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Paper # 30
Entered: April 8, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

DH INTERNATIONAL LTD.,
Patent Owner

IPR2025-00172
Patent 9,022,294 B2

Record of Oral Hearing
Held: March 25, 2026

BEFORE: KARL D. EASTHOM, BRIAN P. MURPHY, and MARY C. HOFFMAN, Administrative Patent Judges.

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The above-entitled matter came on for hearing on March 25, 2026, commencing at 9:59 a.m., via video teleconference.

P R O C E E D I N G S

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JUDGE MURPHY: All right. I'm Judge Murphy. With me are Judge Easthom and Judge Hoffman. Welcome to the Board. We're here for the oral hearing in IPR2025-00172. Apple Inc. versus DH International Limited. Petitioner is challenging patentability of Claims 1 through 20 in Patent Owner's U.S. Patent 9,022,294. Let's start with appearances for Petitioner, please.

MR. SEITZ: Good morning, Your Honors. Adam Seitz on behalf of the Petitioner, Apple. With me at the table here is Sten Larson, an associate from my firm, and behind me is Ms. Natalie Pose from Apple.

JUDGE MURPHY: Oh, welcome to the Board. Thank you, Counsel. And Counsel for Patent Owner.

MR. HART: Your Honor, Robert Hart representing DH International, and with me is Greg Gulliver.

JUDGE MURPHY: Can you speak up, Counsel, please?

MR. HART: Yes, sir. I'm Robert Hart, I'm representing DH International. And with me today is Gregory Gulliver, and he's also representing DH International.

JUDGE MURPHY: All right. Thank you. Welcome back to the Board. All right. So pursuant to our order, each side will have 45 minutes for oral argument. Petitioners will begin, make your presentation. Patent Owner will have the opportunity to respond, and both parties will have the opportunity to reserve rebuttal time to respond to each other's argument.

So given that you each have 45 minutes, take a moment to think

about that. Counsel for Petitioner, I'm starting you at 30 minutes, but you can tell me when we're ready to go, what you'd like. A couple of reminders on the demonstratives. We have received your demonstratives, they're available on our screen. We don't have any judge remote, so we can all see the screen, and we appreciate that.

Remember that they're not evidence, not an opportunity for new arguments or evidence in the slides, but more importantly, please try to remember to reference the slide numbers during your presentation both for our benefit and the benefit of our Court Reporter and the clarity of the transcript. So with that, Counsel for Petitioner, how much -- excuse me, how much time would you like to reserve?

MR. SEITZ: 15 Minutes, please.

JUDGE MURPHY: 15. All right. Okay. So whenever you're ready, I'll start the clock.

MR. SEITZ: Thank you, Your Honors, and may it please the Board. Is the microphone okay on volume, Your Honor?

JUDGE MURPHY: Yes. Yes.

MR. SEITZ: So as we've mentioned, we're here on the '294 Patent. Your Honor, we did raise a prior -- Your Honors, we did raise a priority challenge to this Patent that is not in dispute, not a substantive discussion between the parties here. We raised this priority dispute because the original application did not have the dual or two receiver arrangement that is depicted here on DX-2. That dual transceiver arrangement came in in the application for the '294.

We raised this argument, Your Honor, again, not being challenged or disputed here because we felt it was the right thing, number one, but

number two, there's also a body of law that developed in that time period that showed a significant number of prior art references discussed by our expert that showed cell phones that were able to actively or automatically switch between Wi-Fi communication and cellular communication, was important and an important basis for part of our motivation to combine.

Moving to DX-3, I want to start just briefly, I understand that the panel has a very good knowledge of the '294 at this point, given your work in the Google case. So I will do my best not to be too repetitive of what you already know. But a lot of the arguments today are guided by some fundamental aspects.

And so, I'd like to start with the main advantage of the '294 Patent as described by the applicant themself, discussed in the specification in the file history, cited on page 31 of our petition as the file history. It's not seen in the slide in front of you.

But the applicant described the advantage of the invention as avoiding the need for the user to decide which conveyance operation will occur since the electronic circuit will decide this for the user. The advantage stated differently was that the system would decide whether to send over cellular communication, or the system would decide whether to send over a Wi-Fi communication, one of two data conveyance means.

The specification shown here on DX-3 is in accord with this, Your Honors. It's key here that this path is not selected by the user. The user will through the use of a user trigger control device issue an invariable activation command, but it is an activation cue received by a cue receiver that chooses the ultimate path.

And so that's kind of an underpinning of many of the disputes that

you're going to hear today where there's an assumption or an argument by Patent Owner that somehow the user is involved in selecting the path, which is why I start there today. DX-4 is --

JUDGE MURPHY: Well, they're not arguing that with respect to the '294 Patent, they're arguing that right with respect to your mapping onto the Suga reference.

MR. SEITZ: Yes. Fair clarification. On the Suga reference, that is correct. I'm going to move to DX-5 to talk about the Suga reference. A brief overview of Suga discloses a cell phone. The cell phone can send data such as emails through two different communication paths or two different communication networks.

It either goes through a wireless phone line seen in red on DX-5, which is from Figure 1 of Suga. That is a cellular communication network going through a base station 2. Or it can send data such as emails through a wireless landline to a WLAN or a wireless network that goes through the purple line through 5 to the access point or router 6.

Suga will, it has disclosures that say it will automatically select one of these two paths of communication depending on certain parameters. Those are seen on DX-6 in a settings application or a settings menu that the user has access to. Now shown here at the bottom of DX-6 is the setting screen from Figure 5 of Suga.

It gives the user a number of different options, starting if we work our way down from the top of this box to prioritize use of wireless LAN so the user can tell the system of Suga to prioritize the use of the Wi-Fi network, the wireless LAN. Moving down a bit further to our green box, you can -- the user also can automatically switch, tell the system of Suga to

automatically switch to a phone line if the wireless LAN line cannot be used.

