

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and MOTOROLA MOBILITY LLC,
Petitioner,

v.

MULTIFOLD INTERNATIONAL INCORPORATED PTE. LTD.,
Patent Owner.

IPR2025-00058
Patent 9,158,494 B2

Record of Oral Hearing
Held: February 25, 2026

Before KRISTEN L. DROESCH, HYUN J. JUNG, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

NAVEEN MODI, ESQ.
DAVID VALENTE, ESQ
DANIEL ZEILBERGER, ESQ.
Paul Hastings, LLP
2050 M Street NW
Washington, D.C. 20036
(202) 551-1993
naveenmodi@paulhastings.com
davidvalente@paulhastings.com
danielzeilberger@paulhastings.com

TIMUR ENGIN, ESQ.
Google
1600 Amphitheatre Pkwy
Mountain View, CA 94043
(650) 253-0000

ON BEHALF OF THE PATENT OWNER:

STEPHEN SCHREINER, ESQ.
MINGHUI (MITCH) YANG, ESQ.
Carmichael IP PLLC
8607 Westwood Center Drive
Suite 270
Tysons, VA 22182
(703) 646-9250
schreiner@carmichaelip.com
mitch@carmichaelip.com

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Patent 9,158,494 B2

ROBERT S. PICKENS, ESQ.
Kasowitz LLP
1401 New York Avenue NW
Suite 401
Washington, D.C. 20005
(212) 506-1718
rpickens@kasowitz.com

The above-entitled matter came on for hearing Wednesday, February 25, 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.

JUDGE JUNG: Good afternoon. Please be seated. Okay. This is the oral argument for IPR2025-00058. In this proceeding, Petitioners Google and Motorola challenge Claims 1, 4, 6, 9, 10, 12 through 14, and 18 through 20 of U.S. Patent Number 9,158,494 owned by Multifold International.

Starting with Petitioner's Counsel followed by Patent Owner's Counsel, please state your names for the record.

MR. ZEILBERGER: Good afternoon, Your Honors. Daniel Zeilberger. I'm here on behalf of Google, arguing today on behalf of the Petitioners. I'm joined by my colleagues, David Valente, Naveen Modi, along with the client representative, Timur Engin of Google.

JUDGE JUNG: Thank you.

MR. PICKENS: Good afternoon, Your Honors. Robert Pickens of Kasowitz, LLP, on behalf of Patent Owner. I'm joined today by my colleagues Steve Schreiner and Mitch Yang of Carmichael.

JUDGE JUNG: Thank you. Two reminders. Please refer to demonstratives, papers, or exhibits by slide or page number. The public can listen to this proceeding, and I noticed there are some exhibits filed under -- or accompanied with a motion to seal.

Mr. Zeilberger, do you intend to discuss any exhibits under seal?

MR. ZEILBERGER: No, Your Honor.

JUDGE JUNG: And same question, Mr. Pickens, do you --

MR. ZEILBERGER: Sorry, Your Honor, I should clarify. I'm not intending to discuss any material that's under seal. I believe one of the entire

1 deposition transcripts is technically subject to the motion, but I won't be
2 discussing any of the subject matter that is under seal or requested to be
3 under seal.

4 JUDGE JUNG: All right. Thank you.

5 And, Mr. Pickens, same question.

6 MR. PICKENS: Likewise, Your Honor. We expect to discuss
7 matters that have been sealed, but we don't expect to raise any of the subject
8 matter that have been sealed.

9 JUDGE JUNG: All right. Thank you, Mr. Pickens.

10 With that, Mr. Zeilberger, you may proceed when you're ready.

11 MR. ZEILBERGER: Thank you, Your Honor. And I would like to
12 reserve 15 minutes for rebuttal. May it please the board, this IPR centers
13 around the Seo reference, which has an undisputed priority date that is seven
14 months before the earliest possible effective filing date of the 494 patent and
15 Multifold's attempt to swear behind the Seo reference. As I'll discuss today,
16 the Seo reference renders unpatentable all of the challenged claims, either
17 alone or in combination with other references.

18 We can go to Slide 2. Just very briefly, as you can see, here are the
19 instituted grounds. Seo is at issue in all of the grounds. Let's go forward to
20 Slide 4, please. Most of the dispute in this proceeding centers around
21 whether Multifold can swear behind the Seo reference, which leads to the
22 first two key issues in dispute.

23 Whether Multifold has provided competent, corroborated evidence,
24 proving reduction to practice, which I plan to discuss first, and whether
25 Multifold has shown prior invention by the actual named inventors as

1 opposed to evidence relating to contributions by other individuals. I'd like to
2 start with the reduction to practice issue. If we can go to Slide 6.

3 JUDGE PESLAK: Counsel, I have a sort of general question. Patent
4 Owner submitted a mapping of the devices that they claim show reduction to
5 practice against the claims that are challenged. So it -- I didn't see in your
6 petitioner reply that you disputed any of that mapping. So is that correct that
7 if Patent Owner could show that they invented prior to Seo's priority date,
8 then other than Claim 14, you don't dispute whether those prototype devices
9 mapped to the claim?

10 MR. ZEILBERGER: No, Your Honor, but I think your question
11 actually highlights one of the key disputes in this proceeding. The mapping
12 that Patent Owner has provided in their Patent Owner response goes to
13 conception. They argue that those conception documents show that they
14 conceived all of the limitations, of all of the claims except for Claim 14.

15 With respect to reduction to practice, as I'll talk about today, it's
16 actually undisputed that there's no documentary evidence actually showing
17 how the prototype devices work. They're relying on circumstantial evidence
18 and testimony from the witnesses, but it -- it's not in dispute, at least in terms
19 of what the witnesses have said, that there are no documents showing what it
20 was that was actually reduced to practice, if anything.

21 JUDGE PESLAK: Okay.

22 MR. ZEILBERGER: But I intend to talk about that at length today,
23 Your Honor.

24 JUDGE PESLAK: Okay.

25 MR. ZEILBERGER: So here on Slide 6, we have the key dates that
26 are -- just to set our foundation here. We have the 494 patent which claims

1 priority to a provisional application that was filed on September 27th, 2011.
2 We have the Seo reference that claims priority to a provisional application
3 seven and a half months earlier on February 10th, 2011.

4 And Patent Owner hasn't challenged that Seo is entitled to that
5 provisional date. We have Multifold's alleged conception date of no later
6 than November 18th, 2010, and we have Multifold's alleged reduction to
7 practice date of either before February 10th, 2011 or no later than February
8 22nd, 2011.

9 Let's go to Slide 7. Here, it's really the same information just visually,
10 but what I wanted just to set our foundation here, the red text I think focuses
11 us on what I'll talk about today, which are really the key problems with
12 Multifold's reduction to practice evidence.

13 They put in some documents relating to the period between their
14 alleged conception and their alleged reduction to practice that really are just
15 vague and have various different deficiencies that I'll talk about. And then
16 there's this seven-and-a-half-month window afterwards where they just don't
17 give us the evidence that exists, that they are -- is in possession. They just
18 keep it away from the proceeding.

19 Let's go to Slide 8, please. I know Your Honors are very well aware
20 of the case law governing reduction to practice, but I do think three points
21 are worth emphasizing here. Number one, in order to qualify for a reduction
22 to practice, here we're talking about actual reduction to practice, not
23 constructive reduction to practice. They're not relying on that.

24 I assume they must have had problems with showing diligence to the
25 filing of the provisional application. They haven't made any arguments
26 based on a constructive reduction to practice, talking about actual reduction

1 to practice. And to show actual reduction to practice, they have to have
2 actually constructed an embodiment -- actually constructed an embodiment
3 that meets all of the claim limitations.

4 Number two, they cannot rely on just inventor testimony. There has
5 to be corroboration, and that's one of the key problems with their evidence.
6 And number three, this is an issue that is Multifold's burden. For them to get
7 an earlier date than their actual filing date, they need to show that they're
8 entitled to claim priority to that earlier date, and that the case law makes
9 clear that that's an issue that's Patent Owner's burden.

10 Slide 9, please. Multifold relies primarily on testimony from three
11 declarants. There is Sirpal, who's one of the named inventors, and there is
12 Cassar and Becze, who worked with Sirpal at Flextronics around the
13 relevant time. There are substantial issues with the testimony of all three of
14 the declarants.

15 If you go to Slide 10, I'd like to start by talking about general issues
16 that pervade really all three of the declarants. First, it came out in deposition
17 that Multifold's Counsel wrote all three of the declarations, and they were
18 written after group meetings where all three of the witnesses conferred, got
19 their story straight, and then the declarations were spit out.

20 Now, what was said during these group meetings, we don't really
21 know because all of the witnesses suddenly couldn't remember what
22 happened a few months ago. They said -- couldn't remember what was
23 talked about. And I'll highlight some of the testimony that I think is really
24 glaring in a little bit, but they wouldn't really tell us what they talked about,
25 just that there were meetings. And on top of this, if we go to Slide 11 --

26 JUDGE PESLAK: Counsel.

1 MR. ZEILBERGER: Yes, Your Honor.

2 JUDGE PESLAK: Counsel. Saying that Counsel wrote all three fact
3 declarations, that's a pretty loaded word to put in there, "wrote". As I read
4 some of the deposition testimony, I -- I'm not sure if it was Mr. Cassar or
5 Mr. Becze, but I thought he testified that he had a meeting with Counsel.
6 Counsel gave him a draft of a declaration, and it went back and forth a
7 couple times, so --

8 MR. ZEILBERGER: You're -- yes, Your Honor. I know you're --

9 JUDGE PESLAK: That's different than saying he wrote the
10 declaration.

11 MR. ZEILBERGER: I think if we were to look at just that one factor
12 in isolation, then yes, I understand lawyers help declarants write their
13 declarations sometimes. Here, I'll point out I -- I'm not sure that his
14 testimony is necessarily credible given, as Your Honor has pointed out, at
15 institution.

16 And it's indisputable, there -- there's literally parts of the declarations
17 that are word for word the same, and it really feigns credibility for two
18 different witnesses to have independently come up with literally sequences
19 of words that are word for word identical. But again, I think here, we need
20 to look at the totality of all of the evidence. So it's not just that there were
21 these group meetings that they said that they didn't remember. It's not just
22 that the -- Multifold's Counsel wrote the declaration.

23 Here on Slide 11, we also have that Multifold decided to make sure
24 that their counsel also represented these witnesses, and they paid for those
25 attorneys, and then they used that to say, oh, well, whatever Multifold told

1 the declarants, that's privileged because it's the same attorneys representing
2 them.

3 And then on top of that, they also paid fact witnesses, not just
4 replacing their income. We're talking about \$950 an hour for Sirpal, a fact
5 witness. And he said that he made more than \$70,000 for his time for this
6 proceeding, which is -- when you compare that number to the income that he
7 said he made leading up to that, they're really apples and oranges. It -- it's
8 not in comparison, it's not a -- an hourly rate that would compensate him for
9 what his typical time is. It's something else. And when we look at Sirpal,
10 Cassar's and Becze's actual testimony in deposition, it's apparent that they
11 are not reliable witnesses, and their testimony should not be given weight.

12 If you go to Slide 12, please. First -- and this will be really a theme of
13 my argument today because it's not just an isolated incident. There's the
14 missing documents. Sirpal said he had thousands of documents that he
15 collected from his time at Flextronics, including documents relating to the
16 Imerj, including documents from after what Multifold is alleging to be the
17 reduction to practice date, all the way up until the end of 2011. And actually
18 in his deposition testimony, a few lines after this, he says it might even --
19 might have bled into 2012.

20 He gave that to Multifold's Counsel. He didn't give it to Petitioner's.
21 And when we asked for those documents, because you need to look at all of
22 the evidence to establish whether there was an actual reduction to practice or
23 not, for all we know they noticed problems that they were experiencing in
24 that time period. They refused. Neither Sirpal nor Multifold gave us those
25 documents. And I think that really goes to show two things. One --

1 JUDGE PESLAK: Well, Counsel, let me ask you this. I don't believe
2 you filed a motion to compel in this case, and I don't think you tried -- I
3 mean, Sirpal is a third party and the other guys are, too.

4 Like, you didn't seek a subpoena for those documents. So what are
5 we to make of this that, you know, supposedly there's -- and I believe, you
6 know, I'm not disparaging what you're saying, but you're saying there's
7 thousands of non-produced documents, but you didn't come to us for relief
8 before a hearing.

9 MR. ZEILBERGER: Your Honor, there's -- I know that's the
10 argument that Multifold makes in their surreply, and there's several
11 problems with that. For one, this isn't just something that we're guessing
12 upon. Sirpal said that he had documents and that he handed them over to
13 Multifold's Counsel. Those indisputably exist. Multifold doesn't dispute
14 that they exist.

15 In addition, this is an issue that is Multifold's burden, and for them to
16 try to prove something that is their burden while cherry-picking some
17 documents, and showing those to the Board, and providing those to
18 Petitioners, and keeping other documents behind their backs so that we can't
19 see them, even though they might present fundamental problems with their
20 arguments, that's their issue. This is not an issue that Petitioners have to
21 prove. It's an issue that Patent Owner has to prove.

