

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

INTELLECTUAL VENTURES *
II LLC *
* April 10, 2025
VS. *
* CIVIL ACTION NO. AU:24-CV-884
TESLA, INC. *

BEFORE THE HONORABLE ALAN D ALBRIGHT
MARKMAN HEARING (via Zoom)

APPEARANCES:

For the Plaintiff: John W. Downing, Esq.
Kasowitz Benson Torres, LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, CA 94065

Charles Abraham Naggar, Esq.
Kasowitz LLP
1633 Broadway
New York, NY 10019

Craig Cherry, Esq.
Cherry Johnson Siegmund James, PLLC
The Roosevelt Tower
400 Austin Avenue, 9th Floor
Waco, TX 76701

For the Defendant: Daniel R. Gopenko, Esq.
Fish & Richardson P.C.
1000 Maine Avenue, SW, Suite 1000
Washington, DC 20024

Matthew A. Colvin, Esq.
Michael R. Ellis, Esq.
Fish & Richardson P.C.
1717 Main Street, Suite 5000
Dallas, TX 75201

Court Reporter: Kristie M. Davis, CRR, RMR
PO Box 20994
Waco, Texas 76702-0994
(254) 666-0904

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09:00 1 (Hearing begins.)

09:00 2 DEPUTY CLERK: A civil action in Case
09:00 3 AU:24-CV-884, Intellectual Ventures II LLC versus
09:00 4 Tesla, Incorporated. Case called for a Markman
09:00 5 hearing.

09:00 6 THE COURT: Announcements from counsel,
09:00 7 please.

09:00 8 MR. CHERRY: Good morning, Your Honor.
09:00 9 Craig Cherry for Intellectual Ventures. And along with
09:00 10 me from the Kasowitz firm is John Downing and Charles
09:00 11 Naggar, who will be arguing today. And we are ready to
09:00 12 proceed.

09:00 13 THE COURT: Thank you, sir.

09:00 14 MR. COLVIN: Good morning, Your Honor.
09:00 15 Matt Colvin for Tesla from Fish & Richardson. Joining
09:00 16 me today and also handling part of the argument will be
09:00 17 Dan Gopenko and Michael Ellis. Also joining us today
09:00 18 from Tesla is in-house counsel Krista Carter and Gina
09:00 19 Cremona. And we are ready to proceed.

09:00 20 THE COURT: Mr. Colvin, I don't think
09:00 21 I've had the pleasure of you appearing in front of me,
09:00 22 have I?

09:00 23 MR. COLVIN: I believe this is the first
09:00 24 time, Your Honor.

09:00 25 THE COURT: Which office are you in?

09:00 1 MR. COLVIN: I'm in Dallas.

09:00 2 THE COURT: Well, welcome to my court. I
09:00 3 look forward to hearing from all of you guys.

09:01 4 We'll start off with "may at least
09:01 5 partially" and goes on from there. And I'll hear from
09:01 6 the defendant, please.

09:01 7 MR. COLVIN: Thank you, Your Honor. Just
09:01 8 a moment and I will share our slides that we've
09:01 9 prepared.

09:01 10 MR. DOWNING: And, Matt, do you want to
09:01 11 do both the terms at the same time since they --

09:01 12 THE COURT: I think that makes -- I'm
09:01 13 sorry. I meant to do that. I think that makes sense.

09:01 14 MR. COLVIN: That's fine.

09:01 15 Your Honor, so the '805 patent is about a
09:01 16 way for a vehicle to identify a potential destination
09:01 17 such as a loading dock and determine how to get there.

09:01 18 Claim 1 focuses on how to do that. And
09:01 19 the first part of the claim, if we can look at the
09:01 20 preamble, says: Method for assisting guidance of a
09:01 21 motor vehicle on the basis of image data.

09:01 22 The next few elements describe generally
09:01 23 how that's done. The vehicle will acquire the image
09:02 24 data. It will extract information from the image data.
09:02 25 And then calculate a trajectory for how to get there.

09:02 1 The meat of the claim is really what
09:02 2 happens in that extracting step. And the two terms
09:02 3 we're going to look at today are inside this extracting
09:02 4 process.

09:02 5 And what we see is that to extract, the
09:02 6 vehicle first has to perform an edge detection on this
09:02 7 image data. It then has to analyze that edge detection
09:02 8 to determine if there are geometric objects that are
09:02 9 associated with the geometrical form that may at least
09:02 10 partially describe a potential destination.

09:02 11 So that's the first term we're going to
09:02 12 look at is this "at least partially describe a
09:02 13 potential destination."

09:02 14 And Tesla contends that this term's
09:02 15 indefinite because it's a term of degree, and the
09:02 16 specification doesn't provide us enough guidance to
09:03 17 determine the objective bounds of this claim.

09:03 18 One of the things that is interesting
09:03 19 here is that the applicant could have just omitted this
09:03 20 "at least partially" language and could have said that
09:03 21 the claim requires a geometrical form that describes a
09:03 22 potential destination.

09:03 23 But that's not what we have. The
09:03 24 applicant added this "at least partially" language.
09:03 25 And that raises the question: What's different between

09:03 1 a geometrical form that describes a potential
09:03 2 destination and one that at least partially describes a
09:03 3 potential destination? And that's the question that
09:03 4 really has to be answered here.

09:03 5 Because this is a term of degree, the
09:03 6 specification has to give us the objective bounds for
09:03 7 how much it takes to be at least partially described.
09:03 8 And the specification as it turns out is woefully short
09:03 9 on that point. We just don't have an objective
09:04 10 measure.

09:04 11 The Court's well familiar with the law
09:04 12 here and that's -- we have to have objective boundaries
09:04 13 so that one of ordinary skill in the art can determine
09:04 14 the scope of the claim.

09:04 15 And when this Court and other courts have
09:04 16 looked at terms very similar to this that include the
09:04 17 "at least partially" or "at least in part" language,
09:04 18 courts have found that that term is indefinite.

09:04 19 The first one I'll direct you to is the
09:04 20 at least partially soluble. That's from the Standard
09:04 21 Oil case from the Federal Circuit.

09:04 22 This Court found that "at least
09:04 23 partially" was indefinite in the Mirror Imaging case.

09:04 24 But the one I really want to focus on
09:04 25 today is the one in the lower left-hand corner. This

09:04 1 is the Zadro Products case. And there, Judge Albright
09:04 2 (sic), sitting by designation, found that "at least in
09:05 3 part generally concentrically aligned" was indefinite.
09:05 4 And I think the reasoning there is -- is very
09:05 5 instructive as to what needs to happen here.

09:05 6 In this Zadro Products case, the term
09:05 7 there was about determining how much LEDs needed to be
09:05 8 aligned with a mirror plate. And the Court found that
09:05 9 "at least in part" made this term indefinite for three
09:05 10 reasons.

