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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MAXELL, LTD.,) (
PLAINTIFF,) (CIVIL ACTION NO.
) (5:24-CV-88-RWS-JBB
VS.) (TEXARKANA, TEXAS
) (
CORETRONIC CORP., ET AL.,) (MAY 9, 2025
DEFENDANTS.) (9:01 A.M.

CLAIM CONSTRUCTION HEARING
BEFORE THE HONORABLE J. BOONE BAXTER
UNITED STATES MAGISTRATE JUDGE

FOR THE PLAINTIFF: Mr. Bryan C. Nese
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6 COURT REPORTER: Ms. Shelly Holmes, CSR, TCRR
7 Official Court Reporter
8 Honorable Robert W. Schroeder III
9 United States District Judge
10 Eastern District of Texas
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15 (Proceedings recorded by mechanical stenography, transcript
16 produced on a CAT system.)
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09:01:40 1 COURT SECURITY OFFICER: All rise.

09:01:40 2 THE COURT: You may be seated.

09:01:42 3 Nicole, please call the case.

09:01:44 4 COURTROOM DEPUTY: Maxell, Limited versus

09:01:50 5 Coretronic Corp. and Optoma Corp., Cause No. 5:24-CV-88.

09:02:00 6 THE COURT: Let's start with announcements

09:02:02 7 beginning with Plaintiff.

09:02:05 8 MR. CULBERTSON: Good morning, Your Honor. Geoff

09:02:08 9 Culbertson for Maxell. Today you'll hear from my

09:02:10 10 colleagues from Mayer Brown, Bryan Nese.

09:02:15 11 MR. NESE: Good morning, Your Honor.

09:02:15 12 THE COURT: Good morning.

09:02:16 13 MR. CULBERTSON: So Ra Ko.

09:02:16 14 MS. KO: Good morning, Your Honor.

09:02:17 15 MR. CULBERTSON: Ms. Ko will be making her first

09:02:18 16 argument today.

09:02:19 17 Claire Kim.

09:02:19 18 MS. KIM: Good morning, Your Honor.

09:02:23 19 MR. CULBERTSON: And Don Min.

09:02:23 20 MR. MIN: Good morning, Your Honor.

09:02:26 21 MR. CULBERTSON: And we have three representatives

09:02:28 22 from Maxell, Mr. Nakayama, Mr. Hayashida, and Mr. Watanabe.

09:02:37 23 THE COURT: Good morning.

09:02:38 24 MR. CULBERTSON: And Maxell is ready to proceed.

09:02:38 25 THE COURT: Okay.

09:02:41 1 MR. CULBERTSON: I have some materials. May I
09:02:43 2 hand them up to the Court?

09:02:45 3 THE COURT: Yes.

09:02:45 4 MR. CULBERTSON: Okay.

09:02:46 5 THE COURT: Yeah, and -- go ahead, and then I'll
09:02:47 6 ask for announcements from Defendants.

09:03:12 7 MR. THOMPSON: Good morning, Your Honor.

09:03:12 8 THE COURT: Good morning.

09:03:14 9 MR. THOMPSON: Blake Thompson here for the
09:03:15 10 Defendants. With me today is Don McPhail and John Kern.

09:03:19 11 MR. MCPHAIL: Good morning, Your Honor.

09:03:19 12 MR. THOMPSON: And we're ready to proceed.

09:03:20 13 THE COURT: Okay. Good morning.

09:03:21 14 Let me start with some housekeeping matters.

09:03:24 15 First, as you probably realize by now, our court
09:03:27 16 reporter is attending remotely. May is a real busy time
09:03:33 17 for us, and we have a criminal trial starting next week,
09:03:35 18 and our court reporter has a hard cut-off at 9:50 to
09:03:40 19 transcribe a telephonic conference for that criminal trial.

09:03:44 20 I don't anticipate it will be long, but we will
09:03:46 21 have to take a short break so that the court reporter can
09:03:51 22 jump on that call. So that's 9:50. I hope that's the only
09:03:54 23 break we'll have today. I think that probably will be the
09:03:56 24 only break that we will have.

09:03:59 25 With that, I also just want to give you an update.

09:04:02 1 I wanted to have the report and recommendations out and
09:04:05 2 motions to dismiss by today. That didn't happen, but they
09:04:08 3 should come out next week. I totally anticipate that.

09:04:11 4 And last housekeeping matter is everyone got the
09:04:15 5 copies of the preliminary constructions this morning?
09:04:18 6 Okay. Yeah, and I'm sure you've done this before, that's
09:04:20 7 my got right now based on the briefing. That's not to
09:04:29 8 prejudice anyone. They're not final.

09:04:31 9 So if you think, hey, I've briefed it well enough
09:04:32 10 and the Judge has decided the decision and there's no need
09:04:33 11 to further argue, you can just rest on the papers. You can
09:04:37 12 agree to them. But if you really want to argue, hey, I
09:04:41 13 think you're missing something, now is the opportunity.

09:04:43 14 So there's no harm in either resting on the brief
09:04:46 15 or actually arguing if you want to make an argument. So it
09:04:49 16 really is just to focus the oral argument, but they're not
09:04:53 17 final. My mind is still open.

09:04:55 18 With that, that's the background.

09:04:57 19 So let's start with the preliminary
09:05:00 20 instructions -- constructions.

09:05:02 21 The first term, "projection unit," and it looks
09:05:07 22 like I went with plain and ordinary meaning, which was
09:05:10 23 Plaintiff.

09:05:10 24 So I imagine, Plaintiff, you're fine with that --
09:05:18 25 with the preliminary?

09:05:18 1 MS. KO: Yes, Your Honor.

09:05:20 2 THE COURT: Okay. So let me hear from Defendants.

09:05:41 3 MR. MCPHAIL: Thank you very much, Your Honor.

09:05:42 4 The first thing I would like to address, if I

09:05:45 5 could, is whether or not this term should be

09:05:47 6 means-plus-function.

09:05:48 7 I think we should all agree here, and I think even

09:05:50 8 Plaintiffs would agree, that the word "unit" is a nonce

09:05:52 9 term. Okay. They've made that argument in front of

09:05:55 10 Your Honor quite successfully very recently. We put that

09:05:59 11 up on the slide there in the -- in Case 108.

09:06:01 12 There's nothing here in the term of "projection

09:06:05 13 optical" that adds any structure to that, right?

09:06:09 14 Projection is simply a function. Optical just means light

09:06:14 15 or eye. That's not structure. And if "unit" is truly a

09:06:17 16 nonce term, "projection optical unit" is similarly a

09:06:20 17 means-plus-function term. There's no structure in the

09:06:22 18 words "projection" and "optical."

09:06:22 19 THE COURT: I'm sorry, could you change the format

09:06:24 20 of the slides so it gets rid of the note space?

09:06:24 21 MR. MCPHAIL: Sorry.

09:06:30 22 THE COURT: That's fine. Just sort of blow it up

09:06:43 23 for me a little bit.

09:06:56 24 Okay. And the court reporter asked us, since

09:06:58 25 she's not here, if anytime you speak, you can start by

09:07:01 1 announcing yourself, both sides.

09:07:03 2 MR. MCPHAIL: My apologies. Don McPhail of
09:07:06 3 Merchant & Gould for Coretronic right now.

09:07:06 4 THE COURT: Thank you, Mr. McPhail.

09:07:26 5 MR. MCPHAIL: I'm sorry, Your Honor.

09:07:27 6 THE COURT: Oh, no, take -- take your time. If
09:07:28 7 it's too troublesome, we can just move the screen a little
09:07:31 8 bit closer to me.

09:07:41 9 MR. MCPHAIL: Okay. So anyway, as I was saying, I
09:07:42 10 think, based on your prior holding, as well as the language
09:07:45 11 we have here, that this really ought to be a
09:07:48 12 means-plus-function term. It shouldn't be plain and
09:07:50 13 ordinary meaning, right?

09:07:51 14 Again, "unit" is a nonce term. Everyone has
09:07:54 15 conceded that before. They've argued it successfully.
09:07:57 16 They shouldn't be able to back away from that here and
09:07:59 17 suddenly argue that somehow this has structure where
09:08:03 18 they've argued or conceded before that it doesn't have any
09:08:06 19 structure.

09:08:07 20 But looking now at what Your Honor has put in as
09:08:10 21 the plain and ordinary meaning, I think the critical thing
09:08:12 22 that we've missed here -- and I'm looking really, when I
09:08:15 23 say plain and ordinary meaning, at what Plaintiffs have
09:08:17 24 suggested, an assembly of lenses, mirrors, and/or other
09:08:22 25 optical elements.

09:08:22 1 And I think that's where the problem is here. The
09:08:25 2 specification, the claims of this patent make it clear that
09:08:27 3 a projection optical unit has to have lenses. Okay. Maybe
09:08:30 4 it has something else in there, but it 100 percent has to
09:08:33 5 have lenses. And if plain and ordinary meaning has an
09:08:35 6 and/or language in there, then it could be just mirrors.
09:08:39 7 And just mirrors is not this invention. It's not this
09:08:42 8 projection optical unit. The specification makes that
09:08:44 9 clear, and the dependent claims make that clear.

09:08:47 10 Projection optical unit must have lenses.

09:08:49 11 If we look at the specification, every time it
09:08:53 12 refers to the present invention, it always talks about two
09:08:58 13 lens groups.

09:08:59 14 One lens group is the first projection optical
09:08:59 15 unit.

09:09:01 16 The second lens group is the second projection
09:09:04 17 optical unit.

09:09:04 18 That comes every time in the spec, three different
09:09:08 19 places. At no point does it just say an embodiment. At no
09:09:12 20 point does it say a preferred embodiment. It is always a
09:09:14 21 unit of the invention, okay?

09:09:17 22 So we think it's very clear that the projection
09:09:19 23 optical unit -- the first and second projection optical
09:09:22 24 unit and the overall projection optical unit must have
09:09:24 25 lenses in there, right? It can't be just mirrors. It

09:09:29 1 can't be mirrors and prisms. It has to have lenses in
09:09:33 2 there somewhere.

09:09:33 3 And I think that becomes even more clear, Your
09:09:35 4 Honor, if you look at the dependent claims. Claims 5 and 6
09:09:39 5 both talk about the projection optical unit or a lens
09:09:41 6 element which forms part thereof is adapted to be
09:09:45 7 replaceable. And that makes it, I think, quite clear that
09:09:47 8 the projection optical unit has to have a lens element in
09:09:49 9 it.

09:09:50 10 There's no dependent claim where it adds a lens
09:09:52 11 element to the projection optical unit. That goes all the
09:09:55 12 way back up to Claim 1, okay? And it has to have a lens
09:10:00 13 element in there because when you get to the dependent
09:10:00 14 claim, that could be replaceable.

09:10:03 15 There's no disclosure, there's no support in the
09:10:05 16 claims for something that is simply mirrors or mirrors and
09:10:10 17 prisms. And if that's what plain and ordinary meaning
09:10:12 18 covers, then that would be incorrect. The plain and
09:10:14 19 ordinary meaning, if that's what it is, somehow has to
09:10:16 20 connote that there must be lenses in this somewhere,
09:10:20 21 somehow.

09:10:21 22 THE COURT: Uh-huh. I would like to hear from
09:10:24 23 Plaintiff on whether it must have lenses, but you can go
09:10:28 24 ahead.

09:10:28 25 MR. MCPHAIL: That's all I have right now.

09:10:30 1 THE COURT: Okay.

09:10:30 2 MR. MCPHAIL: I'll let Plaintiff go ahead then.

09:10:35 3 THE COURT: Okay. Thank you.

09:10:35 4 MR. MCPHAIL: Thank you, Your Honor.

09:11:14 5 MS. KO: Hello, Your Honor. So Ra Ko from Mayer
09:11:19 6 Brown -- Mayer Brown for Plaintiff, Maxell.

09:11:20 7 THE COURT: Good morning, Ms. Ko.

09:11:22 8 MS. KO: Your Honor, I would like to first note
09:11:23 9 that Defendant has plainly admitted that the term
09:11:25 10 "projection optical unit" is not subject to
09:11:28 11 means-plus-function interpretation because they have stated
09:11:29 12 that it must include the lens. That's plainly structural
09:11:33 13 and attaches structure to the term.

09:11:35 14 I also want to start with the fact that the fact
09:11:40 15 that projection optical unit does not have the word "means"
09:11:44 16 means there's a presumption against applying
09:11:48 17 means-plus-function analysis.

09:11:49 18 Defendants really rely on the term "unit," but as
09:11:51 19 we know, the term at issue here is "projection optical
09:11:53 20 unit." The modifier is, "projection optical," and as
09:11:59 21 Defendants have plainly referred to, connote structure to
09:12:03 22 the term.

09:12:03 23 Defendants also point to Claims 5 and 6, which
09:12:07 24 also plainly point to a lens element, which is a specific
09:12:13 25 structure. And as I will note here, in Dependent Claims 5

1 and 6, it doesn't refer to "the lens element." It refers
2 to "a lens element," because this is the first time that
3 the claims recite that a lens element forms part of the
4 projection optical unit.

5 Your Honor, I would also like to turn to the point
6 of whether the projection optical unit must include a lens,
7 and for that I want to turn to the overview of the
8 invention.

9 The '988 patent is directed towards the projection
10 of an enlarged image and specifically towards projecting an
11 enlarged image at a shortened projection distance,
12 therefore, directed towards projectors that are capable of
13 wide-angle projection.

14 To discuss all this, the '988 patent goes into
15 detail about existing solutions that include lenses,
16 mirrors, and other optical elements. It doesn't limit this
17 to just lenses. It describes lenses with positive power,
18 negative power, and mirror in its description of previous
19 solutions.

20 Moreover, the invention specifically describes
21 that the purpose is to improve these sorts of systems
22 without complete redesign and redevelopment of the
23 projection optical unit. Therefore, it explicitly
24 expresses an adaption and an ability to adapt previous
25 projectional optical systems, including systems other than

09:13:54 1 lenses, according to the terms of the invention.

09:13:55 2 As you see, the claims themselves, again, they do
09:14:00 3 not recite specific structures until Claims 5 and 6 where
09:14:04 4 it says specific lens elements. Instead, they recite
09:14:07 5 specific positioning and properties of the projection
09:14:11 6 optical unit.

09:14:17 7 And as we discussed, the projection optical unit
09:14:22 8 is specifically described in the specification to include
09:14:25 9 elements other than lenses. This is described in the '988
09:14:31 10 patent in Column 3, in Lines 11 to 24, where they describe
09:14:37 11 the purpose of a mirror, prism, or other optical folding
09:14:42 12 path means to form an enlarged image, which is the function
09:14:46 13 that Defendants attach projection optical unit to.