22 I would also note, Your Honor, that in scheduling these depositions,
23 Patent Owner really pushed it until the last possible date, so there were also
24 logistical issues in terms of actually seeking discovery. But setting that
25 aside, Your Honor, this is an issue that is Patent Owner's burden, and the
26 case law makes very clear that you're supposed to look at the totality of all

1 of the evidence, including evidence after the alleged reduction to practice
2 date, in making a determination about whether there was an actual reduction
3 to practice. And by playing -- kind of cherry-picking the evidence and only
4 showing some of it and not other, that -- that's a fundamental problem in
5 Multifold's case.

6 Can you go to Slide 13, please? Here we can see the testimony about
7 the meetings. And I think it really goes to the edge of credibility.

8 We asked Sirpal:

9 "Do you recall what documents were shared during these group
10 meetings where Cassar and Becze were also present?"

11 "No."

12 "Do you recall who shared the documents?"

13 "That's a tough one."

14 "Do you remember the type of documents that were shared?"

15 "No."

16 "Would the documents shared have been the -- from the documents
17 you collected?"

18 "I don't recall. I don't recall, I don't recall."

19 Again and again, he just said, can't remember, can't give you any
20 testimony on this.

21 If you go to the next slide, please. Slide 14.

22 JUDGE PESLAK: Counsel, can I ask you another question?

23 MR. ZEILBERGER: Yes, Your Honor.

24 JUDGE PESLAK: Did you make a formal request to Patent Owner's
25 counsel for the documents?

26 MR. ZEILBERGER: Yes, Your Honor. We did.

1 JUDGE PESLAK: Did you get a response?

2 MR. ZEILBERGER: They ignore -- well, first they responded and
3 said, we're not going to give it to you. And then when we followed up, they
4 just ignored us.

5 JUDGE PESLAK: Okay.

6 MR. ZEILBERGER: And I believe that is --

7 JUDGE PESLAK: Is that correspondence in the record, Counsel?

8 MR. ZEILBERGER: Yes, Your Honor. I was just pulling up that
9 exhibit. One moment, Your Honor.

10 I believe it's Exhibit 1023.

11 JUDGE PESLAK: Okay. Thank you.

12 MR. ZEILBERGER: And here regarding the content of what was
13 discussed, we asked him what the attorney said. He gave a general vague
14 answer about timeline. So we don't know what the three declarants heard
15 collectively about what Multifold wanted them to know about the timeline,
16 apparently something. We asked him about whether him and Cassar had
17 conflicting recollections. Another I don't recall.

18 If you go to Slide 15, please.

19 Turning to Cassar and Becze, their testimony demonstrates why they
20 cannot act as corroborative witnesses. First, there is the issue of the liability
21 waiver. Cassar explained how he suddenly realized apparently he had a
22 server from Flextronics with a whole bunch of Flextronics documents, and
23 he said that he was worried he was going to face liability because he wasn't
24 supposed to have those documents. He was working at his own startup that
25 arguably competes with Flextronics, or at least did at some point. He was
26 scared he was going to face liability.

1 What happened? Well, he said here -- I won't read all of this text, but
2 I do want to highlight some of it. He said, "I understood that I shouldn't
3 have had those documents. I told them I wouldn't help unless they gave me
4 a waiver for having those documents, and they gave me the waiver. In the
5 release that they sent us, it said that we were -- because we were
6 cooperating, that they would give us the waiver."

7 And he confirmed that without the waiver, he could have had some
8 degree of liability for having the server.

9 Slide 16, please.

10 Cassar also confirmed that Becze was also covered by this liability
11 waiver. Becze didn't bring that up. He didn't tell us during his deposition he
12 had this liability waiver, but apparently he did. He didn't have documents,
13 but apparently they were both worried about devices from Flextronics that
14 Multifold actually relies on to some extent. For having those, he was also
15 worried about having liability, and so they made sure that he was also
16 covered by the liability waiver.

17 Here again, we did ask for a copy of this liability waiver, because all
18 we have is what Cassar is telling us about it. For all we know there -- there's
19 even more damning evidence within that liability waiver itself. So we asked
20 Multifold for a copy of the liability waiver. Again, they did not provide it to
21 us. That's -- again, in Exhibit 1023.

22 Slide 17, please.

23 In the case of Cassar, there was also evidence that -- that's really
24 indisputably inconsistent with Multifold's theories in this case that they did
25 not produce and that they had to produce as routine discovery, and they
26 didn't.

1 In particular, here we see on Slide 17 how Cassar was in possession of
2 prototype devices as we talked about. And he said that originally he didn't
3 even know that he was going to have to put together a declaration, but
4 apparently Multifold asked him to try to get dates off of those devices,
5 firmware dates of when the firmware was installed onto the devices. And he
6 said that they managed to get the dates off those devices, and he waffled, he
7 said he wasn't really sure what those dates were. But even in terms of what
8 he was willing to admit to, he said it was in February or March of 2011.

9 The entirety of March is after Multifold's alleged reduction to practice
10 date and parts of February are, and I think even setting that aside, I think the
11 part -- him saying, I don't remember. For all we know, those dates are April,
12 May, June, July, August. I don't know what those dates are.

13 And it -- it's not just Cassar that knows those dates. Multifold's
14 counsel has those dates, and they didn't provide them to us. How do we
15 know that? If we go to this next slide, 18.

16 We asked him:

17 "Q. When you uncovered those dates, what was your process? Did
18 you send an email with those dates? Did it generate a document that he took
19 a picture of?"

20 Answer: "We did send an email with those dates.

21 "Q. Who did you send an email to?

22 "A. It was someone in Carmichael."

23 Which is one of the law firms representing Multifold.

24 Again, we asked for this evidence and Multifold did not provide it.

25 If you go to Slide 19, please.

1 Mr. Cassar also gave provably false testimony in his deposition,
2 which I'd like to talk about now.

3 JUDGE PESLAK: Counsel, let me -- another question.

4 MR. ZEILBERGER: Yes, Your Honor.

5 JUDGE PESLAK: Okay. I understand what you're saying. I guess it
6 was Mr. Cassar gave dates to Patent Owner's counsel, and then Patent
7 Owner's Counsel refused to give that to you. Why is that a credibility issue
8 for Mr. Cassar if he gave the dates to his lawyer and his lawyer didn't turn it
9 over?

10 MR. ZEILBERGER: I think this go -- well, I think it -- for one, it
11 does go to credibility because it shows that he's acting as a partisan. He --
12 he's trying to help Multifold and he's not trying to help come to the right
13 conclusion.

14 Setting that aside, I think it also -- even if you don't think it goes to
15 credibility per se, it goes to the degree of weight you should accord his
16 testimony when he's coming up with this highly relevant evidence. I mean,
17 the -- we're talking about actual -- these are the prototype devices. These are
18 the EV1, EV2 devices that Multifold's relying on.

19 He says he got the firmware dates off of those devices and he's not
20 going to give it to us. Multifold's not going to give it to us. How can you
21 assess someone's credibility who say -- someone's testimony when they're
22 saying, oh, yeah, we came up with the -- we had a device in February, early
23 February, maybe late January, when they're holding this fundamental
24 evidence kind of away from Petitioners and from Your Honors.

25 And I think, going very fundamentally to a credibility point, Your
26 Honor, I think here, Mr. Cassar has this image of what he says is an Imerj

1 device in his declaration. It's Paragraph 3 of his declaration. And I asked
2 him about this because I felt like he included this image because he wanted
3 to make it look like, yeah, we have this great, shiny device, a browser is
4 loaded, and it must be the case that we had a functioning device.

5 So I wanted to get the context for what this was and maybe it's
6 because he thought it would help Multifold's case. I don't know the
7 reasoning behind why he said what he did, but he said that this was a recent
8 image that either he or Sirpal or Becze took. And I asked him many times to
9 be sure that's really what he meant to say.

10 I -- you can see here on the right hand side of Slide 19, I asked him,
11 did you take this picture? So at first he said, possibly. I don't know who
12 took that picture. How would I know? And then I clarified. Well, if it was
13 taken recently, you might know. And then he answered, so this was a
14 picture of one of the phones at our office. And I don't know -- remember
15 whether it was myself or Ed or Sanj -- that's referring to the other two
16 individuals. I don't remember who took the pictures, but it was one of us,
17 yes.

18 Now maybe you could interpret this two ways. I think it clearly
19 shows he was saying he took it recently. The rest of his testimony makes
20 that crystal clear.

21 If you go to Slide 20.

22 I asked him point-blank:

23 "So this was taken recently?"

24 Answer: "Yeah."

25 Question: "At one of your offices?"

26 Answer: "Yeah."

1 Question: "So it looks like you managed to power on this Imerj
2 prototype?"

3 Answer: "Yes."

4 Question: "And it was working?"

5 Answer: "Yes."

6 Slide 21.

7 He even used this image to claim that he managed to get the device
8 onto the internet. I asked him: "Am I correct? It looks like you managed to
9 get the device hooked up to the internet."

10 He answered: "Yeah, the same way you would any phone. Just
11 connect it to the WiFi."

12 That puzzled me a bit, so I asked him, there weren't any issues with
13 the device that hadn't been turned on for ten years? And then he said, well,
14 like I said, we had many phones and many of them had an issue and some of
15 them didn't. I mean, we had to turn them on to get dates off them, right?

16 And I guess actually pointing on this, I do want to circle back to a
17 question Your Honor raised earlier about how the dates go to credibility. I
18 think that there's a very straightforward thought experiment you could make,
19 which is if those dates were helpful to Multifold, they would be waving
20 them in front of Your Honors, parading them saying, hey, we have prototype
21 devices, we have the dates, case closed. But they didn't do that. And I think
22 the absence of evidence there, which Your Honors are entitled to consider is
23 telling.

24 If we go to Slide 22, please. Here we can see that Mr. Cassar
25 indisputably gave false testimony. The image from his declaration in
26 Paragraph 3 is actually from an article dated June 24th, 2011. That's Exhibit

1 1022. That's several months after Seo's priority date, several months after
2 Multifold's alleged reduction to practice date. You can even see the same
3 watermark. They didn't bother to get rid of the watermark on the bottom left
4 of the image.

5 I think this testimony really underscores how Cassar was acting more
6 like a partisan and not like a neutral and I don't know the incentives that
7 were driving this. It might have been the pay that he was getting. It might
8 have been the liability issue that he was worried about. But the fact that he
9 was willing to go to such length to really not just say, oh yeah, it was
10 recently, there might have been a mistake. He didn't -- this wasn't a mistake.
11 He even went to articulate, oh yeah, I got this device onto the internet. I got
12 a browser up and running. That was no mistake.

13 And I want to also actually point out if -- I think it's also worth
14 thinking about if Mr. Cassar -- setting aside the picture, if he's being truthful
15 that he actually got a device powered on, hooked up to the internet on a
16 browser, why aren't we seeing any examples of the claimed functionality
17 from the actual working prototypes? How come Multifold isn't showing us a
18 video of one of these devices powered on performing the claimed
19 functionality?

20 They got them working. According to Cassar, he said he got them
21 working, so much so they could even get the WiFi running and a browser
22 loaded. How come we don't see that? Is it because the devices don't
23 actually perform the claimed functionality? Well, Multifold kept that
24 evidence out of the proceeding.

25 Slide 23, please. Mr. Cassar also ignored evidence postdating alleged
26 reduction to practice. He admitted that there were -- they were still testing

1 the Imerj for another year after the alleged reduction to practice date, and
2 that there were bug reports that were popping up in that time period. Did he
3 look at those? No. He didn't bother. All he cared about was trying to prove
4 Multifold's alleged date.

5 Slide 24, please. Turning to Becze, he cites various documents in his
6 declaration, Exhibit 2006, 2007, and 2008. He'd never even seen those
7 documents before. Multifold gave them to him for the first time when he
8 was preparing his declaration. He admitted that again and again in the
9 testimony you can see here. And you cannot rely on evidence that a witness
10 has never even seen before for that witness to say, oh yeah, that corroborates
11 what I remember.

12 Slide 25, please. I think even more fundamentally with Becze, he
13 doesn't even really understand what these functions are. We asked him
14 what -- let me take a step back. In Paragraph 31, he refers to maximization
15 and minimization. And so we asked him about a scenario that -- that's talked
16 about in one of Multifold's conception documents where you might swipe.

17 And we asked him, what would happen if you have two windows
18 open?

19 We were talking about the minimize. What happens if you swipe?
20 His first answer just made no sense.

21 He said, you would go into a two-screen mode.

22 Which maybe that is what the documents meant when they talk about
23 minimize, because there is an issue about we have no idea what some of
24 their documents are referring to. And it could be that they're talking about
25 this functionality that Becze is referring to, where you're not performing the
26 claim functionality.

1 But then when we pushed him and said, okay, well, if you're already
2 in two-screen mode, what happens?

3 And he says, "I don't know. I can't remember."

4 How can he speak to corroborate Sirpal's conception or reduction to
5 practice when he doesn't even know what's at issue?

6 Slide 26, please. And when we look at the underlying documents that
7 Multifold relies on, Multifold's case only gets weaker. Let's go forward to
8 Slide 20 -- 28, please. First, as I alluded to earlier, Sirpal and Becze both
9 admitted in deposition that there are, in fact, no documents that actually
10 confirm how the prototype devices worked.