09:05 11 The first is that there was just no
09:05 12 guidance in the specification that would allow someone
09:05 13 to objectively determine how much alignment was needed.

09:05 14 In my next series of slides, we're going
09:05 15 to look at the specification and I'm going to show you,
09:05 16 Your Honor, exactly why the spec here is like the spec
09:05 17 there and that there's just not enough to determine the
09:05 18 objective bounds of what "at least partially" may mean.

09:05 19 The second reason that the Court found
09:06 20 this was indefinite in the Zadro Products case was that
09:06 21 at least in part made the term so broad that only the
09:06 22 tiniest portion of alignment would have been required
09:06 23 and that undermined the claim language.

09:06 24 And that's really one of the questions
09:06 25 that arises here. By inserting "at least in part" into

09:06 1 this claim, we really don't know what the bound is or
09:06 2 how much a geometrical form is needed to describe a
09:06 3 potential destination in order to meet this claim.

09:06 4 And then finally, the third point here is
09:06 5 that this "at least in part" language in Zadro
09:06 6 broadened the claim but we just don't know how much it
09:06 7 was broadened.

09:06 8 And so too here. And the specification
09:06 9 provides no help.

09:06 10 In fact, when we look at the
09:06 11 specification, what you see is that at the point where
09:06 12 you would expect the specification to describe how much
09:07 13 a geometrical form has to describe a potential
09:07 14 destination, it just assumes that it is done.

09:07 15 Now, let's look at the figures here on
09:07 16 the left. And let me explain a little bit about what's
09:07 17 going on in this patent.

09:07 18 In the figure in the upper left, you see
09:07 19 a depiction of a truck and this is backing up into like
09:07 20 a loading dock. And that truck has a little camera on
09:07 21 it. It's identified as Index No. 22.

09:07 22 As that truck is backing up, the camera
09:07 23 is taking images. And there's a processor then that's
09:07 24 trying to determine what geometrical forms are around
09:07 25 and if those geometrical forms match a potential

09:07 1 destination. Or at least partially describe a
09:07 2 potential destination, as the claim says.

09:07 3 We see in the other figure, Figure 3,
09:08 4 that's shown on the bottom of -- a depiction of what
09:08 5 that camera is seeing. And we see in the left, we see
09:08 6 a square. In the middle, we see a larger trapezoid.
09:08 7 In the upper right, we see a larger trapezoid.

09:08 8 And this is the part where the claim is
09:08 9 trying to determine if these geometrical forms that
09:08 10 it's seeing at least partially describe a potential
09:08 11 destination.

09:08 12 And so we look at the spec that's
09:08 13 describing where this is going on. And we've excerpted
09:08 14 the '805 patent at 7:21 through 37 there. And we see
09:08 15 in the first blue box that the specification just
09:08 16 assumes exemplarily that the geometric objects
09:08 17 correspond to the potential destination.

09:08 18 And then we see in the very next
09:08 19 sentence, it is just assumed that the object 32, which
09:08 20 is the trapezoid, corresponds to the image of the cargo
09:08 21 door 26 sought as a destination. We don't have
09:09 22 anything more than that.

09:09 23 Certainly the specification provides some
09:09 24 detail about how to determine geometric objects, but
09:09 25 that's not what we're talking about in this claim.

09:09 1 What we're talking about here in this claim is how to
09:09 2 know if the geometric object describes a potential
09:09 3 destination. And all we have in the spec is an
09:09 4 assumption that that has happened.

09:09 5 Other places in the spec are similarly
09:09 6 vague. In the left here at the '805 at 2:37
09:09 7 through 43, all we see is that the geometric object is
09:09 8 similar to a geometric form.

09:09 9 In the lower left, we see a geometric
09:09 10 shape that typically corresponds at least partially to
09:09 11 the potential destination. That's of no help to
09:09 12 determine the lower bound.

09:09 13 And then on the right, we again see
09:09 14 geometric objects that are similar to a geometric form
09:09 15 and then typical geometric forms substantially
09:10 16 correspond to a rectangle. This says nothing about
09:10 17 what it means to at least partially describe a
09:10 18 potential destination.

09:10 19 And so we know that "at least partially"
09:10 20 is a term of degree, but what we don't know is the
09:10 21 objective bounds of that term. The specification
09:10 22 completely punts on the guidance here and just says
09:10 23 that it is assumed that the geometric form describes a
09:10 24 potential destination.

09:10 25 This Court and other courts have found

09:10 1 very similar terms indefinite for the exact same
09:10 2 reasons provided here.

09:10 3 When we look at the next term in the '805
09:10 4 patent, it's a very similar story. This term here is
09:10 5 about plausibility. The term we're looking at is
09:10 6 potential geometric objects for plausibly -- I should
09:11 7 say, analyzing geometric objects for plausibly using a
09:11 8 matching algorithm so as to identify one or more
09:11 9 plausible objects.

09:11 10 And so when you look at this in the
09:11 11 context of the claim, after these geometric objects
09:11 12 have been identified, now they have to be analyzed.

09:11 13 And what are they being analyzed for?
09:11 14 They're being analyzed for plausibility using a
09:11 15 matching algorithm.

09:11 16 Now, the specification and some
09:11 17 references that are included by reference talk about
09:11 18 matching algorithms. We're not disputing the matching
09:11 19 algorithm piece of this. What we're raising is
09:11 20 particularly about what it means, what is the threshold
09:11 21 for plausibility when using this matching algorithm to
09:11 22 determine if a geometric object is a plausible object?

09:11 23 Is it 2 percent match? Is it 80 percent
09:11 24 match? 30 percent match? We just don't know. And the
09:12 25 specification again provides no help in determining how

09:12 1 much match there needs to be for an object to become a
09:12 2 plausible object.

09:12 3 When you look at the specification,
09:12 4 again, it's very thin on this point. Apparent objects
09:12 5 34a and 34b -- this is the square in the upper left of
09:12 6 Figure 3 and the square on the right side of
09:12 7 Figure 3 -- do not represent images of real objects but
09:12 8 rather result from interference.

09:12 9 Well, how do you know that? The answer
09:12 10 is you don't. A matching algorithm is done but how do
09:12 11 you -- what's the threshold for if one of these squares
09:12 12 suddenly becomes a plausible object? We don't know.
09:12 13 The patent is silent on that.

09:12 14 Similar to the portions of the spec that
09:12 15 I showed you earlier with respect to at least, here,
09:13 16 for plausibility, we just don't have anything other
09:13 17 than conclusory statements about a geometric form that
09:13 18 substantially conforms or that is similar. We just
09:13 19 don't have anything that tells us what the threshold is
09:13 20 for an object to become a plausible object.