Once these are set by the user, the system of Suga will automatically select the appropriate method of communication walking through the flow chart seen in Figure 6 of Suga. Suga, however, does not -- before I move on to our next reference, Suga does not go into specific detail about how it will automatically switch to the phone line or detect if the wireless network is unavailable, which is where our secondary reference Gorsuch comes in.

And I have this on DX-7. Gorsuch describes a portable device that can connect through either a cell phone network or a wireless LAN network. And it will make a choice of which network is available based on input that it receives from its WLAN detection circuit 201. A little hard to see in the figure, but it's on DX-7. It's the left side of the screen depicted in the green box, WLAN detection circuit 201.

The way that Gorsuch describes this WLAN detection circuit is operating, is a couple different ways. I'll give one as an example, but it will look for a WLAN beacon or a beacon frame that is sent out by the base station. And those are sent out at regular intervals. If it detects the beacon frame or the beacon signal, both are used interchangeably in Gorsuch, it is an indication that the wireless network, the WLAN is available and it will communicate through that network.

If it does not detect a beacon frame or a beacon signal, that is an indicator to the Gorsuch system that the WLAN network is not available, at which point it will use the cellular. So this is a much more robust description of how it chooses between the wireless, the WLAN network or the cellular network. And that is what we have incorporated with our

combination.

JUDGE MURPHY: And you're reading that as the activation cue --

MR. SEITZ: That's right.

JUDGE MURPHY: -- (CROSSTALK) in the claims?

MR. SEITZ: That's right, Your Honor. The beacon signal that it sent out is the activation cue. And we can see in our combination here on DX-8, we have modified Suga to add the WLAN detection circuit depicted in purple here. That simply adds the ability for that activation cue in the claims, the beacon signal of Gorsuch to be received by the MPU, the processor of Suga, which then makes the selection based on the presence of a beacon signal or the absence of a beacon signal as to whether it'll communicate via the WLAN network or via the cellular network. Gives us a roadmap -- looks like you're about to ask a question, Your Honor. I didn't want to interrupt you.

JUDGE MURPHY: I'll wait for you, Counsel.

MR. SEITZ: Okay. Roadmap of where we're going to go. There's a couple bigger disputes that have come up through the surreply, few others that are still out there. Some of the disputes that I think are the biggest ones to discuss today addressed in the surreply are this question of data exchange devices seen in the claim. What are they? What is the proper construction?

This question of the updated translator's affidavit. And then we have disputes that relate to various other aspects that are listed on DX-10 here, such as the control device, which relates to whether we should read a question of security into the system, the user configured priority settings of Suga and how those operate, constructions of various terms listed in the

institution decision, motivation to combine, which we'll briefly address, and then this question finally of the direct link and close proximity which we see, for example in Claim 8.

JUDGE MURPHY: So Counsel, why do you believe that Patent Owner has conceded these five disputes or issues on DX-10?

MR. SEITZ: Conceded might be too strong of a word, Your Honor. They were certainly not addressed in the surreply. There was space to address them in the surreply. There was no new expert declaration that was submitted by Patent Owner addressing any of these as part of its Patent Owner response. So they appear to have fallen by the wayside.

Perhaps that is a better phraseology. I'll start with data exchange devices. The claim language, I'll pull that up in just a second, but just to kind of orient us here on where we are, our mapping maps the data exchange devices to two different things. We mapped the first external data exchange device to the WLAN connection to the access point in Suga, depicted in purple on DX-12.

And we mapped the second data exchange device to the base station 2, that's the cellular network seen again in DX-12 in red on our slide here. Both of those are external to the cell phone in Suga. Both of them provide access to the various networks, either cellular or the WLAN network. Moving to DX-13, I want to start at the top with the claim language to just orient us here.

An exemplary claim language from limitation 1C. We see where this aspect of the data exchange device comes up. A first data transceiver operatively linked to said electronic circuit, said first data transceiver being for exchanging data between said electronic circuit and a first external data

exchange device over a first communication link.

There's similar language for the second communication link in the second data exchange device. A couple things that we see here. First it must be external. We see an external data exchange device. I don't believe this is reasonably in dispute. The WLAN access point and the cellular base station that we saw on the last Slide of DX-12, those are external to the cell phone of Suga.

JUDGE MURPHY: And Counsel, what data is being exchanged with the two, with the access point then the base station which you've mapped it in Suga Figure 1?

MR. SEITZ: Yes. What we have mapped is the exchange of an email in Suga. So a user drafts an email, prepares the email on their computer system, pushes send, that email is sent one of two ways in Suga, either through the wireless access point, the email is the data, or it is sent through the cellular base station.

JUDGE MURPHY: And what data is exchanged?

MR. SEITZ: Well, we're looking at the email that's going to go out. It's going to be exchanged from the cell phone to the wireless access point as an example, and then it's going to be sent on out into the network. Other information can come back in, confirmation of emails or other things such as that.

JUDGE MURPHY: And that information or the data that comes back to the cell phone through the access point or the base station, is that from a node or an end point?

MR. SEITZ: In our situation, it would come through the base station or the wireless access point. Either of those would be considered a

node. We submitted a dictionary definition with our reply that said nodes are just those components on a network. So either of those qualify as a node in that scenario.

JUDGE MURPHY: And do you agree with Patent Owner's position? At least as I understand it, they'll speak for themselves, but do you agree that the data being exchanged that returns to the cell phone has to originate at a node?

MR. SEITZ: There's various definitions that they've provided on the data exchange device. So I want to be real careful about what I would say I agree with or don't agree with. For example, I have on DX-14 and DX-15, a few different examples about what they have said. And if I start at the top left of DX-14, Your Honor, I can see a definition of a data exchange device, which has been provided in the POR at page 11.

Eyes aren't as good as they used to be. The data exchange device by its plain meaning is a device or node on a network or a device that is directly linked without a network connection, which is consistent with the specification. As we noted in our reply, I don't have a disagreement with that construction.