11 We asked Sirpal point black -- blank: "We understand your testimony
12 that Exhibit 2006 was implemented in the EV1 and EV2 devices." That's a
13 typo in the transcript there when it says "license".

14 "But what I'm trying to understand is where can I look to see
15 something that tells me that that actually occurred?

16 His answer: "I don't have any documentation that directly will
17 confirm that information."

18 We asked Becze about the EV1 and the EV2 devices, and he said
19 there -- there's no documents, only his recollection.

20 Slide 29, please. I won't harp on this, but as I talked about earlier,
21 Multifold ignored the documents in evidence from the time postdating their
22 alleged production to practice date, but before the date that their provisional
23 application was filed. We see that in this evidence and also in the evidence I
24 looked at earlier on Slide 12, we don't need to go back there.

25 Slide 30, please. Now here, I think, is one of the kind of more central
26 pieces of evidence that Multifold relies on for their alleged reduction to

1 practice. It's this Project Plan document, Exhibit 2033. Multifold relies on
2 this, and they point to how this document refers to "minimize dual display
3 application transition controller" and "maximize dual display application
4 transition controller." But there's nothing that says what those are. The fact
5 that they happen to use the word "minimize" in no way is evidence that that's
6 the claimed functionality. It could be --

7 JUDGE PESLAK: Who created Exhibit 2033?

8 MR. ZEILBERGER: It -- it's some document that I assume Sirpal
9 must have had in his possession. I don't know who created it. I don't think
10 they really had a record custodian to kind of prove up the origins of that, per
11 se. I assume it was a document in Flextronics' possession at some point.

12 JUDGE PESLAK: Well, Exhibit 2032, it's an email from Mr. Cassar
13 to a large number of people. And it says, "Please have a look at the updated
14 project plan."

15 MR. ZEILBERGER: Right, Your Honor.

16 JUDGE PESLAK: So did you ask Mr. Cassar, during his deposition
17 whether Exhibit 2032 was related to 2033, if that was what was attached?

18 MR. ZEILBERGER: Your Honor, I don't think we would dispute that
19 Mr. Cassar might have emailed this exhibit. My only point was, we don't
20 know kind of the origins and the whole story on this exhibit. I think Cassar
21 has testified that he was very familiar with this document.

22 And actually, I'll talk about this in a little bit. Some of his testimony
23 actually further undermines the use of this exhibit to corroborate the actual
24 reduction to practice, because he suggested that these functions were
25 something really unrelated to something that Sirpal worked on.

1 JUDGE PESLAK: Well, when you took any of these depositions, did
2 you ask someone, who prepared this spreadsheet?

3 MR. ZEILBERGER: I don't think -- I think what -- what's relevant,
4 Your Honor, is what minimize and maximize means. So for example, we
5 can, we can jump there now if you'd like, Your Honor, to Slide -- let's go to
6 Slide 46.

7 So we did ask Cassar whether any of his software engineers
8 contributed ideas to the Imerj project.

9 And then he clarified, "Ideas in terms of how the Imerj device was
10 designed?"

11 And we said, "Yes, did they contribute that -- did they contribute to
12 that?" And then we asked him, "Do you remember any examples?" And the
13 examples are extremely telling.

14 He said, "There are items listed," and he referred to the Project Plan
15 document, which is this Exhibit 2033 that we've been talking about. And he
16 said that, "John Visosky is the one who came up with the idea for the
17 minimize dual display application transition controller, and the maximize
18 dual display application transition controller. I believe that was something
19 that John Visosky brought to the table."

20 And if you go to Slide 47, please, those are literally what is described
21 here in the document that Multifold is relying on for reduction to practice.
22 Which really leaves you in one of two worlds: Either these have nothing to
23 do with the claimed functionality, or they're not something that Sirpal came
24 up with, and so they can't rely on it because it's not something that a named
25 inventor came up with.

1 If you can go to Slide 31, please. Multifold also relies on emails,
2 Exhibits 2034 to 2038. There's two problems with those. For one, they're
3 hearsay. Multifold says in its response to our motion to exclude that, well,
4 they're relying on it for corroboration, and so let it in. But corroboration is a
5 hearsay use. They're relying on the emails for the truth that there were
6 functioning devices, which is hearsay.

7 Setting that aside, even if you want to consider them despite the
8 evidentiary issue, the emails have the exact same problem as the Project Plan
9 document, that they have some buzzwords like "parent, child" but they never
10 actually describe the claimed functionality. Is it possible that Multifold, or
11 rather Flextronics at the time, had some sort of phone that was operating?
12 It -- it's possible. We have no idea what that phone was doing because
13 Multifold didn't want to put that evidence into the proceeding. The fact that
14 they had some functioning phone doesn't mean they had the claimed
15 functionality.

16 Go to Slide 32, please. Multifold also relies on video excerpts of a
17 Smartpad device. So here we're not talking about the EV1 and the EV2 that
18 they're -- that they have the mapping that Your Honor referred to earlier. It's
19 the Smartpad, which I think they're saying indirectly, because they had a
20 Smartpad, it means they must have had an EV1 and EV2 also working. But
21 here, there is no non-inventor evidence supporting the authenticity or date of
22 creation of these excerpts.

23 The excerpts and the multi-data that they attach are supposedly pulled
24 from some full videos. Sirpal said it was an eight-minute video. We have
25 absolutely nothing in the record to corroborate that besides Sirpal's say-so.
26 Multifold apparently excerpted this video. I don't know who created the

1 metadata file that they attached. Again, Multifold could have very easily
2 just provided us and Your Honors with that eight-minute video, but they
3 didn't.

4 And I think you have to ask yourselves, why didn't they do that? It --
5 it's probably because the video would have shown the device wasn't
6 performing the claim functionality. These are very short clips they show.
7 It's hard to know exactly whether they're performing the claim functionality
8 or not. The surrounding portions of those video clips that are -- Sirpal said
9 he only had the video. Apparently, Multifold excerpted it, so Multifold has
10 the full video. They didn't want it in the proceeding for reasons that I think
11 are self-evident.

12 And the fundamental problem from a question of law perspective,
13 Your Honors, is that crediting this video evidence relies exclusively on
14 crediting the testimony of Sirpal. They don't have an independent way to
15 corroborate what these videos are showing. And the case law makes very
16 clear, both from other panels of the Board and from the Federal Circuit, that
17 there -- it's not enough, especially when you're looking at a date issue, to just
18 rely on an inventor's testimony. If we can go forward to Slide 36, please.
19 Besides the issue that I spoke about with respect to John Viosky earlier --
20 and by the way, I also want to point out, Multifold's surreply doesn't even
21 respond to the point I made about John Viosky. They don't dispute that he's
22 the one who came up with that idea. Their surreply is completely silent on
23 it, which I think is a fundamental problem in their case.

24 But even setting that aside, Exhibit 2012 is really a foundational
25 document that then Multifold relies on to show conception, or to try to show
26 conception, and they rely on it for nearly all of the claims in their patent

1 owner response. And Sirpal also says in Paragraph 57 of his declaration that
2 the EV1 and EV2 both implemented the specification from Exhibit 2012.
3 Well, if we go to Slide 37, this is a document that wasn't created by Sirpal.
4 It was created by someone else who works at Flextronics called Martin
5 Gimpl.

6 If you go to Slide 38, please. Now, Sirpal tried to brush this issue
7 aside in his declaration. He said, oh, well, Exhibit 2012 is a specification
8 created by my design team, which by the way, isn't inconsistent with Martin
9 Gimpl being the one who created it. And then he just asserts in conclusory
10 fashion, without any support from any documents, that it evidences his
11 conception of the challenged claims.

12 But again, he doesn't provide any background for that, he doesn't
13 provide any evidence for that, he doesn't provide anything. He just asserts it.
14 And I think pretty tellingly, Cassar and Becze don't mention Exhibit 2012 at
15 all, anywhere in their declarations. I don't even know if Multifold showed it
16 to them. Maybe they didn't want them to see and refresh their recollection
17 about Martin Gimpl's contributions.

18 If you go to Slide 39, please. What they talk about is Exhibit 2006,
19 which is a document that was created several months later than Exhibit
20 2012. And there, they use, as I mentioned earlier, literally identical
21 language. We only have to quote it once because it shows up exactly the
22 same way in both declarations. But Exhibit 2006 can't corroborate Sirpal's
23 conception when Exhibit 2012 already shows those same concepts as
24 Multifold itself is arguing, and trying to establish conception.

25 If you go to Slide 40, please.

1 JUDGE PESLAK: Counsel, what exactly are you asking us to do
2 about this inventorship issue? I mean, the Board doesn't have jurisdiction
3 over that. And I mean, there's a presumption that, in any issued patent, that
4 the inventors are named correctly. And, you know, someone has to go to
5 district court, I think, to deal with that.

6 MR. ZEILBERGER: Your Honor, so Multifold, in its reply, I think
7 tries to confuse the issue. We're not challenging, at least in this proceeding,
8 that there was proper inventorship for the patent in dispute. Our argument is
9 that they cannot rely on documents and evidence showing someone else's
10 conception for a swear behind issue. It's impermissible if they're trying to
11 swear behind to try to get an earlier date, an even earlier date than their
12 earliest possible effective filing date. They can rely on someone else's
13 conception to do that in this proceeding.

14 We're not challenging -- we're not asking Your Honors to rule that the
15 patent itself has the incorrect inventors. It -- maybe it's possible that Sirpal
16 independently came up with this idea. He -- himself and Multifold have said
17 it was a very large team. It's possible they both independently came up with
18 it. Multifold hasn't put that evidence in. But we're not asking Your Honors
19 to rule that the patent has wrong inventorship. We're saying that you cannot
20 swear behind a reference and get an earlier date if you're using evidence that
21 relates to someone else's ideas.

22 JUDGE PESLAK: Well, if -- I mean, I though -- did Sirpal say that
23 Gimpl worked for him, in his deposition?

24 MR. ZEILBERGER: So there -- I think it's Becze and Cassar that
25 really gave the important testimony about Gimpl, Your Honor.

1 JUDGE PESLAK: So you're saying we can't rely on this document,
2 for what reason?

3 MR. ZEILBERGER: Because it's not Sirpal's document. We have no
4 way of knowing besides --

5 JUDGE PESLAK: Isn't that corroboration for his testimony though?

6 MR. ZEILBERGER: You -- it -- it's not, Your Honor, because you
7 are relying on the truth of solely Sirpal's testimony to believe that. There's
8 nothing to corroborate Sirpal's assertion that it's his invention in Exhibit
9 2012. Becze and Cassar didn't even look at Exhibit 2012. It's only Sirpal
10 that talks about it.

11 So you're in a situation where you're just relying on the -- one of the
12 named inventors' testimony to believe what the named inventor has to say.
13 And I think that becomes crystal clear in the deposition of Becze and Cassar,
14 where, for example, at Slide 41, Becze admitted that if someone else on
15 Sirpal's team came up with the -- kind of the idea for the gesture
16 functionality at issue here, would he have any basis to know that? And he
17 said, "I wouldn't know. Yeah, I wouldn't know." Slide 42.

18 JUDGE PESLAK: So well, let's just -- okay, let's forget about Martin
19 Gimpl for a second, but -- so you're saying there's no corroboration -- is it
20 there's no corroboration for the November 8th, 2010, date?

21 MR. ZEILBERGER: I -- I'm saying, Your Honor, if Exhibit 2012
22 shows the idea first, and it shows Martin Gimpl coming up with the idea,
23 and we have -- the only other witnesses beside the inventor, both not even
24 looking at Exhibit 2012 and conceding that they have no idea whether it was
25 Sirpal or Gimpl or someone else at Flextronics who came up with those

1 ideas, you can't rely on other exhibits that come afterwards in time that pull
2 the same content from Exhibit 2012.

3 Here, I don't think Multifold disputes that the subsequent exhibits pull
4 the content from Exhibit 2012. And you can even see, for example, in the
5 timeline, for example, that Multifold itself put in their demonstratives on
6 Slide 101, Exhibit 2012 is their first piece of evidence to show conception.

7 And if we look at Slide 42, with respect to Mr. Cassar, we asked him
8 which -- "In your role on the Imerj project, do you -- did you gain an
9 understanding on which ideas Martin Gimpl contributed versus which ideas
10 Sanjiv Sirpal contributed?"

11 He said, "No."

12 If you go to Slide 43, he admitted that he didn't see this -- the lead-up
13 to this was talking about Exhibit 2006, to Your Honor's point about relying
14 on the later evidence. We asked him whether he saw Sirpal -- Sanjiv Sirpal
15 create that exhibit, and he said no, or, "That's correct.

16 I didn't see him create this document." If you go to Slide 44, we asked
17 him directly -- his Paragraph 9 of his declaration, I -- and I do say I have sur-
18 rebuttal, but if you'll allow me to use some of that time to finish this point.

19 In Paragraph 9 of his declaration, he said, "Sanjiv came up with the
20 concept of minimizing and maximizing applications in dual portrait and dual
21 landscape modes."

22 That's what it says in his declaration, and Multifold is really relying
23 on the fundamental premise of that being true. But then when we asked him
24 at deposition how he knows it was Sanjiv Sirpal versus somebody on his
25 team that came up with this -- that idea, and he says he doesn't know.