09:14:49 14 And for these reasons, Plaintiff does not believe
09:14:52 15 that projection optical unit must be limited to just
09:14:57 16 lenses.

09:14:58 17 THE COURT: So just a couple of questions.

09:14:58 18 MS. KO: Yes.

09:15:01 19 THE COURT: I believe in this description in
09:15:04 20 Column 3, there's also lenses as part of the optical unit
09:15:10 21 in this embodiment for lack of -- in this description of
09:15:14 22 the -- the invention, there's also lenses, correct?

09:15:16 23 MS. KO: Yes, Your Honor.

09:15:17 24 THE COURT: Okay. So do you disagree with
09:15:20 25 Defendants' point that other than discussion of the prior

09:15:26 1 art solutions, there's no discussion in the patent about
09:15:33 2 something that's pure lenses -- oh, I'm sorry, something
09:15:37 3 that doesn't have lenses as part of the optical unit? I
09:15:41 4 just want to know if there's a dispute there. I think -- I
09:15:45 5 don't think there is. I think all the embodiments there at
09:15:47 6 least contain at least some lenses for the optical unit; is
09:15:51 7 that correct?

09:15:51 8 MS. KO: Well, Your Honor, we do want to point out
09:15:53 9 that the description of the '988 patent claims describe
09:15:56 10 specific properties, and it specifically ties projection
09:16:01 11 optical unit, you know, to form an enlarged image. And
09:16:03 12 here we have that this is tied to a folding mirror. We do
09:16:07 13 note that there are a lot of embodiments described in the
09:16:10 14 '988 patent that describe having at least one lens.

09:16:12 15 THE COURT: Uh-huh. But even this one has a lens
09:16:15 16 in the optical unit, right?

09:16:16 17 MS. KO: Yes, Your Honor.

09:16:17 18 THE COURT: Okay. So there's no -- I'm not --
09:16:19 19 it's not dispositive, but there's no real dispute about
09:16:22 20 what the patent actually discloses?

09:16:24 21 MS. KO: Yes, Your Honor.

09:16:25 22 THE COURT: Okay. Just a couple other questions.
09:16:26 23 One is -- and this may not -- you may have to ask one of
09:16:31 24 your colleagues, but Defense brought up a prior claim
09:16:37 25 construction where we ruled that "unit" was a nonce term.

09:16:40 1 I'm going off of memory here. There was -- was
09:16:42 2 that term agreed between both parties? There was one
09:16:46 3 means-plus-function in a Markman I recently did with Maxell
09:16:49 4 where both sides wanted means-plus-function, and I pushed
09:16:52 5 back for 20 minutes that it shouldn't be, but because both
09:16:58 6 sides wanted it, we went with it.

09:17:00 7 Is that -- is that that term?

09:17:01 8 MS. KIM: Yes, Your Honor.

09:17:02 9 THE COURT: Okay. I knew it was going to come
09:17:04 10 back to bite me. I just wanted to do it then.

09:17:07 11 Okay. And then, finally, just real quick, there
09:17:13 12 was a little bit of a discrepancy in the briefing about
09:17:16 13 what is the level of a person of ordinary skill, and I just
09:17:24 14 want to know, do I need to resolve that -- and I'll ask
09:17:25 15 Defense this, too. Do I need to resolve that difference
09:17:25 16 for the purposes of the Markman?

09:17:27 17 MS. KO: Your Honor, we don't believe that it
09:17:29 18 needs to be resolved because we believe that under either
09:17:32 19 definition, these definitions should stand.

09:17:34 20 THE COURT: Okay. And let me ask Mr. Nese.

09:17:37 21 MR. NESE: We would agree with that, Your Honor.

09:17:39 22 THE COURT: Okay. So I don't need to rule on that
09:17:39 23 right now?

09:17:39 24 MR. NESE: No, sir.

09:17:41 25 THE COURT: Okay. Okay. Appreciate that.

09:17:46 1 Let me see if I have any other questions.

09:17:52 2 So it seems like the dispute has really come down
09:17:55 3 to whether or not the specification -- specification
09:17:59 4 description of the embodiment as always having a lens
09:18:02 5 should be incorporated as an express limitation.

09:18:06 6 Okay. I understand that. I'll take it under
09:18:09 7 advisement.

09:18:09 8 Anything further on this one?

09:18:12 9 MR. MCPHAIL: No, Your Honor. Thank you.

09:18:14 10 MS. KO: No, Your Honor.

09:18:23 11 THE COURT: Okay. Okay. So the next term is
09:18:25 12 No. 2, which is "light separation optic system," '580
09:18:31 13 patent, Claims 1, 10, and 32.

09:18:34 14 And it looks like the preliminary construction is,
09:18:36 15 again, plain and ordinary meaning.

09:19:10 16 MR. MCPHAIL: Thank you, Your Honor. Don McPhail
09:19:14 17 of Merchant & Gould for Defendants.

09:19:15 18 The term "light separation optic system," we,
09:19:17 19 again, disagree that this should get plain and ordinary
09:19:19 20 meaning. We think, once again, this is a 112(6) paragraph.

09:19:22 21 The term "system" is widely recognized at the
09:19:25 22 Federal Circuit as being a nonce term. "Light separation"
09:19:28 23 is simply the function, and "optic" adds nothing to this.

09:19:35 24 What is an optic system? It's a system of lights
09:19:38 25 maybe. That's all the word "optic" means when it's used as

09:19:41 1 an adjective. It means of the eye. And so light
09:19:45 2 separation of the eye system doesn't mean anything. That's
09:19:47 3 not giving me any structure at all.

09:19:49 4 And I don't think that Plaintiff's proposed
09:19:52 5 construction helps that because we're sort of left with the
09:19:54 6 same question here. What's an optic unit? You know, I
09:20:00 7 mean, it's a collection of optic units. Again, we're going
09:20:03 8 back to now just reciting a function here. They just want
09:20:05 9 anything that separates light. And that's not supported by
09:20:07 10 their spec, and it shouldn't be supported by the law. It's
09:20:10 11 an incredibly broad reading of this, divorced of the
09:20:13 12 specification, divorced from the figures.

09:20:14 13 I mean, if we look at -- it's Figure 1, and
09:20:25 14 everything in this patent relates back to Figure 1.
09:20:27 15 There's no disclosure of any other sort of embodiment of
09:20:30 16 this invention. And it also makes it clear that, you know,
09:20:33 17 the light separation optic system by itself has to have
09:20:36 18 certain elements to it. And just saying plain and ordinary
09:20:39 19 meaning is getting away from that, again, much like we did
09:20:42 20 with '988 and avoiding the lenses.

09:20:42 21 Here, they seem to want to be avoiding the fact
09:20:47 22 that they have to have at least three mirrors, right,
09:20:48 23 because that's what their specification says is required to
09:20:51 24 separate these lights into three separate colors.

09:20:56 25 To simply say it's an optic unit doesn't tell us

09:21:01 1 anything. That's not going to help the jury resolve the
09:21:03 2 question of infringement. It doesn't even properly tell
09:21:05 3 anybody what is the metes and bounds of this claim.

09:21:08 4 And so, again, we think that this one has to fall
09:21:11 5 into the means-plus-function language.

09:21:12 6 THE COURT: Let me -- let me just focus on that
09:21:15 7 real quick. I do think that this one maybe is more closer
09:21:19 8 to purely functional than the first term. I'm not with you
09:21:22 9 on the first term being purely functional. I think there's
09:21:25 10 structure in the claim for -- for the first term.

09:21:27 11 But this one, I think, you get closer. That being
09:21:30 12 said, what am I to make of the fact that there are true
09:21:36 13 means for claim drafting in this claim? Some -- you know,
09:21:40 14 the patentee obviously knew how to draft means-for language
09:21:43 15 because they do it in this very claim and then this one
09:21:46 16 doesn't.

09:21:47 17 You know, what am I supposed to make of that?

09:21:48 18 MR. MCPHAIL: Well, I wouldn't put -- if I --
09:21:51 19 forgive me, Your Honor.

09:21:52 20 I wouldn't put too much on the lexicography here.
09:21:54 21 These are English language translations of Japanese
09:21:59 22 originals. And so the fact that they may in one instance
09:21:59 23 use means-for language and then not in another doesn't
09:22:01 24 necessarily mean they meant something different. It's just
09:22:03 25 how they tried to translate it from Japanese into English.

09:22:07 1 THE COURT: Okay. So with that, let me -- let me
09:22:09 2 look at -- I'm not sure -- you know, if I look at your
09:22:22 3 function, it seems to be, you know, unnecessary. But I
09:22:26 4 don't think that's where your -- where your main concern
09:22:30 5 is, sep versus separating light compared to the function
09:22:35 6 that you state here, which is much more detailed.

09:22:37 7 Looks like the main point that you're raising has
09:22:41 8 to do with the structure, which is whether it's three
09:22:44 9 mirrors or -- is this the one three mirrors or one mirror?

09:22:44 10 MR. MCPHAIL: No, that's -- that's -- that's
09:22:44 11 another one.

09:22:48 12 THE COURT: That's the next one, yeah.

09:22:48 13 MR. MCPHAIL: But it's a similar sort of issue
09:22:50 14 here. They do -- from our position, there have to be three
09:22:50 15 mirrors, two dichroic mirrors and one other kind of a
09:22:50 16 mirror.

09:22:52 17 THE COURT: Uh-huh.

09:22:52 18 MR. MCPHAIL: That's the -- that's the structure
09:22:55 19 that's disclosed in the spec for achieving this. There's
09:22:59 20 nothing else taught here.

09:22:59 21 THE COURT: Uh-huh.

09:23:01 22 MR. MCPHAIL: There's no other way to separate
09:23:02 23 light other than using two dichroic mirrors and a
09:23:07 24 reflection mirror.

09:23:09 25 THE COURT: So that's good to know that that's

09:23:10 1 really what the dispute is. But, again, backing up, it
09:23:16 2 seems hard for me to include that a person of ordinary
09:23:19 3 skill in the art would not know systems to separate light.
09:23:26 4 It seems like that would be a very common system that a
09:23:29 5 person of ordinary skill in the art would know.

09:23:31 6 So there's -- there's no need to actually
09:23:34 7 specifically identify or incorporate the structure from one
09:23:39 8 of the embodiments into the claim.

09:23:40 9 MR. MCPHAIL: If you would take that position,
09:23:42 10 then I would still take the -- I would make the argument,
09:23:44 11 then, that it should still be construed to be two dichroic
09:23:48 12 mirrors and a reflection mirror.

09:23:48 13 THE COURT: Okay.

09:23:49 14 MR. MCPHAIL: Right? That should be the plain and
09:23:50 15 ordinary meaning of the term as it's being used in this --
09:23:52 16 in this specification.

09:23:53 17 THE COURT: And the basis is that the -- that
09:23:55 18 limitation just should be incorporated from the spec
09:23:59 19 because --

09:23:59 20 MR. MCPHAIL: It is the only embodiment taught.

09:23:59 21 THE COURT: Because it's the only --

09:24:01 22 MR. MCPHAIL: It's the only embodiment disclosed.
09:24:03 23 It's the only way of achieving the function that we have
09:24:05 24 here of light separation.

09:24:08 25 THE COURT: Okay. This is helpful.

09:24:11 1 MR. MCPHAIL: Thank you, Your Honor.

09:24:48 2 MS. KO: So Ra Ko for Plaintiff, Maxell.

09:25:13 3 Your Honor, I want to start again with the fact
09:25:18 4 that this term does not recite the word "means," and
09:25:21 5 Defendants refer to the fact that this is a translation.
09:25:24 6 That doesn't matter. This application still went through
09:25:28 7 the same prosecution process that is required of any patent
09:25:33 8 that has been issued.

09:25:37 9 As we discussed previously, modifiers can add a
09:25:41 10 meaning and further narrow the scope of structures covered
09:25:44 11 by a claim to make the term definite. Your Honor, it's
09:25:47 12 Plaintiff's position that light separation and optic system
09:25:51 13 both do that with this term.

09:25:52 14 Start with this term "optic system." You know, as
09:25:57 15 we discussed in our briefing, courts around the country
09:26:00 16 have held that optic system is plainly structural,
09:26:04 17 including at the bottom in Nikon Corp. versus ASM
09:26:09 18 Lithography B.V. case, we have that the courts even
09:26:11 19 identified a specific set of structure that is associated
09:26:13 20 with optic system, a collection of mirrors, lenses, prisms,
09:26:18 21 and the like. Light separation merely further define --
09:26:23 22 further narrows that scope.

09:26:29 23 Your Honor, Defendants -- Defendants' position is
09:26:40 24 that the term "light separation" wouldn't connote a
09:26:42 25 specific structure to a person of ordinary skill in the

09:26:45 1 art. Your Honor, we respectfully submit that anybody could
09:26:53 2 tell you what structures are associated with separating
09:26:56 3 light. And contrary to Defendants' stance, the
09:26:58 4 specification does go into much detail regarding other
09:27:02 5 embodiments that describe structures that separate light.

09:27:06 6 For example, the specification describes how --
09:27:09 7 how light is separated, for example, by passing through an
09:27:12 8 optical element by transmitting light of one color and
09:27:16 9 reflecting light of a different color.

09:27:17 10 This isn't -- this is described in numerous places
09:27:23 11 in the specification, including in Claims 29 and 30, and
09:27:26 12 Column -- excuse me, Column 7, Line 7 to 24. It describes
09:27:31 13 this exact operation that's connected with the light
09:27:36 14 separation optic system of transmitting light of one color
09:27:38 15 while reflecting it of a different color and connects it to
09:27:42 16 other elements.

09:27:43 17 As you see on the right here, in Column 7, Lines 7
09:27:47 18 to 24, it directly connects that to a prism. So it is not
09:27:50 19 directly connected to the one structure that Defendants
09:27:52 20 point out.

09:27:53 21 Defendant -- Defendants also submit that the term
09:28:01 22 "light separation optic system" must include a reflection
09:28:05 23 mirror. This term specifically is unrelated to the
09:28:10 24 function of separating light, and this is explicitly in the
09:28:13 25 specification. The specification clearly states that the

09:28:16 1 reflection mirror is for changing the direction of an
09:28:19 2 optical path and is not connected to the function of
09:28:22 3 separating light.

09:28:25 4 THE COURT: Let me -- let me stop you and just
09:28:26 5 make sure I understand both parties' views of the spec.

09:28:30 6 So you're saying maybe in the summary of the -- or
09:28:36 7 background of the invention or discussion of prior art, the
09:28:39 8 patent explains structures that would separate light that
09:28:46 9 are different than just two dichroic mirrors, right? It
09:28:51 10 describes other ways to separate light, right?