There's another construction that's been applied in -- or a definition, let me say that. A definition that's been applied in the Google proceedings, which is seen in the top right of Slide DX-14. There, Patent Owner said the data exchange device by its plain meaning, which is consistent with the specification is a device. They went on further to clarify that it's a device with a transceiver.

But then it gets a little bit (INDISCERNIBLE) Your Honor on the Slide DX-15 at POR 32. Patent Owner says the data exchange device is the

device identified as the data's end destination, not a network access point or network infrastructure that passes the data. We've noted in our reply that we don't -- I'm going to skip back to DX-14. Don't have a dispute that it is a device or a node on a network. I would not have a disagreement with that.

Your Honors have provided a construction in the Google proceeding. And I'm looking at DX-16, this is our position. But if I'm reading from the final written decision from the Google matter, Your Honor, which is pages 22 to 23 of the Google final written decision. That's IPR2024-01322 for the record.

Your Honors construed the plain meaning of external data exchange device as claimed, and described in the '294 Patent governs. And the construction was any external device that comprises an electronic circuit and a data transceiver for exchanging data with the electronic circuit in the cell phone over communication link. I don't have any objections to that construction either.

Suga meets that. As we have mapped the email as we have mapped what happens in the Suga system, it meets the definition of a node. Its WLAN access point and cellular base stations are unequivocally external. They receive data, they exchange data, they comprise an electronic circuit. They have data transceivers, either a WLAN antenna or a cellular antenna.

And they exchange that with the circuit, the electronic circuit in the cell phone over a communication link, either a wireless network or a cell phone. So we did not have the Google final written decision just based on timing for our reply. And we noted that we were okay with the construction of a device or a node on a network. I'm also fine, Your Honors, with the construction provided in the Google case, because I don't think it's

fundamentally different from a device or a node on a network.

JUDGE MURPHY: Well, it was more our effort to clarify, excuse me, the plain meaning of the recited claim language.

MR. SEITZ: Yes.

JUDGE MURPHY: But as frequently happens in these cases, there seemed to be a dispute over the plain meaning. So --

MR. SEITZ: Yes.

JUDGE MURPHY: It is what it is. My only question is just, I think you confirmed it, you're not taking issue with the construction that for this same claim and the same claim limitation --

MR. SEITZ: Yes.

JUDGE MURPHY: -- that's in our final written decision in the Google case?

MR. SEITZ: Yes. Let me be abundantly clear on that point. I do think consistency is important. I think consistency between the final written decisions of a construction of a term is important. I do not take issue with the constructions that you provided for data exchange device, external data exchange device in the Google proceeding. Our mapping still meets that as we've walked through with Suga and Gorsuch.

JUDGE MURPHY: Thank you, Counsel.

MR. SEITZ: Yes, Your Honor. The translator's affidavit, Your Honor, I want to address this. I'm on DX-18. Setting aside the case law, I want to walk through what this is and what this is not. So this is not a situation where an affidavit was not provided with our original petition. This is not a situation where the affidavit that was submitted with our original petition, excuse me, was false or incorrect.

Indeed, the original affidavit, which is Exhibit 1005 at page 20, included a statement from the project manager, it's Mr. Andrew Raia, that indicated, to the best of my knowledge, the translation was a true, full, and accurate translation of the Suga document. There was an inadvertent mistake that left out the language on providing that statement under penalty of perjury.

Your Honors allowed us to correct that, noted that in the institution decision paper 8 at footnote 6. Gave us 10 days to provide a translation affidavit or a sworn declaration that complied with 1.68 and 42.63 of 37 CFR. We did so Your Honor. We did so within seven days in that 10-day timeframe. We provided Exhibit 1017. 1017 is a declaration from Mr. -- an affidavit from Mr. Frank McGee.

Mr. McGee was the original linguist who performed the Suga translation, working with Mr. Andrew Raia. It includes the appropriate language under the Code of Federal Regulations that was noted. And importantly, for purposes of where we're at today, if you were to look and compare the translation of Suga in Exhibit 1017 to the original translation of Suga in Exhibit 1005, they're identical.

No translation was changed, no word was changed, nothing was changed substantively, nothing was changed immaterially, nothing was changed period. So what we do not have here is any dispute that there was some inaccuracy or something that was wrong with the first translation that was provided. Patent Owner -- sorry, Your Honor.

JUDGE MURPHY: And so just to confirm, what you're saying is the English language translation from Japanese to English in Suga Exhibit 1005 is identical to what was submitted in Exhibit 1017.

MR. SEITZ: Yes, Your Honor. That is correct.

JUDGE MURPHY: And the only difference is the inclusion of the translator's certification under the penalties of perjury in Exhibit 1017.

MR. SEITZ: That's right. It's a different person. Of course, Your Honor, we asked the original linguist to provide it as opposed to his project manager, but the way you stated it is correct. So Patent Owner has had the opportunity to depose any of these translators, they've not taken it. They've had the opportunity to provide their own translation if there was disagreement as to what was substantively translated, they have not done so.

This seems a little bit of form over function here, Your Honors. Your Honors, we've cited in the motion -- our opposition to the motion to strike, we've cited in our reply brief, there is a strong body of law here that suggests that it is standard operating procedure or common practice to allow for corrected affidavits, which is what we believe we've done here.

Talk about the control device next. The control device, Your Honor, is an argument that came up in the institution decision in the POPR. And the way that the control device is being used is a bit in the terms of the aspects to define the field of endeavor or to define the focus of the invention of the '294 Patent.

In the POPR, and then again in the POR, Patent Owner has made arguments that the control device, that the focus of the invention should be one of security. They point to, whether that's a PIN, some biometric aspect, a thumbprint, whatever it may be.