09:13 21 Finally, I want to make one point about
09:13 22 the Giesecke case. Intellectual Ventures in its
09:13 23 surreply says that it's -- this Giesecke is on point
09:13 24 and that Tesla didn't deal with this case. But that's
09:13 25 just not right, Your Honor. In our reply, we dealt

09:13 1 with this case head on and we said why it's not
09:13 2 relevant.

09:13 3 And it's not relevant because indefinite
09:13 4 was never argued or ruled on in that case. The term
09:13 5 there was "plausibility check" and it -- the -- there
09:13 6 was no argument that that term was indefinite.

09:13 7 And so the idea that Intellectual
09:14 8 Ventures is going to trot this case out and say because
09:14 9 of this case, plausibility should be definite just
09:14 10 doesn't have any bearing. And we say that in our reply
09:14 11 brief.

09:14 12 Unless there are any questions, Your
09:14 13 Honor, I will pass it to Mr. Downing.

09:14 14 THE COURT: Okay. I'll hear from
09:14 15 plaintiff.

09:14 16 MR. DOWNING: Thank you, Your Honor.

09:14 17 Could you please put up the slides,
09:14 18 Charles?

09:14 19 We go to Slide -- I think it's Slide 19,
09:14 20 please.

09:14 21 Slide 19, please.

09:14 22 Okay. Your Honor, it's always a pleasure
09:15 23 to be in front of you. May it please the Court. John
09:15 24 Downing for Kasowitz Benson Torres.

09:15 25 Your Honor, I think this is a case where

09:15 1 the amount of disclosure in the specification is
09:15 2 extreme. This is not a case where there's conclusory
09:15 3 statements or that there's assumptions being made. In
09:15 4 fact, there are two separate algorithms and papers that
09:15 5 are disclosed as guideposts to direct one of skill in
09:15 6 the art to have some sort of objective indication
09:15 7 about, you know, what this invention is.

09:15 8 I'll get into that in a second, but I
09:15 9 want to very, very briefly address the Zadro Products
09:15 10 case which Mr. Colvin was focused on. And that is a --
09:15 11 kind of a personification of what's wrong in this case.

09:15 12 The Zadro Products case was a claim
09:15 13 drafting error. At least that appears to me. And it
09:15 14 didn't just focus on at least in part. The issue there
09:16 15 was -- it was "at least in part generally
09:16 16 concentrically aligned."

09:16 17 And the first part of that, "at least in
09:16 18 part," didn't make sense given the generally
09:16 19 concentrically aligned, and Your Honor found that the
09:16 20 resulting structure would not serve the purpose of
09:16 21 providing relatively uniform illumination through the
09:16 22 entire light transmissive region. So it didn't make
09:16 23 sense in light of what was actually being claimed.

09:16 24 And so to us, Your Honor, this is a case,
09:16 25 you know, this is a case that's a claim drafting error.

09:16 1 It's using language that makes no sense when you're
09:16 2 just focused on the claim itself. And that's not
09:16 3 what's being argued here and I don't think that that is
09:16 4 a good example.

09:16 5 The other case, Your Honor, the Interval
09:16 6 Licensing case that they relied on, just very, very
09:16 7 quickly in their opening brief, that was a case that
09:16 8 focused on unobtrusive, you know, displaying something
09:17 9 in an unobtrusive manner. And the problem with that is
09:17 10 that there was -- it was subjective. What's
09:17 11 unobtrusive to you might not be unobtrusive to me. And
09:17 12 so that was a case, you know, you didn't really know
09:17 13 how it was supposed to be displayed.

09:17 14 And those were the two cases that they
09:17 15 focused on in their briefs. And that is -- it's far
09:17 16 from what's going on here and the disclosure that's
09:17 17 going on here.

09:17 18 And I just want to very, very quickly,
09:17 19 you know, kind of pull out focus from the individual,
09:17 20 you know, may at least or plausibility and focus on the
09:17 21 claim as a whole which we're all supposed to, Your
09:17 22 Honor, under Phillips.

09:17 23 And, you know, what you will see here is
09:17 24 you have analyzing the plurality of edge segments for
09:17 25 the presence of a geometric object associated with a

09:17 1 geometrical form that may at least partially describe a
09:17 2 potential destination so as to identify one or more
09:17 3 potential geometric objects.

09:17 4 And I think that there's a divergence in,
09:18 5 Your Honor, what that means.

09:18 6 When they're focusing on -- you know, the
09:18 7 patent talks at length about image processing and the
09:18 8 fact that they're focused on things like windows,
09:18 9 they're focused on cargo doors, and there's -- there's
09:18 10 parts of -- they're not going to review the whole thing
09:18 11 at the same time. There's parts of it that they're
09:18 12 going to focus on which are things like edges for a
09:18 13 rectangle, and they're going to focus on the lengths,
09:18 14 you know, to make sure that the top and the bottom are
09:18 15 the same.

09:18 16 And they may or may not have access to
09:18 17 all information. There may be an obstruction. And so
09:18 18 the object associated with a geometrical form that may
09:18 19 at least partially describe, it's talking about that
09:18 20 data that's being processed. And you may have one
09:18 21 edge. You may have something else.

09:18 22 But it's not something that is a -- is a
09:18 23 term of degree. It's something that's easily
09:18 24 understandable and something that the patent
09:18 25 specification describes in detail.

09:18 1 Next slide, please.

09:18 2 And, Your Honor, just -- I touched on
09:19 3 this real quickly but, you know, we're not -- we're not
09:19 4 held to the standard of, you know, absolute certainty.
09:19 5 The Federal Circuit has been very clear on this. It
09:19 6 just has to be reasonably ascertainable by those
09:19 7 skilled in the art.

09:19 8 So somebody, you know, who has knowledge
09:19 9 in this area, somebody that has, you know, a double EE
09:19 10 or whoever that is, who is in this area, who has read
09:19 11 these papers that are referenced in this specification,
09:19 12 that is what we're looking into to -- to come up with,
09:19 13 you know, the disclosure requirements here.

09:19 14 And examples. Examples are something
09:19 15 that the courts can look to to determine whether or not
09:19 16 there's been reasonable disclosure.

09:19 17 Next slide.

09:19 18 And Mr. Colvin went through this briefly,
09:19 19 Your Honor. I would like to go through this.

09:19 20 We -- you know, I think the parties agree
09:19 21 that there is one embodiment that discloses a way for a
09:19 22 truck to I guess dock with a cargo -- a cargo door.
09:20 23 And the truck is No. 35 here on the bottom. And on the
09:20 24 top is the results of the image data processing.

09:20 25 And so you're going to see -- excuse

09:20 1 me -- 34a, 32, 33, and 34b. Those are described in the
09:20 2 specification as, quote, potential destinations. And
09:20 3 they're potential destinations because 32 is actually a
09:20 4 representation of the cargo door. 34a and 34b is
09:20 5 interference. And so a false edge detection was made
09:20 6 and these objects were -- the representations of
09:20 7 objects were created to, you know, because some sort of
09:20 8 a detection was made.