09:28:55 11 MS. KO: Yes, sir, Your Honor, but also -- also as
09:28:58 12 part of the invention itself.

09:28:59 13 THE COURT: Okay. But not -- not associated with
09:29:02 14 one of the embodiments. It's just whenever it talks about
09:29:04 15 the embodiments, it's always using these two mirrors; is
09:29:07 16 that correct?

09:29:08 17 MS. KO: Well, Your Honor --

09:29:09 18 THE COURT: I'm not concluding. I'm very familiar
09:29:14 19 with the concept of --

09:29:14 20 MS. KO: Yes.

09:29:16 21 THE COURT: -- incorporating limitations from the
09:29:16 22 spec. I just want to know if there's a dispute about what
09:29:18 23 the actual spec says.

09:29:18 24 MS. KO: I would say that the term "light
09:29:21 25 separation optic system" may be connected to a set of

09:29:22 1 structures in a specification. But the function of
09:29:26 2 separating light is connected to several different
09:29:28 3 structures in the specification in the specific
09:29:31 4 embodiments.

09:29:31 5 THE COURT: Okay. So show me those because we
09:29:33 6 have this one, which is the one that Defendants reference
09:29:37 7 with the two dichroic mirrors. What is the one that
09:29:43 8 doesn't rely on two mirrors?

09:29:50 9 MS. KO: For example, Your Honor, on -- excuse me,
09:29:53 10 Column 7, Line 7 to 24, describes a light-composing prism
09:29:57 11 that's capable of separating light.

09:30:01 12 THE COURT: Is this the one with the prisms
09:30:04 13 between two lenses?

09:30:05 14 MS. KO: It's specifically talks about a prism
09:30:07 15 that's made up with a dichroic coat and connects, for
09:30:12 16 example, a dichroic coat to -- having the property to
09:30:14 17 separate light.

09:30:17 18 THE COURT: So that's Column 7.

09:30:18 19 And what column -- where was it in the patent, the
09:30:22 20 dichroic mirrors 31 and 32?

09:30:36 21 MS. KO: We have it at Columns 5 to 6. I have it
09:30:39 22 on this slide right here, Column 6, and it goes into more
09:30:42 23 detail about Figure 1. There's also a description, I
09:30:47 24 believe, in Figure 5 that describes the light separation
09:30:50 25 optic system.

09:30:51 1 THE COURT: Okay. Thank you.

09:31:02 2 MS. KO: Do you have any additional questions,
09:31:04 3 Your Honor?

09:31:05 4 THE COURT: Yeah, let me -- let me form it
09:31:09 5 correctly.

09:31:10 6 No, I think that's it. Thank you very much.

09:31:31 7 MS. KO: Thank you.

09:31:32 8 THE COURT: Yeah, you may respond.

09:31:33 9 MR. MCPHAIL: Two real -- Don McPhail of Merchant
09:31:44 10 & Gould for the Defendants again, Your Honor.

09:31:45 11 If I can just -- two things.

09:31:50 12 First of all, counsel's reference to these cases
09:31:53 13 talking about the systems having structure, each one of
09:31:57 14 those was an optical system, not an optic system, all
09:32:02 15 right? It's not the same term. Maybe optical system can
09:32:05 16 be found to have structure, but optic doesn't mean the same
09:32:09 17 as optical. And it's improper, I think, to try and just
09:32:12 18 blend those and make it disappear. They chose the word
09:32:15 19 "optic system" here. They could have called it an optical
09:32:17 20 system, they didn't.

09:32:18 21 The second thing I'd like to point to is with
09:32:20 22 reference to the prism that counsel was referring to.

09:32:22 23 If I may approach real quickly, Your Honor?

09:32:22 24 THE COURT: Uh-huh.

09:32:22 25 MR. MCPHAIL: The prism is here in Figure 1. We

09:32:22 1 still have to have all the mirrors.

09:32:31 2 If she wants to take the position -- they want to
09:32:31 3 take the position that a prism is also necessary with the
09:32:34 4 dichroic mirrors and reflection mirrors, we would take
09:32:37 5 that. But they can't deny that the mirrors are an
09:32:40 6 essential part of that structure, and that's what's
09:32:42 7 actually separating light into the three different colors.

09:32:48 8 THE COURT: Okay. Thank you.

09:32:48 9 MR. MCPHAIL: Thank you.

09:32:49 10 THE COURT: No. 3 is "light modulation means," and
09:33:02 11 this is from the '580 patent, Claims 1, 9, 10, 18, and 32.

09:33:07 12 And preliminary construction looks like we went
09:33:17 13 with Plaintiff's function, but I'll ask the parties to
09:33:23 14 argue the structure.

09:33:30 15 So who would like to start with -- would
09:33:33 16 Plaintiff? Okay.

09:33:36 17 MR. MIN: Good morning, Your Honor. Don Min for
09:33:50 18 Plaintiff, Maxell.

09:33:51 19 THE COURT: Good morning, Mr. Min.

09:33:54 20 MR. MIN: With respect to structure for this term,
09:33:57 21 "light modulation means," the parties generally agree that
09:34:01 22 the structure disclosed is the image display element or
09:34:05 23 panel. The disagreement is with respect to how many of
09:34:08 24 these structures are necessary. Defendants claim that
09:34:11 25 three are required, while Plaintiffs say one or three.

09:34:16 1 So looking at the claim language itself, a light
09:34:24 2 modulation means configured to make light modulation on a
09:34:27 3 respective one of the lights. Three image elements are not
09:34:31 4 necessary to make light modulation on a respective one of
09:34:34 5 the lights. That just does not make sense.

09:34:36 6 Contrary to Defendants' position, there are many
09:34:41 7 references in the specification with respect to a single
09:34:46 8 image display element.

09:34:53 9 In addition, the patent expressly contradicts
09:34:57 10 Defendants' proposed three panel structure
09:35:00 11 by -- by stating that the present invention should not be
09:35:03 12 limited to this structure.

09:35:09 13 THE COURT: And let -- these other places in the
09:35:11 14 patent where it discusses modulating the light with a
09:35:14 15 single panel, I saw one was in Column 1 and 2. Just to be
09:35:19 16 clear, those -- those references aren't in reference to a
09:35:22 17 specific embodiment, correct?

09:35:24 18 MR. MIN: They are with respect to the actual
09:35:28 19 invention. So there are additional embodiments.

09:35:31 20 THE COURT: Okay. In Columns 1, as well? Let me
09:35:35 21 look at that.

09:35:35 22 MR. MIN: Column 1, it starts off with "the
09:35:37 23 present invention relates to."

09:35:39 24 THE COURT: Let me -- let me just look at these.
09:35:41 25 This is -- I imagine you're going from your briefing, which

09:35:44 1 is 1 -- Column 1, 11 through 19 --

09:35:46 2 MR. MIN: Right.

09:35:46 3 THE COURT: -- 2, 40 through 43; and 4, 40 through
09:35:56 4 47?

09:35:56 5 MR. MIN: Correct, Your Honor.

09:35:57 6 THE COURT: Okay. Give me just a moment.

09:36:06 7 Oh, you have them up. I'll look at this.

09:36:33 8 So this -- I -- this goes into my next question,

09:36:37 9 which was you cite this phrase "transmission-type liquid

09:36:45 10 crystals or reflection-type liquid crystal panels or

09:36:48 11 digital mirror devices, DMD." So if that's the terminology

09:36:52 12 in the spec, why not use that as the structure?

09:36:55 13 MR. MIN: So it's well known in the art of

09:36:59 14 projections that these are two devices, the LCD panel or

09:37:02 15 the DMD panels, that are encompassed under a single image

09:37:08 16 display element.

09:37:10 17 THE COURT: Again, but your proposed structure

09:37:13 18 doesn't -- why don't you just use that language? I mean,

09:37:16 19 normally, when applying corresponding structure, you try

09:37:21 20 and go to language exactly from the spec. So -- and you

09:37:24 21 point to these sections, I believe, that occurs elsewhere

09:37:28 22 in the spec. Why not use that language?

09:37:30 23 MR. MIN: Certainly. We could accept that

09:37:32 24 language also, but we're okay -- we're okay with using that

09:37:35 25 language. We just figured the "image display element"

09:37:39 1 would be a generic term to describe both of those.

09:37:45 2 THE COURT: So there's no real reason not to use
09:37:50 3 that phraseology, "transmission-type liquid crystal panels
09:37:54 4 or reflection-type liquid crystal panels or digital mirror
09:37:59 5 devices, DMD"?

09:38:00 6 MR. MIN: Correct, Your Honor.

09:38:00 7 THE COURT: Okay.

09:38:01 8 MR. MIN: We believe the real issue here is the
09:38:03 9 quantity of those panels.

09:38:04 10 THE COURT: Okay. So address that point. Do you
09:38:09 11 think that that structure includes or does not include a
09:38:14 12 single panel or single mirror?

09:38:16 13 MR. MIN: We believe that it doesn't. In
09:38:23 14 addition, we could point to the Playtex Products case where
09:38:28 15 basically the facts of that case was that a -- the figure
09:38:34 16 described one embodiment while the written description
09:38:37 17 described broader additional embodiments. And that's what
09:38:39 18 we have in this case where the figure describes a three
09:38:44 19 panel figure, but the specification, as I pointed to here
09:38:48 20 in these three references, also describe additional
09:38:52 21 structure, which is the lone panel.

09:38:56 22 THE COURT: I guess what I'm trying to say, and
09:38:58 23 forgive me for not being clearer, I think your function is
09:39:02 24 better for various reasons. The structure -- if we go with
09:39:10 25 Plaintiff's version, this phrase -- and in my notes, I

09:39:17 1 actually got it from Column 3, 42 through 49, but it looks
09:39:22 2 to be the same phrase as in Column 1, and that phrase is
09:39:26 3 "transmission-type liquid crystal panels or reflection-type
09:39:31 4 liquid crystal panels or digital mirror devices, DMD."
09:39:31 5 That seems to be the corresponding structure. It seems
09:39:35 6 like you're okay with that, but apparently there's still a
09:39:39 7 dispute.

09:39:39 8 Does that structure -- say we go with that, is
09:39:43 9 there still going to be a dispute whether or not a single
09:39:45 10 lens or mirror or panel falls within that structure or not?

09:39:49 11 MR. MIN: We would be okay with using the
09:39:53 12 terminology of "liquid crystal display panel" or "digital
09:39:59 13 mirror device," if it's in the singular.

09:40:04 14 THE COURT: So I understand you're okay with that,
09:40:07 15 but what's your view? Does that -- does that phrase --
09:40:11 16 maybe we don't even have to decide this for today, and it's
09:40:14 17 good for me to just understand that this is a dispute that
09:40:16 18 may be coming and that we have to decide whether it's an
09:40:20 19 infringement or claim construction dispute, but what's your
09:40:22 20 view on this structure? Does this structure require plural
09:40:26 21 optical elements, or does this structure allow for a
09:40:30 22 singular optical element?

09:40:34 23 MR. MIN: I think I'm a little hesitant to respond
09:40:41 24 because the optical element -- and I'll take it back to the
09:40:52 25 function just to see if we can clarify it.

09:40:54 1 The function is to make light modulation, and
09:41:04 2 the -- and basically it's these panels, whether it's liquid
09:41:10 3 crystal or digital mirror device, that modulates the light.

09:41:14 4 So I'm a little confused as to what Your Honor is
09:41:19 5 asking in terms of what that relationship is with the
09:41:22 6 optical devices.

09:41:24 7 THE COURT: Okay. So let's say we're going with
09:41:27 8 the phrase, the structures, "transmission-type liquid
09:41:32 9 crystal panels or reflection-type liquid crystal panels or
09:41:38 10 digital mirror devices, DMD," okay? So we're going with
09:41:42 11 that. Do you think that that phrase allows for a single
09:41:45 12 panel or single mirror device, or does that phrase require
09:41:49 13 multiple panels or multiple devices?

09:41:52 14 MR. MIN: It sounds like that it requires multiple
09:41:55 15 because it's in the plural.

09:41:56 16 THE COURT: Okay. Okay. So that's -- that's your
09:41:59 17 view of that.

09:42:00 18 So I guess for another day, if you want to point
09:42:03 19 to something that has a single device, maybe you can claim
09:42:06 20 that's an equivalent thereof or something like that. I
09:42:10 21 don't know, but it seems like this actually does resolve
09:42:14 22 the dispute, probably in the Defendants' favor, that the
09:42:21 23 plain language of the corresponding structure requires
09:42:21 24 multiple panels or multiple mirrors.

09:42:40 25 MR. MIN: Just to clarify, the function is to

09:42:43 1 modulate light.

09:42:45 2 THE COURT: Uh-huh.

09:42:46 3 MR. MIN: Just one light. And it only takes one
09:42:49 4 panel to do that. So they --

09:42:50 5 THE COURT: This is your best argument, okay? So
09:42:53 6 this is a very good argument. The claim language does
09:42:56 7 indicate one light, one panel can do that, absolutely. But
09:42:59 8 here, we do have a means-plus-function term. And so we're
09:43:03 9 looking for the corresponding structure. And if the
09:43:05 10 corresponding structure requires multiple panels, there's
09:43:11 11 nothing I can do here. That's how the patent was written,
09:43:14 12 the spec was written.

09:43:15 13 So even though maybe you could do a different
09:43:21 14 structure, that's why it's so important to identify the
09:43:23 15 structure here.

09:43:25 16 MR. MIN: Right. And I believe we identified
09:43:27 17 single structures.

09:43:30 18 THE COURT: Okay. So where is the -- where is the
09:43:32 19 single structure because --

09:43:32 20 MR. MIN: So --

09:43:33 21 THE COURT: -- all the -- let me finish -- because
09:43:36 22 all of the spec cites that I reviewed, the corresponding
09:43:40 23 structure to this function, not prior art, not previous
09:43:44 24 things, but the corresponding structure seems to be pretty
09:43:47 25 clear of this highlighted language, which looks like it

09:43:50 1 requires multiple panels or multiple mirrors.

09:43:55 2 MR. MIN: If I may approach?

09:43:56 3 THE COURT: Yeah, go ahead.

09:43:57 4 MR. MIN: So these are in the alternatives. It

09:44:01 5 could be either a transmission-type or a reflection-type

09:44:01 6 liquid crystal panel in the singular --

09:44:01 7 THE COURT: Okay.

09:44:01 8 MR. MIN: -- or a digital mirror device, DMD --

09:44:01 9 THE COURT: So that's --

09:44:12 10 MR. MIN: -- in the singular.

09:44:12 11 THE COURT: Oh, I'm sorry. Could you repeat that?

09:44:12 12 MR. MIN: I'm sorry.

