

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC,
Petitioner,

v.

iCHARTS LLC,
Patent Owner.

IPR2024-01387
Patent 8,271,892 B2

Record of Oral Argument
Held: February 10, 2026

Before DAVID C. McKONE, JASON M. REPKO, and
IFTIKHAR AHMED, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing on Tuesday, February 10, 2026, commencing at 1:00 p.m. EST, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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1:00 p.m.

THE BAILIFF: All rise.

JUDGE REPKO: You may be seated. This is an oral hearing for IPR2024-1387. I'm Judge Repko. I'm joined by Judges McKone and Ahmed. The remote judges have the file. They can see the podium, but they can't see the display screen, so you need to refer to slide numbers and paper numbers when you're discussing.

I want to remind you at the outset that this is a public hearing, and there are members of the public listening to the oral hearing today. Also, the panel knows there are a number of motions pending. We will not be ruling on those motions today.

At this time, I'd like Counsel to introduce themselves, starting with Petitioner's Counsel.

Please introduce yourself and anyone with you.

MR. PAPPAS: Thank you, Your Honor. Steve Pappas for Petitioner Tableau Software. With me is Tyler Dutton, Ryan Richardson, and Sal Bezos. We are all from the firm of Sterne, Kessler, Goldstein & Fox.

JUDGE REPKO: Thank you.

Patent Owner?

MR. MARINO: And good morning, Your Honor. Fabio Marino. With me is Lester Vincent, our client, Nisha Agarwal, and our trial technician, Katie Hopkins.

Mr. Vincent, Ms. Hopkins, and myself are with the firm of Womble Bond and Dickinson, and we represent the patent owner, iCharts, LLC.

1 JUDGE REPKO: Thank you.

2 So our hearing order gave each party 30 -- or 60 minutes to present
3 their arguments. The hearing room has a timer. The light on the clock
4 changes to yellow when you're nearing the end of your time, and I'll be using
5 that for your opening and rebuttal. You've run out of time when it turns red.

6 Petitioner's Counsel will begin, followed by Patent Owner's Counsel.
7 Both parties may reserve some rebuttal time, but you may not reserve more
8 than half your time for the rebuttal unless there's some special circumstance
9 that we need to be aware of. If you have any objections, also please wait to
10 raise them during rebuttal. Do not interrupt the other counsel with
11 objections.

12 So with that, I'm going to invite Petitioner's Counsel to begin. And I'll
13 need to know how much time you have for rebuttal, or how much you --
14 time you wish to reserve for rebuttal, and I'm using this timer.

15 MR. PAPPAS: Thank you, Your Honor. I'd like to reserve 20
16 minutes for rebuttal. I'm not sure, Your Honor, if the screen here is working.
17 I can refer to the slides if we don't display them.

18 JUDGE REPKO: Mr. Favor, is there -- the screen, is that working?

19 MR. FAVOR: Yes, it is. I think something just fell and missed
20 linking so that it looks like -- so yes, it should be.

21 MR. PAPPAS: Okay. I think it's all set when you are.

22 JUDGE REPKO: You may begin.

23 MR. PAPPAS: Good afternoon, Your Honor. Steve Pappas for the
24 petitioner, Tableau Software. Tableau's petition provides two primary
25 grounds -- sets of grounds that challenge the independent claims, and each
26 set of grounds renders obvious the claims of the '892 Patent. Those grounds

1 are based on the Becerra reference and based on the QlikView manuals.
2 And if you turn to Slide 2 of Petitioner's Demonstratives, those grounds are
3 displayed.

4 On Slide 3, there's a lot covered in Petitioner's Demonstratives, and
5 that's to ensure that Your Honors have key evidence and key arguments. For
6 purposes of our limited time today, I'm hoping to cover at least the issues
7 raised with respect to Becerra's teaching of publishing or embedding the
8 interactive chart as a self-contained and independent electronic document.
9 That raises the claim construction issues that have been raised in this
10 proceeding.

11 I also plan to discuss the priority date of the '892 Patent, including
12 whether the '892 Patent is entitled to an earlier priority date, and touch upon
13 public accessibility of the QlikView manuals. And then if there's time,
14 issues raised with respect to QlikView's teaching of a self-contained and
15 independent interactive chart. That being said, if Your Honors have specific
16 issues today that you'd like me to discuss beyond those, I'm more than happy
17 to do so.

18 So turning to Slide 4, just to set the stage, the '892 Patent relates to
19 creating interactive charts, and the patent acknowledges that services for
20 doing so already existed. For example, Google offers an online service that
21 already allowed users to create interactive charts. That service had many of
22 the interactive features already that are claimed in the dependent claims of
23 the '892 Patent. For example, in this paragraph that you see on the right of
24 Slide 4, the Google service already had a zoom feature, it already had
25 mouse-over popup features, so none of this was new when the '892 Patent
26 came to be.

1 So if we turn to Slide 5 of Petitioner's Demonstratives, the primary
2 problem, according to the patent, is that those charts did not remain
3 interactive when they were exported elsewhere. So on Slide 5, the way that
4 the '892 Patent purportedly solved this problem is by creating interactive
5 charts that can exist independent of the web portal. So in other words, that's
6 independent of the program used to create the chart. But the way it achieves
7 it is just using well-known technology. For example, Adobe Flash, as you
8 see in these excerpts on Slide 5, or as it used to be referred to, Macromedia
9 Flash, that's exactly the same way as the prior art achieves its interactive
10 charts. For example, Becerra, and we'll touch on that as well.

11 Slide 6 shows the independent claims. So there are two independent
12 claims in the '892 Patent. The first is a system claim, the second is a method
13 claim. They recite substantially similar limitations for the most part, as you
14 can see highlighted here. Claim 10 has a couple additional limitations, one
15 being that the chart template module is located on a remote server. That
16 becomes important when trying to gain earlier priority, because there's no
17 support in the provisional or the conception evidence for that element, as
18 we'll discuss later. It also requires allowing the user to drag and drop
19 selected data, and so having drag-and-drop techniques is only in Claim 10
20 and not in Claim 1.

21 Moving to Slide 8, I'll jump soon to element 1E, which is, I think, the
22 biggest dispute with Becerra. But again, just to set the stage and background
23 on Becerra, Becerra discloses a similar interface to the '892 Patent in the
24 sense that it has these pre-created components. Preexisting files, it calls
25 them. They're based on Adobe Flash. User can select those, customize them
26 like templates by adding data, and Becerra says the nature and appearance of

1 these components is only limited by the imagination of the user and the
2 capabilities of the graphics development software. So these are fully-created
3 Flash files, components that Becerra can use, including charts and maps that
4 can load and create these interactive control panels.

5 On Slide 9, Figure 5 of Becerra shows a created control panel. And
6 Paragraph 52 describes this, that after the control panel is created, it may be
7 exported so that it's no longer dependent on the tool that created it, or the
8 data. And the control panel may be saved as a separate file that's executed
9 as a standalone program. So a Flash file is the preferred embodiment in
10 Becerra of how Becerra goes about exporting it, and then allowing the user
11 to have access to that file.

12 I think -- jumping to Slide 19 addresses element 1E, which was an
13 element that is disputed in this case and raises certain claim construction
14 issues, and I think it's important to talk about this for our time today.
15 Element 1E requires a sharing module configured to enable a user to publish
16 or embed the interactive chart as a self-contained and independent electronic
17 document, and Slide 19 simply shows part of the argument that was made in
18 the petition, and relying on Becerra's Paragraph 52, that after the control
19 panel is created using its generation interface, it can be exported, which, in
20 our opinion, is publishing, exported, and then made available to the user for
21 download as an independent Flash file, a standalone -- that can be executed
22 in a standalone program.

23 On Slide 20, there was an issue that was originally raised in, I believe,
24 the preliminary response and addressed in the Institution Decision, and the
25 board did note that they weren't persuaded at this stage that Petitioner
26 explained how exporting the control panel as a separate file satisfies the

1 publishing aspect. And then Patent Owner brought up in their Patent Owner
2 Response in explicit construction saying that opposer would understand that
3 exporting or saving a file is different than publishing or embedding a file.

4 So in response, if we turn to Slide 21, the Petitioner Reply presented
5 two forms of argument and evidence in response to that. The first is a claim
6 construction issue alleging -- basically saying that that construction is
7 wrong. And our opinion is that enabling a user to publish the interactive
8 chart as a self-contained and independent electronic document does not
9 exclude the embodiment of exporting the chart as a self-contained and
10 independent electronic document for download. That is encompassed within
11 the scope of the claim element itself, and I'll explain that.

12 And the second piece of evidence and argument that was presented in
13 the reply and response was, even if Your Honors disagree with that and
14 adopt a narrower construction that that is not an embodiment covered within
15 the scope of the claims, then Becerra still renders it obvious for, essentially,
16 the same reasons, relying on the same exact embodiment, and I'll discuss
17 that. That's -- that starts on Slide 25.

18 But first, I do want to address the publishing issue, the claim
19 construction that was raised, and why we think that's wrong. So first is the
20 claim language on Slide 21 of Petitioner's Demonstratives. The sharing
21 module needs to be configured to enable a user to publish or embed the
22 interactive chart as a self-contained and independent electronic document.
23 There's no dispute that that self-contained and independent electronic
24 document can be a Flash file. That's exactly what Becerra generates.

25 And on Slide 22, the specification confirms that that embodiment of
26 exporting the Flash file, making it available to the user for download, is a

1 type of publishing within the context of the '892 Patent, and I think Figure
2 30 is the clearest form to see that. In Figure 30, the -- on the top-right of
3 Slide 22 of Petitioner's Demonstratives, it talks about, the user can also share
4 the chart by publishing the chart, as shown in Figure 30, by selecting a
5 publish button. And then the pop-up window includes the following
6 options.

7 These are publishing options. Patent Owner also agrees that that
8 figure discloses that a user can share the cart -- the chart by publishing the
9 chart using that published button 16 16. And then expressly in Figure 30 are
10 the following publishing options that include download the iChart as an
11 interactive object for embedding into a PDF or PowerPoint.

12 JUDGE REPKO: So I mean, I guess you're focused on the data
13 format, right, this Flash. Can you explain that a little bit more? Because
14 doesn't it just -- a format, in a sense, that has to be interpreted or executed by
15 another program in addition to, you know, whatever you're using, I can't -- it
16 can't be executed without another program. So how is that self-contained
17 and independent?

18 MR. PAPPAS: Sure. So in software, anything needs some sort of
19 runtime, some sort of program behind it, right? And so in terms of the self-
20 contained and independent, it's the same way the '892 Patent does it. It --
21 when the '892 Patent refers to self-contained and independent, it is its own
22 file that can be executed outside of the program that was used to create it.
23 And the claim provides some clarification on that, because it says, "When
24 executed in the absence of the generation interface and the chart template
25 module."

1 And so that's what it's referring to, is that you don't need the program
2 that was used to create it. So in the case of iCharts, you don't need the
3 iCharts wizard that creates the chart. In the case of Becerra, you don't need
4 its actual software for creating the control panels. It's that you can execute it
5 outside of that. And I don't think there's any dispute in this case, I don't
6 think Patent Owner disputes, that Flash files are -- can be self-contained and
7 independent for that reason, because they have their own program to execute
8 them separate -- completely separate from the chart -- the program that was
9 used to create the chart.

10 JUDGE REPKO: It sounds like you're saying the limitations in F are
11 the same as limitations in E. In E, they say, "Self-contained, independent,"
12 and then in F, they say, "When opened in a program in the absence of the
13 generation and interface and chart template module." Is there any
14 difference? Does that "when" in limitation 1F add anything to E?