They center this argument often on the control device, as we can see from the control device there's just nothing there that would allow for such a narrow interpretation. Looking at DX-21, if I look at the

specification I've cited column 8 in the middle of the page. Column 8 tells us control device 12 can be, for example, a single manually activated button provided on the portable electronic device. A simple button is one of the options. We see --

JUDGE MURPHY: So Counsel, let me stop you there for a minute. So on this point, I understand your -- right, the control device is what's selectively triggered by a user to issue an invariable activation command. Right? And I understand there may be a dispute over what an invariable activation command is, or at least whether Suga teaches that.

So I'd like you to go to Suga and address that point first. And the second point is Claim 14, the dependent claim from claim -- depends from Claim 13, which depends from independent Claim 12. But Claim 14 requires a so-called authorization command.

MR. SEITZ: Yes.

JUDGE MURPHY: Which is something slightly different or refinement of -- well, it's different than an invariable activation command, I guess is how I'm understanding it.

MR. SEITZ: Yes.

JUDGE MURPHY: Take me first through the invariable activation command in Claim 1 and then the authorization command in Claim 14.

MR. SEITZ: Let me start with Your Honor's construction from the institution decision. An invariable activation command is a command to transmit data through either a first or second data conveyance operation where the decision of which operation to use, it's outside of user control. So we have mapped the email.

The user is going to type out the email on their buttons, which map the control -- in my specific language, Your Honor, it's going to map the user-triggered control device. The user is going to type out their email, and the user is going to push send.

For Claim 1, the pushing of the send button is the invariable activation command that is giving a command to the system to send the email. It's invariable, put back and forth here, it's invariable because the decision of which operation, which direction it's going to go in Suga, either cellular or WLAN wireless network, is outside of user control.

So that email is going to be sent according to Figure 6 in Suga by looking to see -- and the example we have mapped is that the user has said, prioritize the WLAN, and then switch back and forth if necessary, automatically determine whether the cellular network is available.

JUDGE MURPHY: Well that's using the Gorsuch WLAN detection circuit, right?

MR. SEITZ: Correct.

JUDGE MURPHY: To send the so-called beacon signal as the activation cue?

MR. SEITZ: That is correct.

JUDGE MURPHY: Or not.

MR. SEITZ: As the activation cue, that is correct. Yes. And so it's invariable because the setting is there, the user can set the setting. But what we have posited, what their expert agreed on in his deposition was once that setting is made, the system operates without further user input on what network it's going to select.

So when the user pushes send in Suga, the system is going to run

through its Figure 6 flow chart. It's going to attempt to send on the wireless network as we've proposed it. When it determines if the wireless network is going to be available, it's going to use the Gorsuch beacon signal.

If that beacon signal is there, that's an indicator that it should be sent via wireless network. If that beacon signal is absent, the computer system, the MPU of Suga automatically makes the determination to send it via the cellular network. So it's invariable because the user has no control over that setting.

JUDGE MURPHY: Let me ask you this. I understand your point. If you look at Suga Figure 5, please.

MR. SEITZ: Yes, Your Honor, I'm there.

JUDGE MURPHY: So that's the settings screen, which you were referring to. And so if the user in the Suga phone sets -- excuse me, if they do not check the box or automatically switch to phone line if wireless LAN cannot be used, if they don't check that box, what happens in your understanding?

MR. SEITZ: Well, it's not something that we've mapped. So our combination, our mapping does not rely on a system or an aspect of Suga where it would not do that automatic switching.

JUDGE MURPHY: So in your view, does it matter whether the user can change these settings?

MR. SEITZ: No, it does not matter.

JUDGE MURPHY: Why not? And in terms of the claim language, in terms of the -- in terms of the notion of a command being invariable.

MR. SEITZ: So two responses to that. One, you could have a

system where some sort of aspect of meeting the claims is incidental. There's a body of case law that covers that. That is not our situation here where there's some incidental operation that you're trying to map as invalidity. That's not what we're covering here. This is a fundamental aspect of how Suga operates.

Once Suga is set, once the user sets -- let me rephrase that. Once the user sets their settings that they want, and in our mapping, we've said that you're going to prioritize the use of wireless LAN, and you're going to automatically switch to the phone line if the wireless LAN is unavailable, the Suga system automatically runs through that.

So the user is not involved any further. So from my aspect, whether the user can set something at the beginning is inconsequential to the invariable activation command. Because once it's set, Suga will run through its flowchart, automatically choose the method that it needs to send, the communication path that it needs to send without user input.

There's never a screen that pops up that says to the user, do you want to send this via cellular or do you want to stick with wireless LAN? That is an automatic decision that's made. So I don't believe the user input has -- the reason it doesn't matter to me is the user input doesn't have any further involvement, would be a good word.

JUDGE MURPHY: So you're saying for a user to send an email, a data exchange, the send button simply initiates that exchange. It has no impact on which network is used either the Wi-Fi or the cellular?

MR. SEITZ: That's right. When the settings are selected as we have mapped them, that is correct.

JUDGE MURPHY: And if the user decides to -- let's say the user

is closer within range of the access point and walks away from it and is no longer in range, no longer receiving a beacon signal as per the WLAN detection circuit, and sends a second email, it will go through the cellular. But you're saying the send button has no impact on that?

MR. SEITZ: That's 100 percent correct.

JUDGE MURPHY: Okay.

MR. SEITZ: You will flow through -- we'll go through that Figure 6. Okay. Claim 14 -- you've already said this. Claim 14 depends from 13, which depends from 12. Claim 14 includes this additional aspect, awaiting for an authorization command to be inputted through a user confirmation input device provided on said cellular phone before forwarding said first data to said first data transceiver.

The way that we have mapped this, Your Honor, is that our expert has provided in his declaration, his understanding of how an email would be sent in Suga. And what he notes in his declaration and what we have mapped is that the email systems at this time and how Suga would've operated is to provide a screen asking for confirmation from the user, do you want to send this email?

So I compose my email, I push the send button, what I'm going to get -- I can look up the exact page in the petition, but what I'm going to get where we've mapped it in Claim 14 in our petition, is a screen that shows you -- now, it's taken from this reference called Wilson, that our expert found to show how email systems operated at the time, but shows you confirm, send the email, yes or no.