09:20 9 And then we have 33 which is described in
09:20 10 the patent specification as a window.

09:20 11 And so what is this truck going to dock
09:21 12 into? It wants to dock into 32. It doesn't want to
09:21 13 dock into 34a, 34b, or 33. And, you know, the 34a and
09:21 14 34b are not plausible because they don't exist.

09:21 15 Next slide, please.

09:21 16 And this slide goes to my first point,
09:21 17 Your Honor, which is the extreme amount of disclosure
09:21 18 in this case. We have a -- you know, we have this
09:21 19 image data that's running in the background that's
09:21 20 pulling things like edges, that's pulling things like
09:21 21 segments, and it is -- it's run through for this
09:21 22 embodiment a tree structure algorithm.

09:21 23 And this tree structure algorithm is
09:21 24 described in the specification and it's also disclosed
09:21 25 in this Sedgewick article. And that's at '805, 5,

09:21 1 Column 65 to 55, Line 7, Your Honor.

09:22 2 And this tree transversal algorithm, you
09:22 3 know, creates these shapes that you see here, 34a, 33,
09:22 4 34b. And so that's -- once these are created, it's
09:22 5 then -- this data is then matched using a matching
09:22 6 algorithm, and that's disclosed at Column 5:26.

09:22 7 And the matching algorithm is not only
09:22 8 described in the specification, it's an IPC algorithm,
09:22 9 but there's also a paper that they describe which the
09:22 10 inventor directs the listener to, the McKay paper,
09:22 11 that's disclosed and describes this IPC algorithm.

09:22 12 It describes a number of ways that you
09:22 13 can do it. It describes testing related to, you know,
09:22 14 what features are beneficial and what features are not
09:22 15 beneficial. And it also confirms that the matching
09:22 16 algorithm takes the data from the tree transversal
09:22 17 algorithm and it aligns it, it rotates it, and it tries
09:23 18 to minimize the quadratic error with respect to the
09:23 19 object's deviation.

09:23 20 So it takes something, it tries to rotate
09:23 21 it correctly, and then it does a comparison and it does
09:23 22 a comparison related to -- I'm sorry. Was that a
09:23 23 question, Your Honor?

09:23 24 THE COURT: No. Sorry.

09:23 25 MR. DOWNING: Okay, Your Honor.

09:23 1 And it tries to figure out, you know, the
09:23 2 correct deviation so this actually can be matched.

09:23 3 And so I heard earlier that, you know,
09:23 4 it's only assumptions and there's only assumed and we
09:23 5 have no idea, you know, how to create this similarity.
09:23 6 But of course, you know, the disclosure of these two
09:23 7 algorithms do much, much more than one is required to,
09:23 8 you know, to provide objective boundaries.

09:23 9 And can you go to the next slide, please?

09:23 10 And then, Your Honor, there's some other
09:23 11 disclosures about what's acceptable and what's not
09:24 12 acceptable that the patent discloses, providing a --
09:24 13 kind of a boundary line and you use the boundary line
09:24 14 to figure out if it's aligned correctly based on how
09:24 15 far you are away and what the horizon is. And that's
09:24 16 shown as 33 here on the top right.

09:24 17 And this has been rejected because it's
09:24 18 not -- it's not, you know, consistent with the boundary
09:24 19 line. And of course -- and that's at 6 -- Column 6:2
09:24 20 to 15. And, you know, there's additional shape
09:24 21 analysis that's performed to get you to the -- to the
09:24 22 right answer which is we want to go to 32, right? Not
09:24 23 33, not 34a, and not 34b.

09:24 24 Next slide.

09:24 25 Next slide.

09:24 1 Okay. Sorry. Next slide.

09:24 2 And then, Your Honor, just one additional
09:24 3 point.

09:24 4 There was an IPR that was -- that was --
09:24 5 that was -- you know, that Tesla filed. You know, I
09:25 6 want to be clear that the expert said he's not there
09:25 7 to, you know, to do 112 because you can't do 112 in IPR
09:25 8 proceedings. But he did have no problem submitting a
09:25 9 declaration and describing, you know, what he thought
09:25 10 met these particular limitations.

09:25 11 And so, Your Honor, for that reason also,
09:25 12 you know, we believe that these positions are
09:25 13 inconsistent and should not be adopted.

09:25 14 Next slide.

09:25 15 Next slide.

09:25 16 Oh, sorry.

09:25 17 And then, Your Honor, the last term, the
09:25 18 plausibility term, I discussed that briefly just a
09:25 19 little bit ago. You know, the matching algorithm and
09:25 20 those disclosures that describe, you know, comparing
09:25 21 the ideal shape, you know, using the matching algorithm
09:25 22 which is described in the McKay paper which provides
09:25 23 multiple ways you can do it, provides testing, and
09:25 24 provides a number of other ways to, you know, to figure
09:25 25 out.

09:26 1 And the whole paper is on image -- kind
09:26 2 of image registering which is identifying an image.
09:26 3 All of these disclosures would provide objective
09:26 4 boundaries to one skilled in the art to understand
09:26 5 fully this invention.

09:26 6 And, Your Honor, that's all I have unless
09:26 7 Your Honor has any questions.

09:26 8 THE COURT: I'm good.

09:26 9 A rebuttal?

09:26 10 MR. COLVIN: Just briefly, Your Honor.

09:26 11 We heard a bunch about these algorithms.
09:26 12 But we don't dispute that the paper describes matching
09:26 13 algorithms.

09:26 14 But what counsel did not show you and in
09:26 15 fact cannot show you is that there is nothing -- is
09:26 16 something in the specification that says what it means
09:26 17 for a geometric object to at least partially describe a
09:26 18 potential destination. It's just not there. The
09:26 19 patent assumes on that point and that is not enough to
09:26 20 provide objective bounds of this claim.

09:26 21 THE COURT: I'll be back in one second.

09:27 22 (Pause in proceedings.)

09:28 23 THE COURT: Thank you. The Court is
09:28 24 going to maintain its preliminary constructions on both
09:28 25 and move to the '395 patent and "said processing."

09:28 1 MR. GOPENKO: Thank you, Your Honor. May
09:28 2 it please the Court. Dan Gopenko from Fish &
09:28 3 Richardson. It's nice to be in front of you again. A
09:28 4 good pattern here.

09:28 5 If you give me a second, I'll get my
09:28 6 slides up.

09:28 7 And I'll just ask, does everybody see
09:28 8 Slide 17?

09:28 9 (Thumbs up by the Court.)

09:28 10 MR. GOPENKO: All right. Slide 17. And
09:28 11 advance it to 18.