15 MR. PAPPAS: I think it is a clarification of what it's meaning by
16 "self-contained and independent", the "independent" referring to being
17 separate from that original program that was used to create the chart, and the
18 "self-contained" being that it can be executed separate, right? It has its -- it
19 has its own program to execute in. So whether that's Adobe Flash, or if it's
20 embedded, for example, in a PowerPoint, PowerPoint would be -- it would
21 be self-contained within that PowerPoint presentation. It doesn't rely on any
22 other software other than what is required -- the one program required to
23 execute it --

24 JUDGE REPKO: You're saying these --

25 MR. PAPPAS: -- if that makes sense.

1 JUDGE REPKO: -- flash programs can be executed without the user
2 installing anything else?

3 MR. PAPPAS: Right. Well, all they need is Adobe Flash. So that's
4 correct. And I don't see how you could read "self-contained and
5 independent" to require much more than that in view of the embodiments
6 that are in the '892 Patent, one of those being Adobe Flash or embedding
7 into a PowerPoint presentation, right? And so it doesn't mean -- I don't
8 know what it would mean if it didn't have any dependencies. The -- it just
9 means that it's all self-contained in its own, essentially, runtime
10 environment, right? Its own -- it runs in the Flash environment, and that's all
11 it requires.

12 JUDGE REPKO: So E says it's -- or, F seems to suggest that it's
13 separate from the thing that generated it only, right? Is that an accurate
14 characterization of F? The generation interface and the chart template
15 module are part of the authoring environment.

16 MR. PAPPAS: Yes. So in the -- and I'm just bringing up Slide 29 to
17 show the language of 1F. So yes, it's, "When opened in the absence of the
18 generation interface and chart template module." And so it -- it's clarifying
19 that when it's self-contained and independent, it doesn't rely on any of those
20 original components that are -- that were required to make the chart itself,
21 right? You can still interact with it without having to have the original
22 software that was created.

23 JUDGE REPKO: And then the user renders it, and then there's some
24 input from that user, and then it re-renders. So in terms of those aspects of
25 it, doesn't that further kind of limit the "independent and self-contained" in a
26 way?

1 MR. PAPPAS: Yes. It limits it in that it requires, essentially, that
2 interaction that you were just talking about. So it requires that when you
3 open it, it's not simply a static image, that a user can actually input -- it can
4 receive input from a user, and it can update the chart based on that.

5 JUDGE REPKO: So that re-render, that C, is basically just redrawing
6 it after the user has provided some input to it. That's how you're --

7 MR. PAPPAS: Yes.

8 JUDGE REPKO: -- that's how you read that? Okay. I'm --

9 MR. PAPPAS: That -- that's --

10 JUDGE REPKO: You're going to --

11 MR. PAPPAS: -- exactly right.

12 JUDGE REPKO: -- get to that in a moment, I suppose, right?
13 That's --

14 MR. PAPPAS: Yes. And I'm more than happy to talk about that, but
15 yes, that is consistent with the plain and ordinary meaning of rendering.
16 And we have testimony from our expert on that in the Petitioner Reply,
17 because there was an argument made to that. But yes, rendering is
18 essentially displaying a new graphic on the screen.

19 JUDGE REPKO: All right. I have no further questions on it at this
20 point.

21 MR. PAPPAS: Okay.

22 So going back to --

23 JUDGE AHMED: Mr. Pappas?

24 MR. PAPPAS: Yes, Your Honor?

25 JUDGE AHMED: Can you hear me? Yeah. So going back to the
26 claim construction of the published element, is there any difference between

1 what's recited in Claim 1 and method Claim 10, which actually requires
2 publishing or embedding the chart? Claim 1 is written a little different
3 because it says, "The sharing module configured to enable the user," and I
4 see that's where your argument is focused. But is Claim 10 any different
5 than that?

6 MR. PAPPAS: Yes, Your Honor. So for purposes of the claim
7 construction issue, it wouldn't matter. If Your Honors agree with our claim
8 construction that downloading -- exporting for download would be
9 encompassed, then Becerra expressly discloses that it -- that is done anyway.
10 So -- but I'll refer you to Slide 25, because I think that that is directly relates
11 to your question.

12 The claim, and this is an argument we made in the Petitioner Reply
13 and Response to their Claim Construction argument, Claim 1 requires a
14 sharing module configured to enable a user to publish or embed the chart.
15 And so read according to its plain language, you just need to enable the user,
16 and you do that by allowing the user to download the chart. Now they're
17 enabled, then, to publish or embed the chart. We provided evidence of that.

18 The difference in Claim 10, to answer your question, Your Honor, is,
19 Claim 10 is a method claim, and it does require performance of that element.
20 It doesn't require just simply stopping when the user gets the file. But we
21 provided in our Petitioner Reply, on Slides 26 through 28 -- sorry, 26 and
22 27, evidence that a user would know how to embed the Flash file, for
23 example, in a PowerPoint presentation. And not only that, on Slide 27, why
24 it would have been obvious to do so, why one of ordinary skill in the art
25 would have done that. And so that would be the difference in Claim 10.

1 That's not necessary for Claim 1, because Claim 1 simply requires the
2 sharing module to be configured to enable the user to publish. So once the
3 user receives that Flash file, then they're enabled to embed it, for example, in
4 a PowerPoint presentation, as shown on Slides 26 and 27. That relates to if
5 Your Honors disagree with the claim construction -- with our claim
6 construction. That is even under the narrower claim construction, Becerra
7 renders obvious this element. That's what Slides 25 through 28 are getting
8 at.

9 Again, going back to Slide 22, that doesn't matter if Your Honors
10 agree with our claim construction that Becerra's embodiment of exporting
11 and making available to the user for download the Flash file is within the
12 scope of publishing as it's recited in the claim. If it is, then it would meet
13 both independent claims 1 and 10. Does that answer your --

14 JUDGE AHMED: It did.

15 MR. PAPPAS: -- question, Your Honor?

16 JUDGE AHMED: Yes. And then how do you respond to Patent
17 Owner's argument that Figure 30 has the publish button, but that does not
18 equate to just downloading it, because when you click on publish, the
19 specification shows that there's a popup that comes up? That's the step of
20 publishing, and that's what's missing in the Becerra reference.

21 MR. PAPPAS: So I would -- if I'm understanding correctly, in Figure
22 30, when you click that publish button, that is publish button 16 16, as it's
23 described in the specification. The window that's outlined in blue on Slide
24 22, that is the pop-up window that comes up. And so what's happening is,
25 the user clicks publish, that pop-up window comes up, and it displays the

1 published iChart options. One of those is expressly download iChart as an
2 interactive object for embedding into a PDF or PowerPoint.

3 So it is an embodiment that is expressly stated in the '892 Patent, so
4 it's our opinion it would be improper to exclude that embodiment from the
5 claims. There's nothing in the claims that would exclude that embodiment.
6 There's nothing in the claims that say it has to be published online. We don't
7 dispute that publishing it on a portal or a website, that's also an embodiment
8 of publishing, but so is downloading it, as shown here.

9 And it's not just Figure 30, Your Honor, that shows this. This is
10 consistent with all of the evidence in this case, and one example is shown on
11 Slide 23 of Petitioner's Demonstratives, discussing Mr. Duncker's evidence
12 that they're relying on for conception. And this exhibit, Exhibit 2015, at
13 Page 17, expressly shows the same embodiment that's described in the
14 patent.

15 There are two ways to publish in this exhibit. One is publishing
16 online in the -- at the top, where you create HTML embed code, and the
17 second on the bottom there, what's highlighted here on Slide 23, is
18 publishing offline. It's publishing as a Shockwave Flash file, and you can
19 see it even calls it a, "Self-contained Flash object that runs on any modern,"
20 I think it meant to say, "browser," and then you would embed into the PDF.
21 That's the same embodiment that made it into the patent itself, and that's not
22 the only evidence.

23 I'll add on top of here too, in that same exhibit -- sorry, in Exhibit
24 2017, more conception evidence on Page 28, for the record, there's a slide
25 that says, "Publishing methods." And one of those is -- expressly says,
26 "Interactive download," described as, "A chart owner should be able to

1 download the chart as an interactive version in the following SWF," which is
2 a Flash format, "PPT, or PDF." So that's another piece of evidence that is
3 consistent with this in the provisional on Page 63.

4 There's also a slide which is part of the intrinsic record that says,
5 "iCharts multi-publishing options including offline interactive charts," where
6 you can then embed into a PowerPoint. So all of this is consistent with the
7 embodiment that is shown in Figure 30, and I'll go back to Slide 22 for that.
8 Its exact --

9 JUDGE AHMED: So how can you use Mr. Duncker's testimony for
10 claim construction -- are you arguing that that's all extrinsic evidence for the
11 purposes of claim construction? Is that Petitioner's position?

12 MR. PAPPAS: So it wouldn't be evidence that was available to a
13 person of ordinary skill in the art at the time, so that's the difference, I think,
14 the distinction between the patent and then the provisional. Both the patent
15 and the provisional would be part of the intrinsic record, and it would -- they
16 would've had access, in theory, to those documents. But it's -- it is
17 consistent. I think it's probative and telling, because what the inventor was
18 describing from the beginning is exactly what made it into the patent, and so
19 it's probative of how a person of ordinary skill in the art would have
20 interpreted this term. So it's just further evidence. You don't need to rely on
21 that evidence, but it is further evidence that this is an embodiment that's
22 expressly in the '892 Patent.

23 JUDGE AHMED: Okay. And then how do you respond to Patent
24 Owner's argument that all of these arguments in the Reply are improper new
25 arguments, the petition did not argue about downloading the file, so these
26 should not be allowed?

1 MR. PAPPAS: So I would respond that the petition did argue about
2 downloading. So in the petition, the petition is relying on Paragraph 52 of
3 Becerra primarily, which does talk about exporting the file so that it can be
4 saved as a separate file, essentially saved as a Flash file. So that is the
5 downloading embodiment.

6 So I think what Patent Owner is arguing is the additional arguments
7 that -- under their own construction, that once it's downloaded, we presented
8 evidence that that is sufficient to enable a user to publish or embed the chart.
9 It's still relying on the exact same embodiment of Becerra that was talked
10 about in the petition.

11 So I think -- I don't think this is a new theory. It's an extension of the
12 theory. But even if it were, it is properly responsive to the claim
13 construction issue, and so we are required to have a fair opportunity to
14 respond to that, and to present evidence, and so that's what we did in that
15 respect.

16 JUDGE AHMED: Okay. Thank you.

17 JUDGE REPKO: I just want to -- I have a question about what you're
18 saying doesn't have patentable weight or doesn't further limit with the
19 enabling aspect of it, because earlier, you were saying that a lot of this in
20 that wherein clause in 1F sort of informs your understanding and our reading
21 of 1E with the, "Self-contained and independent." So I just want to kind
22 of -- can you clarify that, the enabling, and does it further limit the "Self-
23 contained and independent", or is this a separate thing?

24 MR. PAPPAS: So I -- with respect -- if you're asking with respect to
25 publishing, I don't think it has any effect on what would be encompassed
26 under -- in terms of what would qualify as publishing or embedding.

1 JUDGE REPKO: So this -- the "To enable" part, anything after the
2 "To enable" in E and F, you're saying, shouldn't have patentable weight, or
3 we shouldn't limit the claim in that way?

4 MR. PAPPAS: It is a -- it's not necessarily that it doesn't have
5 patentable weight, but it doesn't require actual performance of it --

6 JUDGE REPKO: Okay.

7 MR. PAPPAS: -- is sort of what we're saying.

8 JUDGE REPKO: But it is a characteristic of the data itself, though,
9 right? I mean, we have to -- in order to, you know, meet that limitation, you
10 have to show that the data has that capability; is that correct? Would you
11 agree with that?