09:44:15 13 THE COURT: We have to transcribe it through the

09:44:18 14 audio.

09:44:18 15 MR. MIN: I'm sorry.

09:44:18 16 So I'm pointing to the specification of the '580

09:44:33 17 patent, Column 1, Lines 11 to 19 specifically.

09:44:33 18 THE COURT: Okay.

09:44:33 19 MR. MIN: So these are all -- this list is

09:44:33 20 alternatives.

09:44:33 21 THE COURT: Okay. And now that I see that, this

09:44:35 22 is helpful. That is in the singular. The one in maybe 342

09:44:40 23 was plural. So --

09:44:44 24 MR. MIN: Right.

09:44:44 25 THE COURT: Okay.

09:44:44 1 MR. MIN: It could be -- the device could be
09:44:47 2 either a transmission-type or a reflection-type liquid
09:44:54 3 crystal panel, in the singular, or a digital mirror device,
09:45:01 4 in the singular.

09:45:01 5 THE COURT: Yeah, that's right. Column 3 uses
09:45:07 6 plural, and Column 1 uses singular.

09:45:14 7 Okay. Let me hear from -- unless you have more?

09:45:19 8 MR. MIN: I just have one last --

09:45:21 9 THE COURT: Go ahead.

09:45:22 10 MR. MIN: It's the Playtex -- and this is, again,
09:45:24 11 a case where -- similar to this case where only one
09:45:29 12 embodiment was in the figures, but the written description
09:45:32 13 contained additional embodiments that added to the one in
09:45:36 14 the figure.

09:45:36 15 THE COURT: Uh-huh.

09:45:37 16 MR. MIN: So very similar to our case, Your Honor.

09:45:39 17 THE COURT: Okay. Thank you.

09:45:43 18 Mr. McPhail, can you do it in four minutes or
09:45:47 19 less? If not -- if not, let's take a break so that -- but
09:45:50 20 if you can do it in four minutes or less.

09:45:54 21 MR. MCPHAIL: I can try.

09:45:54 22 THE COURT: Okay.

09:45:54 23 MR. MCPHAIL: I can certainly try, Your Honor.

09:45:54 24 THE COURT: Okay. I'll interrupt if not.

09:45:54 25 And the main point is this is perhaps my lack of

09:45:57 1 reading. I thought -- I thought all of them were plural.
09:45:59 2 They just pointed out very similar language that was
09:46:03 3 singular, and so that -- seems to be that's where the
09:46:06 4 dispute is. So if you could address that.

09:46:06 5 MR. MCPHAIL: Right. The main dispute, I think,
09:46:08 6 here isn't so much whether it's one or three. It's whether
09:46:11 7 it's one per light or whether one can do all three lights.

09:46:15 8 THE COURT: Okay.

09:46:15 9 MR. MCPHAIL: Okay. They want to take the
09:46:17 10 position that one panel can do all three, even though it
09:46:20 11 says a respective one of. And I don't want to take too
09:46:23 12 long to plug in and waste my time. But we would agree a
09:46:26 13 single panel can do a single color light. But we would
09:46:30 14 dispute strongly that a single panel can do red and then do
09:46:35 15 blue and then do green. That's not what's shown in the
09:46:35 16 figures. That's not what's described in the spec.

09:46:38 17 And when they talked about that language about not
09:46:40 18 being limited to, that not being limited to was referring
09:46:44 19 to the type of panel, not the -- not the number of panels.

09:46:48 20 THE COURT: So let me -- well, I -- and I saw that
09:46:50 21 that was clear. You could be right, I could see a
09:46:52 22 possibility that it's both number and -- and -- and
09:46:56 23 material, but you could certainly be right that it's just
09:47:00 24 material.

09:47:00 25 But let me look at Claim 1 because you brought up

09:47:05 1 a point I hadn't considered, and that's if the light
09:47:08 2 modulation has to be on all three of the colors or if the
09:47:11 3 claim just requires it be -- modulate just one of the RGB?
09:47:13 4 Do you know the answer? I'm looking right now.

09:47:16 5 MR. MCPHAIL: I believe that Plaintiffs have
09:47:17 6 asserted it does all three in their infringement
09:47:19 7 contentions. And that's the way that we have taken it for
09:47:22 8 this. But we would take the position that light modulating
09:47:25 9 means can be a single panel, if it's only modulating a
09:47:27 10 single color.

09:47:28 11 But there's no way a single panel can then do --
09:47:31 12 can do red, then do green, then do blue, not the way this
09:47:35 13 claim is written. It would have to be three separate
09:47:38 14 panels, one for red, one for green, and one for blue.

09:47:41 15 THE COURT: Yeah, I'm just looking at the claim,
09:47:42 16 and I'm hesitant to even say this. I'm going to say this,
09:47:45 17 but neither side can use this in any type of infringement
09:47:48 18 analysis later.

09:47:49 19 But just a quick look at the claim, it looks like
09:47:53 20 it's just requiring modulation of one of the three. So
09:47:56 21 theoretically there would be a single panel, you just
09:47:56 22 modulate the R, and the claims term is still met. That's
09:48:01 23 an infringement analysis. That's not here for claim
09:48:04 24 construction. But it seems like -- I'll let you respond to
09:48:07 25 that real quick, and then we have to stop.

09:48:09 1 MR. MCPHAIL: I'll let us take our break, Your
09:48:12 2 Honor.
09:48:12 3 THE COURT: Thank you.
09:48:12 4 MR. MCPHAIL: Thank you.
09:48:12 5 THE COURT: We're in recess. It's a phone call.
09:48:15 6 I have no idea how long it's going to take. I've been told
09:48:18 7 it's just a few minutes. But I'll come and get you. Let's
09:48:21 8 say at least 10:00 o'clock. Thank you.
11:00:30 9 (Recess.)
11:00:30 10 COURT SECURITY OFFICER: All rise.
11:02:34 11 THE COURT: You may be seated.
11:03:10 12 Let me just confirm our court reporter can hear
11:03:20 13 us?
11:03:20 14 THE REPORTER: Yes, sir, I can hear you.
11:03:20 15 THE COURT: Thank you for your patience for that.
11:03:23 16 It looks like we'd just finished "light modulation
11:03:29 17 means."
11:03:29 18 Unless, Mr. McPhail, did you have anything further
11:03:32 19 to add on that?
11:03:33 20 MR. MCPHAIL: No, we'll go ahead and rest on what
11:03:35 21 we have. Thank you.
11:03:35 22 THE COURT: Yeah, it felt like we were at a
11:03:38 23 stopping point.
11:03:38 24 So let's move on to "light flux capturing means."
11:03:49 25 This is Term 5 -- Disputed Term 5 in the '580 patent,

11:03:50 1 Claims 7 and 37.

11:03:51 2 And it looks like the function is directing light,
11:03:56 3 which is partially from Defendant, and the structure is --
11:04:01 4 I gave two choices, "a reflection surface," or "one or more
11:04:06 5 mirrors."

11:04:06 6 So let's go with Plaintiff since you may have
11:04:11 7 objection to one or both of those.

11:04:13 8 Are you fine with either of those?

11:04:18 9 MR. MIN: So, Your Honor, Defense counsel and I
11:04:21 10 have spoken. And we have, in the spirit of compromise,
11:04:26 11 agreed to accept the function in the --

11:04:26 12 THE COURT: Okay.

11:04:29 13 MR. MIN: -- preliminary construction. And also
11:04:29 14 for the structure, a reflection surface.

11:04:34 15 THE COURT: Directing light and structure is a
11:04:37 16 reflection surface?

11:04:37 17 MR. MIN: Correct.

11:04:37 18 THE COURT: And that's agreed by Defendants, as
11:04:39 19 well?

11:04:40 20 MR. MCPHAIL: Yes, sir.

11:04:40 21 THE COURT: Okay. So we'll go with that.

11:04:42 22 Okay. Do we need to take more breaks to reach
11:04:48 23 more agreements?

11:04:50 24 No. 5 is "an emission side of the excitation light
11:04:57 25 relative to the fluorescent material." This is in the '226

11:05:01 1 patent, Claim 8.

11:05:02 2 And, yeah, this one I struggled with, and there
11:05:04 3 was a couple more with it. I think you guys understand my
11:05:07 4 question, and I'm showing you my views. I do think that
11:05:10 5 the plain language of this term and the specification,
11:05:14 6 especially Figures 1 through 4, supports Plaintiff's
11:05:16 7 reading of this term more than Defendants', but I --
11:05:21 8 given -- if I go with that, I don't know what to do with
11:05:25 9 Claim 10. That probably makes sense to you, but, again, it
11:05:29 10 looks like Plaintiff wants to address this first?

11:05:32 11 Okay. Go ahead.

11:05:52 12 MS. KIM: Claire Kim for Plaintiff, Maxell.

11:05:55 13 THE COURT: Good morning.

11:05:55 14 MS. KIM: Good morning, Your Honor.

11:05:58 15 So regarding Claim 10, we have an agreed
11:06:04 16 construction of a front side of the fluorescent material,
11:06:07 17 and we believe that resolves the issue of indefiniteness
11:06:11 18 because when we agreed to this term, we were fully aware of
11:06:14 19 each other's positions regarding Claim 8.

11:06:18 20 THE COURT: Well, maybe I'm not understanding
11:06:20 21 Claim 10. But as I read Claim 10, this is saying that
11:06:27 22 there can -- the light-condensing position is going to be
11:06:27 23 on -- in between the fluorescent material and the
11:06:39 24 excitation light source, right?

11:06:40 25 MS. KIM: Right, Your Honor. But when we look at

11:06:42 1 the Claim 10, we have to also be mindful of the antecedent
11:06:45 2 basis. A condensing light position in Claim 8 is not the
11:06:49 3 light-condensing position. So, therefore, a
11:06:52 4 light-condensing position that is described in Claim 8
11:06:56 5 should be different from a light-condensing position in
11:06:58 6 Claim 10.

11:07:02 7 THE COURT: Let me get there.

11:07:07 8 MS. KIM: And when we look at Figure 1A, the lens
11:07:13 9 configuration, which is labeled No. 4 -- do you mind if I
11:07:17 10 approach?

11:07:17 11 THE COURT: No, no, go ahead.

11:07:36 12 MS. KIM: Okay. So over here, if we look at this
11:07:38 13 part of the lens, which is labeled No. 4, we also see that
11:07:44 14 light is convergent here.

11:07:47 15 So the light-condensing position that I described
11:07:49 16 in Claim 10 would be likely referring to this part of the
11:07:53 17 figure instead of the light-condensing position over here
11:07:56 18 which is described in Claim 8.

11:08:09 19 THE COURT: So your view of Claim 10 would be
11:08:14 20 there's still Claim 8's light-condensing position, which is
11:08:16 21 a point on the exit side of the fluorescent material, but
11:08:21 22 there's also -- at Object 4, the light is being condensed
11:08:30 23 there, and that's a light-condensing position?

11:08:35 24 MS. KIM: Yes, Your Honor.

11:08:37 25 THE COURT: So that -- I mean, that goes against a

11:08:42 1 different construction you have about the light-condensing
11:08:46 2 position is a point and not a region, doesn't it?

11:08:49 3 MS. KIM: In that case, I think we also see that
11:08:55 4 when a person of ordinary skill in the art is looking at
11:08:58 5 Claim 8 in view of the specification, that this
11:09:02 6 light-condensing position that was referred in Claim 10
11:09:06 7 would likely be something akin to a second light-condensing
11:09:10 8 position. And this Court has the authority to correct a
11:09:15 9 typo like this in the claim.

11:09:18 10 THE COURT: And so your view would be the light --
11:09:21 11 I should interpret light-condensing position in Claim 8
11:09:24 12 differently than light-condensing position in Claim 10, not
11:09:27 13 just their locations, but also in Claim 8, it's a point,
11:09:33 14 and Claim 10, it's a region?

11:09:34 15 MS. KIM: Yes, Your Honor. But if we were to
11:09:37 16 remove the structure at No. 5, then we could see that light
11:09:45 17 would supposedly be converging at a spot, because the
11:09:50 18 light -- the path that the light is travelling --

11:09:52 19 THE COURT: Oh, I see what you're saying.

11:09:54 20 MS. KIM: -- because of the way that Lens 4 is
11:09:57 21 working with the light rays, there would have been a
11:09:59 22 light-condensing position there, as well.

11:10:01 23 THE COURT: So it's not -- it's not condensing at
11:10:03 24 Object 4. It's -- it's somewhat further, which isn't shown
11:10:11 25 because of Object 5.

11:10:13 1 MS. KIM: Yes.

11:10:13 2 THE COURT: I see.

11:10:14 3 MS. KIM: It would be converging somewhere here,
11:10:15 4 as we follow the light path in that direction.

11:10:22 5 THE COURT: Okay. I think I see that.

11:10:26 6 Okay. So your view is Claim 10 is not indefinite.

11:10:35 7 Claim 8, the term, "an emission side of the excitation

11:10:42 8 light relative to the fluorescent material" means, with my

11:10:49 9 preliminary construction -- oh, I agree with that

11:10:52 10 preliminary -- and I guess that's all you have, right?

11:10:55 11 MS. KIM: Yes, Your Honor.

11:10:56 12 THE COURT: Okay. Let me see if I have any
11:10:58 13 questions specific for you, because there were several
11:11:00 14 terms now at issue.

11:11:10 15 Now, I'm confirming, this is -- what we previously
11:11:14 16 said about the level of ordinary skill in the art, I don't
11:11:17 17 have to resolve that for any of the patents, not just the
11:11:20 18 prior patent, right?

11:11:21 19 MS. KIM: Yes, Your Honor.

11:11:22 20 THE COURT: And that's correct, Mr. McPhail?

11:11:24 21 MR. MCPHAIL: Yes, Your Honor.

11:11:35 22 THE COURT: Okay.

11:11:35 23 MS. KIM: I just also wanted to make sure that
11:11:37 24 we're clear on the record that both a light-condensing
11:11:41 25 position that is described in Claim 8 and the

11:11:43 1 light-condensing position on Claim 8 -- 10 are both
11:11:46 2 points -- they're both referring to points.

11:11:49 3 THE COURT: Yeah -- no, I understand your view
11:11:52 4 now.

11:11:52 5 MS. KIM: Yeah.

11:11:52 6 THE COURT: And it's based -- in case I need to
11:11:53 7 review the transcript, we were looking at Figure 1A, and
11:12:01 8 Claim 8 just -- Claim 8 captures the light-condensing
11:12:05 9 position on the exit side of the fluorescent material, and
11:12:09 10 Claim 10 is referring to a light-condensing position that
11:12:14 11 would be shown but for --

11:12:17 12 MS. KIM: The mirror on -- No. 5, that is in
11:12:23 13 Figure 1A.