09:29 12 All right. Perfect.

09:29 13 Thank you, Your Honor.

09:29 14 We -- the term here is "said processing"
09:29 15 from the '395 patent. We appreciate the tentative.

09:29 16 However, Your Honor, the term cannot be
09:29 17 construed as plain and ordinary meaning. Doing so
09:29 18 would leave unresolved the objective uncertainty in
09:29 19 Claim 1. It also leaves unresolved the objective
09:29 20 uncertainty in Dependent Claim 2, which also recites
09:29 21 said processing.

09:29 22 Fundamentally this is an issue of --
09:29 23 borne out of antecedent basis. The parties here agree
09:29 24 that "said processing" does not have proper antecedent
09:29 25 basis in this claim.

09:29 1 THE COURT: Counsel, could you show me
09:29 2 the entire Claim 1 and -- so I can see where said
09:29 3 processing is in it.

09:29 4 MR. GOPENKO: Absolutely. We have here
09:29 5 on Slide 18 the Claim 1 on the right. I'll explain the
09:29 6 colors in a moment. But you can see that "said
09:29 7 processing" appears in the middle of the blue column,
09:29 8 the blue colored piece.

09:30 9 IV is arguing that "said processing"
09:30 10 refers back to the immediately preceding step, i.e.,
09:30 11 executing.

09:30 12 And, Your Honor, we've got IV's arguments
09:30 13 here on the left. Their expert says it's referring
09:30 14 directly back to the immediately preceding processing
09:30 15 or execution step. In their surreply, they say that
09:30 16 said processing actually derives its antecedent basis
09:30 17 from the executing step. It relates back to the
09:30 18 executing step.

09:30 19 And this is where this claim of
09:30 20 interesting. Because Tesla argues that there are
09:30 21 multiple potential interpretations of said processing.

09:30 22 However, construing said processing as IV
09:30 23 suggesting here to mean said executing would actually
09:30 24 resolve the indefiniteness issue. It would resolve
09:30 25 that issue and it would actually -- and I'll show you

09:30 1 this -- it will fix the indefiniteness issue with
09:31 2 Dependent Claim 2.

09:31 3 But what we can't do is we can't stop at
09:31 4 plain and ordinary.

09:31 5 THE COURT: And is what you're saying
09:31 6 that if it's not plain and ordinary meaning, it would
09:31 7 have to -- I would have to restrict it to what IV is
09:31 8 saying to -- it would have to be executing a third
09:31 9 group or something like that?

09:31 10 MR. GOPENKO: I think there are
09:31 11 different -- yeah. The crux of the indefiniteness
09:31 12 argument is that it's objectively uncertain what "said
09:31 13 processing" is referring to.

09:31 14 And Tesla doesn't take a position on what
09:31 15 it's referring to. It simply identifies different
09:31 16 things in the claim, in the intrinsic record that a
09:31 17 person of skill in the art would look at this "said
09:31 18 processing" term and say, it's unclear. It's
09:31 19 objectively uncertain.

09:31 20 But construing the term as "said
09:31 21 executing" as IV had proposed fixes the indefiniteness
09:31 22 thing.

09:31 23 Now, we're not advocating for a rewrite.
09:31 24 But we think that we need more guidance here than plain
09:32 25 and ordinary. We need the rewrite if we're going to

09:32 1 say that the term is definite.

09:32 2 And so we have here on Slide 18 is IV's
09:32 3 arguments that were made to rebut Tesla's
09:32 4 indefiniteness argument.

09:32 5 I promised you I'd tell you about the
09:32 6 colors. I think the colors are going to be important
09:32 7 because they map to the intrinsic record, the file
09:32 8 history.

09:32 9 What we have here on Slide 19 is the
09:32 10 claim. The gray text refers to setting the first bit
09:32 11 of the indicator and setting the second bit of the
09:32 12 indicator in the cache. That gray text is happening in
09:32 13 Figure 1 in cache 14.

09:32 14 Said processing, you see it in the middle
09:32 15 there with the red box. I'll get there in a second.

09:32 16 The only other instance of processing in
09:32 17 this claim is in the orange text. Processing said
09:32 18 first group and said second group of instructions.
09:32 19 It's highlighted here with a red box. That's the only
09:33 20 other instance of processing.

09:33 21 And here, what the orange text is
09:33 22 referring to is processing the first group of
09:33 23 instructions and the second group of instructions.
09:33 24 That's our what.

09:33 25 And the who is the processor in No. 10,

09:33 1 the orange. This is important because the objective
09:33 2 uncertainty is in the who, the what, and the when.

09:33 3 You have additional text here which is
09:33 4 the green. We talked about this a little bit. This is
09:33 5 IV's proposal that said processing derives its
09:33 6 antecedent basis from executing.

09:33 7 The executing refers to a different who.
09:33 8 The who for the executing is an agent other than the
09:33 9 processor. Something else. Something different than
09:33 10 No. 10 in Figure 1. And the what is again something
09:33 11 different, the third group of instructions.

09:33 12 The timing here is also important because
09:33 13 if we look at said processing, what follows is said
09:33 14 processing comprises rolling back said first group of
09:34 15 instructions, rolling back said second group of
09:34 16 instructions before allowing an instruction in the
09:34 17 third group to access the cache line. That's the
09:34 18 timing issue.

09:34 19 In order for a person of skill in the art
09:34 20 to understand the bounds of this claim, they need to
09:34 21 know the who, the what, and that will inform the when
09:34 22 for said processing.

09:34 23 Those are the three objective
09:34 24 uncertainties that Tesla described in their briefing.
09:34 25 But those three will actually be resolved with an

09:34 1 alternative construction. Plain and ordinary just
09:34 2 doesn't get us there.

09:34 3 Now, Slide 20 is IV's argument.
09:34 4 Consistent with the language of the claim, they say
09:34 5 said processing is said executing. And, therefore, the
09:34 6 who is the agent other than the processor, some other
09:34 7 structure in the -- in the system. And the what is the
09:34 8 third group of instructions.

09:34 9 But the intrinsic record here gives us
09:34 10 more. Processing shows up two times in the claim. And
09:35 11 the order of the processing terms here is very
09:35 12 different if you look into the file history.

09:35 13 And so what I have here is, in Slide 21,
09:35 14 the original claims. Claim 1 of the patent comes out
09:35 15 of original Claim 33, which is an independent claim;
09:35 16 34, which depended from 33; and 35, which depended from
09:35 17 34.

09:35 18 You'll notice the same color coding here.
09:35 19 The gray text was the entirety of Independent Claim 33.
09:35 20 Green and orange, in that order, were in 34. And the
09:35 21 blue text was in Dependent Claim 35 after both the
09:35 22 green and the orange text.