1 JUDGE PESLAK: So let me ask you this: If -- leaving conception
2 aside for a second, if we were to find that the prototypes were in fact
3 reduced to practice in 2011, before Seo, does this conception really make a
4 difference?

5 MR. ZEILBERGER: Yes, Your Honor, it does. And I guess I can't
6 help myself but quibble with the premise of your question in terms of, even
7 if there were prototypes that were functioning, you would also have to find
8 not just that there were prototypes functioning, but that they reduced the
9 claimed invention to practice. But this conception issue is separate and apart
10 from that because the thing that was reduced to practice carried over from
11 the conception of somebody who is not a named inventor. That is not
12 something they can rely on to swear behind a reference.

13 JUDGE PESLAK: Okay, I understand.

14 MR. ZEILBERGER: Unless Your Honors have any further questions,
15 I'll save the rest of my time for rebuttal.

16 JUDGE JUNG: I have no questions.

17 JUDGE PESLAK: I don't have any more. Thank you.

18 JUDGE JUNG: Are you ready, Mr. Pickens?

19 MR. PICKENS: Your Honors, would I be permitted to reserve 15
20 minutes for a brief surreply?

21 JUDGE JUNG: You may.

22 MR. PICKENS: Okay. Thank you.

23 JUDGE JUNG: Please proceed.

24 MR. PICKENS: May it please the board, I -- I'll pick up where my
25 venerable opposing counsel, my friend across the aisle, left off on this
26 Exhibit 2012 issue, because I agree it's quite important. And just to be clear,

1 what we're looking at on screen is the declaration of Mr. Sirpal in Paragraph
2 15, and he explains that, "Exhibit 2012 is an interaction design specification
3 dated September 10th, 2010, created by my design team with my input and
4 evidencing my conception of the invention of the challenged claims."

5 I think it's a relatively bedrock principle that an inventor is allowed to
6 rely on members of a team in putting together documents that relate to their
7 invention. And I do think it's really important here that what we're pointing
8 to on Petitioner's side of the aisle is not some affirmative evidence that Mr.
9 Gimpl conceived of this invention, but rather speculation because his name
10 appeared on a document. That's all we have. We have his name on a
11 document. Sanjiv Sirpal says, it's part of my team. Mr. Cassar confirmed
12 the same.

13 They asked Cassar. They sought the admission. They sought the
14 admission from Mr. Cassar. They tried very hard to get this admission
15 during the deposition that Martin Gimpl or somebody else conceived of the
16 invention first, and the testimony that we heard a moment ago, it wasn't, yes.
17 It wasn't, yeah, you got it right; Mr. Gimpl was first. It was, I wouldn't
18 know. And there's a good reason, because Mr. Gimpl was on Mr. Sirpal's
19 team.

20 So I think we can put this whole Martin Gimpl issue entirely to the
21 side. There is no proof that he's the wrong inventor. As we pointed out in
22 our surreply, and as Your Honors raised, that is not an issue for this
23 proceeding, whether or not he's a correct inventor. And actually, more to the
24 point, if Martin Gimpl truly authored that document, as Your Honor pointed
25 out, that's simply corroboration. That's not by Mr. Sirpal, so that gives us all
26 we need here to find in our favor, and I think that's the record at bar.

1 Now, just to wind back and start where I intended to start on this,
2 there was a very important admission right at the start of this hearing, and
3 it's one that I had hoped for and expected, but one that hope -- that now
4 obviates many of my slides. So I'm happy for all of us that we don't have to
5 walk through 115 slides on every single limitation, but Petitioners are not
6 disputing that the evidence shows conception. That moves the needle about
7 90 percent of the way, and in this case -- I'm going to show and walk
8 through the evidence -- it should move it 100 percent of the way, and there's
9 a good reason for that. It's because once we've agreed that conception
10 happened based on these documents, we have a simple question to answer:
11 Did that invention make it into a reduced-to-practice invention?

12 And there's ample documentary evidence, as well as testimony from
13 disinterested third parties. Yes, they asked to get paid a consulting rate.
14 Yes, that rate was \$200 an hour at first, which they testified was below what
15 they usually charge, and there's a good reason for that, for taking up their
16 time. And they work by the hour, and so yes. They even offered to give us
17 a discount to \$200 an hour in the first instance because they wanted to
18 participate in this proceeding. Now, I -- if they were sitting here today, I
19 don't know that they'd still agree that they want to participate, having heard
20 the allegations that have been levied against them, but they did participate,
21 they got their \$200 an hour, and yes, they asked for it to be increased to 500
22 when they had to travel to the United States to sit before a deposition and
23 take an under-oath deposition. That's not shocking either. That's reasonable.

24 JUDGE PESLAK: Okay. Counsel?

25 MR. PICKENS: Yes.

1 JUDGE PESLAK: Before you get too far into your presentation, I
2 just want to ask a preliminary question. If we were to find that Patent
3 Owner did not prove reduction to practice prior to Seo, as I read your Patent
4 Owner response, you don't dispute, other than for Claims 14 and 18 to 20,
5 that Petitioner's mapping for the other claim -- petitioner's mapping for the
6 remaining claims?

7 MR. PICKENS: Well, there's a couple of answers to that kind of
8 woven into that question, Your Honor, but I -- I'll say this: If reduction to
9 practice were to fail wholesale -- and there's multiple layers of why it
10 doesn't, but if you were to find that there was never any constructive or
11 actual reduction to practice, which is required, yes, it is correct that the
12 remaining substantive dispute is limited to Claims 14 and 18. No.

13 JUDGE PESLAK: Okay. Thank you.

14 MR. PICKENS: And with that said, I -- you know, I just -- as long as
15 we're there, I'll address briefly that first, there is a separate argument that
16 there was reduction to practice through -- proved by these polished
17 documents that show the feature was just being polished up, and then we
18 have some tiger team-related documents that show that there was continuous
19 improvement over the very short period. It's less than two weeks, I believe,
20 between those two. I don't think we need to look to any of that here, though.
21 I really do think we can look to the main evidence at bar and prove this was
22 reduced to practice well before sale.

23 And then beyond that, I will say, you know, there was an argument
24 about constructive reduction to practice. It's true we didn't argue that, but I
25 will say that Petitioners have put into the record, in order to try to undermine
26 our reduction to practice, quite a bit of evidence. They've speculated that

1 testing went on and on for years. And when we look at the feature, which
2 we're going to turn to in a minute -- when we look at the feature, it's going to
3 be clear that that testing could not have possibly been changing the patented
4 functionality, which is really the base level idea.

5 But if they're correct, then great. We know that the provisional was
6 filed -- I think it's roughly a year afterwards, and I'll check that and confirm
7 in a moment. But if they're correct that testing was continual thereafter,
8 well, great. Then we're arriving at constructive reduction to practice, which
9 is enough. So I -- you know, if they have their way and say, "We're going to
10 undermine that by pointing to additional testing, well, great. That puts us
11 right back into a world where, again, we have reduced to practice by --
12 constructively by filing.

13 Okay. So I do want to turn quickly -- I want to go through the
14 evidence itself and just walk through a couple of the exhibits, because I do
15 think it really does show clearly, unequivocally -- there really isn't a dispute
16 here -- that this was both conceived and reduced to practice in a timely
17 manner. But just to -- on the credibility issues, I will use the time I have
18 remaining at the conclusion of this to walk through them. I think at bedrock,
19 I have a maxim for issues like this, where if you're disputing credibility, I've
20 always been told you need to show, not tell. And the vast majority of what
21 I've seen in the papers, what I heard today, is just telling us that there's a
22 credibility issue, telling us there might be something out there, telling us that
23 they have concerns.

24 And the one issue, the only issue where they showed a true dispute,
25 was this taking of a picture thing where they said, well, Cassar accidentally
26 testified that he took a picture recently, but we did some research; turns out

1 that picture was taken back in 2011. First off, Petitioner's Counsel
2 themselves acknowledged his original answer was, I'm not sure who I
3 took -- who took that picture. So yes, they then pressed him. He said, I
4 think, something along those lines. They pressed him. They pushed him.
5 Yeah, he eventually committed, it probably was recently.

6 Right, but I think this is important for more than one reason. First off,
7 that's all we've got, is an admission that he originally said, I don't know, and
8 then eventually was pressed into committing to something that turned out to
9 be, you know -- I -- frankly, I think supports the record, because 2011 is
10 much closer to the date. So if that's when that picture came from, that
11 supports us. But I think you also have to look at what we're dealing with on
12 Petitioner's side.

13 They're a very sophisticated party. This is Google. They are the
14 number one search engine. They are the masters of the internet. They have
15 a number of counsel devoted to this case who are being paid very well, and
16 they devoted their time and effort to trying to poke holes in his testimony,
17 and the very best they could come up with was that Mr. Cassar accidentally
18 said he took a picture recently, and it turns out it was 2011. I would be
19 thrilled for any witness that I've ever had to stand up to scrutiny that well.

20 JUDGE JUNG: Mr. Pickens, before you go on, does Patent Owner
21 have an explanation why they didn't provide the documents requested by
22 Petitioner, for example, in the email of -- in -- that's in Exhibit 1023?

23 MR. PICKENS: Sure. And I think that there's a relatively easy
24 explanation there as well. We know that discovery in an IPR and a
25 proceeding such as this is limited. There's one set of discovery that comes in

1 automatically, and there's another that comes in on motion practice,
2 additional discovery.

3 Okay. Apologies. I needed to find my note on this. We've got
4 routine discovery. We've got additional discovery. The statute is very clear.
5 Additional discovery, you need to request it. You need to seek it through the
6 Board, and there's very good reasons for that. Some of them have been
7 raised previously, but I'll point out the trial practice guide, not the statute,
8 but it makes clear.

9 And this is a quote, "Requests for additional discovery must be in the
10 form of a motion." We all know an email is not a motion. And if you look
11 at the email chain that was cited earlier, you'll see they asked.

12 We responded and said, we have given you what you're entitled to as
13 statutory right. We need to know your bases for seeking additional
14 discovery.

15 And it wasn't just one email, one response. They emailed us. We
16 responded. They emailed us. We responded and explained our position.
17 And yes, eventually there was no further correspondence, but I think that
18 kind of demonstrates why we ended up where we are. And my friend across
19 the aisle pointed to something he referred to as a helpful thought experiment.
20 And I think there's a similar helpful thought experiment here.

21 We know all of this evidence came in back before institution. It's
22 been a year of proceedings. Now, we know our counsel across the aisle is
23 very sophisticated. They're excellent attorneys. And there's a question: Did
24 they simply not know that they needed to request additional discovery? No,
25 they clearly -- they certainly knew. They're very good attorneys. They

1 knew that if they wanted additional discovery, they could have asked for it,
2 and they should have asked for it. But they chose not to.

3 And so that leaves us in a world where I think you have to wonder,
4 did we make a purposeful strategic decision to not seek discovery, so that we
5 could point to the absence of it? So we could ask questions like we heard
6 earlier today? So we could say, we don't know what's out there?

7 JUDGE JUNG: So let me just verify. The documents they requested,
8 in Petitioner's view, they're all subject to additional discovery, not routine
9 discovery?

10 MR. PICKENS: That's our understanding. We -- I -- and I -- it's in
11 fact in the record that they did press the witnesses quite repeatedly at the
12 depositions if they were aware of other relevant matter that wasn't produced,
13 and the answer was, no, that came in the deposition testimony.

14 So that puts it in the gambit of additional discovery. And there's a
15 good point to this. I mean, we had acknowledgement. This all came very
16 late in the proceeding. These were also third parties. The documents
17 concerned, they came from third parties.

18 So we're not actually talking party discovery in the first instance.
19 We're talking third-party discovery that also implicated another third party,
20 Flextronics. And, you know, the -- there was a time and a place to do that.
21 We had a long time since the evidence came in. And the request just simply
22 didn't come in.

23 JUDGE JUNG: Okay. So the documents requested, they're also from
24 a third party, not subject to routine discovery, and those are the -- at least
25 two reasons why you did not provide those documents?

1 MR. PICKENS: Certainly. I also -- there are strictures for how e-
2 discovery is supposed to be happening -- happen if we're going to do
3 additional discovery. There's a model order under the Board's guidance, the
4 trial practice guide that's supposed to come in. E-discovery is a complicated
5 process.

6 So yes, it's easy to say, we asked for a document. We asked for a
7 document. We didn't get it. The reality of engaging in e-discovery at the
8 very tail end of a proceeding, where it wasn't properly sought, is a lot
9 different than, you know, we asked a simple question. It's -- it has an
10 implication. And there's also a point that we made. I -- well, I'll move on.
11 But I think that relatively answers the question. I --

12 JUDGE JUNG: Yeah.

13 MR. PICKENS: Rules are clear. You're supposed to move for it.
14 And simply asking Counsel, I -- they asked in the depositions, the witnesses
15 informally if they would provide discovery. That's certainly outside the
16 bounds, right?

17 You can't ask a witness in a deposition, Mr. Sirpal, could you go get
18 me this document? That's not the way discovery works. Not in a district
19 court case, not in the PTAB, certainly not where there was no motion for
20 additional discovery.