JUDGE MURPHY: So let me stop you there for a minute. So what I'm grappling with on this claim, right, is Dr. Buehrer, the Petitioner's

expert, Dr. Buehrer, and the way it's discussed in the petition is that he's in -- "A person of ordinary skill would interpret Suga to have an LCD display or some type of display on the phone of what the draft email would look like before sending," right? That's the concept.

But that's not in -- that's actually not -- there's no express teaching or even suggestion that I see in Suga for that. I don't want to characterize your argument, but it's the notion that it was something that was known?

MR. SEITZ: That's right, Your Honor.

JUDGE MURPHY: Even though it's not disclosed expressly or suggested in Suga?

MR. SEITZ: That's right, Your Honor. That is our argument. An expert, our expert, Dr. Buehrer, as he reads Suga, and it talks about sending an email, at this timeframe, says the way email systems operated was to ask for confirmation on sending the email.

We cite to Wilson as an example of that. He cites to two other references in his declaration that we've provided as exhibits, both of which, all three of which showed the same operation, press send, ask for confirmation of, do you really want to send that?

So our expert is saying, what we have mapped, let me phrase it this way, what we have mapped is that a POSITA who reads Suga understands that sending emails are going to ask for authorization.

JUDGE MURPHY: Right. And then, so that's point one. Point two is, why is there an authorization command taught by Suga in view of Gorsuch?

MR. SEITZ: So --

JUDGE MURPHY: We also need to go to Wilson for that. And

then my question would be, why wasn't Wilson in the ground? You needed to teach a limitation.

MR. SEITZ: Our point is that that is -- an authorization is simply the same as a confirmation when you look at the specification. There are aspects where the specification -- I can find this here. I don't think I have it in one of my slides, but I can pull this up when I come back up for you, Your Honor.

But there's aspects in the specification that talk about entering a PIN number, providing an authorization, or a combination of both. So as I read that, I think the appropriate -- and I understand I'm eating into my time, that's fine. The way to read that is to say in one, authorization could be some sort of security aspect. That's the PIN number aspect.

But it is very careful to say a PIN number, authorization, or a combination of the two. Given that phraseology and the specification, I think the proper reading is to say that an authorization is the same as a confirmation simply saying, yes, I want to do it.

JUDGE MURPHY: I see. So your view is that Patent Owner's argument is reading a security protocol limitation that may not be in the claim?

MR. SEITZ: That's absolutely right. And that's what we asked their expert during his deposition.

JUDGE MURPHY: Can you tell me where in the spec you're pointing to please for that?

MR. SEITZ: I can, Your Honor, and I might need to stand back up and do it because I have it in my notes. And I don't believe I have it right here handy. When I stand back up I'll have that quotation for you on the

authorization, if that's all right with you.

JUDGE MURPHY: Yes, sure.

MR. SEITZ: Okay. Thank you. One other item that I wanted to note on Claims 13 and 14 before I leave that, if you look at the Patent Owner response, there is a dispute on Claim 14 as to authorization. Their expert clarified that dispute relates to this imputing a security aspect.

There is not a dispute from Patent Owner on Claims 13 and 14 as to the operation of email systems at that time. I also will look up because you've asked, and I don't have it at hand, but I also asked their expert in his deposition whether he was disputing what our expert, Dr. Buehrer said for how emails would've operated at the time as it relates to Claim 13 and 14.

He did not have a dispute with our expert's understanding and description of how emails operated. So I appreciate your questions. There is a dispute between the parties on the security aspect of authorization. There has not been a dispute by Patent Owner as to how emails operated requesting that confirmation screen at the time.

JUDGE MURPHY: Okay. I appreciate that clarification there.

MR. SEITZ: The final thing, and I'll finish Your Honor and leave about 10 minutes for my rebuttal. The final thing that I want to note is this question of direct link and close proximity. I've jumped forward to DX-32. The final question that we have here, this comes out of Claim 8. There's other claims similar to that that use this question of direct link and close proximity.

And Your Honor, what I want to point to, I'll actually just go to DX-33. Your Honors made a ruling on this question of close proximity in the Google case. I won't belabor that here. I don't have any disagreements

with what you've done. I think your analysis there was correct. The question of direct link and close proximity are tied together.

As you read Claim 8, there is a direct link between the cell phone and the device that's going to receive the communication because you are in a close proximity, it's not going through something else. In our mapping, there is a direct link because you are within a close proximity to the router that is sending the beacon signals that we've mapped as the activation cue that are being received by the WLAN detection unit or the WLAN detection circuit of Gorsuch.

JUDGE MURPHY: So let me ask you this. In the reply in Dr. Buehrer's supplemental declaration, he makes the point that it's a direct link because it's a single hop connection --

MR. SEITZ: Yes.

JUDGE MURPHY: -- between the phone and the access point in particular.

MR. SEITZ: Mm-hm.

JUDGE MURPHY: So explain to me where that comes from. What that really means.

MR. SEITZ: That is tied into arguments that Patent Owner has made in variable -- or in various aspects about whether it needs to be an endpoint device, whether there's other intervening devices. And I think fundamentally when you look at the Patent itself, there's two different systems or two different ways of communicating that are described.

One is certainly that direct aspect that is with the device that you're in close proximity to using some sort of communication method. The other is a system where you're communicating via cellular. You're going pretty

far out through multiple different hops to get to some endpoint that you're going to.

So expert's point on this direct link is consistent with Your Honor's construction or statement of what a direct link in close proximity is in the Google proceeding, but was driving at that aspect as well, that you were there with no intervening or intermediary devices because you have to be in close proximity to the device to have a direct link to it.

JUDGE MURPHY: So let's take the example of, I don't know, an ATM machine or a metro card machine. And a person with an electronic card, a cell phone, according to the invention, gets within close proximity to have a data exchange. Could be, in this case, a financial exchange of information. Is that a direct link?

