11 I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
12 TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN
13 THE ABOVE MATTER.

14 FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
15 REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
16 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

17
18 /s/ Miriam V. Baird

08/15/2024

19 MIRIAM V. BAIRD
20 OFFICIAL REPORTER

DATE

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