21 JUDGE JUNG: One last question.

22 MR. PICKENS: Yes.

23 JUDGE JUNG: Could Petitioner procedurally have, under our rules,
24 asked for documents from a third party?

25 MR. PICKENS: You know, Your Honor, I'm -- I would have to say
26 I'm not 100 percent sure. I am sure the -- I would speculate the answer is

1 certainly, yes, there must be a mechanism. I'm not a regular practitioner
2 before the Board, so I can't, you know, work off my wealth of knowledge to
3 say one way or the other. But certainly the request wasn't tendered here.

4 JUDGE JUNG: Okay. Thank you.

5 MR. PICKENS: Okay. So this photograph -- we had one photograph
6 where they said, that was different, Mr. Cassar answered wrong. Okay,
7 that's a very minor point. I think that the idea from there is let's look at what
8 we do know. We do know that three witnesses, Canadian citizens who are
9 former Flextronics employees, agreed to provide declarations in this matter,
10 and then ultimately agreed to travel to the United States and sit for sworn
11 depositions.

12 We also know that while they're impugning the credibility of those
13 witnesses, this patent actually has two inventors. It has Mr. Sanjiv Sirpal,
14 who submitted a declaration, sat for a deposition. And it also has an
15 individual named Moh Selim. And this is in the record from before
16 institution, but Moh Selim is an employee of Google.

17 So if we're going to have this long, drawn out conversation about
18 credibility and what was or wasn't provided, I do think the absence of Mr.
19 Selim speaks volumes. He was involved in this. He's a named inventor. He
20 works for Petitioner. And so we're here sitting and talking minutiae on
21 document production. We're talking minutiae on, you know, did the
22 witnesses slip up after seven hours of deposition? I'm not sure any of them
23 actually went seven hours, but after hours of deposition.

24 You know, we're talking about that, and yet we have an individual,
25 Moh Selim, who works for Google, who was an inventor on this patent, and
26 they chose not to bring him forward. And if we're going to ask probing

1 questions about what might have been revealed, I think the shoe can be on
2 both feet there. And we can say, if Moh Selim had something different to
3 say, I would have expected we would have heard from him in this
4 proceeding, and we didn't.

5 Okay. And with that, I -- I'd like to turn to some of the evidence that
6 we're relying on and just walk through it for the Board because I do think it
7 shows that this is a relatively straightforward issue.

8 Okay. So this first document is Exhibit 2006. This is one of the
9 foundational documents that's relied on for conception. And we see on the
10 front page, Authored by Sanjiv Sirpal, dated November 18th, 2010. That's
11 well before Seo. Those facts aren't disputed.

12 Now, and again, the content of this presentation is not in dispute.
13 There's no motion trying to strike it. So we go down to Page 6, and you see
14 your first instance. These are the -- these are the devices that were being
15 developed. There was a handset. It's shown in one-screen mode. We're
16 going to see it in two-screen mode in a second. There was a Smartpad.
17 There was a SmartDock.

18 Then here is the handset in single-screen and two-screen modes. You
19 can see there's -- it was -- the idea was a smartphone, Android-based that
20 had two different screens that could unfold. You get down to Page 12, and
21 here's where we first start to see the functionality that's really at issue here.

22 So this is the split-screen representation of an inbox. I think we can
23 all appreciate why that's kind of handy. You have on the right, the email
24 itself. And then on the left, you have the inbox, and so you can scroll down
25 and select your emails while reading them on the other pane. It was a nice
26 piece of feature and functionality. But in order to control that, in order to

1 have the two screens, you needed a way to control them, right? You need to
2 be able to move. You need to select a single-screen mode. You need to
3 select a dual-screen mode, and you need to have a way to do that.

4 And so what they came up with was this thing called WPC or
5 Window Position Control. And Window Position Control, through a series
6 of gestures, drags, would let you control these screens and go from single-
7 screen to dual-screen. So this same document, Exhibit 2006, talks about
8 Windows Position -- Window Position Control, and it describes the gesture-
9 tracking strip at the top, and it describes that you can use it to minimize and
10 maximize applications. That's the functionality we're looking at. And I'll
11 turn to Claim 1 in a minute and explain how it maps to Claim 1, but it's
12 pretty straightforward.

13 Now that document, for conception, goes hand in hand with the
14 document we've been talking about a moment ago, and that's Exhibit 2012.
15 That's the windowing management document. Now again, there's no dispute
16 that this was dated September 10th, 2010, no dispute that it was authored by
17 Martin Gimpl, non-inventor who worked underneath Sanjiv Sirpal.

18 And this document introduces Window Position Control operations,
19 including maximizing a dual screen, and we can show that on Page 4, where
20 it explains that you can maximize a dual screen capable application to two
21 screens or minimize one to a single screen, and they're generally performed
22 with offscreen gestures. That's what we're talking about here. We're talking
23 about maximizing, minimizing, using this gesture-capture bar.

24 Now Page 8 of the same document, this is cited in our demonstratives,
25 in our briefing. Again, this talks about the gestures that are supported by the
26 WPC. We have drag that maximizes and minimizes dual screen capable

1 applications. That's all there. And then Page 10 shows you how the
2 functionality works for maximizing, and Page 12 shows you how it works
3 for minimizing.

4 So you've got two application pages here, 1.1 and 1.2, and this
5 document talks about how you can drag them to take the auxiliary page and
6 hide it behind the other one. That -- that's the whole ballgame. That's
7 everything we've got here. Those couple of slides, that will do it.

8 And then we come to the question of, okay, great. Was that reduced
9 to practice? And again, there's a couple of foundational documents that
10 readily established that it was. And my friends across the aisle tried to point
11 out that, well, there was some testimony that they didn't have any document
12 that showed that.

13 I really think that got into some hyper-technical questioning where
14 they were trying to kind of -- you got them and the witnesses running in a
15 circle where the witnesses said, well, the prototypes implemented this
16 functionality.

17 How do we know? Well, we have these other documents that show it.

18 Okay, but you can't show me a document showing me the prototype,
19 showing me implementing the functionality.

20 To which, yes, the witnesses admitted they don't have a specific
21 document that 100 percent confirms, you know, this looks like it. But
22 instead, what we have is the same circumstantial evidence Federal Circuit
23 has often pointed to that clearly establishes that this very basic functionality
24 was on the phone as of a relevant time. It was reduced to practice. So let's
25 go ahead and look at some of that. This is Exhibit 2033. This is --

26 JUDGE PESLAK: Counsel?

1 MR. PICKENS: Yes, Your Honor?

2 JUDGE PESLAK: Did Petitioners ask to see the prototypes?

3 MR. PICKENS: They did not, to my recollection. I'll let them
4 address that on reply, and I can address it on surreply, but this was a point
5 that was made in our surreply paper. The witnesses had prototypes, and
6 frankly, I believe they were willing to bring them down to the U.S.

7 The request just was never tendered. Instead, we got a request to get
8 discovery of a privileged email to Counsel on dates. And I think that's one
9 of the underlying -- the fundamental issues here is, you know, it was known
10 the prototypes existed from the filing of our original POPR here, and yet we
11 just never had a request for discovery.

12 JUDGE PESLAK: And did I hear Petitioner, right, that Mr. Cassar
13 powered up those prototypes?

14 MR. PICKENS: He did power up some of the prototypes. That's
15 correct, Your Honor.

16 JUDGE PESLAK: Okay. And -- okay.

17 MR. PICKENS: I -- yeah, that --

18 JUDGE PESLAK: I -- there -- there's nothing in the record -- they're
19 not in the record -- I mean, the prototypes -- okay.

20 MR. PICKENS: They're not in the record. They're not in the -- they
21 are not in the record. That was -- they powered them up. They were able to
22 operate them. That's the testimony in the depositions. The prototypes
23 themselves just didn't come into evidence.

24 JUDGE PESLAK: Okay.

25 MR. PICKENS: You know, obviously, you know, in the absence of
26 the evidence, I'll assume it will support my case, and my friends across the

1 aisle will assume it supports theirs. But unfortunately, they're just not in the
2 record. And I think part of that is, you know, the difficulty in a written
3 proceeding of submitting electronic evidence. It would be difficult.

4 But also, it just wasn't asked for. And, you know, that's their
5 testimony. It -- Mr. Cassar's declaration in particular walks through the
6 various iterations of this and talks about the prototypes that existed
7 previously and what he understood the functionality to be. And that's the
8 state of the record.

9 Exhibit 2033, there's been a lot of discussion about this document.
10 This is what Mr. Cassar described as "my project plan", that shows WPC
11 relevant functionality being 84 percent complete. And the kind of telling
12 aspect of this is looking at what's not complete, and it's things like negative
13 acceleration on window glide, slow down window motion when moving
14 away from display, support for video applications, caching to a disk, support
15 to allow desktop pause, refactoring, refactoring, canceling reveal animation
16 when a new application is launched, and tap and flip.

17 You know, these are all aspects that I think even, on their face, you
18 know, those of us who had involvement in this know that these aren't core
19 functionality, these are things that relate to, you know, animation glitches.
20 We don't need to rely on just us.

21 Mr. Cassar testified, starting at Page 261, Line 4, of his deposition.

22 He was asked: "Mr. Cassar, were the remaining percent of things
23 relevant" -- that's the 16 percent "relevant to the operation of WPC?"

24 And his response was, "No, they're not."

25 And then he was asked, "What did those 16 percent relate to?"

1 And he said, "Code refactoring. I believe some work on the emulator,
2 and animations."

3 Things -- they were all things that were not directly related to the core
4 capability of WPC or the basic capability of WPC. And that all starts at
5 Page 261. And so we have an -- we have an explanation for what's left of
6 the 16 percent. It's essentially polishing things up.

7 JUDGE JUNG: Oh, Mr. Pickens --

8 JUDGE PESLAK: So what -- Counsel, how do you respond to what
9 Petitioner's Counsel said that apparently his interpretation of the deposition
10 was that a John Viosky I think was his name, was the one that worked on
11 maximizing dual display and minimizing dual display was his idea.

12 MR. PICKENS: I just don't think it's supported by the record, Your
13 Honor. This is similar to the Gimpl issue where we -- we're kind of cherry-
14 picking some reference to another person. And there's no testimony of
15 record to challenge the named inventors who are presumed valid, correct,
16 named inventors.

17 And, you know, I can offer, having looked at the -- you know, we
18 don't have testimony on it but having looked at it, what is John Viosky?
19 What do they say he did? They said he did the minimize dual display
20 application transition controller. Not that he came up with the idea of
21 minimizing and maximizing, but that he was in charge of the transition
22 controller. Which I wouldn't understand to be the very idea of minimizing
23 and maximizing, but rather controlling the transition.

24 But again, I think this goes back to the Martin Gimpl issue. Which is,
25 we're just kind of issue spotting here. We're just saying, well, here's a nice
26 relevant fact. There was somebody else involved. Yeah. There were.

1 There were quite a few employees. It was a big operation. This was a real
2 project. This was supposed to launch as a dual screen smartphone by
3 Flextronics, one of the largest electronics companies in the country. And
4 they're in Canada and then the -- in the U.S. It was supposed to be a big
5 project that was supposed to come out. It didn't come to fruition. But there
6 was a heck of a lot of work put into it. There were prototypes, there was
7 development work, there's lots of documents. We know all of that now.

8 And so yeah, when you're talking about a real project in the real world
9 with a real patent that came out of it, there is going to always be a little bit of
10 this sort of thing on the sides. But that's why we have a presumption that the
11 named inventors are the correct inventors. It's because you can always point
12 to somebody else who's involved in the work. You can always point out and
13 say, well, this guy had a hand in it. Yeah. No -- none of us do these things
14 all by ourselves.

15 The question is who are the inventors? They've got a presumption.
16 Their names are Sanjiv Sirpal and Moh Selim. One of them testified, one of
17 them didn't. And we had Mr. Cassar and Mr. Becze and a -- scads of
18 documents that confirm that Mr. Sirpal is correct.

19 JUDGE JUNG: Mr. Pickens, before you go on, I want to -- I just
20 want to go back to the prototypes for a second.

21 MR. PICKENS: Sure.

22 JUDGE JUNG: You said you can't submit it because it's an actual
23 working prototype and this is a written proceeding. So if I was looking to
24 reconstruct the prototype from what's been filed, would it be correct to say I
25 would look at exhibits -- at least Exhibits 2006, '12, and '33, that describes
26 the prototype and its operation?

1 MR. PICKENS: I would look certainly to those documents. I mean, I
2 think if you look, those are the key ones I'm highlighting today that show
3 this functionality. And, I mean, to be clear, the patent -- the claim is at
4 bottom directed to the idea of I've got two screens, auxiliary and main. And
5 I have the ability to slide them in a way that you're going to select one of
6 them or maximize -- minimize or maximize.

7 And I think that there's more than enough in 2006, 2012, 2033 alone
8 to do that. But certainly, it's not the only thing. Mr. Cassar testified in depth
9 to the way these work. His testimony -- he's a non-inventor. That is
10 supportive testimony. You know, I understand we would rather not, you
11 know, rely on that according to petitioners. But he testified. He came to the
12 U.S., he sat for a deposition, he testified. And he really did express strongly
13 his belief that this functionality, in the way that it's talked about here in all
14 these documents was put to use on a phone.

