1 IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
2 AUSTIN DIVISION

3 INGENIOSPEC, LLC * April 6, 2026
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4 VS. * CIVIL ACTION NOS.
*
5 APPLE, INC. * 1:25-CV-867/1:25-CV-877

6 BEFORE THE HONORABLE ALAN D ALBRIGHT
MARKMAN HEARING (via Zoom)
7
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01:31 1 (Hearing begins.)
01:31 2 DEPUTY CLERK: The Court calls the
01:31 3 following Civil Actions: AU:25-CV-867 and
01:32 4 AU:25-CV-877, IngenioSpec versus Apple Incorporated for
01:32 5 a Markman hearing.
01:32 6 THE COURT: Announcements from counsel,
01:32 7 please.
01:32 8 MR. SIEGMUND: Good afternoon, Your
01:32 9 Honor. Mark Siegmund on behalf of plaintiff
01:32 10 IngenioSpec. With me this afternoon from the Kramer
01:32 11 LLP firm are Rob Kramer, Nikki Glauser, Rob McArthur
01:32 12 and Courtney Kasuboski. Also with us are client
01:32 13 representatives and the inventors of the patents, Peter
01:32 14 Tong and Doug Thomas. And we're ready to proceed.
01:32 15 THE COURT: And for defendant?
01:32 16 MR. WINGARD: Good afternoon, Your Honor.
01:32 17 Steve Wingard from Scott Douglass & McConnico on behalf
01:32 18 of Apple. With me today are Kara Specht, Daniel
01:32 19 Tucker, and Frank DeCosta, all from the Finnegan firm.
01:32 20 Also with me today is Aaron Huang, and he's from Apple.
01:32 21 And then we have additional representatives from the
01:32 22 Finnegan firm, James Barney, Erika Arner, Malcolm
01:32 23 Meeks, Kelly Horn, Jency Mathew, Milan Feliciello, and
01:33 24 Hani Salameh.
01:33 25 THE COURT: Okay. And thank you to the

01:33 1 clients who have taken the time to attend.
01:33 2 The first claim term we have is from the
01:33 3 '104 patent, provided that the wireless headset is
01:33 4 active, and goes on from there. I'll hear from Apple
01:33 5 to start with.
01:33 6 I'll let Apple know that we've looked at
01:33 7 and considered the issues that they have -- are making
01:33 8 with regard to written description. And I think that's
01:33 9 an issue that will have to be dealt with down the road.
01:33 10 I understand it. But I just wanted Apple's counsel to
01:33 11 understand it. We have looked at that.
01:33 12 So anything Apple wants to say, I'm happy
01:33 13 to hear it, please.
01:33 14 MR. DECOSTA: Good afternoon, Your Honor.
01:33 15 This is Frank DeCosta for Apple. May it please the
16 Court.
01:33 17 Regarding the '104 term, for this term,
01:34 18 both Apple and IngenioSpec have argued that a plain and
01:34 19 ordinary construction of the term should apply. But
01:34 20 the problem for us is that, as confirmed by the record
01:34 21 during briefing, there are many plain and ordinary
01:34 22 meanings for the relevant terms.
01:34 23 THE COURT: Counsel, I don't know if
01:34 24 I've -- I've stopped saying this because I'll say, I
01:34 25 don't know if you've been in my court before, and I'll

01:34 1 find out that someone's tried a case in front of me and
01:34 2 then I'm embarrassed. I don't know that you've been in
01:34 3 front of me before or not. I don't remember if you
01:34 4 have. I've had lots of really good lawyers from
5 Finnegan.
01:34 6 But I will tell you that ordinarily the
01:34 7 way I deal with an argument like yours that I find is
01:34 8 the most productive -- but again, I'm happy to hear
01:34 9 your arguments today -- is the plaintiff -- the
01:34 10 plaintiff really, in my opinion, carries the burden
01:35 11 here or the concern about me not doing more than plain
12 and ordinary meaning.
01:35 13 And what I mean by that is is that the
01:35 14 way I handle my cases where I give plain and ordinary
01:35 15 meaning and I'm advised by counsel, like you're doing,
01:35 16 that there may be an issue down the road is to let you
01:35 17 know -- now the burden is going to be on you for a
01:35 18 moment -- that when you get the plaintiff's expert
01:35 19 report and it says that the Apple accused products meet
01:35 20 the claim term propose that, ellipses, the wireless
01:35 21 headset is active, and goes on from there. If it's
01:35 22 your opinion on behalf of Apple that the position that
01:35 23 plaintiff is taking with regard to what the plain and
01:35 24 ordinary meaning is of that term is impossible, for
01:35 25 lack of a better word, if your opinion is that the

01:35 1 fight would between your expert on noninfringement and
01:36 2 theirs on noninfringement would devolve into a fight
01:36 3 over what the plain and ordinary meaning is, then you
01:36 4 just need to let me know and I can get a Markman
01:36 5 hearing done -- a mini Markman done on this claim term
01:36 6 and you can argue why the plaintiff's expert, why
01:36 7 that -- the construction he's using is inappropriate as
01:36 8 a matter of law.
01:36 9 I don't know that I've had anyone take me
01:36 10 up on this so far. I have had to do this during trial
01:36 11 which is a really bad time to have to do it. But
01:36 12 that's the way, generally speaking, I handle issues
01:36 13 where I think that plain and ordinary meaning is
01:36 14 appropriate but the lawyers are worried about the
01:36 15 impact it would have on trial.
01:36 16 So that is what I do in these cases. I
01:36 17 don't know if you've had a case with me before or not
01:36 18 where I've told you that. But that's what I do.
01:36 19 Knowing that, if there's anything else
01:37 20 you'd like to argue, of course I'm happy to hear it
01:37 21 now.
01:37 22 MR. DECOSTA: Well, Your Honor, I do
01:37 23 appreciate that because that's precisely what we're
01:37 24 trying to head off, if we can. We've not gotten yet
01:37 25 into discovery and we're in a situation now where if we