11:12:24 14 THE COURT: Well, it looks like but for Object 4,
11:12:27 15 which I don't know if that's a lens. But that's actually
11:12:28 16 what's preventing the light from condensing to a single
11:12:33 17 point, right?

11:12:35 18 MS. KIM: Yes, Your Honor.

11:12:36 19 THE COURT: Okay. Sorry, just give me a moment.
11:12:38 20 I'm seeing if I need to ask any questions about the other
11:12:41 21 terms.

11:12:55 22 No, I don't think so. I think I understand your
11:12:57 23 position. Thank you.

11:12:58 24 MS. KIM: Thanks, Your Honor.

11:12:59 25 THE COURT: I'm sorry, I did have one other

11:13:17 1 question for Ms. Kim.

11:13:19 2 You can speak into that microphone there.

11:13:22 3 Do you know in the prosecution history, was Claim
11:13:26 4 10 ever an independent claim and it was, you know, modified
11:13:30 5 or changed to be a dependent? Was there -- was there
11:13:32 6 anything like that, or was it always a dependent -- did it
11:13:35 7 always depend from whatever Claim 8 was in the prosecution
11:13:39 8 history?

11:13:40 9 MS. KIM: To the best of my memory, I believe it
11:13:43 10 was always a dependent claim, but I will have to
11:13:45 11 double-check the record.

11:13:46 12 THE COURT: Yeah, that's -- I'll take that
11:13:50 13 representation. I would like to know -- if you could just
11:13:53 14 notify me somehow that if Claim 10 -- Issued Claim 10 was,
11:13:55 15 in prosecution, ever an independent claim. I'd like to
11:13:58 16 know that, and then I'd like to see the prosecution
11:14:02 17 history, if you can file that.

11:14:03 18 MS. KIM: Yes, Your Honor.

11:14:04 19 THE COURT: If not, no need to contact.

11:14:04 20 MS. KIM: Okay. Thank you.

11:14:05 21 THE COURT: Thank you.

11:14:05 22 MR. NESE: Your Honor, Bryan Nese. Just to
11:14:07 23 clarify that, how would Your Honor like us to provide that?

11:14:10 24 THE COURT: You can just file -- file something on
11:14:11 25 the docket.

11:14:12 1 MR. NESE: A notice or something?

11:14:12 2 THE COURT: A notice, yeah.

11:14:12 3 MR. NESE: Thank you.

11:14:20 4 THE COURT: That's right. Thank you.

11:14:20 5 MR. KERN: Your Honor, John Kern for the Defendant
11:14:23 6 Coretronic.

11:14:24 7 THE COURT: Good morning.

11:14:25 8 MR. KERN: Good morning.

11:14:27 9 So let me just jump to the actual claim language
11:14:30 10 here. Give me a second.

11:14:33 11 So just short of a tech tutorial, what we're
11:14:41 12 talking about here is a light source device, and the
11:14:47 13 important elements of a light source device are highlighted
11:14:51 14 and the colors correspond to the colors shown in Figure 1A
11:14:54 15 beside it.

11:14:55 16 And so what you have is an excitation light source
11:14:57 17 or a set of excitation light sources shown on the bottom.
11:15:01 18 Those are emitting light in this draw upwards towards the
11:15:06 19 fluorescent material shown in yellow. The light beams --
11:15:09 20 the individual beams are raised as they are emitted from
11:15:10 21 the light -- the excitation light sources pass through the
11:15:13 22 optical member, and then at condensing lens 6 to cause it
11:15:19 23 to converge onto the fluorescent material.

11:15:21 24 And so the term at issue here -- and both the
11:15:25 25 terms for the '226 are closely related, because, obviously,

11:15:28 1 if you select the emission side, it's the light-condensing
11:15:34 2 position that's located on that emission side. So one's
11:15:35 3 going to sort of follow from the other.

11:15:36 4 But the term itself we're talking about here is an
11:15:40 5 emission side of the excitation light relative to the
11:15:42 6 fluorescent material.

11:15:44 7 And, Your Honor, we think that term is a little
11:15:46 8 unclear -- unclear to the point to being indefinite. The
11:15:52 9 two competing constructions are the Defendants' proposed
11:15:55 10 construction where we're saying that the emission side is
11:15:58 11 the front side of the fluorescent material.

11:16:00 12 The Plaintiff's proposed construction is that the
11:16:04 13 emission side is on the rear side of the fluorescent
11:16:06 14 material.

11:16:06 15 Sorry, it's moving pretty slow.

11:16:11 16 So, you know, we think this term itself, "the
11:16:17 17 emission side of the excitation light," is a little
11:16:20 18 confusing in that there really is no emission side to the
11:16:25 19 excitation light itself. It really is the emission side of
11:16:30 20 the system where the excitation lights are propagated or
11:16:33 21 emitted.

11:16:34 22 So the ambiguity there leads us to the
11:16:39 23 construction problem we now have, because the only
11:16:41 24 disclosure in the specification about emission of
11:16:44 25 excitation light is light emitted from the excitation light

11:16:48 1 sources.

11:16:49 2 So as you can see in the blue arrow, the emission
11:16:51 3 direction of the excitation light in Figure 1A is upward
11:16:54 4 towards the fluorescent material.

11:16:55 5 So the conflict of which side is the emission side
11:17:01 6 relative to the fluorescent material becomes exceptionally
11:17:05 7 unclear in that the claim language itself just talks about
11:17:09 8 an emission side of excitation light. It doesn't talk
11:17:12 9 about excitation light being emitted from a back side or a
11:17:15 10 rear side of a fluorescent material.

11:17:18 11 Sorry for the delay, Your Honor.

11:17:28 12 And so the emission side, we believe, is the
11:17:32 13 surface of the fluorescent material on the side facing the
11:17:32 14 excitation light source or the front side for that very
11:17:36 15 reason, right? It's the excitation light sources that are
11:17:41 16 emitting light. There's an emitting side in the system
11:17:43 17 itself. And when the claim recites an emission side of the
11:17:47 18 excitation light relative to the fluorescent material, we
11:17:49 19 believe it's referring to the excitation light being
11:17:52 20 emitted from the light sources -- of the excitation light
11:17:57 21 sources shown on the bottom of Figure 1.

11:17:59 22 And we believe, Your Honor, we're going to show
11:18:02 23 this is consistent with what's disclosed in the
11:18:04 24 specification.

11:18:04 25 In addition, it also resolves the potential

11:18:07 1 indefinite or invalidity of Independent -- Dependent
11:18:11 2 Claim 10, because a construction, as we're proposing, gets
11:18:15 3 rid of the conflict between Independent Claim 8 and
11:18:18 4 Dependent Claim 10.

11:18:19 5 THE COURT: No, it does a lot for you. It's
11:18:23 6 consistent with 10, and it also maybe helps your
11:18:27 7 region-versus-point dispute later on.

11:18:28 8 But let me just -- I want you to critique my
11:18:32 9 thinking here and why I'm wrong. So looking at this --
11:18:34 10 looking at the -- the light blue line, emission direction
11:18:39 11 of excitation light. Do you see that?

11:18:42 12 MR. KERN: Yes.

11:18:43 13 THE COURT: Okay. So you have it starting at the
11:18:45 14 light source and just going north --

11:18:47 15 MR. KERN: Yes.

11:18:47 16 THE COURT: -- right? But those rays -- that blue
11:18:53 17 line actually goes all the way to that point where the
11:18:55 18 lines condense. All that is the excitation light, correct?

11:19:02 19 MR. KERN: By condense, you mean it ends in or on
11:19:06 20 the surface of the fluorescent material?

11:19:08 21 THE COURT: Well, there is that excitation light
11:19:10 22 going through the fluorescent material, right?

11:19:12 23 MR. KERN: Well, it's shown in dotted lines, Your
11:19:15 24 Honor. And this is something the Plaintiff's expert would
11:19:18 25 not clarify. But our understanding is that light does not

11:19:21 1 pass through the fluorescent material. Light interacts
11:19:23 2 maybe at a microscopic level with the fluorescent material
11:19:27 3 that causes it to fluoresce, and that light is then sent
11:19:31 4 back down towards the dichroic mirror out to the projector
11:19:34 5 to put the projection image on the screen, right?

11:19:37 6 THE COURT: Okay. I have to think about that
11:19:40 7 because I would think that light does actually go through a
11:19:43 8 fluorescent material if you just see it, right?

11:19:45 9 MR. KERN: Well, not exactly, Your Honor.

11:19:46 10 THE COURT: Okay.

11:19:46 11 MR. KERN: So what happens is, is the excitation
11:19:48 12 light is heading north, as you said. It's incident on the
11:19:51 13 fluorescent material. It excites the fluorescent material.
11:19:54 14 The fluorescent material fluoresces. That light then gets
11:19:58 15 sent south -- back down towards to the dichroic mirror.
11:20:01 16 You can see the very faint lines there. It gets sent out
11:20:04 17 to the various light transmissive or optical features that
11:20:10 18 put the image onto the light before it's projected onto the
11:20:12 19 screen.

11:20:12 20 So what's shown here is a fluorescent material on
11:20:15 21 a metal disk 9, right? And certainly I think common sense
11:20:19 22 would dictate light is not going to pass through at very
11:20:24 23 least that metal disk itself.

11:20:25 24 So our understanding is that it doesn't even pass
11:20:28 25 through the fluorescent material, maybe microscopic

11:20:31 1 amounts, but the excitation light causes that fluorescent
11:20:34 2 material to be excited. It fluoresces. Light then gets
11:20:39 3 sent back down through the system and out to the projector.

11:20:41 4 And that's evident from the lines itself. So the
11:20:46 5 ray lines -- the ray trace up to the fluorescent material,
11:20:49 6 you can see subsequent to the fluorescent material, they're
11:20:52 7 dotted lines, right? So that's sort of an imaginary focal
11:20:56 8 point on what the Plaintiffs are referring to as the rear
11:20:58 9 or emission side of the fluorescent material.

11:21:03 10 THE COURT: If the light source was turned off,
11:21:08 11 would those dotted lines still be there? You know, in
11:21:13 12 other words, if the light source was turned off, would
11:21:16 13 there be anything coming out of the fluorescent material?

11:21:19 14 MR. KERN: No, Your Honor.

11:21:19 15 THE COURT: Okay. So whatever is coming out of
11:21:21 16 there traces its life back to the light source, at some --
11:21:25 17 some point, right?

11:21:26 18 MR. KERN: So the rays shown there --

11:21:26 19 THE COURT: Yeah.

11:21:28 20 MR. KERN: -- are sort of the central rays from
11:21:31 21 the excitation light sources. They're more laser, so
11:21:33 22 they've got a very narrow distribution. But that's the
11:21:37 23 central ray. It's not the whole beam. It's just the
11:21:40 24 central ray being incident or directed onto the fluorescent
11:21:43 25 material.

11:21:43 1 THE COURT: Okay. And so I guess my point is, you
11:21:50 2 know, I look at this, an emission side of the excitation
11:21:53 3 light. So the excitation light is starting at the light
11:21:56 4 source and goes up and at least goes into the fluorescent
11:22:00 5 material, right? Right now I'm still convinced that it
11:22:03 6 also goes through the fluorescent material, but I'll look
11:22:05 7 at the specification closer.

11:22:06 8 But if you go with me on that, that all this light
11:22:11 9 is the excitation light, then this term makes, you know,
11:22:17 10 pretty clear sense. And it's an emission side of that
11:22:21 11 light, the emission side relative to the fluorescent
11:22:25 12 material. So it's the part of the excitation light that is
11:22:28 13 emitting from the fluorescent material.

11:22:30 14 I mean, I have my mind open, but it looks pretty
11:22:40 15 clear. And then you look at the figures, and the figures
11:22:42 16 seem to match that. But, you know, I'll give you a chance
11:22:45 17 to convince me otherwise.

11:22:47 18 MR. KERN: Hopefully, I can, Your Honor.

11:22:49 19 The rear side or the upper north side of the
11:22:51 20 fluorescent material, no light goes up there. Light does
11:22:54 21 not go up -- go past the fluorescent material or the metal
11:22:58 22 disk 9, right? All the excitation light is doing is --
11:23:01 23 doing is exciting the fluorescent material, right?

11:23:05 24 So that excitation light is just used to get this
11:23:10 25 fluorescent light that then drives the projector. So light

11:23:13 1 goes up, hits the fluorescent material, doesn't pass
11:23:14 2 through the disk --

11:23:14 3 THE COURT: Okay.

11:23:15 4 MR. KERN: -- comes back down, and out to the
11:23:16 5 projector.

11:23:16 6 THE COURT: Okay. So nothing -- nothing is
11:23:18 7 emitted from the fluorescent material?

11:23:21 8 MR. KERN: In the upward direction?

11:23:21 9 THE COURT: In the north. Yeah.

11:23:22 10 MR. KERN: Yes, yes.

11:23:23 11 THE COURT: Okay. Okay.

11:23:24 12 MR. KERN: Yeah, right. So the dotted lines there
11:23:26 13 are just ray tracing --

11:23:26 14 THE COURT: Okay.

11:23:28 15 MR. KERN: -- where they would converge, but it's
11:23:30 16 not necessarily any -- any of the light passing through the
11:23:33 17 disk itself.

11:23:34 18 And to sort of reinforce that point, the
11:23:40 19 specification itself really doesn't discuss that aspect or
11:23:43 20 that area of Figure 1 or any of the respective figures. It
11:23:47 21 doesn't label the rear side of the fluorescent material an
11:23:51 22 emission side. It doesn't say anything about that point
11:23:55 23 where -- the imaginary point where the light is converging
11:23:59 24 in dotted lines as being a light-condensing position,
11:24:03 25 right?

11:24:03 1 And, you know, Plaintiffs would have you believe
11:24:05 2 that this is a very important aspect of the invention, yet
11:24:08 3 the specification is silent as to the whole aspect.

11:24:12 4 THE COURT: So if -- if this phrase really means
11:24:18 5 the front side of the fluorescent material, you know, that
11:24:22 6 begs the question -- the spec uses the phrase, "the front
11:24:26 7 side of the fluorescent material" other places, so why
11:24:30 8 wouldn't it just consistently use that phrase? It seems to
11:24:33 9 mean something other than the front side.

11:24:35 10 MR. KERN: Right. Well, you know, we can
11:24:36 11 speculate, Your Honor. I think if I were drafting the
11:24:38 12 application, I might do it a little differently. But as my
11:24:42 13 partner mentioned earlier, these are translations of
11:24:46 14 Japanese applications. Sometimes they're not always
11:24:48 15 perfect. Sometimes, you know, words are used repetitively,
11:24:52 16 incorrectly, and sometimes different phrases are used for
11:24:55 17 the same word. And I'm going to point in a few seconds to
11:24:59 18 portions of the specification where they're using them
11:25:01 19 interchangeably, front side and emission side.