15 I think that gives me a helpful segue to reduction to practice, actually.
16 Which is this document here. I think this is one of the more key documents
17 in the case. It's Exhibit 2035. And this is an email from Rod Schrock to
18 Paul Weber, David Thompson, Ron Cassar, Sanj -- Sanjiv Sirpal, and others
19 at Flextronics. And he said, "Folks, it" -- "it does look like our channel
20 partner will be meeting with Vodafone and CPW in Europe next week.
21 They will" -- and I'm paraphrasing a bit, showcase system software --
22 "showcase system software will be visual multitasking (WPC) and app
23 manager."

24 And so this is an email. We're not disputing the authenticity of this.
25 Petitioners did file a motion to exclude on hearsay grounds and I -- I'll
26 explain why that's wrong. But we're not disputing authenticity.

1 So we know, for the purposes of this proceeding, on the record we
2 have here today -- Rod Schrock did send an email on January 12th, 2011.
3 For the purpose of this proceeding, that's undisputed. Rod Schrock sent that
4 email on that date saying they'd be meeting with providers in Europe next
5 week. That's, again, going to be before the prior date of sale. And they were
6 going to use as the showcase system software, "visual multitasking (WPC)."
7 And --

8 JUDGE JUNG: Mr. Pickens, I just need to caution you. This is
9 protective order material.

10 MR. PICKENS: I can confirm that this is my understanding based on
11 the record and the way it's come in is this -- the facts in here are already in
12 the public record, Your Honor.

13 JUDGE JUNG: Okay.

14 MR. PICKENS: Okay. I'm sorry, Your Honor. I lost my place. And
15 the important part of this email -- so they say they're demoing WPC in
16 Europe next week. We know that that's got to be based on the timeline
17 before sale. And Mr. Cassar testified during his deposition, and this is
18 important, that he knew this happened then because quote, he, and that's
19 paraphrased, he said I. But he would've lost his job if that functionality
20 hadn't been working.

21 And so we've had some testimony back and forth here a little bit about
22 credibility and what they did remember, what they didn't remember. I don't
23 think it's any great surprise that Mr. Cassar would have remembered the
24 goings-on of a critical meeting where you're demonstrating functionality.
25 I've been an engineer. I've done demos for customers. I know it's a big day.
26 And it's not shocking that he remembers that and it's not shocking that when

1 asked about the details of other meetings, he might not have remembered
2 everything. But when you have a critical moment where you're
3 demonstrating something, and you're demonstrating to a potential customer,
4 and he viewed it as he -- I don't know if that's true, that he would have lost
5 his job, but that was his feeling. That he could have lost his job if it didn't
6 work. There's no surprise that he remembered that.

7 And I think that lends a heck of a lot of credibility to his testimony to
8 say that we've got this email that's undisputed that says we're demonstrating
9 it. He says it's done. Rod Schrock says they're demoing it. He says, I
10 would have lost my job. That really does drive home the point here. It's not
11 the only email. We have Exhibit 2037. That's an email, again, from Rod
12 Schrock, 2011, "EV2 units are now relatively functional smartphones." And
13 then we have an email in 2034 from Paul Reeves. Wednesday, December
14 1st, 2010, that's well before sale, saying, "I understand that parent/child may
15 have been added to the framework."

16 Now, there's some quibble with may. But again, what we're looking
17 at here on reduction to practice is we're supposed to weigh the evidence, all
18 of the evidence. And circumstantial evidence, under the Federal Circuit's
19 test is enough. That's in our briefing. Circumstantial evidence is enough.
20 So we have numerous emails, the authenticity of which is not disputed, that
21 show that people were saying WPC, parent child, these things were getting
22 into the phones around the same time.

23 So that -- again, Mr. Cassar couldn't go back in time and make these
24 emails up. They existed. The dates are not disputed. And that corroborates
25 his testimony. And again, that's not a hearsay use. This is third parties.
26 And I'm not relying on the truth of that they may have been added to the

1 framework. What we're relying on here for this is that the statements were
2 made. That at that time, Paul Reeves, who's yet another third party, another
3 non-inventor, was saying something that's consistent with my inventor's
4 story. And that's a non-hearsay use. That's acceptable. And moreover, it
5 really is compelling that Mr. Cassar says this was done then. They say,
6 we're not so sure. Well, we looked at the record. This is here. These emails
7 exist.

8 Okay. So I will turn briefly just to claim 1. I think we have an
9 admission that conception was established. But I do want to walk Your
10 Honors briefly through claim 1 before I -- my time --

11 JUDGE PESLAK: Okay. Counsel, can I just ask you just one
12 question before you get to that?

13 MR. PICKENS: Yes.

14 JUDGE PESLAK: What's your response to Petitioner's argument that
15 large portions of all the declarations are, like, word-for-word identical? And
16 it's supposed -- you know, the corroborating witness evidence is supposed to
17 be independent, and a lot of the stuff is just word for word the same.

18 MR. PICKENS: I -- Your Honor, I think that there's always going to
19 be some level of correspondence between declarations submitted in a
20 hearing. I think the point was made earlier it'd be awfully hard for a third
21 party to go about drafting a legal declaration and filing it with the Board. I
22 don't think they would know how to access the filing system. But you're
23 also going to have portions, for example the oath and affidavit at the end,
24 where you say that you're submitting under the penalty of perjury. Not
25 shockingly, that's going to be verbatim identical.

1 And nor do I think that it's surprising, even if you have minorly
2 substantive portions that track each other, again, the testimony came in
3 clearly that the witnesses -- it was an iterative process. They met with the
4 attorneys. The attorneys put together a draft of a declaration. These people
5 are -- they're lay witnesses. They don't know exactly what these things are
6 supposed to look like. Then they looked at them. Then they made edits.
7 They made sure that they tracked the facts. And that -- that's what's
8 important, is that they're tracking the facts. And I -- you know, if there's
9 portions that are identical, frankly, that really only supports that they're
10 consistent and that they were correct, right?

11 It would be more concerning -- I think we'd be having a different
12 conversation if Mr. Becze said one thing substantively and Mr. Cassar said
13 another. That would be a problem. We'd have an issue. If one of them said
14 it was 2011, the other one said 2010, that's an issue. That there's portions
15 that might track, I suppose that's a vagary of the procedure by which
16 declarations get drafted and submitted. But I don't think that it's really a
17 smoking gun here on anything other than that these folks did, in fact, work
18 with attorneys and try to make sure they got it right.

19 Okay. So briefly, just claim 1, I just wanted to walk through. And
20 I'm starting here on our Demonstrative 27, slide 27. And this is claim 1A
21 that requires presenting a first page of a first application on a first display of
22 the device. Wherein, the first page is an auxiliary page. And got some
23 pictures of the prototypes. And for this example, what we're using --
24 maximize this so it's a little more viewable. What we're looking at here is an
25 example with the browser.

1 So we looked earlier at the email, right? We had the inbox on the left
2 and the email on the right. There, the auxiliary page would have been the
3 inbox. Here, we're looking at the browser where we've got bookmarks on
4 the left and the browser page on the right. And here, not shockingly, the
5 auxiliary page is bookmarks. So we are presenting a first page of a first
6 application on a first display of the device where the first page is an
7 auxiliary page. Left side is a -- is a display. And we have an auxiliary page
8 of bookmarks, okay?

9 And there's some other examples we put in here, but I'll move
10 expeditiously given the time and that this really isn't disputed at this point.
11 1B, presenting a second page of the first application and a second display of
12 the device, wherein the second page is a primary page. Well, here, earlier
13 we had an email. That was the email. Not the inbox. Here we have a
14 browser. That's the actual browser page, not the bookmarks. And again, we
15 can move forward to claim 1C, where again we need, now, the first --
16 wherein the first and second pages present different content and are distinct
17 pages. And wherein, the auxiliary page is a child of the primary page, okay?
18 Again, they're presenting different content on the right. We have the
19 browser. It's accessing a page. On the left, we have the bookmarks. Those
20 are different things. And not shockingly, the bookmarks are auxiliary and a
21 child of the primary page.

22 Okay. So then, now here's where we get into Exhibit 2012 and the
23 way this functionality worked. And so you need to receive a first input from
24 the user, wherein the first user input includes an input to minimize the first
25 application to one of the first and second displays of the device. The claim
26 is wordy, but it's not really a terribly hard concept. It's -- you need an input

1 from the user here. That's the dragging functionality. And that's shown on
2 these slides by the green D and F and the arrows.

3 And you need an input to minimize. Great. Okay. So we drag, and
4 we're going to minimize to one of the first or second displays. And then we
5 need -- wherein in the second page of the first application is displayed by
6 one of the first display of the device and the second display of the device,
7 and wherein the first page of the first application is not displayed.

8 And again, all that this is trying to describe is this concept of, okay,
9 we're going to drag, and we're going to get rid of the auxiliary page. And
10 we're going to get -- we're going to be left with the parent page. And that's,
11 again, described throughout in Exhibit 2012. That diagramming showing
12 the dragging, that's really all that's needed there. And that's the entirety of
13 Claim 1.

14 And then we go into Claim 4. And I think, like, for example, you can
15 look at Claim 6. Some of these are pretty easy. Claim 6, method of Claim
16 1, wherein the device is oriented such the first and second displays are
17 presented in a dual portrait format. I'm not going to go through all the
18 claims because there's a lot of this, where we're saying, okay, we have this
19 general concept of I can drag, I've got two different displays, two different
20 things being shown, and I can drag it to minimize and make my viewing
21 more consistent. Okay. Great. And then we have other flavorings like, let's
22 do it in portrait. Yes, you could do it in portrait. That's all shown.

23 Okay. So that's the extent of the claim analysis, given that we have a
24 concession on conception, I think is needed. I do want to -- I've got four
25 minutes remaining and I would like to just take a brief opportunity to

1 address a few of the points made by Petitioner that I didn't get to previously.

2 Oops. Pardon me.

3 So the liability waiver came up. And just to be clear, I mean, the
4 testimony we -- we've put in, Mr. Cassar did not testify that anyone at
5 Flextronics forced him to be participating in this proceeding. He chose to
6 participate. Not shockingly, having had emails from his old job, he was
7 concerned, hey, if I participate in the proceeding, is Flextronics going to
8 come to me and say, hey, you let this stuff -- why did you still have it and
9 why did you use it? And all of that. So he asked for a liability waiver to
10 make sure it was okay.

11 And to try to turn that against him now is, I think, frankly, a bit
12 disappointing. To say that this guy -- he -- he's a careful man. I think the
13 liability waiver really underscores the degree to which he is credible. He's
14 so credible, in fact, that before he would even participate, before he would
15 provide documents, he wanted to make sure everything was on the up and
16 up.

17 And so he made sure he got a liability waiver from Flextronics that
18 they weren't going to say, hey, you've got all these old documents and we
19 think that's a problem. So he went to them and he asked them for a liability
20 waiver and he was able to obtain that. And to try to turn that around, I think
21 it just isn't right.

22 JUDGE JUNG: Mr. Pickens, is that the -- is that explanation
23 somewhere in the record, in the files that Patent Owners have?

24 MR. PICKENS: Yes, Your Honor, it is.

25 JUDGE JUNG: You don't have to give me an exact slide, but is it
26 somewhere in the record?

1 MR. PICKENS: So it's in the -- in his deposition transcript, in the
2 redirect testimony at the very bottom. There was questioning on direct and
3 it came out a little bit muddled. And so I did ask on redirect a couple of
4 clarifying questions. And it's in the surreply also that Mr. Cassar --

5 I said, "Mr. Cassar, did you -- did anybody at Flextronics ask you to
6 participate in this?"

7 "No."

8 "Did anybody make you, as a condition of the waiver," because that
9 seemed to be, kind of, the implication that was trying to come in, was that he
10 had these documents, he was in trouble, so he had to participate. And that's
11 not what he testified to. And that's -- there's a few -- there's a few citations
12 in our surreply and there's also -- there's at the very end in the redirect
13 question I know of Mr. Cassar's deposition as well.

14 JUDGE JUNG: Thank you.

15 MR. PICKENS: And frankly, Your Honor, with that I -- Your
16 Honors, I do believe I've addressed the other points that were raised in
17 Petitioner's opening argument. So I would cede or reserve the remainder of
18 my time unless there are further questions.

19 JUDGE JUNG: I have no questions.

20 JUDGE PESLAK: I have no further questions. Thank you.

21 MR. PICKENS: Thank you. 17 minutes left for rebuttal.

22 MR. ZEILBERGER: Thank you, Your Honors. What I heard a lot
23 from Multifold is why they think their conception documents, like Exhibits
24 2006, 2012, and 2013 mapped to the claims. They spent a very large portion
25 of their time walking through why they think there's disclosures in their
26 conception documents that can map to the claims. What we heard very little

1 from, from Multifold, is why it is that we know that those disclosures were
2 actually reduced to practice. And the reason for that is that there simply is
3 little to no evidence to that point.

4 Multifold actually made a brand new argument today, it -- they never
5 even hinted at this in their -- Patent Owners' response or even their surreply
6 that there was a constructive reduction to practice and they kept testing.
7 That -- that's a brand new argument. It -- it's an improper argument and you
8 shouldn't consider that. And I think there's actually a very good reason why
9 they probably didn't make that argument in their papers. If we look, for
10 example, at the deposition of Mr. Cassar, here I am showing Exhibit 1020,
11 starting at Page 62, Line 13. Sorry. One second. Wrong page.