12 MR. PAPPAS: Yes. You have to show that it -- that the user would
13 have the capability to publish or embed, yes.

14 JUDGE REPKO: Okay.

15 MR. PAPPAS: And so that was the evidence that we presented in
16 Petitioner's Reply --

17 JUDGE REPKO: Okay.

18 MR. PAPPAS: -- in response --

19 JUDGE REPKO: Thank you --

20 MR. PAPPAS: -- to that.

21 JUDGE REPKO: -- for clarifying.

22 MR. PAPPAS: Yep.

23 JUDGE REPKO: I have no further questions.

24 MR. PAPPAS: Okay.

25 So with that, just in view of my limited time, I'm happy to answer
26 more questions on Becerra if Your Honors have them right now, but I think

1 it's also important to address the QlikView priority issues that have been
2 raised.

3 So I'll turn to Slide 52 of Petitioner's demonstratives. So the
4 QlikView manuals, we have said, were publicly accessible by at least July
5 8th, 2008. The patent was filed after that. It claims priority to a provisional
6 application that was filed on July 2nd, 2008. And so Patent Owner has made
7 two arguments in terms of trying to obtain an earlier priority date than the
8 QlikView manuals. The first is claiming priority to the provisional
9 application, and the second is providing conception and diligence evidence
10 to claim an earlier date of conception.

11 I'll address the priority issue first. So turning to Slide 54 of
12 Petitioner's Demonstratives, in view of our time, I won't go through all of
13 these. But in Petitioner's Reply, we expressly argued that certain elements
14 were unsupported by the provisional application. It doesn't adequately
15 disclose the computer system architecture, doesn't adequately disclose the
16 chart template module elements, and it doesn't adequately disclose the self-
17 contained and independent electronic document limitations.

18 I will -- I'll talk very briefly about the computer system architecture.
19 And basically, the issue here is, in the non-provisional application, there
20 were two figures added at the beginning, that are completely absent from the
21 provisional application. The provisional is only a little more than a page,
22 and it does include some figures. And all that the provisional application
23 discloses, with respect to this computer system architecture, all the different
24 modules, is that embodiments of the invention relate to online services for
25 creating, sharing, and embedding interactive charts. That's it.

1 This actual separation of modules and the architecture of having a
2 generation module, a sharing module, chart template module, and a data
3 module, those all first appeared in the non-provisional application. And if
4 we jump to Slide 63 for a minute, it shows Patent Owner's expert's
5 understanding of what a module is in the context of providing conception
6 evidence.

7 And he says it's a self-contained unit of code of hardware. But you
8 can see here, Patent Owner's expert himself only refers to the '892 Patent,
9 and there's nothing in the provisional application about those specific -- the
10 way that the code is specifically organized that's recited in Claim 1.

11 If we go back to Slide 56, another problem with the provisional relates
12 to the chart template module. And we'll rely on our briefing for most of this.
13 But I specifically wanted to point out with respect to Claim 10, Element 10C
14 of Claim 10 differs from Claim 1, and it recites "Wherein the chart
15 template -- wherein the chart template is stored in a chart template module
16 located on a remote server." So the chart template module needs to be
17 located on a remote server. This snippet that you see on Slide 56 of
18 Petitioner's demonstrative is the only thing that is relied on in the charts
19 from either Patent Owner's response or its expert.

20 The service may include chart templates, users can store templates
21 that allow them to create charts that all have the same look and feel. That's
22 it. There's nothing about a remote server. There's nothing about where the
23 chart templates are stored. There's nothing about where the chart template
24 module is stored. So that alone is dispositive for Claim 10, and I just wanted
25 to make that clear as it -- if it didn't jump out in the briefing itself.

1 So we don't think that there is support in the provisional for a number
2 of limitations. We pointed that out in our Petitioner Reply. I'm happy to
3 answer more questions about the provisional, but I'll talk about the
4 conception evidence next if there's no questions on that right now.

5 JUDGE AHMED: The one question that I had was you argue about
6 the conception evidence as not being detailed enough. And Patent Owner
7 argues about, for example, Becerra on the -- some of the same limitations,
8 like the chart templates, right, they argue there's not enough detail in Becerra
9 of, for example, the format and things like that, for those templates.

10 MR. PAPPAS: Sure.

11 JUDGE AHMED: And you're arguing, I think, about these. How do
12 you reconcile those arguments?

13 MR. PAPPAS: Sure. So there's a couple answers to that. One, we
14 think Becerra is more detailed. For example, on -- for example, on the chart
15 templates, having pre-created components, these preexisting library,
16 preexisting files that already exist, right, that's more than just the idea of
17 having a type of chart. It -- these are files that have been already created
18 with Adobe Flash that then you can customize with data, et cetera.

19 But the, I think that the more important answer here is there is a
20 difference, a big difference between obviousness and written description
21 requirement for claiming earlier priority to a provisional. And there's a
22 number of cases that have talked about this. And so you can't think of this
23 as apples to apples. Because what would have been obvious to a skilled
24 artist in looking at the provisional doesn't matter. It matters how they would
25 have interpreted the disclosure and whether or not they would have thought
26 the inventor had possession of the full invention.

1 And, you know, just to give Your Honors a case on the record, there's
2 a *Los Angeles Biomedical Research* case, 849 F.3d at 1049, and it just
3 essentially lays out the difference, right? It says "A disclosure and apparent
4 application is not sufficient if it merely renders the later claimed invention
5 obvious. The disclosure must describe the claimed invention with all its
6 limitations." So I think you have to look at the written description
7 requirement with a little bit more critical eye in the sense that you can't look
8 at what might have been obvious to a skilled artisan when reading it. You
9 have to look at what they have shown the inventor would have had actual
10 possession of.

11 JUDGE AHMED: Okay. And while you're talking about the chart
12 templates, Patent Owner also points to the chart gallery. I think it's Page 61,
13 it says "all your charts in one place."

14 Why is that not sufficient to meet this claim?

15 MR. PAPPAS: Sure, Your Honor. So I -- this is in our briefing, I
16 believe. The only thing that shows are the finished charts, right? So a user
17 has gone through whatever it is, the iCharts program and created a chart, and
18 then those finished charts are put, I think, onto a portal. I think that's what is
19 implied by that figure. There's nothing about those being chart templates.
20 There's nothing about those being then used to create other charts in the
21 provisional application. The only thing you can glean from that is the users
22 created some charts and then here are the charts that they've created.

23 JUDGE AHMED: Okay, thank you.

24 MR. PAPPAS: So going to Slide 59 of Petitioner's demonstratives,
25 Patent Owner has also provided conception evidence from the inventor.
26 And Slide 59 summarizes, again, some of the elements that we've expressly

1 challenged .no possession of the recited chart templates, same with the
2 computer system architecture. And then a couple other arguments separate
3 from just the content of that is that the evidence is piecemeal and they have
4 to show evidence of the complete invention. They rely on at least 15
5 exhibits for the independent claims, I think it's 17.

6 And then more importantly, which I do want to talk about for a few
7 minutes today, the conception and diligence evidence here is not sufficiently
8 corroborated because all of that evidence comes directly from the inventor
9 himself. And so I'll talk about that a little bit as well.

10 On Slide 66 we'll rely on our briefs again from, in view of time for
11 most of these, unless Your Honors have specific questions. But I do want to
12 point out on Slide 66 this slide relates to, again, Element 10C. And 10C,
13 again, recites receiving a user selection of a chart template in the chart pane
14 wherein the chart template is stored in a chart template module located on a
15 remote server. And so this, what you see on the right here, Exhibit 2200,
16 Page 43, it cites Exhibit 2005.

17 That's the only image and the only exhibit that's relied on by either
18 Patent Owner or the inventor in his declaration for this element. And so we
19 wanted to get some clarity on that. We asked the inventor to clarify, what is
20 the remote server? So we said, you're saying that the iChart portal is what
21 you're pointing to for the server for Element 10C? And he agreed with that.

22 And then we directly asked him, you agree that the chart template
23 module is not stored on the server for the iChart portal, correct? And he
24 said, correct. That again is dispositive. There is no support in the
25 conception evidence for the idea of having the chart template stored in the
26 chart template module on or located on a remote server. So that's at least

1 dispositive with respect to Claim 10 -- element 10C in Claim 10. And so we
2 just wanted to point that out again to make sure it's clear from the briefing.

3 On Slide 68, I wanted to talk just a little bit about the requirements for
4 corroboration of the inventor's evidence. And what we have here in this
5 case, we have inventor testimony, and then we have a number of emails and
6 presentations coming from the inventor himself. These are all documents
7 that stem purely from the inventor himself, and there is nothing else to
8 corroborate any of this evidence.

9 This becomes really important in this case because Mr. Duncker, the
10 inventor, has a financial interest in the outcome of this case. I won't go into
11 detail here, but it's in our briefing in terms of his financial interest. And
12 there are a number of cases that we cited in Petitioner's Reply that establish
13 it's not enough to provide only testimony and documents from the inventor
14 to corroborate and establish conception.

15 One of those main cases is the *Apator* case, and you can see this on
16 Slide 68, that's 887 F.3d at 1293. And in the *Apator* case, we had similar
17 facts. We had evidence consisting of inventor testimony, inventor emails,
18 and inventor documents, things like drawings that were supposedly attached
19 to the emails or separately provided.

20 And the court here said that the evidence proffered by the inventor,
21 Mr. Jackman, stuck in a catch 22 of corroboration. "*Apator* attempts to
22 corroborate the testimony with emails and drawings, but those emails and
23 drawings can only provide corroboration with the help of his testimony."

24 We have the same thing here, right? Everything relies on Mr.
25 Duncker's testimony. Now, Patent Owner may come up and say, we have
26 more here, we have metadata, for example, which I expect that they will

1 bring up. What was provided is not metadata. It is an image that was pasted
2 onto a PDF presentation that was provided by the inventor, and the inventor
3 himself pasted that date. I don't know exactly how it got there, but the
4 inventor himself describes in Paragraph 37 of his declaration, that's Exhibit
5 2200, and I'll read part of this. "For any documents I rely on in this
6 declaration that were not attached to an email, I have included a screenshot
7 of the metadata associated with the file which evidences the documents
8 existed -- existence during the relevant time frame."

9 So it's the same situation as *Apator*, where Patent Owner is relying on
10 the inventor's testimony to establish what these documents are and where
11 they came from, including the metadata, which is then relied on to
12 corroborate the inventor's own testimony. And so you have sort of this
13 circular catch 22 where everything stems from the inventor's testimony and
14 nothing is actually independent from that.

15 So the line of cases that we cite in our Petitioner Reply, including
16 *Apator* and including *Medichem*, has said that that alone is just not
17 sufficient. It can provide some evidence of corroboration if it's alongside
18 other independent persuasive evidence, but alone it can't be enough to
19 establish corroboration for conception.

20 So I think that's an important issue that goes across conception and
21 diligence evidence because everything is provided by the inventor. They
22 could have gotten other testimony, they could have gotten independent
23 evidence. None of that exists here.

24 JUDGE AHMED: Mr. Pappas, could you address the *Cooper v.*
25 *Goldfarb* case that Patent Owner cites where the federal circuit seems to
26 have allowed corroborating testimony from inventors in some instances?

1 MR. PAPPAS: Yes. So I think -- I don't recall the exact facts of the
2 case, but I do recall some of them. So this was also -- that case was actually
3 also cited in *Apator*. And the difference in the *Cooper v. Goldfarb* case was
4 there actually was testimony of a third party, independent from the inventor,
5 to help corroborate. And so it sort of goes with the reasoning that was set
6 forth in *Apator* and *Medichem*, that it can provide some corroborative
7 evidence, but it has to be alongside other independent evidence. And so they
8 did have independent evidence in the *Cooper vs. Goldfarb* case. We don't
9 have any of that here, so it just can't be sufficient here.

10 With that, I know I'm into my rebuttal time. I'm happy to answer
11 more questions if you have them, otherwise I'll reserve the rest of my time
12 for rebuttal.