11:25:04 20 THE COURT: Okay. And so let me -- let me ask
11:25:07 21 another question. If this did mean the front side,
11:25:13 22 wouldn't that make Claim 10 superfluous?

11:25:17 23 MR. KERN: I think it could, Your Honor. And, you
11:25:20 24 know, Claim 10 is obviously a problem. There's one
11:25:22 25 construction --

11:25:25 1 THE COURT: It's a problem for either one of you
11:25:26 2 guys, to be honest.

11:25:26 3 MR. KERN: Sure.

11:25:26 4 THE COURT: Because in there's, you know -- and
11:25:27 5 they did a good job explaining why it's not indefinite.
11:25:31 6 But under your view, it seems to mean that it's not further
11:25:34 7 limiting Claim 8 at all.

11:25:35 8 MR. KERN: Right.

11:25:35 9 THE COURT: I mean, yeah, Claim 8 at all, so...

11:25:38 10 MR. KERN: I think -- I think you're right, Your
11:25:40 11 Honor. I think you have to, you know, take the lesser of
11:25:42 12 two evils. Either it's inconsistent with Claim 8 because
11:25:46 13 it recites that the light-condensing position is on the
11:25:50 14 front side, not the rear side, or it's redundant with
11:25:54 15 Claim 8 because our construction would be that it is on the
11:25:56 16 front side. Claim 10 comes along and confirms that it's on
11:26:00 17 the front side.

11:26:00 18 THE COURT: Okay. I'm sorry for interrupting you.

11:26:00 19 MR. KERN: Okay.

11:26:02 20 THE COURT: Thank you for going there with me.

11:26:03 21 MR. KERN: Good questions. Okay.

11:26:05 22 Let's see -- so, Your Honor, as I mentioned
11:26:14 23 earlier, and I'm sorry, there's a little bit of a lag here.

11:26:25 24 As I mentioned earlier, the specification we
11:26:28 25 believe is consistent with our construction, and I think

11:26:31 1 one of the most telling portions is in the Summary of the
11:26:35 2 Invention section, the patentee mentions a problem, right?
11:26:40 3 And this problem is that the -- you know, the light is too
11:26:45 4 focused, is too condensed onto the fluorescent material.
11:26:48 5 It causes premature burnout or, you know, not as long as
11:26:51 6 the longevity with the fluorescent material.

11:26:54 7 The very next paragraph is labeled "The Means for
11:26:58 8 Solving the Problems." And that's -- you know,
11:26:58 9 ostensibly, it's the means for solving the problem that
11:27:02 10 the patent just described, right? And in the very last
11:27:04 11 sentence of that "Means for Solving the Problem," the
11:27:06 12 patentee describes that the optical member has a curvature
11:27:12 13 that is set to allow the excitation light that is passed
11:27:14 14 through the optical member to be made incident on the
11:27:17 15 fluorescent material at a front side of the fluorescent
11:27:21 16 material as a light-condensing position.

11:27:25 17 I don't know that there's any more clear
11:27:28 18 disclosure that's contrary to Plaintiff's construction than
11:27:33 19 the section that describes the means for solving the
11:27:36 20 problem of the patent.

11:28:07 21 And so, Your Honor, consistent with that, the
11:28:10 22 first embodiment of the patent itself also teaches that the
11:28:13 23 emission side is on the front side of the material.

11:28:17 24 And if you'll bear with me, it's shown
11:28:19 25 graphically, but let me read you the highlighted portion.

11:28:22 1 And this is with respect to Figure 1 and the first
11:28:25 2 embodiment of the invention: Thus, the excitation light 10
11:28:29 3 that is passed through the condenser lens 6 is made
11:28:33 4 incident on the fluorescent material 7 at the front side of
11:28:37 5 the fluorescent material 7 as a light-condensing position.

11:28:41 6 That in and of itself is consistent with the means
11:28:45 7 for solving the problem and is consistent with Defendants'
11:28:47 8 construction that the emission side and the
11:28:50 9 light-condensing position are on the front side of the
11:28:54 10 fluorescent material.

11:28:54 11 Now, Defendants point to this parenthetical phrase
11:28:59 12 behind it, but I think they misconstrue what it's actually
11:29:02 13 saying. It's basically confirming that the front side is
11:29:06 14 equated with the emission side. And let me read that for
11:29:10 15 the record. It's: Open paren, such that the
11:29:13 16 light-condensing position is positioned on the emission
11:29:16 17 side of the excitation light (relative to the fluorescent
11:29:20 18 material 7).

11:29:22 19 It's basically just confirming what the applicant
11:29:25 20 said in the sentence before. It's saying -- in the first
11:29:27 21 sentence, it's saying that the light-condensing position
11:29:29 22 or -- is positioned at the front side of the fluorescent
11:29:33 23 material. The parenthetical is saying such that it's
11:29:36 24 positioned on the emission side, equating the front side
11:29:40 25 and emission side to one another.

11:29:44 1 THE COURT: So let me -- just explain the
11:29:51 2 technology. If the light is condensed before or at -- as
11:29:56 3 it hits fluorescent material, wouldn't that increase the
11:30:00 4 intensity and shorten the lifespan of the fluorescent
11:30:06 5 material and all of that?

11:30:06 6 MR. KERN: It's really a matter of degree, Your
11:30:09 7 Honor, right? If you recall, Figure 6A is showing that
11:30:11 8 light is condensed -- it doesn't necessarily say into a
11:30:14 9 point. It's into a region, and you can see that from the
11:30:18 10 distribution. But it's saying it's too condensed. It's
11:30:21 11 too intense in a smaller region.

11:30:23 12 What this invention wants to do is spread it out a
11:30:28 13 little bit so that it's more distributed uniformly across
11:30:28 14 the fluorescent material that it strikes -- and we're
11:30:29 15 talking about the excitation light -- so that it doesn't
11:30:31 16 cause a hotspot or a hot region on the fluorescent
11:30:35 17 material. And that adds to the longevity of the
11:30:37 18 fluorescent material.

11:30:40 19 THE COURT: So your point is it's more about
11:30:43 20 uniformity and not strictly intensity?

11:30:48 21 MR. KERN: It is and it isn't. It's really about
11:30:51 22 a matter of degree. They're saying if you do it too much,
11:30:54 23 you're going to burn out of the fluorescent material. If
11:30:56 24 you do it too little, you don't get enough light out of the
11:31:00 25 fluorescent material. And if you do it just right, you

11:31:03 1 know, that -- that's what they're attempting to claim and
11:31:05 2 describe here.

11:31:06 3 THE COURT: Uh-huh.

11:31:19 4 MR. KERN: So here's the first embodiment
11:31:21 5 continued, the description. And, again, it's equating the
11:31:24 6 front side of the fluorescent material as the
11:31:27 7 light-condensing position.

11:31:27 8 I'm just going to read that brief highlighted
11:31:30 9 portion: In order to make the excitation light 10 that is
11:31:32 10 passed through the condenser lens 6 incident on the
11:31:36 11 fluorescent material 7 at the front side of the fluorescent
11:31:39 12 material as the light-condensing position -- again, it's
11:31:43 13 reaffirming that if there's a light-condensing position,
11:31:45 14 it's on the front side of the fluorescent material.

11:31:48 15 And the claim is telling us that the
11:31:50 16 light-condensing position is on the emission side of the
11:31:53 17 fluorescent material. So one could equate the
11:31:55 18 light-condensing position described in the first embodiment
11:31:59 19 as being the light-condensing position in the claim
11:32:02 20 positioned on the front side of the fluorescent material as
11:32:04 21 the emission side.

11:32:04 22 Good?

11:32:34 23 THE COURT: Yeah.

11:32:34 24 MR. KERN: So now back to Claim 10 -- Dependent
11:32:36 25 Claim 10. Claim 10 specifically says the -- sorry, I can't

11:32:45 1 read it -- is to allow the excitation light to be made
11:32:47 2 incident on the fluorescent material at a front side of the
11:32:49 3 fluorescent material as the light-condensing position.

11:32:52 4 I think under the rules of claim construction, one
11:32:55 5 has to assume that if the patentee is referring to a
11:32:59 6 light-condensing position, the same term being used in the
11:33:02 7 independent claim, more likely than not, they're referring
11:33:05 8 to the same term, right?

11:33:07 9 So if you would have done this differently, as,
11:33:10 10 you know, Plaintiffs have suggested, maybe one would be a
11:33:14 11 first light-condensing position and one would be a second
11:33:16 12 light-condensing position. The patentee didn't do that.

11:33:18 13 More likely than not in the translation process,
11:33:22 14 the antecedent basis for light-condensing position was
11:33:23 15 missed, right? It should have been the light-condensing
11:33:26 16 position.

11:33:28 17 But, again, this is a consistent construction with
11:33:33 18 the means for solving the problem we talked about, and it
11:33:36 19 also puts the emission side on the front side of the
11:33:39 20 fluorescent material.

11:33:41 21 So as Your Honor pointed out, perhaps there's a
11:33:43 22 redundancy problem with Claim 10. There's not an
11:33:47 23 invalidity problem with Claim 10. It is consistent in
11:33:51 24 Claim 8. And Claim 10, the dependent claim, the
11:33:56 25 construction would be consistent to allow both claims to

1 exist.

2 And so, Your Honor, if you think about it
3 logically, maybe think about it like a Venn diagram. With
4 our construction, you have Claim 8, which is a big outer --
5 the big outer oval, if you will. Claim 10 fits nicely
6 within that oval, as a dependent claim should.

7 With Plaintiff's construction, you've got Claim 8
8 being the big oval, and you have Claim 10 outside of that
9 big oval, because it's mutually exclusive of one another.
10 Either it's on the front side, or it's on the rear side.
11 It can't be both.

12 THE COURT: Assuming that a light-condensing
13 position refers to the light-condensing position?

14 MR. KERN: Correct.

15 THE COURT: Yeah.

16 MR. KERN: Correct, Your Honor.

17 And so, you know, we were able to depose the
18 Plaintiff's expert, and we were a little troubled by the
19 expert's admission that during review of the intrinsic
20 record, he had not really considered Dependent Claim 10 as
21 part of his analysis.

22 So we can only conclude from that that Independent
23 Claim -- or Dependent Claim 10 was not used to construe the
24 term as it's recited in Independent Claim 8.

25 So, Your Honor, that's all we had for that term.

11:35:26 1 THE COURT: Thank you.

11:35:28 2 Yes, go ahead and hear your response. I am
11:35:31 3 curious about you critiquing my understanding of the
11:35:35 4 emission light, if it goes through the fluorescent material
11:35:38 5 or not -- I'm sorry, the excitation light.

11:35:43 6 MS. KIM: So whether if there actually is a light
11:35:49 7 that travels beyond the fluorescent -- beyond the
11:35:53 8 fluorescent material here or not, I think, is relevant
11:35:56 9 because Claim 8 very specifically defines emission side to
11:36:01 10 be where a light-condensing position is located, and that
11:36:04 11 is very clearly shown when we look at the claim language,
11:36:06 12 especially in view of Figure 1A.

11:36:09 13 But that aside, just to go over the technical
11:36:12 14 details, I -- I believe there actually -- we believe there
11:36:16 15 actually is a light that is traveling through the
11:36:20 16 fluorescent -- that metal wheel that the opposing counsel
11:36:24 17 has been talking about because there is a part of that
11:36:27 18 wheel that is transparent so the light will actually be
11:36:31 19 traveling there. And we believe that those dotted lines
11:36:34 20 are trying to convey that some of that light would be
11:36:37 21 reaching that side of the fluorescent material and would be
11:36:41 22 forming a light-condensing position.

11:36:50 23 THE COURT: Give me just a moment.

11:36:58 24 So I guess if there's not -- you know, maybe
11:37:03 25 there's some material -- some light that goes through

11:37:07 1 fluorescent material. I heard you say, you know, maybe
11:37:09 2 there might be. But sounds like both sides are more or
11:37:15 3 less agreeing that most of the light does not pass through
11:37:17 4 the fluorescent material and --

11:37:21 5 MS. KIM: No, Your Honor, because -- I probably
11:37:25 6 misspoke, I think. But the wheel that the fluorescent
11:37:29 7 material is located has portions of that that is spinning
11:37:33 8 that is transparent, which is not really well depicted in
11:37:37 9 this figure. So that transparent part of the wheel will
11:37:40 10 allow the light to get passed through that wheel. So there
11:37:43 11 will be some light that is reaching that side of the
11:37:48 12 fluorescent material.

11:37:48 13 THE COURT: Okay. So just describe or even point
11:37:51 14 on this figure -- you're looking at Figure 1A. This is
11:37:55 15 Slide 29. Point for me the start and stop of the
11:38:01 16 excitation light on this figure.

11:38:04 17 MS. KIM: The start of the excitation light would
11:38:14 18 be here.

11:38:14 19 THE COURT: Of the light source.

11:38:16 20 MS. KIM: It's labeled No. 1. And then it would
11:38:19 21 be ending over here at light-condensing position.

11:38:21 22 THE COURT: Okay. All of that is -- is the
11:38:24 23 excitation light?

11:38:25 24 MS. KIM: Yes, Your Honor.

11:38:27 25 THE COURT: Okay. Thank you.

11:38:39 1 MS. KIM: We would also like to address that the
11:38:41 2 part of the spec that the Defendants addressed right below
11:38:51 3 "The Means for Solving the Problem" is talking about --
11:39:02 4 talking about how the light is being made incident on the
11:39:06 5 fluorescent material, and it's different from the way that
11:39:09 6 the light is converging at a light-condensing position.

11:39:12 7 This is Column 1, Line 51 through 55.

11:39:18 8 And the way that the light is being made incident
11:39:21 9 on the fluorescent material is talking about how the
11:39:26 10 light -- the excitation light is hitting the fluorescent
11:39:30 11 material and interacting with it.

11:39:32 12 And the whole point of the invention of the '226
11:39:35 13 patent was to increase that area and to have it -- the
11:39:39 14 light be more dispersed so that there would no longer be a
11:39:45 15 light-condensing position that's formed on that surface of
11:39:48 16 the fluorescent material. And that is very clearly
11:39:49 17 depicted when we compare where the light-condensing
11:39:53 18 position is located in Figure 1A, for example, of the '226
11:39:59 19 patent with Figure 6A, which is depicting a conventional
11:40:03 20 light source device.