12 There we go. Page 62, Line 13. We asked Cassar, "Why is it that you
13 and Mr. Sirpal were in possession of Imerj prototypes? Why didn't those
14 stay with Flextronics?"

15 Answer: "Because Flextronics was throwing them in the garbage."

16 Question: "Why was Flextronics throwing them in the garbage?"

17 Answer: "Because they killed the project."

18 "Do you know why?"

19 "I don't know exactly why. I've heard many stories, but I don't know
20 exactly why."

21 So I think it stands to reason that at some point in this time period that
22 Multifold doesn't want you to know about, the project was killed off and
23 they couldn't have shown diligence. In any event, it -- it's an improper new
24 argument that's not part of the record.

25 We heard today Multifold say that Mr. Cassar was pressed into saying
26 the wrong thing at deposition. That it was an accident and because we asked

1 him a couple of times -- it was an accident; we should forgive him. Your
2 Honors, depositions are formal proceedings. They're under oath. Witnesses
3 are reminded that they're under oath. He swore to penalty of perjury when
4 he submitted his declaration. These aren't the sorts of proceedings that you
5 can say, oh, whoops, sorry. And it goes -- if that is how he took the
6 deposition and that's how we considered it, I think it goes, again, to the
7 credibility you should accord his testimony. And I also don't think it's a
8 credible way to read the deposition transcript, that it was just a mistake.

9 As I walked through for you earlier today, it wasn't one question, it
10 wasn't two questions, it was again and again I asked him. And he even
11 explained, oh yeah, I got the browser working. Everything was working.
12 He doubled down, triple down. He went completely to say that that was the
13 device and he got it working.

14 Multifold said that, well, we should have sought additional discovery
15 for all of the things that they hid from this proceeding. The issue before
16 Your Honors is not whether Multifold has committed a discovery violation,
17 per se, in and of itself. The issue here is the weight that you should give
18 evidence when Multifold is hiding evidence. I would footnote that we do
19 think some of the evidence was expressly inconsistent and that they should
20 have produced it under routine discovery and not just additional discovery.
21 But the issue here is the weight that you give to the evidence.

22 And I think, actually, one of the cases that Multifold cites in its
23 surreply is pretty telling. It's the *Dionex v. -- v. Agilent* case, 56 F.4th 1353.
24 They cite that in the surreply for the proposition that there's no mandate that
25 the Board draw a negative inference when a party fails to present some types
26 of documentary evidence an opposing party insists must exist. But that case

1 was decided in the context of a Board's determination that those documents
2 did not exist. And the Federal Circuit was saying, well, yeah, if the Board
3 can fairly say documents don't exist, they don't have to accept the other
4 party's representation that they did. And in that context, there was no
5 mandate. But the Federal Circuit also affirmed that there are circumstances
6 where a strong negative inference may be reasonable.

7 If there was ever a case where such a strong negative inference is
8 appropriate, it's this case, where it -- it's not us speculating that there's
9 documents. We know that there's documents. We have Sirpal admitting that
10 he gave thousands of documents to Multifold. And apparently, Multifold is
11 now saying, oh, there's third party issues of those. I don't know how they --
12 they're -- maybe they're representing the third party, I don't know.

13 Apparently a third party didn't care about those documents being shared with
14 Multifold. It doesn't make sense why Multifold can have those documents
15 and not Petitioners. There -- there's the dates, which are not third party
16 documents. That was an email that Cassar emailed to Multifold's counsel.

17 Now, the ground gets muddy because Multifold created it muddy and
18 they said, oh, let's have the same attorneys represent Multifold and also
19 represent Cassar. So now we can claim privilege over what Cassar tells us.
20 I don't think you can use privilege as a shield to hide inconsistent evidence.
21 And I would also point out that the witnesses, Cassar and Sirpal and Becze,
22 had no problem sharing these supposedly third party documents with
23 Multifold. And it doesn't make sense why they weren't willing to share
24 those same documents with us.

25 I would also point out that Multifold didn't really have any response to
26 the issue of Exhibit 2033 and how Mr. Cassar testified that the key

1 fundamental features that Multifold is relying on were actually ideas by John
2 Visosky. They said, when they were speaking, that there's no testimony on
3 this issue. That -- that's just flat not correct. We showed Your Honors that
4 testimony from Mr. Cassar saying that was John Visosky's idea.

5 And again, either it's John Visosky's idea, and so they can't rely on it
6 for conception, or it has nothing to do with the claim functionality.
7 Because -- and we agree, that language is very vague. We have no idea,
8 really, what minimize and maximize is referring to in Exhibit 2033. But if
9 you want to -- you can either accept their contention that, well, believe Mr.
10 Sirpal, even though it's uncorroborated. Sirpal is the only one that talks
11 about Exhibit 2012. Either believe Sirpal or it had nothing to do with the
12 claims. You can't have it both ways, though.

13 JUDGE JUNG: Mr. Zeilberger, would you agree that even without
14 the documents you asked for, there's enough in the record, as it is now, to
15 poke holes in the testimony, the corroboration evidence, the actual reduction
16 to practice evidence, but you really -- in the end, you don't seem to really
17 need these additional documents.

18 MR. ZEILBERGER: That's exactly right, Your Honor, because this is
19 Multifold's burden. They needed to prove this and they've fundamentally
20 failed. I think the only way that they could meet their burden is if you were
21 to give full weight and credit to everything that Sirpal has said, everything
22 that Becze has said, and everything that Cassar has said. They're
23 fundamentally relying on the testimony of those witnesses. Their surreply
24 even admits that at a point. They say, well, yes, these documents might be
25 vague but we have the testimony of the three witnesses that explained them.
26 I can even try to find that cite for you guys.

1 That's at Page 19 of their surreply. But that's correct, Your Honor.
2 This is an issue that's Multifold's burden. And as the case law makes clear,
3 for example, in the *Dionex* case that I was speaking at earlier, you have to
4 look at, not just the evidence that's in the record, but also what you don't
5 have and what's been kept from you. And this is a case where it -- it's not
6 just petitioners guessing that there's documents. The witnesses confirmed
7 that there's documents.

8 And I think my friend on the other side said something that -- that's
9 pretty telling. He said, and I'll try to be as accurate as I can, that in the
10 absence of evidence, I -- I'll assume what was missing supports my case and
11 the petitioners will assume it supports their case. That may be the case if
12 nobody has the evidence.

13 Maybe there is a third party that nobody had access to and they have
14 an exhibit, and I'm going to speculate that it supports my case and the other
15 side will speculate that it supports their case. This isn't that case. This is a
16 case where Multifold has everything, and we don't. And they're just not
17 putting it into the record. And in that circumstance, you have to assume that
18 any reasonable actor would have put that evidence into the record if it
19 supported their case. And the fact that they didn't, allows you and really
20 compels you in these circumstances to draw a negative inference from that.

21 JUDGE JUNG: But even without that negative inference, you would
22 still agree that you would -- you prevail?

23 MR. ZEILBERGER: Yes, Your Honor, I agree.

24 JUDGE JUNG: That they don't meet their burden?

25 MR. ZEILBERGER: Yes, Your Honor. I -- I'll also point out,
26 Multifold went through some of the emails and said that those support their

1 case. Again, corroboration is not a proper use. It's not a hearsay exception.
2 The Board operates under the Federal Rules of Evidence, I think for good
3 reason, and corroboration is not a hearsay exception.

4 There is no case law that suggests that it is. I would even note that the
5 *Medichem* case that we cite in our reply at Page 14, Footnote 10 even
6 recognizes an example where inadmissible hearsay was kept out a reduction
7 to practice analysis. I think respectfully, Your Honor, is that Multifold is
8 leading Your Honors to error in asking you to consider those emails.
9 They're hearsay without any proper exception.

10 I will also point out that I don't think the characterization of the
11 liability waiver for Multifold is credible. Cassar was very clear that this
12 wasn't a situation where he wanted a liability waiver because he was worried
13 that he'd be in trouble for saying things. He said very clearly that he was
14 worried he would face liability for having documents, and he got the liability
15 waiver in exchange for testifying in this proceeding.

16 I'll conclude by saying, I think one of the points that Multifold really
17 harps on in their sur-replies, well, you can apply the rule of reason and,
18 yeah, we don't have a smoking gun showing reduction to practice, but let's
19 put it all in the pot, and what comes out is good enough.

20 If ever there was a case where you could do that, this is not it. We
21 have -- as I spoke about earlier, we have declarations that stem from group
22 meetings with word for word, on and on and on, exact language. We have
23 declarants that were paid. Multifold mentioned how Cassar and Becze were
24 paid only \$200 and then \$500 an hour. They didn't say anything about
25 Sirpal getting \$950 an hour.

1 We have the missing documents. We have the evidence inconsistent
2 with the dates that Multifold is alleging for reduction to practice. We have
3 the provably false testimony from Mr. Cassar, and we have Becze being
4 unfamiliar with the exhibits and unfamiliar with the actual functionality at
5 issue.

6 I respectfully submit, Your Honors, that you should find that there
7 was no actual reduction to practice. And even if there was, there is no
8 conception by the named inventors that you can rely on, and so Seo is prior
9 art to all of the challenge claims. If there are no further questions, I'll close.

10 JUDGE PESLAK: Counsel, did you ask to inspect the prototypes?

11 MR. ZEILBERGER: I -- I'm glad you brought that up, Your Honor,
12 because I actually meant to touch on that, and it slipped my mind. The --
13 Counsel for Multifold said, oh yeah, the witnesses were happy to share those
14 devices. We were surprised there wasn't a request for it.

15 No one told us the witnesses were -- had the devices and were happy
16 to share them, let alone that there were functional devices. If you look at
17 their declarations, they only have images of broken-looking devices.
18 They're all powered off. They have tape over parts of them.

19 We had no idea that, supposedly, the witnesses turned on the devices
20 until the depositions. They didn't say anything about that. And following
21 the depositions, we asked for the actual documents that we knew existed. It
22 kind of feigns credibility for Multifold to say, oh yeah, Flextronics would
23 have been happy to share these secret prototype devices, got credit to show
24 they inspect those, but not the documents that were already shared with
25 Multifold, and the emails with dates that are inconsistent with them. It -- it's
26 simply not a credible argument, Your Honor.

1 Thank you very much for your time today.

2 MR. PICKENS: Your Honors, apologies. I appear to have lost the
3 screen. That's okay. We can do it off papers. Let's go, but we'll help.
4 Okay. Thank you.

5 JUDGE JUNG: All right. We have 19 minutes for rebuttal.

6 MR. PICKENS: Thank you, Your Honors. May I proceed?

7 JUDGE JUNG: Yes, please proceed.

8 MR. PICKENS: Just at the outset, on this discovery issue, the rules
9 are the rules, and the rules are the rules for a reason. You don't get the
10 discovery you don't ask for, and it's specifically to avoid a situation like this.
11 The Board is not supposed to be faced at the end of this with questions from
12 a petitioner saying, well, we never asked for discovery, and now we're going
13 to point to things we never asked for and say that they are sufficient to
14 support our case, to win the day, to invalidate a lawfully issued United States
15 patent.

16 And it -- it's a problem. And again, I'm not saying they didn't send an
17 email that said, hey, at the very end, could you please send us the
18 documents? They sent an email, and we replied. And we said, there is a
19 procedure for this.

20 And there is. And you have to be able to live within the confines of
21 the statute. It cannot be, as they would like it to be, that you can disregard
22 the statute and not file a motion, which we know you have to file, and not
23 proceed in the proper form with discovery, and then come into the hearing
24 and base your entire argument, or nearly your entire argument around the
25 prospect of a discovery dispute that was not raised. There is a reason we
26 raised these in a timely fashion.

1 It's true in district court. It's true in the PTAB. It's true in this
2 proceeding, and it's mandated by the statute. And I think -- you know, I
3 understand the appeal. I understand the appeal of wanting to ask a witness
4 during his deposition, hey, will you please just hand over the documents?
5 But unfortunately, it's not the way that this gets done. There is a statute for a
6 reason.

7 Somebody sat down and thought about it, and that is the rule we came
8 up with. You need to ask. You need to raise the dispute. And then we
9 could have had that conversation. It could have come before the Board, but
10 the time is not now to be pointing to these things.

11 Now, we did -- on that topic, just to be clear, there was some
12 argument that, well, we know there is stuff out there, and so now it's on us,
13 and it's our problem because it wasn't produced because it's out there, and it's
14 not of record. There was questioning about the -- at this about the
15 depositions.

16 And this is on the screen, the Cassar deposition at Page 74, Line 7
17 through 15.

18 They asked Mr. Cassar, all the emails you reviewed, exhibits to your
19 declaration.

20 And his response was, "All of the emails that I reviewed, exhibits to
21 my declaration," I believe that should be a question mark, "probably not
22 because I thought some were irrelevant."

23 "Okay. And so all of the emails that you thought were relevant are
24 exhibits to your declaration?"

25 "Yes."