13 JUDGE REPKO: Any questions from my colleagues?

14 JUDGE AHMED: No, thank you.

15 JUDGE REPKO: Take the podium and let me know how much time
16 you'd like to reserve for rebuttal.

17 MR. MARINO: Just one second while we set up. But yes, we are
18 going to also do 40 and 20.

19 JUDGE REPKO: Thank you.

20 MR. MARINO: Yeah.

21 Just trying to make sure we have the slides. Okay. Okay. And okay,
22 thank you. I'm ready to start.

23 Hey, Your Honors. My name is Fabio Marino. I represent the patent
24 owner. I'm also going to be addressing why we feel that the petitioner has
25 not met its burden on the Becerra reference. I think Becerra is a
26 fundamentally different solution to a similar problem. And I will also

1 address why QlikView does not qualify as priori, because just applying a
2 rule of reason analysis to the issue of conceptual reduction to practice is a
3 practical matter. The patent owner filed a provisional, within two months,
4 filed a non-provisional, and within three days of the non-provisional,
5 launched a commercially successful website that embodied invention.

6 And in fact, one of the factors that patent -- that Petitioner left out of
7 their presentation and their briefing is the fact that the provisional includes
8 multiple screenshots of that website that two months before launch was
9 largely complete. So when we talk about the issue of written description, we
10 have to look -- and conception and reduction to practice, we need to look at
11 that within the realities of this world where it's -- we're talking about a
12 product that was developed over 18 months, not just by the two inventors,
13 but the two inventors with a team of programmers working under their
14 supervision.

15 And so what we see in the provisional, not only we argue is fully
16 supporting under Section 112 the claims in the non-provisional, but is also
17 very strong evidence of conception of a product that had in fact been
18 implemented almost 100 percent two months before launch, as, you know,
19 actually a person of ordinary skill in this particular art, two months before
20 launch of a website, clearly you're just debugging, you're not developing
21 new features. So there is -- I'm going to say a lot more about that, but I want
22 to start with Becerra.

23 And I -- obviously, Your Honors have understood our arguments with
24 respect to publishing, embedding, and downloading. Those are three
25 separate words. In the petition, the petitioner took the position those terms
26 should be given their plain and ordinary meaning to person of skill in the art.

1 And they have very different meanings, one from the other. We agree with
2 that. We said that in our response. Publish means to share with somebody
3 else. Embedding means adding something to an existing file. And
4 downloading means transferring a file from one computer to another, that's
5 the down in download. Person of ordinary skill in the art would have no
6 problem understanding those three things to be different.

7 Now, in their reply, they take it complete, apparently, and then read
8 the decision of institution that they hadn't met their burden of showing that
9 saving a file was publishing, they switched gears and they said, well, it's
10 downloading. No, downloading is a different term used separately
11 throughout the specification to mean exactly what downloading means:
12 saving a file from one computer to the next.

13 One of the fundamental differences between the '892 Patent and the
14 iChart system compared to Becerra is that the '892 describes an online
15 services system, a system with servers and clients. So when you go save the
16 interactive chart that you have created from a server, right, you're going to
17 have to download it onto a client at a minimum. If you're going to publish it,
18 you're going to post it on a portal or another website where other people can
19 access it.

20 If you embed it, you have to open up an existing file with some
21 content and insert the interactive chart into that file. That is all described
22 throughout the specifications of those terms as they're used in the
23 specification. They're used exactly in their plain and ordinary meaning for
24 person of ordinary skill in the art. So we disagree with the proposed
25 construction in the reply that they all mean the same thing. They mean three
26 separate things.

1 JUDGE REPKO: Well, I think they're focused on format in the sense
2 that --

3 JUDGE AHMED: Mr. Marino?

4 MR. MARINO: Yes, sir.

5 JUDGE REPKO: -- you have the flash file, right?

6 MR. MARINO: Correct.

7 JUDGE REPKO: In the sense -- and you have that in the
8 specification and in Becerra.

9 MR. MARINO: Absolutely.

10 JUDGE REPKO: And so they're arguing that it has the capability to
11 do all of those things. That's really all that needs to be shown is that it has
12 capability, it doesn't actually need to disclose the steps of publishing and all
13 of that. How do you respond to that?

14 MR. MARINO: Sure. So flash is a computer language, that's all it is.
15 Computer languages don't have the ability to download, publish, or embed.
16 That is something that needs to be done on an operating system. In fact, you
17 don't do any -- you -- there might be language constructs in flash that might
18 allow you to do that. There is no disclosure whatsoever of that in Becerra.
19 Becerra is actually a very clear writeup.

20 They're very clear, all they do is they have a piece of software they
21 call Canvas where you can compose a graphic simulation of data, right?
22 You can read the data, you can generate a flash file, and you can save that
23 file, and that's the end of it. It's one computer, one program generates this
24 control panel that is a flash file. That's the extent of Becerra. It doesn't talk
25 about embedding, doesn't talk about downloading from one computer to the
26 other, certainly doesn't talk about publishing.

1 JUDGE REPKO: But these are just properties of the file that
2 Becerra's authoring program has, right? Because the file itself has the
3 capability of doing all of those things, even just basically showing -- looking
4 at the patent that says that, right? The flash file has these properties. Does
5 Becerra need to go beyond that and actually describe in detail what the flash
6 file format needs to have?

7 MR. MARINO: I slightly disagree. The patent clearly goes way
8 beyond Becerra. In the patent, and if we can have figures, Slide 6 of ours
9 which is just as the claim language, we actually have an element which is a
10 sharing module configured to enable a user to publish or embed. That
11 means that there is a piece of code in the iChart system that actually does the
12 publishing and actually does the embedding. It's not just saving the file and
13 then hoping that the user would later embed it or publish it. If you look at
14 the specification, it's very clear.

15 Counsel actually showed you some of the screenshots from the
16 operating website where, in fact, the system of the '892 Patent can do the
17 publishing by putting the file after it's created onto a website. It can do the
18 embedding by opening a file and inserting the flash file into that preexisting
19 file. And you can also download the file. And because download, publish,
20 and embed are three separate words with three separate meanings, I would
21 submit that the claim language actually does not include the downloading as
22 an embodiment. It includes the publishing and the embedding as
23 embodiments. I'm sorry.

24 JUDGE MCKONE: Now, Counselor, have you proposed a
25 construction of "publish"?

1 MR. MARINO: I do not believe we have, other than to disagree with
2 their proposal that publish, embed, and download mean the same thing.

3 JUDGE MCKONE: Okay. Thank you.

4 MR. MARINO: Yeah. We went with what the petition said, leave it
5 the plain, ordinary, and that's what our expert has based his opinions on.

6 JUDGE REPKO: So this description of embedding and doing all
7 these different things, is that different than what an ordinary Flash file
8 ordinarily would be able to do?

9 MR. MARINO: So as I said, a Flash file is just a piece of code, right?
10 If you write instructions to do any of those things into that piece of code, it
11 will do it. If you don't write instructions in it, it will not do it. The only
12 teaching in Becerra is to write a flash file. There's no discussion of
13 embedding, no discussion of publishing, not even discussion of
14 downloading.

15 It's -- so it's a -- it's an extra step, right? And so my point here is that
16 the sharing module configured to enable a user to publish or embed is an
17 active limitation. It's a capability of the program that is being claimed, not
18 just a hope that once you've saved the file on your computer, the user
19 independently using an operating system, for example, would then go on and
20 do those extra steps. That's our position.

21 JUDGE REPKO: Thank you. I have no further questions on that.

22 MR. MARINO: Yeah.

23 JUDGE AHMED: Mr. Marino?

24 MR. MARINO: Yes, sir.

25 JUDGE AHMED: Petitioner offers evidence, expert testimony and
26 also the other reference, Elfarssi, to show that that was the purpose of flash

1 files, was to basically create these presentations, and embed them in
2 PowerPoint presentations, and put them on the internet. Why is that not
3 relevant? It's an obviousness ground, so why wouldn't a person of ordinary
4 skill in the art look at Becerra and say, oh, if it's in the Flash file, that's what
5 it's enabling me to do?

6 MR. MARINO: Well, because the claim is not just for the possibility
7 of somebody else doing it, it's to a system that actually does it, right? There
8 is a sharing module configured to enable a user to publish or embed. Even if
9 you use -- if you add the new reference they bring up in reply, which by the
10 way, they are not offering a combination under 103, which I think would
11 be -- would have been the right way to present that evidence if they wanted
12 to, they decided not to do it. And again, in IPRs, right, we're limited to the
13 scope of the petition.

14 So I -- number one, we object to the combination, because we think
15 that's a classic situation where you should -- they should have presented it to
16 reference obviousness ground, not just a one reference and then say, oh, we
17 can combine it after the fact with anything else we can think of. So it is that
18 problem, but also again, it still wouldn't get to what is claimed, which is the
19 sharing module configured to enable a user to do those things, to actually
20 publish, to actually embed.

21 If I may, I would like to re touch on two other aspects of Becerra I
22 think are really important because it distinguishes the invention. So I said at
23 the beginning that Becerra was addressing a similar problem, right? So it
24 recognized that static charts aren't very useful, and so it said, well, let's
25 create a graphic simulation. But it does it exactly in the opposite way that
26 the '892 does it. It does it by minimizing data, right? So in Becerra -- and

1 I'm on Slide 38 of the presentation. Actually, no, Slide 40. No, sorry, Slide
2 38, my bad. So on Slide 38 -- I'm sorry, this is the -- I'm sorry, let me skip
3 my head. Let me just talk through it for a second and then I'll go to a slide.

4 So in Becerra, they actually claim, as the point of novelty, not
5 including data in their simulation. In the Canvas, they have the ability to
6 open up a piece of data, open up this flash file that, as Counsel said, contain
7 some graphics component, and apply the data to the graphics component to
8 create a control panel.

9 The control panel is then saved as a file, right? So what happens with
10 this file that you have created? It contains no data, and that's -- Becerra is
11 very clear on this. They say, we don't put the data into the control panel.
12 We extract the mathematical relationship between the data and the data in
13 the Excel spreadsheet. We create a formula, and in the control panel, all we
14 have is the formula. It's a graphic simulation. It's basically a little GIF that
15 can, if you move the sliders, can modify the drawing.

16 Why is that the opposite of the '892? If I can have that Slide 6 back
17 up. So in the modules, you'll see that we have a data module configured to
18 store data. So the '892 Patent doesn't just read data from an Excel
19 spreadsheet, it actually stores it into the data module. We don't just have a
20 chart template module, we have a chart template module configured to store
21 chart templates.

22 So again, the '892 Patent and the system described there in, and the
23 iCharts website, has both a data module that stores the data and a chart
24 template module that stores the chart templates. And that's important
25 because then when they create the interactive chart and they share it so that

1 then the user -- that becomes a self-contained and independent electronic
2 document, it contains both that data and that chart template.

3 And then you asked questions about the where in Clause 1F. So that's
4 where I think the whole thing comes together. Because once it's shared,
5 so -- and remember in the '892 Patent, now we're on a different computer.
6 It's not the same computer that created the interactive chart. You've shared it
7 somewhere else, you've published it. Now this new computer, it doesn't
8 have any of the original software, using that data and using that chart
9 template, you can render the chart, receive user input, and then re-render the
10 chart using the user input as a parameter. Okay, that's very different what
11 Becerra does.

12 In Becerra, you have this animation, this little GIF that you can move
13 around. It looks like it's doing something, but it's not going back to data
14 because there is no data. There is no data to render. And one thing that's
15 important is their expert put in a declaration where he offered the
16 construction of the word render, and I think Counsel cited it.

17 If I could have that exhibit? Sorry, I'm jumping around a little bit.
18 Yeah, it's Exhibit 1072 at Page 15, Your Honors. So in this Page 15, please,
19 of Exhibit 1072. All right. So this is Paragraph 26, the next page, 15. This
20 is their -- petitioner's expert. He said that "This understanding is consistent
21 with the ordinary meaning of render, which means to produce a graphic
22 image from a data file on an output device such as a video display or
23 printer." And that is, I think, a fairly decent definition. So rendering is not
24 just drawing. It's taking data that is not an image in a data file and
25 generating an image from it.