MR. SEITZ: Because you're in close proximity, yes. I believe they are -- I believe the way the claim is written is you look at Claim 8 has a functional relationship between those two. Let me flip to Claim 8.

JUDGE MURPHY: Yes.

MR. SEITZ: And then I'll sit down because I know I'm short on time. But if I look at Claim 8, Your Honor, I have a first data transceiver comprises a proximity transceiver for accomplishing a wireless data exchange with a first external data exchange device through a direct link. But then there's more.

It tells us representing said first communication link where the cellular phone is conveyed toward a close proximity of the first external data exchange device, and within a range to receive the activation cue to initiate the wireless data exchange.

So, Your Honor, taking your words -- I'm not trying to put words

in your mouth, but taking your words from the Google final written decision, it talks about how there's a functional relationship between those two, the close proximity and the direct link.

In your ATM example, because I'm within a close proximity enough to use whatever method of communication that is, I am also having a direct link. It is enabled by being -- able is such a loaded word. It is capable because of the fact that I'm in close proximity to that signal, that beacon signal that's coming out or that activation cue.

JUDGE MURPHY: Okay. I'll let you save some rebuttal time and --

MR. SEITZ: Thank you, Your Honor.

JUDGE MURPHY: -- you can follow up.

MR. SEITZ: Thank you very much.

JUDGE MURPHY: So nine minutes on rebuttal.

MR. SEITZ: Oops. Sorry, Rob. You're good.

MR. HART: Your Honors, in many respects we're much closer to agreement, and to many respects we're farther apart.

JUDGE MURPHY: Counsel, let me just -- do you want to reserve rebuttal time?

MR. HART: Sure. I'll reserve 10 minutes.

JUDGE MURPHY: 10. Yes. Please also speak --

MR. HART: Yes.

JUDGE MURPHY: I'm a little hard of hearing, actually.

MR. HART: I appreciate that. And I'm a soft-spoken kind of guy, so I appreciate that.

JUDGE MURPHY: Thank you.

MR. HART: If I screw up, just remind me.

JUDGE MURPHY: And so, you said 10 minutes?

MR. HART: 10 minutes, yes, sir. Here we have the '294 Patent talking about an activation cue. A combination of Suga and Gorsuch are such that it's really not an activation cue, as we've already discussed this morning, it's a beacon. It's merely telling the portable device, mobile device, that there's a network out there.

In the '294, the activation cue when it arrives, it says that there's a data path that is connected. That's something that doesn't happen in the combination of Suga and Gorsuch. Gorsuch and Suga, that combination merely just says there's a beacon signal sending out, there's a network. Doesn't say that there's a path that's been connected, it just says that there's a network available.

And I think that's a pretty important distinction between the Suga and Gorsuch combination and the '294. The second thing is, once the '294 receives that activation cue, I'm not sure why the Patent attorney did it when they drafted it, but it was in state two, which is the cellular state. It then switches over to the first state, which is the direct state going directly to that device. As a drafter, I would probably switch them around.

JUDGE MURPHY: Well, that's not consistent --

MR. HART: I want to go to state two. But nonetheless, that's the way the case is drafted, and that's how we'll have to interpret it. So once that activation cue is received, it says that there's a data path and the mobile device switches over to state one. And that's that direct path. So once that's done, then we get a veritable activation cue.

And that's, as we've talked about, it could be a variety of different

things. It could be a fingerprint, it could be a PIN code, it could be a variety of things. Once that's done, then the state is set so that that authentication is done and the data is then set. That's different than an email exchange. Okay. So in an email exchange, even if you were switching states in the Gorsuch and Suga reference, that user is actually inputting certain criteria.

And then based on that criteria, then the mobile device will switch. That doesn't happen in the '294. '294 Patent, it already says it's automatically going to switch when it receives that activation cue telling it that it's got a data path set up, it's moving right into the second -- the first state.

JUDGE MURPHY: Why isn't the Gorsuch beacon signal, beacon frame in your view a predetermined signal?

MR. HART: It is a signal, but all it does is merely identify that there's a network out there. So as I bring my mobile device out and I'm -- let's just say I'm walking inside this building, it may suddenly get beacons from four, five, 10 different networks. And it merely just says, you've got 10 networks that you can potentially connect to. It doesn't say you've got a path to any of these networks. That's been --

JUDGE MURPHY: Well, but at least in the asserted combination, it's a WLAN or Wi-Fi detection circuit. So that signal, doesn't it set the data conveyance -- you call it a switch or whatever, but doesn't it set it to a state where it's got to use the WLAN path?

MR. HART: Yes, it can set that, but it doesn't automatically have that. When that beacon signal comes in, it doesn't say, you have a dedicated path. It merely identifies that there's a network.

JUDGE EASTHOM: But the combination does -- I think my

colleague's point is when you have the -- in the first reference, you check those two boxes and then you get the cue, then you're going to switch over automatically. Right?

MR. HART: Right. To which network?

JUDGE EASTHOM: To the close one, WLAN.

MR. HART: Yes. Maybe.

JUDGE EASTHOM: Not, maybe. I mean, that's the way they set it up.

MR. HART: Well, the closest network may not have the strongest signals. As I understand it, it would switch to the more stronger signal.

JUDGE EASTHOM: Well, what's that have to do with the claim? I don't understand.

MR. HART: It doesn't, that's what Suga and Gorsuch does.

JUDGE EASTHOM: Right. But that still meets the claim, right?

MR. HART: What the '294 Claim does is it receives that activation cue. When it receives that activation cue, it automatically switches the --

JUDGE EASTHOM: And I'm saying, I thought that's what they're showing, was your friends are saying, hey, when you have Suga's checked boxes, the two boxes, and then you get the secondary references activation cue, the beacon, it automatically switches to that local WLAN.

MR. HART: My understanding is, no, the beacon just tells you that there's a network available.