11:40:04 21 So this patent is trying to make sure that this
11:40:09 22 convergence of the light that is happening on the surface
11:40:11 23 of the fluorescent material is no longer being converged
11:40:14 24 and creating that hotspot that was deteriorating the
11:40:20 25 fluorescent material.

11:40:27 1 And going, again, back to the part of the
11:40:30 2 specification, Column 3, Line -- starting from 39 to 59, as
11:40:35 3 shown in Slide 90, it's again very clearly explained,
11:40:41 4 especially with Figure 1, that a light-condensing position
11:40:45 5 is positioned on the emission side of the excitation light
11:40:47 6 relative to the fluorescent material.

11:40:49 7 So here again, we're getting very language within
11:40:52 8 the specification that shows that a light-condensing
11:40:56 9 position is where that emission side of that fluorescent
11:40:59 10 material is referring to.

11:41:00 11 Defendants' construction of the light-condensing
11:41:06 12 position being that region in the area would go very well
11:41:09 13 with the -- when we're looking at Figure 6, but that is the
11:41:12 14 conventional art that we're trying to move away from.

11:41:15 15 So when we're looking at Figure 1 with this
11:41:18 16 language, I believe there is a very consistent support as
11:41:22 17 to what the emission side of the fluorescent material is
11:41:25 18 referring to.

11:41:26 19 THE COURT: So anything further before we move on?

11:41:38 20 MS. KIM: No, Your Honor.

11:41:48 21 Just really quickly, Your Honor, we just wanted to
11:41:50 22 also note that what they're saying is inconsistent with our
11:41:53 23 agreed construction of front side in Claim 10.

11:42:01 24 THE COURT: How is it inconsistent?

11:42:03 25 MS. KIM: Because they're saying that -- they're

11:42:06 1 not distinguishing where the light is being made incident,
11:42:11 2 which is where the light is interacting with the
11:42:13 3 fluorescent material versus where a light-condensing
11:42:15 4 position is.

11:42:18 5 So Defendants' construction that the light is
11:42:21 6 converging on that particular point contradicts that it's
11:42:25 7 actually also making that interaction on that fluorescent
11:42:39 8 material.

11:42:48 9 THE COURT: You may have to explain it again. It
11:42:51 10 looks like their position is consistent, but you're saying
11:42:56 11 it's inconsistent. They're saying that Claim 8's term, "an
11:43:06 12 emission side of the excitation light relative to the
11:43:09 13 fluorescent material," basically means the front side of
11:43:11 14 the fluorescent material, and that's what I understand the
11:43:13 15 gist is -- of the agreed construction for Claim 10 is.

11:43:24 16 MS. KIM: May I confer with my colleagues?

11:43:27 17 THE COURT: Yeah, yeah -- no, go ahead.

11:43:59 18 MS. KIM: Your Honor, the presumption is that the
11:44:01 19 emission side and the front side are different terms
11:44:04 20 because they use different distinct words within the claim.

11:44:08 21 So the emission side should be referring to a
11:44:11 22 different side of the fluorescent material as to what the
11:44:14 23 front side of the fluorescent material is referring to.

11:44:18 24 THE COURT: Okay.

11:44:19 25 MS. KIM: And we have an agreement as to what the

11:44:21 1 front side of the fluorescent material should be, but I
11:44:25 2 don't think Defendants have shown why the other side -- why
11:44:28 3 the same side of the fluorescent material should also be
11:44:31 4 referring to the emission side of the fluorescent material.

11:44:35 5 THE COURT: Okay. I understand.

11:44:37 6 MS. KIM: Thank you.

11:45:00 7 THE COURT: Thank you.

11:45:00 8 MR. KERN: So just briefly, Your Honor -- there we
11:45:03 9 go.

11:45:05 10 The patent itself refers many times to the
11:45:09 11 light-condensing position, and as we've discussed in the
11:45:12 12 means for solving the problem and in the first embodiment,
11:45:15 13 it places it on the front side of the fluorescent material.

11:45:18 14 What can be seen in Figure 1 is as the excitation
11:45:23 15 light is emitted from the excitation light sources, passes
11:45:26 16 through a few optical members before reaching the
11:45:29 17 fluorescent material, the last optical member is condenser
11:45:33 18 lens 6. And as you can see, it condenses the rays to make
11:45:37 19 them incident on the fluorescent material.

11:45:39 20 There is no disclosure in the specification that
11:45:42 21 says that light-condensing position has to be a focal
11:45:46 22 point. Our position is that it is not a focal point. It
11:45:49 23 is where the light is condensed and incident on the
11:45:52 24 fluorescent material. That's the light-condensing
11:45:55 25 position. And that's what causes the invention to operate.

11:45:58 1 It causes the fluorescent material to fluoresce and thus
11:46:01 2 illuminate the rest of the projector system.

11:46:04 3 So one other point is -- you know, we maintain,
11:46:08 4 Your Honor, that no light passes through at least the metal
11:46:13 5 disk 9. We can't find in the specification any disclosure
11:46:17 6 that that wheel or disk has transparent windows in it that
11:46:22 7 allows light to go through it.

11:46:25 8 In fact, to the contrary, later in the
11:46:26 9 specification at Column 3, Line 22, the patent makes quite
11:46:32 10 clear that light is reflected by the -- the wheel or the
11:46:38 11 disk 9, the metal disk, therefore, that point that we
11:46:43 12 talked about, shown as a dotted line, past the fluorescent
11:46:49 13 material, is not existent.

11:46:52 14 Oh, I'm sorry, Your Honor, I misspoke. It's
11:46:55 15 Column 7, Line 22, not Column 3.

11:47:01 16 And, again, it basically says the light is
11:47:03 17 reflected by the metal disk. It's not passing through the
11:47:06 18 metal disk.

11:47:09 19 And that's all we had, Your Honor.

11:47:10 20 THE COURT: Thank you.

11:47:10 21 MR. KERN: Yep.

11:47:12 22 THE COURT: Well, we've already covered some of
11:47:15 23 the next ones, but I'll just go through them anyway.

11:47:18 24 The next is Term No. 6, "the optical member has a
11:47:23 25 curvature that is set such that a light-condensing position

1 of the excitation light is positioned on an emission side
2 of the excitation light relative to the fluorescent
3 material." This is from the '226 patent, Claim 8.

4 And I understand the real dispute here is -- we've
5 already covered two disputes, I understand. One is the
6 location of the light-condensing position, and that's what
7 we just discussed. I don't think we need to revisit that.

8 But then it's also -- the second dispute is
9 whether a light-condensing position means a point or a
10 region.

11 It looks like -- I'll just give the Plaintiff the
12 opportunity to speak first if you'd like to address this.

13 And, yeah, if you could, just focus on the point
14 or region dispute.

15 MS. KIM: Yes, Your Honor. Claire Kim for
16 Plaintiff, Maxell.

17 A light-condensing position should be different
18 from a radiation region, because as we see in the spec from
19 Column 3, Line 60, to Column 4, Line 4, a radiation region
20 is given a very specific number in the figure, and it's
21 talking about the area of the fluorescent material where
22 the excitation light is interacting with that fluorescent
23 material. And that is happening in a much greater surface
24 area in a diffused manner as we see in Figure 1B and C, as
25 an example.

11:49:18 1 So when the spec is discussing the region of the
11:49:23 2 radiation, it's talking about something totally different
11:49:26 3 from a focal point that is a light-condensing position.

11:49:31 4 As we see in Column 3, Line 39 to 59, a
11:49:38 5 light-condensing position doesn't have that specific number
11:49:42 6 in the figure, and it's discussed separately from that
11:49:45 7 discussion of a radiation region. And this was done
11:49:49 8 purposefully.

11:49:49 9 So a region that is trying to describe how the
11:49:53 10 light is interacting with the fluorescent material should
11:49:56 11 be distinguished from trying to map out how the light would
11:50:00 12 have been travelling and focusing on that light-condensing
11:50:06 13 position.

11:50:06 14 And let me also again look at the comparison of
11:50:10 15 Figure 1A with Figure 6A. We see that the point of it was
11:50:16 16 that this point that it was interacting in Figure 6A in
11:50:22 17 that conventional light source was now then increased to
11:50:25 18 that region, as we see in 1A, and that is consistent with
11:50:31 19 what the inventors of the '226 patent intended with this
11:50:34 20 newly configuration of all of the optical members.

11:50:40 21 Thank you.

11:50:40 22 THE COURT: Thank you.

11:50:56 23 Mr. Kern?

11:50:56 24 MR. KERN: So, Your Honor, I won't belabor the
11:50:59 25 point since there's a lot of redundancy with the emission

11:51:00 1 side discussion we just had.

11:51:00 2 THE COURT: Yeah, I just wanted to make sure you
11:51:01 3 had the opportunity to discuss the region versus point
11:51:05 4 dispute.

11:51:05 5 MR. KERN: No. Thank you, Your Honor. And,
11:51:06 6 again, John Kern for Defendants.

11:51:07 7 I'm just going to refer to this one figure. There
11:51:10 8 is a lot of confusion or discussion between Figure 6, which
11:51:13 9 represents the prior art, the conventional art, however you
11:51:17 10 want to characterize it, and the Figure 1, 1A.

11:51:22 11 Again, Your Honor, it's a matter of degree. It's
11:51:24 12 a matter of how densely concentrated is that light on the
11:51:28 13 surface of the fluorescent material, right? So when the
11:51:31 14 patent says light-condensing position -- it doesn't say
11:51:34 15 light focal point. It doesn't say, you know, point -- you
11:51:36 16 know, pinpoint. It doesn't say anything like that. It's
11:51:39 17 talking about light -- the excitation light as it passes
11:51:44 18 northwardly up in Figure -- in Figure 1, it goes through a
11:51:47 19 condensing lens that condenses the light. So the
11:51:51 20 light-condensing position, we would argue, is anything past
11:51:53 21 that lines.

11:51:54 22 But really what I think they're referring to here
11:51:57 23 is the surface of the fluorescent material where the light
11:51:58 24 is condensed and how sharply is it condensed. Is it
11:52:03 25 condensed as shown in Figure 6 to the point where, you

11:52:07 1 know, perhaps under one interpretation, that focal point of
11:52:10 2 the excitation light is within the fluorescent material? I
11:52:12 3 think that's a bit of a stretch to take from the figure,
11:52:15 4 but it basically shows the radiation region 8, the size of
11:52:19 5 it.

11:52:19 6 So here, it's a little more dispersed. It's a
11:52:22 7 little more uniformly distributed. In the prior art, it's
11:52:26 8 a little tighter. It's not as uniformly distributed. And
11:52:30 9 that obviously causes the problem that the patent is trying
11:52:33 10 to improve on.

11:52:35 11 So long story short, Your Honor, light-condensing
11:52:35 12 position, we believe, is where the light is condensed onto
11:52:38 13 the surface of the fluorescent material, not some imaginary
11:52:42 14 point past the surface of the -- or behind the surface of
11:52:47 15 the fluorescent material where light never actually
11:52:48 16 reaches.

11:52:51 17 THE COURT: And both the conventional art and the
11:52:56 18 invention have the light-condensing position basically at
11:52:59 19 the same point. It's just as you say, a matter of degree.
11:53:03 20 It's more focused in the prior art and less focused here?

11:53:06 21 MR. KERN: Yes, yes. And, again, I don't want to
11:53:08 22 get too into it. But it's -- the invention is actually the
11:53:13 23 optical member 4. And, again, if I -- if I were to claim
11:53:15 24 it, I would have focused more on that. It's necessarily a
11:53:17 25 matter of degree of the resulting distribution of light on

11:53:22 1 the fluorescent material. It's basically teaching there's
11:53:26 2 a problem. Prior art devices focus it too sharply or bring
11:53:26 3 it into too densely.

11:53:29 4 We want to organize the lens structure so that
11:53:32 5 it's more spread out when it strikes or is incident on the
11:53:36 6 fluorescent material.

11:53:37 7 THE COURT: Thank you.

11:53:37 8 MR. KERN: Uh-huh.

11:53:46 9 THE COURT: The next term is No. 7, a "Retinex
11:53:54 10 processing unit" from the '388 patent, Claim 4, 6, 16, and
11:53:57 11 18.

11:53:57 12 And it looks like the preliminary construction is
11:54:03 13 plain and ordinary meaning.

11:54:05 14 So I'll give Defendants the opportunity to address
11:54:08 15 this.

11:54:24 16 MR. KERN: Again, John Kern for Defendants, Your
11:54:24 17 Honor.

11:54:33 18 One second. Bear with me, Your Honor.

11:54:33 19 THE COURT: Take your time.

11:55:01 20 MR. KERN: I'm having a little -- a little
11:55:02 21 difficulty. There we go.

11:55:12 22 So this term, Your Honor, is "Retinex" -- "Retinex
11:55:17 23 processing unit." And, again, we believe it should be
11:55:19 24 construed as a means-plus-function term, and we believe
11:55:21 25 that there is no corresponding structure or algorithm

11:55:23 1 described in the specification, and, therefore, the term
11:55:25 2 should be rendered indefinite or found indefinite.

11:55:28 3 So the term in the claim is -- there's a first and
11:55:34 4 a second, and this is indicative of all the independent
11:55:37 5 claims: A first Retinex processing unit which performs a
11:55:41 6 first Retinex process on a video input from a video input
11:55:46 7 unit.

11:55:46 8 We understand from the specification that the
11:55:49 9 Retinex processing is this idea or theory of separating the
11:55:54 10 illumination light component from the video and extracting
11:55:58 11 a reflected light component from that video. And it's
11:56:01 12 basically to improve the quality of video as seen by a
11:56:05 13 human eye.

11:56:06 14 So, again, the claim itself has both a first and a
11:56:12 15 second Retinex processing unit. And, you know, our
11:56:16 16 understanding is that, you know, the idea of a first
11:56:23 17 Retinex processing unit, the Retinex processing unit
11:56:24 18 portion of it is merely an adjective, and it's highly
11:56:27 19 redundant of the function that's recited in the claims. So
11:56:31 20 it provides no structure to the term "unit."

11:56:34 21 And, again, I would remind Your Honor of my
11:56:38 22 colleague, Mr. McPhail's, point earlier of a related case
11:56:41 23 where Plaintiffs had argued for the term "unit" to be
11:56:46 24 considered a nonce term and thus desired a
11:56:49 25 means-plus-function construction of a particular term.

11:56:54 1 The specification in this case fails to disclose
11:56:57 2 any structure that's capable of performing the Retinex
11:57:02 3 process. The '388 specification basically repeats the
11:57:09 4 function that's described in the claim over and over again,
11:57:11 5 and we hardly think that qualifies as the necessary
11:57:16 6 structure or any kind of algorithm for performing that
11:57:20 7 function.