09:35 23 And so, Your Honor, if you -- if you look
09:35 24 at the original language of the claim here, processing
09:35 25 in Dependent Claim 34 clearly referred -- said

09:35 1 processing in Dependent Claim 35 clearly referred back
09:35 2 to processing in Dependent Claim 34, the claim from
09:35 3 which it depends. Those were the only two instances of
09:36 4 processing.

09:36 5 And in fact, if we go even one step
09:36 6 earlier, the original language used the word
09:36 7 "handling." Again, handling appeared only two times in
09:36 8 these claims, once in the orange limitation, once in
09:36 9 the blue limitation.

09:36 10 When the applicant amended handling, they
09:36 11 removed the word "handling" and replaced it with
09:36 12 "processing." This is how the term "processing" ends
09:36 13 up in the claim.

09:36 14 But they changed it in both the orange
09:36 15 and the blue. I don't think that IV would be arguing
09:36 16 if the claim remained the way it was at this stage of
09:36 17 the prosecution history, that said processing in Claim
09:36 18 35 does not refer clearly to processing in the orange
09:36 19 in Claim 34.

09:36 20 However -- and the significance there, as
09:36 21 I've mentioned before, is that the who in the
09:36 22 processing step, in the orange processing, is the
09:36 23 processor. It's a different who. And the what is the
09:36 24 first and second groups of instructions. It's a
09:36 25 different what.

09:36 1 But what happened here, Your Honor, is in
09:36 2 order to gain allowance of this claim, the applicant
09:37 3 amended Independent Claim 33 to incorporate the text of
09:37 4 Dependent Claims 34 and 35. The text appears exactly
09:37 5 as it was in 33, 34, and 35; it now just appears in one
09:37 6 single claim.

09:37 7 The ambiguity, Your Honor, is that when
09:37 8 they made this amendment, they switched the order. The
09:37 9 blue text ended up ahead of the orange text. And where
09:37 10 in original claims said processing followed processing,
09:37 11 now said processing precedes the processing step.

09:37 12 Now, IV argues that there's some
09:37 13 significance here. That because the order changed,
09:37 14 said processing now refers to executing.

09:37 15 Tesla and their expert have looked at
09:37 16 this and said, well, that's the ambiguity. There's a
09:37 17 problem here. There's a who and a what and a timing
09:37 18 issue. But that timing issue can be resolved with an
09:38 19 affirmative construction.

09:38 20 Tesla's brief explains that said
09:38 21 processing can be referring to either executing the
09:38 22 executing step or the processing step. And Tesla
09:38 23 continues to believe that the meaning of "said
09:38 24 processing" is not reasonably ascertainable and, thus,
09:38 25 this term is indefinite.

09:38 1 But if it is not indefinite, then it must
09:38 2 be construed to resolve the ambiguity in Claim 1.

09:38 3 I promised I'd get to Claim 2. I've got
09:38 4 Dependent Claim 2 here on the screen on the left side.

09:38 5 Said processing must also be construed to
09:38 6 resolve the independent -- the ambiguity in Dependent
09:38 7 Claim 2. Said processing appears in the preamble of
09:38 8 Dependent Claim 2 and points to something in Claim 1.

09:38 9 But Claim 1 has said processing and
09:38 10 processing. So which of the two instances, said
09:38 11 processing or processing, does Dependent Claim 2 relate
09:38 12 to? Is it the blue or is it the orange?

09:39 13 And so, Your Honor, construing said
09:39 14 processing in Claim 1 as said executing resolves the
09:39 15 ambiguity in Dependent Claim 2 because then it's very
09:39 16 clear that Dependent Claim 2 is referring to the
09:39 17 processing in the orange.

09:39 18 IV has already told Your Honor that "said
09:39 19 processing" means said executing. This position has
09:39 20 been taken in all of their briefing. Their expert has
09:39 21 taken this position. We'd be surprised if they said
09:39 22 something different here today.

09:39 23 But if IV stands up next and does say
09:39 24 something different, if they reject the construction of
09:39 25 "said executing," then that only amplifies the

09:39 1 ambiguity of said processing and reenforces a finding
09:39 2 of indefiniteness.

09:39 3 However, if they agree that "said
09:39 4 processing," as they've argued, should be construed as
09:39 5 said executing, that resolves the indefiniteness issue
09:39 6 and allows the parties to move forward with objective
09:39 7 certainty on this claim.

09:39 8 We respectfully submit that there are two
09:40 9 options, the two options presented here on Slide 25.
09:40 10 We need some further guidance beyond plain and ordinary
11 meaning.

09:40 12 And with that, Your Honor, I thank you
09:40 13 for your attention and consideration.

09:40 14 THE COURT: A response?

09:40 15 MR. NAGGAR: Thank you, Your Honor. Good
09:40 16 morning. Charles Naggar for the plaintiffs
09:40 17 Intellectual Ventures from Kasowitz Benson & Torres.

09:40 18 I'll first ask if Your Honor has any
09:40 19 questions that Your Honor wants to direct me to before
09:40 20 we begin and then I'll --

09:40 21 THE COURT: No. I think I pretty well
09:40 22 understand that -- the concern that they have that it
09:40 23 should -- that it should -- I should define it to
09:40 24 relate back -- to avoid indefiniteness, I should define
09:40 25 it the way it's defined at the beginning of that

09:40 1 portion of the claim.

09:40 2 MR. NAGGAR: Thank you, Your Honor.

09:40 3 Understood.

09:40 4 I'll just note for the Court, before
09:40 5 going into the slide presentation, this is the first
09:41 6 time I think Tesla's offered an affirmative
09:41 7 construction. Throughout the briefing, Tesla has
09:41 8 maintained that the claim is simply just indefinite.

09:41 9 And then these new arguments asking for
09:41 10 an affirmative construction for said executing,
09:41 11 seemingly -- although, you know, they haven't quite
09:41 12 been briefed yet, seemingly are looking to import
09:41 13 limitations from the spec into the claims.

09:41 14 THE COURT: I don't think he's -- at
09:41 15 least that argument's not importing. He's arguing
09:41 16 that -- as I understood it, he's arguing that -- he --
09:41 17 they believe it's indefinite. I understand why they
09:41 18 think it's indefinite. But your argument about why it
09:41 19 is not indefinite doesn't come from the specification,
09:41 20 it comes from the claim term itself.

09:41 21 So that's what I'd like you to focus on.

09:41 22 MR. NAGGAR: Understood. Thank you, Your
09:41 23 Honor.

09:41 24 Okay. So going straight to the claim
09:42 25 term itself, we have here the '395 patent, Claim 1.

09:42 1 This "said processing" term, it comes right -- it comes
09:42 2 right after a wherein clause and comes right in the
09:42 3 paragraph with this executing step. And all that we're
09:42 4 saying is that the said processing -- said processing
09:42 5 is not lacking antecedent basis.