1 In the particular example of the '892 Patent, you have a -- you have
2 data that might represent, I don't know, stock prices over time, right? That is
3 not an image. It's just a bunch of numbers. And then you render it. You
4 interpret the data to generate an image that actually represents the graph. So
5 in the patent, we have lots of, you know, charts that show you average price
6 of goods over time, right? That's rendering. And their expert agrees with
7 that. You take data which is not an image and you convert it into an image
8 on a display.

9 JUDGE REPKO: So hold on. Before you go further, just focusing on
10 this, you know, Paragraph 26 and the word "data file"?

11 MR. MARINO: Yeah?

12 JUDGE REPKO: Can that not be the flash file itself? Does it have to
13 be the numbers you're -- that you're saying is elsewhere depicted in the
14 chart?

15 MR. MARINO: Well, that's the point. So Becerra specifically
16 teaches that they don't put the data into the flash file. They only put a
17 formula into the data file -- into the flash file, which is not a data file. And
18 it's key to the invention of the '892 because the '892 actually relies on that
19 data to actually be able to render and re-render after the interactive chart is
20 shared, right? So there is actually a figure in the patent that shows you a
21 zoom feature, right? And zoom typically, when we think of it, you look at
22 an image and you blow it up, right? You just blow up the pixels.

23 That's not what the patent teaches. In the '892, we have a few figures
24 before and after of the zoom feature. In the before, you have a graph that
25 shows you data over a long period of time. When you zoom in, it goes back

1 to the data and draws you a completely different picture of a much smaller
2 time frame.

3 So if you compare those two figures, the zoom feature in the '892
4 Patent, it's a completely redrawn, not version of the same image, but it's a
5 completely new image. And that's what the capability in section -- in
6 limitation 1F is drawn, because it's the exact --

7 JUDGE REPKO: I realize you -- yeah, I realize that's what you
8 wanted to say there in that, what is it, C. But I guess, again, focusing on this
9 Paragraph 26, how do I know that what they're saying in this Microsoft
10 computer dictionary data file just can't be the Flash file itself? Just like it's
11 just some instructions, just there --

12 MR. MARINO: No, no. It could be if it contained the data that is
13 used to re-render.

14 JUDGE REPKO: But it didn't --

15 MR. MARINO: And our position is that there is no -- there is no
16 teaching of that. And in fact, there is a teaching away from it. So I've
17 actually read -- let's say, it's not a very long reference. I've read it in detail,
18 right, trying to find out exactly is there any indication where they said, put
19 data in?

20 No, they actually tell you exactly the opposite. They tell you, we will
21 only look at the data when we're doing the Canvas on the first -- in the first
22 program. We extrapolate the mathematical formulas, that's the relations of
23 one person is higher, right? You have to go up. And if the other person is
24 small -- is shorter, you have to go down. And that's all they do. They never
25 go back to the original data.

1 So certainly, in the context of '892 claim, what we mean, right, is the
2 data that was used to create the interactive chart in the first place. We send
3 it along, it's part of the interactive chart.

4 JUDGE REPKO: You're saying the data depicted in the chart, that is
5 the underlying numbers that are then displayed and all of that.

6 What I'm saying is, in Paragraph 26 here, if you're showing any data
7 file, like, what if it's just like a, you know, flat image file, right? You could
8 say render. Render the flat image file by reading that data file, reading that
9 JPEG, GIF, whatever, and then just showing that on the screen.

10 Just like you have some data in the Flash file in Becerra, it just doesn't
11 really distinguish between data in a chart and just data representing whatever
12 you're going to draw on the screen.

13 So I'm wondering, even if we did sort of read this definition into the
14 claim, whether that actually, you know, shows what you're trying to show.
15 So I think what you're trying to say with Claim 1 is that, no, the numbers in
16 the chart, the number that the chart is actually trying to convey to the reader
17 is actually being -- re-rendered --

18 MR. MARINO: Yeah --

19 JUDGE REPKO: -- being reread.

20 MR. MARINO: Yes.

21 JUDGE REPKO: But I don't see that in -- I mean, the claim doesn't
22 talk about that. It doesn't make that distinction, doesn't even recite that.
23 You're just trying to take that word "re-render", I guess, and have that mean
24 what you're trying to say. Is that correct? It's all -- it all turns on that word
25 "re-render".

1 MR. MARINO: It turns on the word re-render. And again, this is
2 actually my field of expertise. Rendering is not just redrawing the same
3 image to look different. It's actually going back to the source of that image.
4 And that is why I agree with their expert's construction. So let's go back to
5 the data file, which is not an image, and then re-render.

6 Rendering is really transformation of data, which is not an image, into
7 data represents an image. That's what a person of ordinary skill in the art
8 would understand rendering to be. We have rendering engines. It's a very
9 rich field. That's what render really means.

10 Anyway, so I think I've covered that. I just want to cover one other
11 important aspect of Becerra before I move on to the priority date issue.

12 So in Becerra, we also don't have chart templates. And again, their
13 expert put in his declaration and reply, I think it's the same. It's 1072, that he
14 said a chart type is not a chart template, and we cite it in our briefing, I
15 think. And our expert agrees with that.

16 So in Becerra, number one, the program itself, the Canvas doesn't
17 store any of the graphics component that the petitioner is reading on the
18 chart templates, right? Those are just files that exist on the computer that
19 they can read.

20 So I have, really, two points on that. One, the storing, which is an
21 actual limitation of the claim is not met for either the data or the chart
22 templates. But also what's loaded, if we leave aside the storing part, is not a
23 template because a template, really, within the '892 Patent is a completed
24 chart that you have created and saved for further use down the line, right?
25 So you don't have to recreate the same chart all the time.

1 Well, that's certainly not possible in Becerra, right? In Becerra, they
2 can create the control panel, which they say is not one of the original
3 graphics component. It's a new thing. There is no capability discussed once
4 you've -- once you read the graphics element to save it, to -- for reuse the
5 next time. So that wouldn't meet the chart template limitation either.

6 Now I think that's pretty much everything I wanted to say on Becerra.
7 Let me go ahead and address the priority. And on the priority issue, I think
8 there's one important point to make, which is -- and as I said, I lay down
9 kind of the surrounding circumstances.

10 I think it's Slide 14. Go to Slide 14 of the presentation.

11 Okay. So really, there are three separate basis where we think the
12 QlikView manuals are not prior art. The first one is taking Petitioner's
13 evidence at face value. They claim a July 8th, 2008 date. Okay. We filed
14 the provisional on July 2nd. And we put in a declaration by our expert in
15 our opposition detailing for each element of the claims that are addition to
16 the IPR, where the provisional provides support for that.

17 This was something that caught me by surprise. In opposition,
18 Petitioner didn't address that. They addressed the inventor's separate
19 evidence of conception prior to the provisional, but they never actually
20 addressed our expert's declaration pointing out where support for each
21 element of the claim was found in the provisional application.

22 And so that is an issue that I think is important to understand because
23 the only evidence from their expert was in the original petition, and we
24 rebutted it with our expert's declaration. They didn't comment on it in their
25 response.

1 And if we actually look at that declaration, which is Exhibit 2201,
2 starting on Page 13, so our expert went through and identified for every
3 single element where there is a disclosure of the same subject matter in the
4 provision.

5 So for example, for Claim 1, it says the computer system comprising.
6 And I think actually counsel showed the same element of the provisional,
7 says that embodiments of the invention related to an online service. Well, I
8 submit that an online service, at a minimum, would require a computer
9 system, online service, a person of ordinary skill in the art, at least a server
10 and a client.

11 Data module configures to store data. Users enter or upload data.
12 The user can then drag and drop the data into a chart in a special charting
13 page.

14 Next page, Page 614, again, we highlighted on the chart template, the
15 service may include chart templates. We don't have to debate whether the
16 provisional discloses chart templates because it tells you that they're chart
17 templates. And it says users can store templates to allow them to create
18 charts that all have the same look and feel. It's exactly what the chart
19 template module is configured to do in the claims.

20 And then we have a snapshot, a screenshot of the actual website that
21 by this point in time had been implemented that actually does it. So you
22 have -- this is one of the figures. Also, you'll see a very similar figure in the
23 specification. It's clearly there.

24 Go to the next page. This is the generational module, and we
25 specifically -- the highlighted language says the chart is automatically
26 created using the data, and it shows above how you actually apply data to the

1 template using a drag and drop. And again, there is a screenshot of the
2 website doing the same thing.

3 Next page. The sharing module, the highlighted, so we have saved
4 several things. We highlight the box that says, Publish iChart. So again, we
5 don't have to guess whether we're disclosing publishing. It's right there. We
6 also disclose embedding. And we use, a Share iChart on the very right of
7 that. So all the same words of the claim, you can verify. This is obviously
8 in the record. It's Exhibit 2201. It's actually present in the provisional.

9 And not only is the language of the claims present, we have
10 screenshots of a website implementing the invention attached to that text.
11 So I -- for a person of ordinary skill in the art, I think this is actually a pretty
12 fulsome support and fulsome disclosure.

13 Yes, it does not have all of the text in the non-provision. That's what
14 lawyers do. You file a provisional disclosing the full invention for a person
15 of ordinary skill in the art, and then you hire a patent lawyer to write the
16 specification. That's exactly what happened here. It happened over the
17 course of two months, a very short period of time.

18 May I just point out a couple other things? You can scroll down on
19 the same page, which is Page 16. We have two highlighted pieces of text.
20 After the chart is created, the chart can be published. The users can select to
21 embed the object as a cold snippet or download or embed as an interactive
22 object. The chart may be part of a portal or script. It's actually misspelled as
23 port.

24 Then we highlight, "The user can then publish the chart online or
25 download and embed the chart." Again, download and embed. So
26 download and embed are two separate things. You can download the file,

1 but then you have to embed it. And it gives you examples. The chart is
2 embedded or published, can be interactive. The chart can be updated
3 automatically. Again, all of the language in the claims, I would submit, is
4 fully supported by the text and the provisional.

5 Just one more page, I believe. Okay. I use the last element of Claim
6 1. There is this issue of live updating, update your online chart with a mouse
7 click, wherever they are located on the web.

8 So again, Counsel mentioned, well, you don't describe having
9 multiple servers. Well, I would submit this disclosure that you can update
10 the chart wherever it's located after you have shared. Obviously, you need at
11 least two websites to be able to do that.

12 Updating it wherever it might be located on the web, that is the
13 definition of the remote server to person of ordinary skill in the art. So --
14 and we have -- and he did the same thing for each one of the other elements
15 of the claims. I'm not going to have to take you through each one right now,
16 but I'm happy to answer any questions you may have on any specific
17 element.

18 I would submit two points. One, I think this is actually fully
19 supporting 112. And again, their expert did not offer a contrary opinion
20 after our expert provided this information.

21 Second, even if, for some reason, the board were to decide this is not a
22 fully enabling -- well, if it -- just to state the obvious, if it is fully enabling,
23 then the '892 gets a filing date of the provisional, which is July 2nd. July
24 2nd is before July 8th, so Qlik is not prior art.

25 Now, let's assume the Court disagrees with us on that and decides that
26 somehow it doesn't support under 112 written -- and written description is

1 the only argument they made in their briefing. Then I would submit it's at
2 least very strong evidence of conceptual, right? Discloses each element of
3 the claim in some detail in a written description, and it has actual
4 screenshots of an actual website attached to the provisional that
5 demonstrates it was actually implemented to a large extent, save for final
6 debugging that happens in the last two months before a commercial launch.

7 He also -- we also submitted, in addition to that, all the previous
8 documents that detailed the process of conception that, clearly, by July 2nd,
9 had been completed.