JUDGE EASTHOM: But then I thought in the first reference, once you get that, you switch because you know you're close.

MR. HART: Right. So once you've got it, then it can switch to the

Wi-Fi network.

JUDGE EASTHOM: So it automatically switches to it. Yes.

MR. HART: Yes.

JUDGE EASTHOM: So I don't understand what the argument is then.

MR. HART: But it doesn't automatically say that there's an individual path that's set up for that.

JUDGE EASTHOM: I don't understand that argument either.

MR. HART: Well, in the '294, you're in close proximity to a device. When it receives that activation cue, that activation cue says that there's a dedicated path available and the state switches.

JUDGE EASTHOM: Right. And we agree that the combination does that also. That's --

MR. HART: No, because the beacon's not saying that there's a dedicated path set up, it's merely identifying that there's a signal available.

JUDGE EASTHOM: All right. I think we're going in circles, but go ahead. Sorry.

MR. HART: All right.

JUDGE MURPHY: Counsel, I have a different question on that. Is that argument in your Patent Owner response?

MR. HART: We believe so, yes. But I wanted to address some things that came up in the Petitioner's presentation this morning. I'll direct you to DX-8 of the Petitioner's slide deck. You can see that here they have the WLAN detection circuit. That's the detection to receive the beacon. So that's just merely detecting that there's a network out there.

On DX-9 and 10, they summarized the disputes. We would take

issue with DX-10 that we have not conceded these points just because it wasn't in the surreply brief. As you know, the surreply brief is addressing things that were raised in the reply. So just because we didn't address it doesn't mean that we are now conceding those points.

I wanted to address the affidavit issue. I think fundamentally from the Patent Owner's perspective, that this is new information that the second affiant was the one that actually did the translation. That's new information. I would also say that I think that the fundamental error from the Patent Owner's perspective, is that the correction should have referred back to Exhibit 1005. And it didn't. It created a new exhibit, that's 1017. And then they've said that it's the same. It's not --

JUDGE MURPHY: Do you disagree with that? They said it's identical, they didn't say it's -- they said it's the identical translation.

MR. HART: It's not our burden to show that's the --

JUDGE MURPHY: Well, I know. They submitted the document and said it's identical.

MR. HART: Okay.

JUDGE MURPHY: I just want to know if you think it's not identical.

MR. HART: We're not disputing that it's identical, but we do dispute that it was done correctly. We believe that it wasn't done correctly, that the new exhibit should have referred back to Exhibit 1005 and it didn't.

JUDGE MURPHY: And what case law supports that?

MR. HART: That's in our -- I think we did that -- in Patent Owner's motion to exclude on page 5, we have a chart kind of illustrating what the case law is, and then what the errors were made by the Petitioner.

And I think that summarizes the issue here on pages 4 through 6 of the motion to exclude. And the cite of cases are in our briefing on that. That's all I have, Your Honor.

JUDGE MURPHY: That's it?

MR. HART: Yes.

JUDGE MURPHY: Okay. Well, you have -- I guess you have 25 or 30 minutes for surrebuttal, but thank you.

MR. SEITZ: Apologies for going slow there. Go ahead, Your Honor.

JUDGE EASTHOM: Okay. Thank you. Sorry, your friend was arguing that this combination won't automatically switch. And I could see his argument. Do you have any response to that?

MR. SEITZ: There was a question as to whether this was in the POR. I don't believe it is. But setting that aside, we have Suga saying on Figure 5 of Suga, prioritize the use of wireless LAN. We have Suga with an automatically switch to phone line if wireless LAN line cannot be used. And then as we discussed with their expert, whether it would swap automatically -- again, I can look that up.

I believe it's cited in our reply, but their expert also agreed, Mr. Zaheer agreed that it would automatically switch to a cellular phone line once you run through the Figure 6 with the settings done from Figure 5. But once you run through the Figure 6 flowchart. So I don't believe that's properly in dispute at this point.

JUDGE EASTHOM: Okay. Thank you.

MR. SEITZ: I owed you two pieces of information, Your Honor.

The first question, we'll work backwards here. There was a question about email authorization.

JUDGE MURPHY: The Authorization command. Yes.

MR. SEITZ: Yes, Your Honor. And we asked Mr. Zaheer in his deposition at page 59, line 22 to 25. So you're not disputing to confirm before sending an email, is that right? And his answer was, yes. Not disputing.

JUDGE MURPHY: And that's exhibit 1019, is the depo transcript.

MR. SEITZ: Correct. 1019

JUDGE MURPHY: And page, you said page 50?

MR. SEITZ: Page 59, lines 22 to 25. So this leaves us with the question that we had been discussing.

JUDGE MURPHY: Counsel, hang on one second.

MR. SEITZ: Yes, Your Honor.

JUDGE MURPHY: So -- all right. Just for the record, Dr. Zaheer's deposition testimony continues on page 60, right? Where he is disputing that a confirmation, if you will, to send the email is sufficient. He's disputing saying it's not sufficient to teach an authorization command.

MR. SEITZ: Correct. I don't disagree with you there. And I wasn't trying to say he was not disputing that.

JUDGE MURPHY: Okay. All right.

MR. SEITZ: There were questions --

JUDGE MURPHY: That's the dispute.

MR. SEITZ: That is what my point was.

JUDGE MURPHY: Okay.

MR. SEITZ: The dispute is not, did emails operate in this way?

Does he dispute that emails asked you for a confirmation?

JUDGE MURPHY: And that comes back to your notion of, well, there's no security protocol in the claim.

MR. SEITZ: That's correct.

JUDGE MURPHY: And so tell me where in the spec that was.

MR. SEITZ: So there's two parts that talk about this authorization, right? I'm going to start at 15, column 15. So this is the '294 Patent Exhibit 1001, column 15. Let's look at line 43 to 49. I'll read. Make sure you're there. But column 15, line 43, "It is further envisioned that after the step of forwarding third data to the display screen, the step of forwarding the (INDISCERNIBLE) through a user confirmation input device.