09:42 6 Our position throughout the case has been
09:42 7 that -- IV's position throughout the case has been that
09:42 8 the plain and ordinary meaning should apply if the
09:42 9 term's not indefinite.

09:42 10 Tesla's position is that the term is
09:42 11 indefinite for lack of antecedent basis, but the
09:42 12 antecedent basis is there. It's implicit.

09:42 13 I think there was an argument --

09:43 14 THE COURT: Can you go back to the claim?

09:43 15 So what else can said processing being
09:43 16 referred to here other than executing?

09:43 17 MR. NAGGAR: Said processing refers --
09:43 18 refers back to executing. But I think the choice of
09:43 19 language is important because when you -- when we look
09:43 20 at the embodiments described -- just give me one
09:43 21 second.

09:43 22 When we look at the embodiments described
09:43 23 in the -- in the specification, the patent gives
09:43 24 examples, another processor or a DMA agent such as a
09:43 25 peripheral device, that's 11, 12, and 13 in the

09:43 1 specification. And those are things that executes.

09:43 2 And so the concern is -- or the thought
09:43 3 is -- and again, this -- you know, this is sort of the
09:43 4 first time we're looking at a potential affirmative
09:43 5 construction, that -- you know, if that in any way
09:43 6 limits the embodiments to just a processor or to just a
09:43 7 peripheral device, we wouldn't want to limit the
09:44 8 embodiments -- we wouldn't want to limit the claim to a
09:44 9 particular embodiment that's only a CPU or that's only
09:44 10 a processor or that's only a peripheral device.

09:44 11 Does that make sense?

09:44 12 THE COURT: It does. And I'm not -- and
09:44 13 I don't know why I would be -- I don't know why I would
09:44 14 be doing that. That might be the practical effect that
09:44 15 defendant would argue. But I'm just saying, it seems
09:44 16 to me that looking at the claim language -- give me one
09:44 17 second here.

09:44 18 That said processing doesn't really have
09:44 19 a plain and ordinary meaning. Said processing is said
09:44 20 processing. But it -- that doesn't mean anything
09:44 21 without reference to something in either the claim or
09:44 22 the spec. I mean, it's said -- it's like said driving.
09:44 23 I mean, processing doesn't have anything.

09:45 24 I don't think it's indefinite, but I do
09:45 25 think that there has to be some construction here. But

09:45 1 I'm sensitive to the idea that IV may have been taken a
09:45 2 little off guard if this is the first time this is the
09:45 3 suggestion that's made.

09:45 4 So what I'm going to do on this one is --
09:45 5 which I don't know that I've even ever done before, but
09:45 6 I'm going to let you all get back together on this
09:45 7 claim term and each -- I don't think -- I'll say,
09:45 8 having looked through this and understanding it the way
09:45 9 I do now, I don't think it's plain and ordinary meaning
09:45 10 alone. It might be plain and ordinary meaning of said
09:45 11 processing wherein said processing is X.

09:45 12 I think said processing might have a
09:45 13 plain and ordinary meaning as long as it's clear what
09:45 14 that goes to. I don't think it's indefinite.

09:46 15 I'm going to -- you all take a week or
09:46 16 sooner, if you can do it sooner, and give me either a
09:46 17 joint proposal or competing proposals of what you
09:46 18 believe plain and ordinary meaning -- plain and
09:46 19 ordinary meaning ought to be, whether it has to include
09:46 20 executes or whatever, and submit those, you know,
09:46 21 within a week and I'll make a ruling on that. We'll
09:46 22 have another quick hearing on this to figure out what
09:46 23 we need to do.

09:46 24 I am persuaded that plain and ordinary
09:46 25 meaning is not sufficient on this. But I'm also

09:46 1 persuaded it's not indefinite.

09:46 2 So next I have "broadcast information."

09:46 3 And I'll hear -- I'll hear from the defendant. I
09:46 4 really just want to know why the construction that
09:46 5 we -- the preliminary construction we've given seems to
09:47 6 be adequate.

09:47 7 I will also say to my friends on the
09:47 8 defense side that the more words you use -- I mean,
09:47 9 broadcast information I think is relatively
09:47 10 understandable. Once you get to more than a dozen
09:47 11 words to explain what something like broadcast
09:47 12 information is, you would have to color me skeptical.

09:47 13 So if you can tell me -- if whoever's
09:47 14 going to argue for defendant can explain to me why
09:47 15 broadcast information, which is information that's
09:47 16 transmitted via a broadcast, is not a sufficient, let
09:47 17 me know, please.

09:47 18 MR. ELLIS: Thank you, Your Honor.

09:47 19 Michael Ellis on behalf of defendant Tesla.

09:47 20 The short answer to your question is that
09:47 21 the term "broadcast" in the cellular context has a
09:47 22 specific and technical meaning. It's essentially a set
09:47 23 of resources that's intended for all UEs or -- which is
09:48 24 another synonym for devices.

09:48 25 You can kind of think of it like an AM/FM

09:48 1 radio station. That's a broadcast.

09:48 2 It's a set of audio resources in this
09:48 3 case that anybody with an antenna within the service
09:48 4 area can tune into or not tune into, but they have the
09:48 5 option.

09:48 6 That's the short version of the argument.
09:48 7 I can expand on that further if needed.

09:48 8 THE COURT: Well, so let me ask you this:
09:48 9 If -- if down the road the plaintiff were to take a
09:48 10 position with respect to infringement that you felt was
09:48 11 inconsistent with what you just said, isn't that
09:48 12 something I would take up at summary judgment?

09:48 13 I mean, in other words, it seems to me
09:48 14 it's unnecessary to do it at the Markman stage, but you
09:48 15 may -- your argument may be one that is persuasive at
09:49 16 the summary judgment stage if they take a position that
09:49 17 the experts or I would find experts wouldn't disagree
09:49 18 on and that you're right.

09:49 19 Does that question make sense? I'm
09:49 20 not --

09:49 21 MR. ELLIS: It does.

09:49 22 THE COURT: I'm not trying to just avoid
09:49 23 doing a Markman construction. I'm just trying to
09:49 24 figure out if we're doing it in the right -- in the
09:49 25 right order.

09:49 1 MR. ELLIS: It makes perfect sense, Your
2 Honor.

09:49 3 And I think we may be able to save a
09:49 4 little time here. And if you'll just bear with me for
09:49 5 a moment, I'll explain what I mean.

09:49 6 The reason this is important to us is
09:49 7 because, exactly as you say, we believe that this issue
09:49 8 is likely to arise again at a later stage in the case.

09:49 9 To be a little more specific, as we read
09:49 10 plaintiff's infringement contentions, the functionality
09:49 11 identified as meeting this claim element does not
09:49 12 appear to be broadcast information.