10 And then we submitted very detailed evidence of diligence after that.
11 Now, Petitioner, as far as I can tell, did not challenge our evidence of
12 diligence in their reply. So I think if you conclude that there is conceptions
13 of July 2nd, they're not challenging diligence. It's less -- it's about a two-
14 month period.

15 We have detailed communications back and forth between the
16 inventors and the development team. We have attached to our declarations
17 detailed communications of the patent attorneys drafting the application. I
18 think it's one of the strongest showings of diligence I've seen in my 30-year
19 career. So -- and that -- perhaps that's why they didn't attack it in their
20 response. So if we have at least conception by July 2nd, I think that resolves
21 the issue of whether QlikView is prior art.

22 You know, one argument that Petitioner raised was you didn't show
23 the computer architecture. I would submit that the evidence in the
24 provisional would disclose that or at least convey to a person of ordinary
25 skill in the art that architecture. The architecture here is not anything out of
26 the ordinary. It's online services, so you have to have servers and clients. I

1 showed you where in the description we talk about the possibility of having
2 two servers, right? One is the portal. The other one is the remote server.
3 And we talked about the update, the chart, whatever it might be on the
4 internet.

5 So I think to a person of ordinary skill in the art, reading that
6 description, looking at all the screenshots, it would be very clear that you
7 need to have a piece of software that does these things.

8 We do obviously disclose the website. We have screenshots of the
9 website. The website implements each and every feature of the claims.
10 That's what the non-provisional details, right? What was added after this
11 point in time of the provisional was a detailed description basically
12 explaining what's in each one of those screenshots.

13 But for me, for a person of ordinary skill in the art, somebody who
14 develops websites, we have the screenshots, and, you know, counsel as -- in
15 his argument, relied on those same screenshots to explain what the invention
16 is, you would understand what the functionality in the website is that maps
17 to the features of the claim. So I don't think that argument has a lot of lack.

18 Now, the last, and I just want to touch on this quickly, the last issue
19 that we believe makes the QlikView prior art not prior art, is the adequacy of
20 the evidence presented to substantiate the July 8th date. And I'm just going
21 to say it very quickly since that is the issue they're challenging in their
22 motion.

23 So what the Federal Circuit has said, because again, we can only do
24 printed publications in an IPR. So it's not whether the program had these
25 features or not. It's just was -- does the printed publication -- is that
26 accessible to the public? If it were a journal, it'd be a different story. It's a

1 manual. So a manual has to be shown to be reasonably accessible by those
2 of ordinary skill in the art.

3 JUDGE MCKONE: Could you tell me where in your substantive
4 briefing you briefed the issue of public accessibility?

5 MR. MARINO: I can't off the top of my head, Your Honor.

6 JUDGE MCKONE: And I ask because I couldn't find it.

7 MR. MARINO: Yeah.

8 JUDGE MCKONE: So that -- I was going to give you an opportunity
9 to show me.

10 MR. MARINO: Yeah, no, we did not. So that came up as part of the
11 Motion to Exclude.

12 JUDGE MCKONE: But the problem is, a substantive argument
13 shouldn't be presented with a motion to exclude. That's for evidentiary
14 issues.

15 MR. MARINO: Right. So I will not present that, I will -- so I'll stand
16 on the evidentiary objection because whether the evidence is sufficient to
17 sustain their -- the petitioner's burden, that, obviously, is a proper evidentiary
18 objection. So I will not present it as a substantive argument. I agree with
19 you.

20 JUDGE MCKONE: Okay.

21 MR. MARINO: I will let my co-counsel address the -- QlikView's
22 reference in -- as a -- on substantive terms and then reserve the rest of our
23 time, unless you have any other questions for me. Thank you.

24 MR. VINCENT: So I'm going to start with Slide 56.

1 Good afternoon, Your Honors. So I'll go to Slide 56, Patent Owner's
2 slide. So this is addressing it on the merits. We obviously heard that we
3 believe it's not prior art.

4 So I could -- the key point is that each QlikView document that we're
5 making is not self-contained and independent because the QlikView manuals
6 disclose that each open chart table in a QlikView document must be
7 recalculated on the server after each change in the logical state.

8 And I think that's a key, key point to understand the very long
9 QlikView manuals with -- that have a lot of information, but it -- this really
10 crystallizes it.

11 So again, each open table, chart table in a QlikView document must
12 be recalculated on the server after each change in the logical state.

13 Could you go to Exhibit 1009, Page 9?

14 So yeah, I guess this is hard to read, but -- so basically, this server is
15 the centerpiece, and it's a central -- the QlikView is disclosed as a centrally
16 managed document community. So the server is essential to this.

17 And you have QlikView users, but those -- everything that's done
18 there, any change has to happen at the server. So the thing about this is, let's
19 go to --

20 JUDGE REPKO: So just a quick question on it. So it's -- they're
21 wanting us to read it as independent of the authoring software. Is it
22 independent of the authoring software?

23 MR. VINCENT: That was going to be my next point. So Slide -- two
24 minutes left.

25 JUDGE REPKO: Well, you've got two minutes left.

26 MR. VINCENT: I know.

1 Slide 58, if you look at Claim 1, it -- the -- it -- the sharing module
2 says it refers to a self-contained and independent electronic document. And
3 we believe this is preliminary to the rest of the claim.

4 So after the wherein clause, that is just -- that is not definitional. That
5 is just a further limitation. So you have the sharing module creating a self-
6 contained and independent document, and then there's a further limitation,
7 but it's not definitional. It refers to the self-contained and independent
8 document in that wherein clause.

9 So therefore, if you don't have the self-contained and independent
10 document, which we don't believe is the case in QlikView, then that -- being
11 absent from the generation module doesn't matter. It's not there.

12 And that's kind of the key argument because it's not self-contained and
13 independent ever in QlikView. Anything you do on the user side, any
14 change in the logical state goes back to the server, and the server does it.
15 That's where the website is.

16 And in our briefing, we -- in our declaration, we show that the -- that
17 QlikView, there's another citation where it has extra memory. The more
18 clients it has, the more users, the more -- the extra memory it has because
19 more and more things need to be done in the server, okay? Because that's
20 where everything happens. And so that really does not meet the limitations
21 of our independent claims. So QlikView is not prior art from a substantive
22 point of view.

23 And I guess that's --

24 MR. MARINO: We reserve the rest of our time.

25 JUDGE REPKO: Okay. Thank you.

26 And, Petitioner, you have 20 minutes.

1 MR. PAPPAS: Okay.

2 JUDGE REPKO: I'll start the clock when you begin.

3 MR. PAPPAS: Sorry. Yeah, just trying to get the slides up very
4 quickly. Okay. Okay. Well --

5 Okay. Whenever you're ready, Your Honor.

6 JUDGE REPKO: There you go.

7 MR. PAPPAS: So I -- I'd like to address some of those points.
8 There's a lot that my friends discussed there. But I want to start with the
9 self-contained and independent, just quickly to touch on that because I
10 know, Your Honor, Judge Repko asked about that. That came up with both
11 in terms of Becerra and QlikView.

12 I think Slide 87 of Petitioner's demonstratives here provides some
13 clarity. This is from the prosecution history and the intrinsic record, and so
14 just helping to clarify that it says that the interactive chart can be embedded
15 or published as an electronic document which can be downloaded as a self-
16 contained file and independent of the web portal. And then moreover, it can
17 be opened by an electronic program to show the interactive chart.

18 And so I think that kind of shows to the extent there's a distinction
19 between 1E and 1F in terms of self-contained and independent. It's being
20 able to download it and have it as that self-contained and independent file.
21 That's what -- both what Becerra does and QlikView also creates, for
22 example, an HTML page that's downloaded as that separate and independent
23 file.

24 And then to the extent 1E adds to that, right, it's being able to open it
25 and execute it in the absence of any of the things that were used to create it.
26 So just to provide a little bit of clarity on that.

1 In terms of Becerra, they -- I believe Counsel stated that we didn't
2 present an obvious combination, but we did present an obviousness ground
3 in view of Becerra. This is not an anticipation ground, and so it is relying on
4 obviousness. And it is perfectly allowable to present single reference
5 obviousness grounds here, and that's what we did.

6 And then the reply itself does not present a new combination. What
7 it's doing is relying on the same exact disclosure in Becerra to explain why,
8 first of all, under -- why we think the construction is wrong, but then under
9 the narrower construction, why it still renders obvious the claim limitations.

10 That's not relying on the Elfarssi article as part of the combination.
11 That is what a person of ordinary skill in the art would have known. That's
12 the state of the art. That's the knowledge of a person of ordinary skill in the
13 art. And so combining that with Becerra's disclosure, same disclosure that's
14 in the petition, it would render it obvious. That -- that's the argument that's
15 presented in the reply.

16 I'll turn to Slide 25 quickly. And I believe Counsel also argued that
17 Claim 1 here is not the possibility of someone else doing it, that somehow it
18 had to be the application that's doing it.

19 Again, that's not how we read the limitation in Claim 1. It is a sharing
20 module configured to enable a user to publish or embed the interactive chart.
21 And so what it needs to do is once it enables the user to publish or embed the
22 chart, then that limitation of Claim 1 is met. Again, that only matters if you
23 disagree with our claim construction, and that's under the narrower
24 construction, but I just wanted to point that out.

1 There was some discussion about re-rendering and I think, Judge
2 Repko, I believe you raised this. That why in that definition of rendering --
3 why can't the data file be the data in the Flash file? And it can.

4 I don't think anything in the definition or any of the evidence that's
5 been presented requires the underlying data to be -- or requires the data that's
6 being rendered to be some sort of underlying data set separate from
7 computer data.

8 All it's saying is that you need to take some sort of file and you render
9 an image on screen. That's what rendering is. And so if you're re-rendering,
10 you're creating a new image on screen from whatever data is in the file, that
11 again, I think can be the data that is the Flash file.

12 And if we turn to Slide 12 because I think that was addressed, I think
13 this sort of brought up some questions with Becerra in respect to Element
14 1A, which is the -- which refers to the data module configured to store data.
15 There is no requirement in the claim, first of all, that the data be some sort of
16 underlying data set. It's just data, right? And that can be any sort of
17 computer data.

18 And I don't think there's any dispute that what Becerra stores in the
19 Flash file is a type of computer data. And it's actually used -- if you turn to
20 Slide 29, what Becerra stores in its underlying data structures do refer to
21 data, right? There are input components, for example, as shown in Figure 5,
22 that a user can change. That is changing the input data that affects the
23 output component, affects these charts up here.

24 It doesn't -- it's immaterial whether or not Becerra would store the
25 original Excel file data versus a version of the data that uses the chart. It's
26 still data. And that being said, our expert did testify -- and I will -- I'll go

1 back up to Slide 12 again. Our expert did testify that Becerra would store
2 the underlying data. A skilled artisan reading Becerra would understand that
3 it's storing the underlying data. And then the mathematical models are any
4 sort of formulas that would be present in the Excel file.

5 And so we have that evidence. I don't know that it's been rebutted,
6 and certainly, he was not deposed on this issue, but there is testimony here
7 saying, regardless of what you think the data should be, a person of ordinary
8 skill in the art would read it to say that Becerra is going to store the
9 underlying data. And it makes sense because it's displaying that data in
10 chart form in its published control panel.

11 There was also a little bit of discussion about chart templates, and I
12 think the argument that Counsel had brought up was there's no chart
13 template because there's no way to save the finished control panel for reuse.
14 I don't think that's a requirement of the claim that the chart templates have to
15 be the finished chart.

16 But nonetheless, I wanted to point out Slide 14 because the control
17 panels are Flash files, and that is also what Becerra talks about as being the
18 preexisting files or libraries, and it calls them, in Paragraph 32 -- again, this
19 is Slide 14 of Petitioner's demonstrative, in Paragraph 32, Becerra calls them
20 pre-created component library. Right. These are Flash files that have been
21 pre-created the same as the control panel is created. And so to the extent it
22 has to be some sort of finished, created component, I think Becerra has that
23 as well.