1 That goes to the fundamental, initial obligatory discovery in this
2 proceeding. He looked through, and he attached everything he thought was
3 relevant, and they tried to poke at that and say there is something not
4 relevant.

5 Well, you know what? They got the answer. They got it under oath.
6 Everything he looked at that he thought was relevant, he put in there. And
7 that fits tightly with the standard. I mean, that is the statutory language. He
8 looked through it. And this isn't even the attorneys. This is the witness
9 himself looked through them and said, that is -- I put everything relevant in.

10 And to say they want more than that, fine. You want to test and see if
11 his relevance determination was good enough? Great. File your motion.
12 Let's hear it. Let's resolve how much discovery is coming in. Let's enter,
13 you know, the standing order on ESI. Let's have a conversation about
14 custodians. Let's have a conversation about search terms. Let's have all
15 those conversations, but those are in the rear-view mirror now. Those never
16 happened.

17 And again, my friends at the other -- at the other table, they're very
18 sophisticated lawyers. They represent Google. It's not the strictures of the
19 statute are not unknown to them. So there was a choice made doubtlessly at
20 some point, and it wasn't rebutted when they stood up here.

21 There was a choice made on that side of the aisle, for better or for
22 worse, to not seek the discovery, and to proceed as we have here. And in the
23 face of that, this whole dispute has to go away because it's contrary to the
24 statute and it -- because if you don't follow the statute, we end up right here
25 where we shouldn't be, talking about hypotheticals.

1 In any event, we know at least somebody looked at the documents,
2 Mr. Cassar, and he said that he attached everything relevant to his
3 declaration.

4 JUDGE JUNG: Mr. Pickens, do you know if Patent Owner did tell
5 Petitioners that there were actual working prototypes available?

6 MR. PICKENS: I think -- I mean, first off, I do think that the answer
7 to that question came in as, no, they did not ask for them. If there was some
8 disconnect there, it would be surprising to me.

9 JUDGE JUNG: Did you tell them they existed? Did Patent Owner
10 tell Petitioner they existed, these prototypes?

11 MR. PICKENS: I think it's clear on the face of the declarations. I
12 certainly -- did I engage in a conversation directly with my friends across the
13 aisle and say, hey, just so you know, I think it was our view that it was clear
14 from the declarations. And we think it's clear from the declarations there
15 was a universe of discovery, and that it was not sought.

16 JUDGE JUNG: Do you remember what statement you -- what
17 statement in the declaration would imply that the prototypes existed?

18 MR. PICKENS: Sure. I mean, we have a photo of an early single
19 screen dev kit as shown below, that is Paragraph 21 of Cassar, and he has a
20 picture.

21 JUDGE JUNG: But, you know, that goes to Mr. Zeilberger's point
22 that it doesn't look like a working prototype. It looks like it's just in pieces,
23 right?

24 MR. PICKENS: Well, I think that is kind of part and parcel nature of
25 prototypes, Your Honor. They often don't look like a polished product. So I
26 don't -- I think trying to take as, well, we relied on the fact that there was

1 scotch tape on them, that doesn't really -- in my view, prototypes are always
2 messy. That's the way it works.

3 JUDGE JUNG: Is there a picture where that prototype with tape has
4 an actual screen on that looks like it's working?

5 MR. PICKENS: Well, there is the -- there is the disputed picture that
6 is in the -- that we've talked about that looks like it's working where they
7 thought they got an admission. So they, you know -- there was clearly
8 evidence the prototypes worked at some point. Moreover, I think the
9 declaration itself goes on at length to describe --

10 JUDGE JUNG: That is not the same prototype, right? That --

11 MR. PICKENS: It's not, ultimately, because it was --

12 JUDGE JUNG: And it's not from the same -- I don't remember. If I
13 remember correctly, they're not from the same time period either, correct?
14 Because it looks like that prototype that is working came a little bit later. I
15 don't know how much later in the time frame and whether it still fits into
16 your ante-dating arguments, but it seems like that came a little bit later than
17 the other prototype that you showed first.

18 MR. PICKENS: I think that might be a fair characterization, Your
19 Honor. I think that the testimony bars there, they were the early prototypes
20 that were, like -- vary without a case altogether, and you've got one screen,
21 two screens.

22 We may have lost Judge Peslak.

23 JUDGE JUNG: Yeah. Oh, yes. We lost him just now. Let me see.

24 JUDGE DROESCH: He is trying to reconnect.

25 JUDGE JUNG: But let me pause the clock.

26 JUDGE DROESCH: Looks like he's good.

1 JUDGE PESLAK: Yeah, I'm back. Sorry about that.

2 JUDGE JUNG: All right. And let me restart the clock and, Mr.
3 Pickens, if you can, just go back one minute in your explanation.

4 MR. PICKENS: Certainly. I think -- and probably I can explain this
5 a little better having had 10 seconds to think about it, but on the issue of the
6 prototypes, I mean, regardless of whether one should have known on the
7 face of the declaration that there were functioning prototypes, we do know
8 that that came out during the depositions. We know that is of record. That
9 is why we're standing here having the conversation. So we know that came
10 out, and yet we still did not proceed to ask for discovery.

11 And I think that really kind of is dispositive of the issue. So I -- I'll
12 credit my friends across the aisle. I'll credit Your Honor's questioning.
13 Could a reasonable person have read the declaration and not appreciated? I
14 thought it was clear. There was photos of them. I thought that was clear.

15 I'm hearing otherwise, but I think regardless, we wind forward a little
16 bit here. We get to a deposition. We know it's clear then because that is
17 why we're having the conversation. And still, we didn't ask for the
18 discovery, and we did hear that. There was no request for the prototypes
19 themselves. Okay, thank you. I think that is relatively clear on that issue.

20 And again, just to hit one other point, we again had some conversation
21 about privilege, and I really don't know why this keeps coming up. I mean,
22 we cited case law going back, you know, 100 years, *Upjohn*. Privilege is a
23 right of a witness.

24 You -- you're not allowed to invade the privilege, and that you want to
25 doesn't render it correct. So I don't know why we're having that

1 conversation, nor is it relevant that we offered to represent the witnesses
2 versus their own attorneys.

3 Their own attorneys would have had the same exact objection to
4 deposition preparation. I have -- I cannot picture a single deposition I've
5 been in where a represented party agreed to voluntarily waive privilege
6 during a deposition. I -- it's part and parcel of deposition prep 101,
7 witnesses --

8 JUDGE JUNG: Yeah. Can you respond to Mr. Zeilberger's
9 implication that we should draw a strong negative inference from the fact
10 that documents weren't turned over? And this prototype, there's an issue
11 with the prototype, whether it was working or not?

12 And there are other things that seem to indicate that, you know, the --
13 to Petitioner that things were being hidden, not fully submitted to the other
14 side for their inspection.

15 MR. PICKENS: Sure. I mean, I can respond to that right off the bat.
16 The question of whether things were hidden is -- we wouldn't be having this
17 conversation if it wasn't known, right? For us to have the conversation, the
18 back and forth here about what the prototypes were and what they were --
19 whether they were provided, we had fulsome depositions of the declarants.
20 And again, these are three Canadian citizens who agreed to voluntarily travel
21 to the United States and sit for an under oath deposition.

22 And they answered the questions truthfully. And what we have
23 following that was not a request to say, hey, let's get some discovery. Now
24 we realize that we think we didn't get enough discovery. We didn't come
25 forward and say it. Instead, we opted for the latter course, to argue that,

1 well, now we know there's some discovery we might have wanted, so we'll
2 just argue that that's fatal.

3 And that -- that's not the way this is supposed to work with discovery,
4 not here and not in any proceeding. We learned about the fact. In fact, we
5 know we know it, and we know it wasn't asked for.

6 JUDGE JUNG: And just to put a final note on this, Petitioners seem
7 to agree that what we have in the record is sufficient to show that they
8 prevail. Do you also agree that there's enough in the evidence -- enough
9 evidence in the record that Patent Owner can prevail on?

10 MR. PICKENS: Yes. I think that there is -- I think it's a rather strong
11 case, and I think it's actually difficult to find otherwise. I think you wind
12 back --

13 JUDGE JUNG: So whatever discovery problems there might have
14 been in the past, that they come out at -- it doesn't really make a difference
15 in the outcome?

16 MR. PICKENS: I would certainly agree we don't need to take a -- an
17 avenue into discovery problems because I think that -- I can string it together
18 like this, Your Honor, and I think it's relatively clear.

19 We know Exhibit 2006 and Exhibit 2012, they established conception,
20 and we know what that looks like. We know it looks like an email on one
21 side of the page, an inbox on the other, bookmarks on one side of the page,
22 displayed website on the other. And we know how it works because of
23 Exhibit 2012. We know that the gestures work that way, okay? That's not
24 disputed. We got that admission right out the gate. We know it's not
25 disputed that that establishes conception.

1 Now, the only remaining question at this point is, was that reduced to
2 practice? And we have testimony from multiple witnesses saying, yeah, that
3 got on a device, and it got on it before Seo. I -- that's enough. And frankly,
4 that's, I think, dispositive and was actually where I was planning to end this
5 argument. So I -- I'll gladly answer any further questions. There's eight
6 minutes remaining, but I really do think that's where this turns, and the rest
7 of this is simply a distraction.

8 JUDGE JUNG: I don't have any questions.

9 JUDGE PESLAK: If we were to find that the emails that are subject
10 to the Motion to Exclude are hearsay and we exclude them, would there still
11 be enough evidence in the record?

12 MR. PICKENS: Yes, Your Honor. And more than enough because
13 we have Mr. Sirpal testifying. He's an inventor, okay? We can't rely on that
14 at -- alone, okay? Do we have other evidence to corroborate him? That's the
15 question that your answer -- Your Honor is answering, right?

16 So Mr. Sirpal says, I reduced it to practice. And, okay, yeah. Yes, we
17 do. What do we have? Well, we have Mr. Cassar. He has a declaration and
18 deposition testimony. They both support it. That's corroboration right there.
19 That's enough.

20 Now, do we even need to stop there? No. I have Exhibit 2033. That
21 is not subject to the Motion to Exclude. That's the document that has the
22 percentages in WPC. It says WPC is 84 percent complete. And Mr. Cassar
23 clearly testified, which I read into the record earlier, that the remaining 16
24 percent did not relate to core functionality.

25 So I -- you know, we can exclude a lot of evidence here and still carry
26 forward. I would suggest those emails really don't need to get excluded.

1 And my opposing counsel said I was -- you know, that Multifold was trying
2 to lead Your Honors to error. And I think it's actually the opposite. There's
3 a Federal Circuit case that we cited in our opposition to that Motion to
4 Exclude where there was actually a determination the board had erred in
5 excluding confirmatory evidence on hearsay grounds.

6 And so I think it's -- respectfully, yeah, I -- we could set them aside if
7 we want, but to expressly exclude them, even if we do that, we're potentially
8 going to have -- being led to error again on the other side, which is that we
9 excluded relevant evidence that confirms. And that -- that's the federal
10 circuit saying it, that you -- third party -- that these hearsay confirmatory
11 statements, they need to come in.

12 JUDGE PESLAK: One last question from me. And I asked
13 Petitioner's Counsel this, and I'm not sure I got an answer. And it's really
14 Exhibit 2033, who is the author of that spreadsheet?

15 MR. PICKENS: Yes, Your Honor. Let me show you. I'm sorry. I
16 just disconnected my laptop. So this is Ron Cassar's Declaration, and
17 Paragraph 18, which specifies -- he says, "And my project plan discussed
18 below lists work on the minimize-maximize dual display application
19 transition controllers as starting on September 3rd and September 6th,
20 2010," citing to Exhibit 2333, Project Plan.

21 I -- it was my understanding based on that statement that Mr. Fitar --
22 Cassar was testifying that that was his project plan, and that's, again,
23 supported by Your Honor's citation to the record earlier where 2033 is
24 represented to be an attachment to Exhibit 2032, which is an email from Mr.
25 Cassar.

1 So we do have that in the record, that it's his project plan, and that's
2 consistent with the email sending it, again, from him at Exhibit 2032.

3 JUDGE PESLAK: Okay. Thank you.

4 MR. PICKENS: Thank you, Your Honor.

5 JUDGE JUNG: Thank you, gentlemen, for both of your
6 presentations. That was very helpful. Your case is submitted, and we are
7 adjourned.

8 (Whereupon, the above-entitled matter went off the record at 3:05
9 p.m.)

PETITIONER:

Naveen Modi
Joseph Palys
Daniel Zeilberger
Quadeer Ahmed
David Valente
PAUL HASTINGS LLP
naveenmodi@paulhastings.com
josephpalys@paulhastings.com
danielzeilberger@paulhastings.com
quadeerahmed@paulhastings.com
davidvalente@paulhastings.com

Timothy Pearce
Christopher Higgins
ORRICK, HERRINGTON & SUTCLIFFE LLP
tvpptabdocket@orrick.com
0chptabdocket@orrick.com

PATENT OWNER:

Stephen Schreiner
James Carmichael
Minghui Yang
Stephen McBride
Christopher Abidin
CARMICHAEL IP, PLLC
schreiner@carmichaelip.com
jim@carmichaelip.com
mitch@carmichaelip.com
stevemcbride@carmichaelip.com
chris@carmichaelip.com