09:49 13 THE COURT: Well, I've never -- just so
09:49 14 you know, I've heard this -- that concern like a
09:50 15 thousand times now. And as a general rule, I tend to
09:50 16 ignore what is in someone's infringement contentions in
09:50 17 terms of how I'm going to rule on a Markman.

09:50 18 MR. ELLIS: Understood, Your Honor.

09:50 19 And we're not using that as a basis here.
09:50 20 Just to give you a little context, we didn't even put
09:50 21 that in our briefing.

09:50 22 Really the penultimate -- the ultimate
09:50 23 question here is we just want to confirm our
09:50 24 understanding of the Court's preliminary construction.

09:50 25 THE COURT: Okay.

09:50 1 MR. ELLIS: That is --

09:50 2 If we could just advance to the next
09:50 3 slide, I think it'll make it slightly easier.

09:50 4 Over the course of the briefing, the
09:50 5 parties converged on a definition, but they didn't
09:50 6 quite get all the way there.

09:50 7 THE COURT: Okay.

09:50 8 MR. ELLIS: And that's shown in green.

09:50 9 And the Court essentially adopted the
09:50 10 common vocabulary in green and did not adopt the
09:50 11 additional language in red in our proposed
09:50 12 construction.

09:50 13 And with all that said, we just want to
09:51 14 confirm that we've understood the Court's preliminary
09:51 15 construction correctly that by adopting this common
09:51 16 language, the Court has not reached the merits of what
09:51 17 is broadcast information or foreclosed the argument --

09:51 18 THE COURT: I'll even go you one better.

09:51 19 The way I handle issues like this,
09:51 20 because I am mindful of, you know, the obligation to
09:51 21 construe things and I don't want a situation at trial
09:51 22 where the plaintiff is saying broadcast information is
09:51 23 X and they infringe, and the defendant is arguing
09:51 24 that's the wrong construction and so we don't infringe.

09:51 25 So here's my suggestion to you is, at

09:51 1 some point -- and the reason I made my comment about
09:51 2 preliminary infringement contentions is they're just
09:51 3 that.

09:51 4 Once you have -- once the defendant has
09:52 5 the plaintiff's technical expert report where they're
09:52 6 explaining to you why they believe that Tesla meets the
09:52 7 claim element of broadcast information, if you believe
09:52 8 at that point that they are taking a position that's
09:52 9 inconsistent with what you believe you're saying here,
09:52 10 and at that point I will have a real conflict over a
09:52 11 claim term.

09:52 12 And so it's incumbent on Tesla at that
09:52 13 point to let me know, and I will set up a mini Markman
09:52 14 at that time and resolve this issue and let you -- on
09:52 15 the record, and that way the plaintiff can either
09:52 16 figure out what to do with their expert report and move
09:52 17 forward or you all can just -- you all can -- you
09:52 18 all -- by you all, I mean, I'm sorry, Tesla -- can say,
09:52 19 okay. We don't have an issue that we were worried
09:53 20 about and you don't have -- there's not a problem. I
09:53 21 don't need more Markman hearings. I'm fine with not
09:53 22 doing one.

09:53 23 But I'm just saying that I get this
09:53 24 point, once you see the position in concrete that
09:53 25 plaintiff is taking with what they're saying why Tesla

09:53 1 meets this claim element, if you think it's incorrect
09:53 2 for the reasons that are articulated here, let me know
09:53 3 and I'll set another Markman hearing, and I will
09:53 4 resolve it on the record one way or the other.

09:53 5 MR. ELLIS: Thank you, Your Honor.
09:53 6 That's all I wanted to confirm.

09:53 7 And with that, we can rest on the papers.

09:53 8 THE COURT: Okay. Thank you.

09:53 9 Then I'm going to maintain the Court's
09:53 10 preliminary construction that was offered for -- but
09:53 11 with everything that I just said, telling Tesla what
09:53 12 you all can do if you're unhappy in the future.

09:53 13 Next up, I have "said target feature
09:53 14 information." I'll hear from -- oh, I'm sorry. I
09:54 15 think that's all that you requested oral argument on.
09:54 16 Is that correct?

09:54 17 MR. COLVIN: Yes, Your Honor. I'm happy
09:54 18 to talk about said target feature information. That's
09:54 19 one of my favorite topics but...

09:54 20 (Laughter.)

09:54 21 THE COURT: I was barely able to sleep
09:54 22 last night, you know.

09:54 23 I'm going to maintain our preliminary
09:54 24 constructions on those as well.

09:54 25 Is there anything else that we need to

09:54 1 take up today?

09:54 2 MR. COLVIN: Just one issue, Your Honor.

09:54 3 THE COURT: Yes, sir.

09:54 4 MR. COLVIN: As it relates to fact
09:54 5 discovery opening, given the additional Markman issues
09:54 6 that are going to happen next week when we -- when the
09:54 7 parties provide you their additional information on
09:54 8 said processing. Is it Your Honor's intention that
09:54 9 fact discovery wait until after that --

09:54 10 THE COURT: No. No. It can open. Y'all
09:54 11 can all -- yeah. The whole point of doing that is I've
09:55 12 found -- I always hated when I was practicing, you
09:55 13 know, the whole point of that, it was simply to put
09:55 14 both sides on the same, you know, you weren't doing
09:55 15 discovery or anything.

09:55 16 Y'all -- I mean, y'all can start -- you
09:55 17 can send out whatever you want today and that'll be
09:55 18 just fine. And so -- we will get the other issue
09:55 19 resolved very shortly and that shouldn't interfere with
09:55 20 anyone's ability to respond to discovery, I hope.

09:55 21 Anything else?

09:55 22 MR. COLVIN: That's all from Tesla, Your
09:55 23 Honor. Thank you.

09:55 24 THE COURT: Thanks. As always, I -- I've
09:55 25 said this now probably a thousand times but it's worth

09:55 1 repeating, whenever people wonder why it is that I like
09:55 2 patent cases so much, I say it's -- I think it's
09:55 3 because you always get the very best lawyers in the
09:55 4 practice in front of you. It's a great way of culling
09:55 5 it down to great lawyers. So I appreciated this
09:55 6 morning's hearing. I look forward to seeing you guys
09:55 7 in the future. Take care.

09:55 8 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
8 correct transcript from the record of proceedings in
9 the above-entitled matter.

10 I certify that the transcript fees and
11 format comply with those prescribed by the Court and
12 Judicial Conference of the United States.

13 Certified to by me this 21st day of
14 August 2025.

15
16 /s/ Kristie M. Davis
KRISTIE M. DAVIS
Official Court Reporter
17 PO Box 20994
Waco, Texas 76702
18 (254) 666-0904
kmdaviscsr@yahoo.com
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21
22
23
24
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KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)