24 So with that, I want to talk briefly about the provisional application.
25 The -- or Counsel said, the counsel for iCharts said that it ignored that the
26 product existed when talking about the provisional. I -- I'm not aware of any

1 evidence that a skilled artisan would have been aware of the iCharts product.
2 I don't think the provisional specifically talks about this is a product that
3 exists.

4 I don't think it's anything that needs to be considered. What needs to
5 be considered is the disclosure of the provisional application itself and how a
6 skilled artisan would have interpreted that.

7 They also said that we never addressed their expert's report with
8 respect to support in the provisional application. That's not true. On Page
9 17 of our reply, I believe, we stated Dr. Miller's declaration provides some
10 color, but the board's rules prohibit arguments incorporated by reference. So
11 that's the first time we addressed it.

12 And I think that is important because it raises another point that Patent
13 Owner, all they put are these bare charts with no explanation whatsoever.
14 With their patent owner response already approaching being over the limit,
15 it's important not to take explanation that's only provided in another
16 document and incorporate it by reference.

17 But nevertheless, on Pages 17 to 21, we did address the evidence that
18 was -- provided in both the Patent Owner response and Dr. Miller's
19 declaration. That is on -- from Pages 17 to 21 of the -- of Petitioner's reply.
20 In there, it actually says, "Even considering Dr. Miller's analysis, he
21 improperly incorporated by reference," and then it goes on to address the
22 evidence that is in that. Let's put this up here.

23 Additionally, Counsel had put up -- and I don't have it handy, but they
24 had put up a portion of Dr. Miller's declaration discussing chart templates.
25 And the disclosure in the provisional application talking about chart

1 templates can be stored. And then pointing to Page 61, I believe the figure
2 on Page 61, which is titled the personal chart gallery.

3 And they say that this is somehow showing that there are chart
4 templates stored on a remote server. But there is nothing in the provisional
5 and there is nothing in -- if you look at Dr. Miller's declaration, no
6 explanation tying those two together. There is separate disclosure in the
7 provisional about chart templates can be stored. And we don't dispute that it
8 says chart templates can be stored.

9 And then a figure titled personal chart gallery, which looks to be --
10 and our expert -- or it looks to be just the finished charts which we set forth
11 in our petitioner reply. Nothing about those being templates that can be used
12 later or that they're pulled from a remote server. There is literally nothing
13 but an image of personal chart gallery. So there's not much to glean from
14 that. And a person of ordinary skill wouldn't have gleaned much from that
15 in terms of those being chart templates.

16 And then another point I just want to address, and I'm rattling this off
17 so feel free to stop me if I -- if you have any questions about these. They
18 mentioned that the only thing that we challenged was the written description
19 requirement. But on Page 17, we did argue both written description and
20 enablement. And both of those are required to satisfy section 112 for
21 purposes of claiming priority to a provisional application.

22 So on Page 17, we did say, "But iCharts did not provide any
23 explanations why these pages support and enable the claims," and I think our
24 arguments go to both, right? There is no support for -- there is no written
25 description to support -- and then it wouldn't enable a skilled artisan

1 separately, because these are separate requirements, to actually implement
2 the invention.

3 Section 112, I'll just note, does provide stricter standards than
4 obviousness. And it sounded like a lot of what counsel for iCharts was
5 talking about is how a skilled artisan may have looked at this and understood
6 how, you know, you could have implemented the underlying computer
7 architecture, or you could have made modifications to align with that. That's
8 an obviousness analysis. That's not a written description analysis. That
9 doesn't show that the inventor had possession. And so it does need to be
10 looked at with an eye toward 112, not an eye toward obviousness.

11 With respect to public accessibility of the QlikView manuals, I -- I'll
12 just note that Judge McKone was correct that there was no argument raised
13 in the patent owner response going to the sufficiency of the evidence
14 establishing that QlikView was publicly accessible by July 8th, 2008.
15 Counsel for iCharts agreed that wasn't raised. That doesn't have -- that --
16 that's not something that has to be considered in terms of their argument.
17 That was first made in, I believe, the reply to the Motion to Exclude. And so
18 although it is our ultimate burden to establish that, there is no argument on
19 the merits. They waived any argument on the merits with respect to that.

20 And then lastly, I will -- I'll touch on the QlikView merits. I believe
21 that counsel for iCharts was talking about everything in QlikView needs to
22 happen at the server. And so I wanted to bring up slides. I'll start with slide
23 84. Well, let's actually start with slide 83, just to be clear. And I didn't get a
24 chance to touch on this in more -- in detail in the opening, but this seems to
25 be the only element, really, that Patent Owner is disputing on the merits for
26 the QlikView grounds, and it relates to whether QlikView meets element 1E

1 and provides a self-contained and independent electronic document. And so
2 there were two theories that were presented in the petition. The first goes to
3 publishing and embedding the QlikView object in a web page. And the
4 second goes to publishing and embedding the interactive chart as a
5 Microsoft Excel document. And I don't believe Counsel addressed the
6 second one, but I'll address these quickly just to provide a little bit of color
7 on it.

8 So on slide 84, QlikView discloses an objects client page generator.
9 And this is where it generates things like the interactive chart as a Java
10 objects client, for example. And then these are stored -- these pages that are
11 created are stored in a location on a folder ready for publication on a web
12 server. On slide 85, I think Counsel ignores that the Java objects client, for
13 example, which I think is an easy example to look at, is self-contained and
14 independent. It doesn't rely on a server. It runs in an applet. It -- and it runs
15 using the Java runtime environment. So it has its own runtime environment,
16 it runs in an applet, it says it creates a sandbox, and so these are self-
17 contained applications.

18 There is nothing in here that necessarily requires going back to a
19 server. This is running purely in the client's browser. And there is an
20 example on Slide 85, Petitioner's Demonstratives, showing that. And if you
21 go to slide 92, that shows some examples of the types of interactions that can
22 happen in this Java objects client. For example, you can interact with the
23 data and you can sort the data. That's one of the examples that's provided
24 here on Page 133 of Exhibit 1009. There is no indication that this has to go
25 back to the server to do that.

1 But nevertheless, I think Your Honors were correct in the institution
2 decision that there's nothing in the claim that prevents having a connection
3 to a server, right? That is not specified in the patent. That's not specified in
4 the claims themselves. And so we think QlikView would meet this, even
5 under that sort of narrow interpretation of self-contained and independent.
6 But there is nothing supporting that in the claims, that there can't be any
7 connection to a server whatsoever. And that's just sort of how websites
8 work anyway. So we don't think that has merit.

9 And then the last thing I just want to touch on there, in terms of the
10 second theory that an Excel document is a self-contained and independent
11 document, I don't believe there is any argument from Patent Owner
12 disputing that theory in terms of it being self-contained and independent. I
13 think the only thing on dispute there -- and this is, sorry, for Your Honors,
14 slide 90 of Petitioner's Demonstratives.

15 And then on slide 91, I think the only thing in dispute with respect to
16 that theory is whether or not a table would be considered a chart in the
17 context of the '892 Patent. And we've provided a lot of evidence that we
18 think it does. I mean, QlikView itself talks about pivot tables and straight
19 tables. Our expert has commented on this in his reply declaration. That is
20 consistent with the plain and ordinary meaning of that.

21 And then to the extent that Your Honors credit any of the conception
22 evidence, it's also consistent with some of the conception evidence. For
23 example in Exhibit 2007, on Page 7, there is a slide, and I don't have it in the
24 demonstratives. But there is a slide titled, "iChart works with different chart
25 types," and then it lists and shows one titled "simple table with signal

1 buttons." And so I think everybody, including the inventor, had understood
2 that a table is a type of chart.

3 And so if you agree with that, that a table falls underneath the breadth
4 of the term, chart, then this theory would render it obvious regardless of
5 whether or not there is some sort of self-contained and independent
6 argument for the web versions of QlikView. With that, I will cede the rest
7 of my time, but I'm happy to answer any questions.

8 JUDGE REPKO: Any colleagues of mine have any questions?
9 Thank you. You have 20 minutes. Begin when you're ready.

10 MR. MARINO: Just give me a -- yeah. Okay. Thank you, Your
11 Honors. So just quickly, because you just mentioned that -- so Petitioner
12 argued that a table can be a type of chart. But the claim language is
13 interactive chart, and I don't think that they made an argument -- I don't
14 think anybody with ordinary skill in the art would think that a table is an
15 interactive chart. So I think that argument is insufficient to meet their
16 burden.

17 JUDGE REPKO: On Page 7 in the petition, they say an Excel
18 document, "An interactive chart within an Excel document." You could
19 change the cells in the Excel document. You can actually -- you can resize
20 them, you can move them around.

21 Why is that not interactivity?

22 MR. MARINO: I'm sorry. Why isn't that?

23 JUDGE REPKO: So --

24 MR. MARINO: I missed the last word. Sorry.

25 JUDGE REPKO: Right. So the -- why is that not interactivity? You
26 could actually change the dimensions of the cells. You can move them

1 around. You can move data within an Excel document. It seems to be pretty
2 interactive.

3 MR. MARINO: Certainly, you can interact with any electronic
4 document. But the interactive chart that's being claimed, right, is the one
5 that, at a minimum, which I think we had a lot of discussion about this, can
6 be rendered. You receive user input and re-render it.

7 I don't think the argument -- or I think -- I don't think it's a reasonable
8 argument to say that should be an example of re-rendering the table by
9 simply changing the data in it. If that were the case, literally any -- editing a
10 Word document would be interactive, right? So I think it's way outside the
11 scope of the claims and what's being described in the patent in '892.

12 JUDGE REPKO: Well, what they say is -- they're saying it allows the
13 user to render a chart, provide input that is input data, and that would be
14 saved to the data file, the Excel file, and then redisplayed as new data, right?
15 The data file being the Excel file itself. Why is that not re-rendering? Even
16 by your definition under the Microsoft dictionary definition?

17 MR. MARINO: Because there is never a transformation of the data
18 from data that doesn't constitute an image into an image. You're just
19 updating a file. Excel -- basically, the argument is Excel would anticipate
20 the claims of the patent, and Excel is clearly disclosed as prior art that the
21 office considered. I think the patent is strong about a chart that might be
22 created using data and Excel spreadsheet and then you make that chart
23 interactive.

24 I think one of the main points where we disagree, right, is whether the
25 function of the sharing module is purely -- is a limitation or not, right? So
26 their entire argument is -- and I think it's because the institutional decision

1 said they didn't meet the publishing or embedding requirements. Said, well,
2 let's write that out of the claim. They say all you have to do -- you don't
3 have to publish or embed, you just have to enable a user to later publish or
4 embed. So I think that is an issue of claim construction that this board
5 should resolve.

6 I submit that the claim language is very clear. It's a sharing module.
7 It's a structural limitation of the claim that has to enable the user. So it
8 doesn't say a sharing module that saves the file. It says it's a sharing module
9 configured to enable a user to actually publish and actually embed. And
10 then the specification shows you a computer program on a website that does
11 exactly that. So I think that's our position. I don't think that interpretation of
12 the claim that gets rid of entire limitations that are actually present, and
13 structural limitations of that in the apparatus claim is a reasonable
14 interpretation of the claim.

15 JUDGE REPKO: Just another question to -- going back to the Excel
16 for a limitation warning, did you argue anywhere in your response anywhere
17 about that particular theory?

18 MR. MARINO: I believe we did. But I'm going to let my co-counsel
19 address it, because that's really on his side of the argument.

20 JUDGE REPKO: All right.

21 MR. MARINO: I apologize for that. We kind of sectioned off the
22 theories. With -- I just want to quickly respond to the best combination of
23 Becerra and Elfarssi. That is a new combination. I think my argument was
24 pretty clear on that. It should have been presented as a two reference
25 obviousness. And, you know, the runaround of saying it's a one reference
26 obviousness and we'll tell you later what are we combining with, I think is

1 improper. And I think both the federal circuit precedent and these boards
2 precedent shows that.