This input device may be the control device or another input device. There's nothing in that aspect of the specification that tells us that is some sort of security, biometric or PIN or otherwise.

JUDGE MURPHY: And that's because it characterizes it as a user confirmation?

MR. SEITZ: That's right. This is an argument by omission. If you look through the specification, you will not find any definition or any explanation that says that an authorization is something different from a confirmation. There's nothing in the specification that will tell you or the claims.

So we can include the claims there that will tell us that an authorization should be equated with some sort of security measure such as a PIN, a biometric, a thumbprint, or the like. So there simply is not a connection that's been made in the specification or the claims that would say we should read authorization in such a narrow manner.

JUDGE MURPHY: Yes. And let me take -- in the same column 15, beginning at lines 14.

MR. SEITZ: Yes.

JUDGE MURPHY: 14 through 18. This is a description of a selective triggering of the control device to issue an invariable activation command. And then that discusses alternatives including entering a PIN, pressing an authorization button, entering a PIN code and pressing the authorization button. So I'm trying to square what distinctions are or are not made --

MR. SEITZ: Yes.

JUDGE MURPHY: -- in the claim.

MR. SEITZ: From the specification here, I think what we see, Your Honor, is a distinction between some security aspect, which is a PIN, and an authorization, which you could read as a (INDISCERNIBLE) reach that conclusion, the drafter here specifically said a PIN code, which is indisputably some sort of security measure. Sorry, I lost my place.

PIN code, pressing an authorization button, number two, or a combination of both. So there is a distinction that's being drawn between a security measure such as a PIN code and an authorization, which we think is proper to construe as a confirmation.

And it says here, authorization could be confirmation, authorization certainly could be also providing some sort of biometric or PIN code or the like. There's nothing in the specification, especially in light of what you've just cited there, Your Honor, that says that authorization must be a security measure.

JUDGE MURPHY: Right. Okay. And in Claim 14, the operative

language is an authorization command. Your point is it doesn't say PIN code or security code or something.

MR. SEITZ: That's absolute right. And we know they can draft it in that way. Claim 1 talks about having a biometric parameter detector. So we know they can wrap in security aspects into the claim if they want. That is not included in Claim 14 or elsewhere to tell us that authorization equals some sort of security measure.

JUDGE MURPHY: Thank you, Counsel.

MR. SEITZ: Yes. I have nothing further. If there's no further questions then I thank you, Your Honors, for your time.

JUDGE MURPHY: All right. Thank you, Counsel.

MR. SEITZ: Thank you, Your Honors.

JUDGE MURPHY: All right.

MR. HART: Your Honor, Judge Easthom, you had raised an issue and I wanted to just clarify what we talked about earlier, that the beacon was not a true activation code. So as such, it's identifying that there's a network. Under the combination of Suga and Gorsuch, the state has changed.

But what that fails to do is to say, well, it's changed, but that's -- change is done without understanding whether or not a path has actually been created. What we've said is, the '294 gets an activation cue that's telling it that there's a path available. So when it switches, it's on that state and it's on that path.

JUDGE MURPHY: It's already connected, you're saying?

MR. HART: Yes. So it's got that path and then it changes the state. Whereas the combination of Suga and Gorsuch, it gets easily transmitted without actually having a path. That's the Patent Owner's

position.

JUDGE MURPHY: Counsel, can you point me to where that argument is in your response?

MR. HART: We believe it's in the definition of the activation command and POPR page 9 -- I'm sorry, POR page 9, with a claim term of activation cue. That's where we believe it is.

JUDGE MURPHY: You mean activation cue?

MR. HART: Yes. Yes. The claim term activation cue means a predetermined indicator, such as a predetermined bit sequence. And that's Exhibit 1001. It was column 6, lines 1, 2, 3. That is recognized by the electronic device as an activation cue. A POSITA would understand that the activation cue must be intended as a predetermined indicator.

Patent Owner is not -- sorry, I have a line break -- saying that the activation cue has to be a predetermined bit sequence as insinuated in the institution decision pages 14 through 15. Instead, the activation cue has to be designed or created for use in a device to cause activation. That's the POR page 9.

JUDGE MURPHY: So your argument is based on your claim construction?

MR. HART: Yes.

JUDGE MURPHY: And so if we don't accept your claim construction --

MR. HART: That's difficult for us.

JUDGE MURPHY: -- then your argument doesn't apply.

MR. HART: That's tougher for us. Yes.

JUDGE EASTHOM: But I mean, even what you just read, it says

that the activation cue is designed so that it will initiate some further connection. I don't see where there has to be a connection established. And I was trying to look in the claim for that.

It says if said switching elements is in a first state, a first state will be initiated through the instrumentality of -- and so it doesn't really say that there's any -- I don't see anywhere in there where it says there's a -- either what you just read there doesn't even argue for that. And I also don't see where it's required in the claim.

MR. HART: That's in 1C, Claim Element 1C. The first data transceiver operably linked to the electronic circuit, or the first data transceiver for exchanging data between the electronic circuit and the first external data exchange device over the first common network.

JUDGE EASTHOM: Yes. And then the next one, so the second transceiver operative link. So they're both linked, right? So they don't -- you're not going to talk -- you're not talking over both? You don't have an established communication over both of them at the same time. Right?

MR. HART: Typically, you're communicating on one or the other.

JUDGE EASTHOM: Right. So that doesn't really tell us anything. But I think I understand your argument. I appreciate it.

MR. HART: Okay. Thank you, Your Honor.

JUDGE EASTHOM: Thank you.

JUDGE MURPHY: All right. I guess that does it. Thank you, Counsel, for being here and giving us your arguments. Appreciate that. We will take it under advisement and you will have our decision in due course. Thank you.

MR. SEITZ: Thank you, Your Honor.

(Whereupon, the above-entitled matter went off the record at 11:02 a.m.)

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