11:57:21 8 And then one other point we noticed, Your Honor,
11:57:24 9 is that the Plaintiffs tend to rely on patent documents --
11:57:28 10 I'm sorry, not patent documents, literature cited in the
11:57:32 11 specification to fill this gap of a lack of structure in
11:57:37 12 the specification. And I would just remind Your Honor,
11:57:40 13 under 35 U.S.C. Section 1.57(d), essential material is --
11:57:48 14 is allowed to be incorporated into a patent application,
11:57:52 15 but that essential material must be in the form of either
11:57:56 16 an issued or published U.S. patent application.

11:58:00 17 And in this case, essential material is defined in
11:58:03 18 that statute as any material necessary to satisfy the
11:58:06 19 structural aspect or the structural requirements for a
11:58:11 20 means-plus-function claim. I bring that to Your Honor's
11:58:15 21 attention.

11:58:22 22 And unless there are any questions, that's all we
11:58:24 23 had on this term, Your Honor.

11:58:26 24 THE COURT: I'll just -- I'll let you address
11:58:28 25 my -- my issue with going with you on this one, give your

11:58:33 1 best shot.

11:58:34 2 If you -- if you go back to maybe your first slide
11:58:36 3 here. Keep going back. Right there. One more forward,
11:58:40 4 yeah.

11:58:41 5 MR. KERN: Yeah.

11:58:41 6 THE COURT: So looking at this, on the screen it
11:58:45 7 states: A first Retinex processing unit which performs a
11:58:49 8 first Retinex process on a video input from the video input
11:58:54 9 unit.

11:58:54 10 And I'm having trouble concluding that a person of
11:59:00 11 ordinary skill in the art would not know what types of
11:59:03 12 structures perform Retinex processes. You know, I just
11:59:08 13 don't have a lot to go there.

11:59:11 14 It seems that a person of ordinary skill in this
11:59:14 15 art would know the type of structures that perform Retinex
11:59:18 16 processing. And so Retinex processing unit can be
11:59:21 17 structure. But if you can address that, you know, give it
11:59:26 18 your best shot, you can, and how I can actually agree with
11:59:30 19 you on that point.

11:59:31 20 MR. KERN: Right. So I think the specification
11:59:33 21 sort of highlights the problems of what is a Retinex
11:59:36 22 processing. It's a theory. There's no definite definition
11:59:40 23 of Retinex processing.

11:59:41 24 The specification provides several papers that
11:59:44 25 talk about, you know, what could be done, what, you know,

11:59:46 1 has been done, but it doesn't provide anything specific.
11:59:49 2 It's all sort of theoretical. So that would be our point,
11:59:53 3 Your Honor. It does not provide one of ordinary skill in
11:59:57 4 the art with a definite possible way to perform Retinex
12:00:00 5 processing.

12:00:01 6 THE COURT: So Retinex is too new and too
12:00:03 7 theoretical for a person of ordinary skill in the art to
12:00:07 8 understand what type of structure would actually be needed
12:00:10 9 to perform a Retinex process on the video input?

12:00:13 10 MR. KERN: It seems that way from their
12:00:14 11 specification, Your Honor.

12:00:15 12 THE COURT: Okay. Thank you.

12:00:16 13 MR. KERN: Uh-huh.

12:00:22 14 THE COURT: The next term -- I believe this is
12:00:25 15 last, yeah -- No. 8, "video composing unit." This is from
12:00:30 16 the '388 patent, Claims 4, 6, 10, 16, 18, and 22.

12:00:37 17 And it looks like I went with plain and ordinary
12:00:42 18 meaning, "video composing unit," which I'll give Defendants
12:00:49 19 the floor because I'm sure Plaintiff is okay with that
12:00:54 20 construction.

12:00:54 21 MR. NESE: No objection from Plaintiff, Your
12:00:55 22 Honor.

12:00:55 23 THE COURT: Yeah. And -- and, Mr. Kern, as you
12:00:58 24 approach, and this is the same issue that I just went over.
12:01:02 25 It seems like a person of ordinary skill in the art -- it's

12:01:03 1 a big ask for me on this record to conclude that a person
12:01:07 2 of ordinary skill in the art would not understand what kind
12:01:09 3 of structures are used to compose videos.

12:01:12 4 MR. KERN: Okay. Well, hopefully I can change
12:01:13 5 your mind, Your Honor.

12:01:14 6 So you're familiar with the claim term. It's in
12:01:25 7 multiple independent claims and some of the dependent
12:01:25 8 claims in the '388 patent. In fact, in a lot of the
12:01:29 9 independent claims, there are not just a single function
12:01:32 10 but a dual function described by the video composing unit,
12:01:32 11 right?

12:01:36 12 So they have the one directly related to the video
12:01:40 13 composing unit, but then later, there's a wherein clause
12:01:42 14 that says: Wherein the video composing unit changes -- and
12:01:45 15 it has another function there. So there are actually two
12:01:48 16 functions associated with the video composing unit.

12:01:51 17 And the Plaintiff has referred to some of the
12:02:00 18 disclosure in the '388 patent as supporting at least the
12:02:03 19 first function. And so there is a signal processing-type
12:02:10 20 diagram over at the right, Figure 3, and there's -- I think
12:02:15 21 it's corresponding Figure 15, as well, that incorporates
12:02:19 22 this. It's not necessarily structure to our mind, Your
12:02:22 23 Honor, it's more of a partial algorithm for accomplishing
12:02:25 24 this idea of video composing.

12:02:28 25 So we don't think that rises to the level of

12:02:31 1 structure or describing anything other than the function
12:02:34 2 that's recited in the claim itself. But it's really when
12:02:37 3 you get to that second function that we do not find support
12:02:40 4 in the specification.

12:02:46 5 THE COURT: And what -- just so I can recall
12:02:49 6 quickly, what's the second function?

12:02:51 7 MR. KERN: It's in the wherein clause --

12:02:54 8 THE COURT: The wherein clause.

12:02:54 9 MR. KERN: -- so it's, you know, the video
12:02:57 10 composing unit changes a composition of ratio between the
12:02:59 11 video subjected to the first Retinex process and -- I don't
12:03:05 12 know if you can read it, Your Honor.

12:03:05 13 THE COURT: Oh, no, that's fine. The wherein
12:03:07 14 clause of Claim 4 is the second function, and that's the
12:03:10 15 one -- I mean, I guess that goes to your indefiniteness
12:03:14 16 argument?

12:03:15 17 MR. KERN: Exactly.

12:03:16 18 THE COURT: How does it touch on the issue about
12:03:20 19 whether or not it's means-plus-function in the first place?
12:03:24 20 Again, how does this cast doubt that a person of skill in
12:03:28 21 the art would know a structure that could do both -- both
12:03:31 22 of these functions?

12:03:32 23 MR. KERN: Right. So we'll maintain that -- you
12:03:33 24 know, our position with the other terms with unit in it,
12:03:33 25 that this is --

12:03:33 1 THE COURT: Okay.

12:03:36 2 MR. KERN: -- unit is a nonce term, and that the
12:03:39 3 video composing is simply, again, redundant -- highly
12:03:42 4 redundant. Okay.

12:03:43 5 THE COURT: I see.

12:03:43 6 MR. KERN: Okay.

12:03:44 7 THE COURT: You're going the other way?

12:03:45 8 MR. KERN: Yeah.

12:03:46 9 THE COURT: Yeah, I understand.

12:03:47 10 MR. KERN: Okay. Good.

12:03:47 11 THE COURT: Thank you.

12:03:48 12 MR. KERN: Okay.

12:03:48 13 THE COURT: Okay. Any response from Plaintiff?

12:03:54 14 MR. NESE: Yes, Your Honor.

12:03:56 15 THE COURT: Okay.

12:03:56 16 MR. NESE: Bryan Nese, for Maxell.

12:04:19 17 Your Honor, I do not relish standing between the
12:04:22 18 Court or anyone, frankly, and lunch, so I will attempt to
12:04:25 19 be very brief here.

12:04:26 20 Let's talk about these unit terms that my
12:04:29 21 colleagues on the Defense are so fond of.

12:04:32 22 We need to look at the term as a whole. Simply
12:04:36 23 saying, well, it says, unit, therefore, it must be a nonce
12:04:39 24 term, that's not the law.

12:04:40 25 And with regards to the Retinex processing unit,

12:04:43 1 time and again, this Court and the Federal Circuit have
12:04:46 2 found that a processing unit refers to structure. Our
12:04:49 3 cases on that are cited in the brief. They're shown here
12:04:52 4 also on Slide 120. In the interest of brevity, I will not
12:04:55 5 turn to that today.

12:04:57 6 I'd also like to point out regarding the Retinex
12:05:02 7 processing unit, again, that the -- my colleagues on the
12:05:05 8 other side keep bringing up this "communication unit" term
12:05:10 9 that was construed by this Court in an earlier case.

12:05:13 10 That's a different patent. In fact, it's
12:05:15 11 different technology. It relates to televisions, not
12:05:19 12 projectors, and it's a different term most importantly. We
12:05:22 13 cannot simply say a unit is a unit is a unit. We need to
12:05:26 14 look at the modifier words in order to determine whether
12:05:28 15 this would be a known structure to a POSITA.

12:05:30 16 That's the Canon case out of this district, Your
12:05:32 17 Honor. We cited that in our brief, as well.

12:05:34 18 Your Honor pointed out also to my colleagues on
12:05:38 19 the other side, we don't have a lot to go by here. That's
12:05:42 20 exactly right. They haven't submitted an expert testimony
12:05:44 21 or an expert declaration to say what a POSITA would not
12:05:48 22 have known. They're speculating on what Retinex theory
12:05:52 23 would be or would not be known.

12:05:53 24 I have to correct the record here. Retinex theory
12:05:55 25 is not new. It was developed in the late 1950s. And even

12:06:00 1 in the patent, the specification refers to publications
12:06:02 2 from the late '90s that talk about Retinex models that are
12:06:06 3 performed by processors. What else would be doing this
12:06:09 4 processing on video other than a processor?

12:06:11 5 The same is true also, Your Honor, for the video
12:06:14 6 composition unit, which I'll jump to now -- pardon me, the
12:06:18 7 video composing unit.

12:06:19 8 Again, the Canon case tells us we can't just point
12:06:22 9 to the word "unit" and throw up our hands and say it's a
12:06:26 10 nonce term. We have to look at the modifier words, as
12:06:29 11 well, and these modifier words for the video composing unit
12:06:33 12 make very clear what's happening here. It's processing
12:06:35 13 video. It's working on video signals.

12:06:37 14 My colleagues have told you that the other
12:06:43 15 function performed by this video composing unit is to
12:06:48 16 change a compensation ratio and that there's nothing in the
12:06:52 17 specification about that. That's not true, Your Honor.

12:06:54 18 In Paragraph -- pardon me, in Column 4, Lines 58
12:06:58 19 to 65, this very structure is disclosed. And it's also
12:07:03 20 shown in Figure 3 quite clearly what's happening here. I
12:07:07 21 won't read all of that into the record, but this is
12:07:10 22 informing one of ordinary skill in the art, at least in
12:07:12 23 these portions of the specification, how one would change
12:07:16 24 the composition of the video.

12:07:18 25 My colleague also mentioned it's not really

1 structure. It's a partial algorithm, but we agree, it is
2 an algorithm, and an algorithm is structure.

3 The Apple v. Motorola case, which is 757 F.3d 1286
4 from the Federal Circuit tells us that the structure of
5 computer software, and this clearly is a software-type
6 processing unit, is understood through, for example, an
7 outline of an algorithm, a flowchart, or a specific set of
8 instructions or rules. That's exactly what we have here,
9 and that's exactly what my friends on the other side have
10 admitted that this description is.

11 And so you're right, Your Honor, we don't have a
12 lot to go by because we don't have any expert saying that
13 these terms would be not understood by a POSITA either as
14 nonce words lacking any structure, taking us into the realm
15 of 112(6). They also don't have any expert testimony
16 saying this would be indefinite to a person of ordinary
17 skill in the art.

18 I don't think they win on either issue, but
19 particularly with indefiniteness when we have a clear and
20 convincing burden, there simply isn't enough on this record
21 to find the level of confusion that Defendants seem to
22 think is here.

23 If there are any questions, Your Honor, I'll
24 happily take them. Otherwise, I will head back to counsel
25 table.

12:08:37 1 THE COURT: Not about those terms. I had
12:08:38 2 questions about an argument you made in the brief, but I
12:08:42 3 think it was about the term that you all agreed to, the
12:08:42 4 "light flux capturing means."

12:08:42 5 Is that the one where you argued there was
12:08:46 6 implicit structures?

12:08:47 7 MR. NESE: Yes, Your Honor. I think --

12:08:52 8 THE COURT: And so that's -- that's moot now
12:08:53 9 because you guys have agreed to that?

12:08:55 10 MR. NESE: Yes, Your Honor.

12:08:56 11 THE COURT: Okay. Okay. Yeah, then I don't think
12:08:56 12 I have any further questions.

12:08:57 13 Let me -- yeah, I don't have anything. Thank you.

12:09:03 14 MR. NESE: Thank you.

12:09:05 15 THE COURT: Anything further?

12:09:06 16 MR. KERN: Nothing further, Your Honor. Thank
12:09:07 17 you.

12:09:07 18 THE COURT: Okay. Before I release y'all, we have
12:09:11 19 everybody here. Is there anything further about the case?

12:09:14 20 Like I said, I'll get out the Report and
12:09:17 21 Recommendations to motion to dismiss. They're nearly done.
12:09:20 22 I wanted to get them done before today, but I didn't get a
12:09:24 23 chance to. But that -- I suspect by the next week. I'm
12:09:28 24 not aware of anything else you're waiting for me.

12:09:30 25 Is there anything from Defendant that we need to

12:09:32 1 address right now?

12:09:32 2 MR. MCPHAIL: Nothing we need to address. I just
12:09:38 3 wanted to let you know that we're going to be submitting a
12:09:38 4 stipulation on representative products --

12:09:39 5 THE COURT: Okay. That's very -- that's very
12:09:40 6 useful.

12:09:40 7 MR. MCPHAIL: -- to narrow it down a little bit
12:09:40 8 for both sides, I think.

12:09:40 9 THE COURT: Okay. And anything from Plaintiff
12:09:43 10 before I adjourn?

12:09:45 11 MR. NESE: Nothing from Maxell, Your Honor. Thank
12:09:47 12 you.

12:09:47 13 THE COURT: Okay. Thank you very much. I
12:09:48 14 appreciate the arguments, and safe travels.

12:09:53 15 We're adjourned.

12:09:55 16 COURT SECURITY OFFICER: All rise.

17 (Hearing concluded at 12:09 p.m.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2025

6/3/2025
Date