3 On the re-rendering, I just want to be clear on this because I know we
4 had a lot of discussions about it. If there were data in the flash file, that
5 would be a different story. But the teaching of Becerra is actually against
6 putting data into that flash file. They say we only look at the spreadsheet,
7 we extrapolate the mathematical formulas, and we put that into the flash file.
8 That is exactly the opposite of what the patent does. Which is, we actually
9 put the data, put code that can render the data using the chart template, and
10 then re-render it after the user input. Becerra's is exactly the opposite.

11 We don't put the -- even the data we read from the Excel spreadsheet,
12 we just use it to calculate a formula. We put code that executes the formula,
13 and code and data two different things in computer science. And that's what
14 we do. It's literally like a GIF, right? It's a graphic routine that can execute,
15 and can do whatever it's programmed to do. It doesn't go to any data to re-
16 render it. It's literally just executing code to display an image.

17 That if you move the sliders, you know, the image changes. So it's
18 exactly the opposite. So there is not just a question of not meeting the
19 element. To a person of ordinary skill in the art, it's a classic example of
20 teaching away. The patent claims, having data, putting the data into the
21 interactive chart so you can render and re-render, the reference is avoiding
22 storing data into the file. Instead, it stores just code that can display the
23 graphic image that you can move around with a slider.

24 So I think it's a -- it's not just a question missing the element, it's
25 actually a teaching away. And, in fact, our expert talks about that in this
26 reply declaration, which I believe is 2201. Actually, don't worry about it.

1 Just cite to it for now. I did mention earlier on the chart template issue that
2 their expert and our expert agree on that. So let me show you that. So
3 Exhibit 1072 at Page 19. Okay.

4 So this is their -- petitioner's expert describing the difference between
5 a preset chart template and a chart type. And on the next page, on Page 20,
6 it says, "I disagree that a chart type is itself a chart template." And our
7 expert in 2001, so it's Exhibit 2001 at Page 52, basically says the same thing
8 in the Paragraphs 127 to 128. And I believe that's what their expert is
9 responding to. Both experts agree the chart template is not just a chart type.

10 What Becerra has is this -- it's not you can pick different types of
11 chart. It doesn't even have chart types. It has specific graphic elements.
12 One of them is called a bar chart. So you can pick a bar chart, and that's it.
13 And as we discussed, you can't modify it and save it back. So Becerra
14 would submit there is even less than a chart type, that both experts agree is
15 not sufficient to meet the claim limitation of a chart template. So you know,
16 this is actually the -- our expert's declaration on this point. I just want to
17 make sure that I showed you where their expert agrees that chart type is not
18 sufficient for chart template.

19 Now, he says that in distinguishing the provisional from the
20 invention -- and we saw that in the provisional, we both talk about a chart
21 template explicitly. And we say that the chart template can then be -- that a
22 created chart can then be saved to become a chart template, which is exactly
23 the same thing as a non-provisional explain. So it doesn't work for that
24 purpose, but it does distinguish Becerra.

25 So, you know, at a high level, one of the problems with Petitioner's
26 position is that they apply one set of constructions to read Becerra onto the

1 claim, and a completely inconsistent set of constructions to say that the
2 provisional doesn't support the invention. And that's problematic because, if
3 you look as a rule of reason, again, the provision is filed two months earlier,
4 website has almost completely been implemented. It would take something
5 extraordinary for that to be true, right? That the reference is closer to the
6 non-provisional than the provisional that was filed two months earlier
7 describing exactly the same product.

8 Now, granted, that is not by itself sufficient to determine this issue.
9 But in considering all of the evidence, I think that's important to keep that in
10 mind. So when the specific -- when the provisional talks about a chart
11 template, obviously it's talking about the same thing as the non-provisional.
12 When the provisional talks about data module, it's talking about the same
13 thing as the non-provisional.

14 When it's talking about a self-contained and independent document
15 that can be freely shared and it has screenshots of the website actually
16 sharing that document that's self-contained and independent, you know, it --
17 it's a lot -- it has to be a lot closer, just by simple rule of reason, than a
18 reference like Becerra that is trying to do exactly the opposite. Not store
19 data. Just create a simple graphic animation that approximates what the
20 chart would look like if you move a slider.

21 It just doesn't make sense at a conceptual level that Becerra's counsel
22 has actually argued today would be closer to the non-provisional description
23 than the non -- than the provisional that was filed less than two months later
24 and became, in fact -- and I think our expert discusses that in his original
25 declaration, and certainly in his reply declaration, a lot of the same figures
26 that are in the provisional are then found in the non-provisional, right?

1 Obviously, there are some modifications. They updated screenshots.
2 But again, makes sense. It's a website that's almost developed. You're
3 debugging it. You have screenshots of the, of the first time when you
4 write -- when you turn the provisional into a non-provisional, you write
5 description. But you're still describing the same screenshot, the same
6 subject matter, the same workflows, the same architecture.

7 I think that's all I have unless you have any questions for me. I'm
8 going to leave the rest of my time to my colleague.

9 JUDGE AHMED: Mr. Marino, is there --

10 MR. MARINO: Yes, sir?

11 JUDGE AHMED: -- something that connects the commercial product
12 to the provisional application? Petitioner argued that there isn't any way to
13 connect those two. Is there something in the record that --

14 MR. MARINO: Yes, Your Honor.

15 JUDGE AHMED: -- helps connect those?

16 MR. MARINO: Yeah. So several things, actually. Number one, the
17 figures of the provisional and the figures of the non-provisional are
18 extremely overlapping. You'll find some that are exactly the same, and
19 some that are somewhat modified. Second, the testimony and the
20 declaration of the inventor describes how the invention was developed. And
21 a lot of the figures that are in the provisional and in the non-provisional are
22 found in those documents.

23 You know, one point we did argue is that, you know, we submitted
24 about 180 exhibits. About 28 of them on conception, and the balance on
25 diligence and reduction to practice. So it is a very detailed explanation of
26 how the product was put together and it's continuance starts before the

1 provision starts. You know, our inventor testified he had conception as of
2 June of 2008. The provisional is July, so it's about a month later.

3 And you can trace through those exhibits, and both our inventor and
4 our experts do that, to see how, in fact, it's a progression. The patent, that is
5 not a standalone. It is, in fact, describing the product. And the screenshots,
6 again, are the best evidence to me. You can look at them and see that most
7 of the figures are exactly the same.

8 Thank you, Your Honor. Appreciate the time.

9 JUDGE AHMED: Thank you.

10 MR. VINCENT: So Your Honor, I can address your question. Could
11 you go, by the way, to Page -- slide 61? Got another slide. I wanted to talk
12 about Excel. And so you know, our position is that data and tables are not
13 interactive charts. And we did discuss this at a response at Page 87. And
14 our sur-reply, Page 27 and 28.

15 I mean, data and tables are not charts. So they -- you know, a chart
16 is -- you know, a data on a table is just presenting numbers and organization
17 of the numbers. And it -- that's different than the visualizations and other
18 things you get with a chart. So the -- so that's really what Excel -- you
19 know, what is being exported to Excel. And we do not believe tables are
20 charts.

21 As far as the conception documents, they -- if you look at the one they
22 refer -- that they refer to that we showed, the tables, there is a table there.
23 But it's associated with the sparkline visualization. In sparkline
24 visualization, there's all -- there's a table associated with it.

25 And that's really -- that is not showing that we thought tables were
26 charts. As far as Java goes, you know, I just always have to come back, that

1 the QlikView manuals say that the recalculation is -- any logical -- change of
2 logical states done on the server. That's what it says. And as far as Java
3 goes, just saying there's Java and Java applets, the QlikView manuals do not
4 really go into enough detail as to how this operates.

5 You could just as well have a situation where you had a Java applet on
6 the user side, and where you go to make a change to the chart and it would
7 just send it to the server to recalculate. And because of the change in logical
8 state, it works just as well. It could be just the opposite of what they're
9 presenting. The QlikView, there's not enough evidence -- we're relying, by
10 the way, on what these manuals disclose. There is just not enough
11 disclosure about that.

12 And so -- and we set our argument in our briefing response and our
13 sur-reply. So -- and then with respect to -- going back to self-contained and
14 independent. You know, this contrasts with the '892 Patent. Where the '892
15 Patent, you can embed an interactive chart in a PDF. So obviously, it retains
16 its interactivity in that PDF. And so there's no server involved, and this
17 really contrasts with the QlikView, you know, server-centric system that's
18 connected. It's just very different.

19 And as I previously pointed out, the separation from the generation
20 module is not -- it's not definitional. It's the -- QlikView last -- lacks the
21 sharing module which creates in -- a self-contained and electronic -- self-
22 contained and independent electronic document. And the wherein clause
23 just gets into further details about that. It's not definitional.

24 JUDGE REPKO: Just a quick question about that tables are not
25 charts. In Figure 13, it says -- there's information region on there. That isn't
26 talking about the patent?

1 MR. VINCENT: Okay. The '892?

2 JUDGE REPKO: Yeah.

3 MR. VINCENT: Yeah. Could you pull it up?

4 JUDGE REPKO: So the users can upload a data file from an Excel
5 spreadsheet using the uploaded data sheet region and then browse it. And
6 then there's an information region 120.

7 Is that the -- is information region 120 the chart?

8 MR. VINCENT: Yeah. Could you --

9 JUDGE REPKO: In Figure 13?

10 MR. VINCENT: Figure 13?

11 Could you pull it up? It's Figure 13.

12 JUDGE REPKO: Okay.

13 MR. VINCENT: Okay. So your question is -- I'm a little confused.
14 So you're saying --

15 JUDGE REPKO: You argued that -- you know, that with respect to
16 tables and charts, tables are not charts. That's what you said, right?

17 MR. VINCENT: Yes.

18 JUDGE REPKO: So this 1224, is that a chart?

19 MR. VINCENT: Let me grab -- I guess -- yeah. I see it. Your
20 Honor, I need to -- let -- I'm going to grab the pad, and this is my
21 description.

22 I mean, Figure 13 is described as uploading data from an Excel
23 spreadsheet to that region. So I -- I'm not -- I don't believe that departs from
24 what our position is, that a table is not a chart.

25 JUDGE REPKO: Okay. Thank you.

26 MR. VINCENT: I think that's it. Anybody else has any questions?

1 JUDGE AHMED: Counsel, the manuals say that the Java runtime
2 environment basically creates a sandbox in which the Applets work. Why
3 isn't that disclosure detailed enough on the self-contained aspect?

4 MR. VINCENT: Because, you know, in terms of the sandbox, well,
5 the question is, where is the sandbox? Is the sandbox on the server, or is it
6 on the client side? And also, are you just entering information into that
7 sandbox which then goes back and makes the logic -- the change on --
8 recalculates on the server? So I think you -- there's just not enough
9 information in this -- these reference manuals to get a clear answer frankly.

10 And I don't think Petitioner has provided it. But when you look at it
11 through the lens of the statement that everything is recalculated on the server
12 for an open table chart, I think when you look through that lens, it creates the
13 issue that it's -- basically doesn't operate that way. That you could have the
14 sandbox, and you can have Java, and whatever, AJAX, everything else, and
15 it's still being updated on the server side.

16 JUDGE AHMED: Okay. Thank you.

17 JUDGE REPKO: We're out of time.

18 MR. VINCENT: Thank you, Your Honor.

19 JUDGE REPKO: All right. Well, thank you for appearing today and
20 answering our questions. And that concludes our hearing. Please stay to
21 answer any questions that the court reporter might have for you.

22 MR. MARINO: Thank you, Your Honor.

23 MR. PAPPAS: Thank you, Your Honor.

24 MR. VINCENT: Thank you.

25 (Whereupon, the above-entitled matter went off the record at 3:06
26 p.m.)

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