01:37 1 can get this resolved sooner rather than later, we'll
01:37 2 find ourselves probably with a lot of discovery saved,
01:37 3 a lot of depositions saved for sure, a lot of time and
01:37 4 dollars.
01:37 5 THE COURT: Well, I don't think it was
01:37 6 going to impact the -- I'm sorry. I didn't mean to
01:37 7 interrupt you. Keep going, please. That's a bad habit
01:37 8 of mine. Please finish up and then I'll...
01:37 9 MR. DECOSTA: Well, only that to make the
01:37 10 point as -- as crisp as possible. There are two
01:37 11 disputes that just applying a plain and ordinary
01:37 12 meaning at this time, it won't -- won't resolve, won't
01:37 13 narrow discovery. There are a number of claims and
01:37 14 patents at issue.
01:37 15 So with respect to the plain and ordinary
01:37 16 meaning, there's a what and a when. There's a whether
01:37 17 or not the language should be tied to the
01:37 18 communications environment of the claims and whether
01:37 19 there's a timing requirement. So these are two
01:37 20 specific disputes that we have with IngenioSpec that
01:38 21 should they -- could they be resolved sooner rather
01:38 22 than later, it would help in scoping the case and not
01:38 23 have to get a point, Your Honor, where we're down the
01:38 24 road and expert reports addressing this very same
01:38 25 issue.

01:38 1 So that's the 50,000-foot view where we
01:38 2 are. I appreciate the timing that you explained.
01:38 3 But the argument that we have prepared is
01:38 4 to explain to Your Honor what the two disputes are and
01:38 5 they're very narrow, they're very crisp, and they're
01:38 6 joined with respect to this claim.
01:38 7 THE COURT: I'm happy to hear them.
01:38 8 MR. DECOSTA: Okay. Great.
01:38 9 So again, the two disputes are whether
01:38 10 the plain meaning requires communication between the
01:38 11 wireless headset and the wireless communication system
01:38 12 and whether there's a timing condition imposed in the
01:38 13 limitation. So let's just start with --
01:38 14 THE COURT: I'm sorry. I just -- I was
01:38 15 thinking about the first thing you said and so I
01:38 16 stopped thinking as you said the second one. So if
01:38 17 you'll go ahead and repeat the second -- I'm sorry.
01:38 18 You -- if you could remind me what you said on the
01:38 19 second one. I missed it.
01:38 20 MR. DECOSTA: Absolutely. So there's the
01:38 21 what, and that's the communication concept we'll talk
01:39 22 about, and then the when. So t is there a timing
01:39 23 condition in the phrase being construed? Is there a
01:39 24 timing limitation? And that's where there are two
01:39 25 points of disagreement with IngenioSpec.

01:39 1 So we start to try to resolve those two
01:39 2 questions by looking first at the claims themselves.
01:39 3 So that's Slide 4, please.
01:39 4 And as we look at the claim, as the Court
01:39 5 knows, the claims at issue are directed to a wireless
01:39 6 communication system with a wireless communication
01:39 7 device and a wireless headset. And what's happening is
01:39 8 you have incoming text messages that are converted to
01:39 9 audio messages and replies are converted from text to
01:39 10 audio. So that's framework that we're operating under.
01:39 11 And then when you look at the claims, the
01:39 12 claim language for construction defines the what and
01:39 13 when for the condition and the claims that will trigger
01:39 14 text to audio conversion. So the phrase that we're
01:39 15 construing is a trigger for other action to happen in
01:39 16 the claim.
01:39 17 And that determination is seen here in
01:39 18 Claim 2, and the language we have highlighted says:
01:40 19 Provided that said determining determines that the
01:40 20 wireless headset is active. That's the condition.
01:40 21 So starting with that intrinsic evidence
01:40 22 provided by the claims itself, we have the specific
01:40 23 context for the phrase and how it interacts with the
01:40 24 other claim limitations.
01:40 25 Let's go to the next slide.

01:40 1 We look to the spec for help. And the
01:40 2 term "active," which is the trigger inside of that
01:40 3 condition that we're construing, the term "active" is
01:40 4 used in one spot, in that paragraph we have highlighted
01:40 5 there three times and once in the figure. And this is
01:40 6 an unclaimed embodiment because this talks about audio
01:40 7 to text, and the claims that we're focusing on are text
01:40 8 to audio.
01:40 9 But even though this is for an unclaimed
01:40 10 embodiment, it still provides some context because it
01:40 11 shows the use of active in the call flow and it shows
01:40 12 that active is being used to describe components of a
01:40 13 mobile communication system as opposed to some other
01:41 14 context.
01:41 15 So this is something, right? So this
01:41 16 doesn't resolve the dispute but this is something.
01:41 17 This gets you down the road in trying to understand
01:41 18 what's the context to select from a number of plain and
01:41 19 ordinary meanings that are available.
01:41 20 And then we go to the dictionary
01:41 21 definitions submitted by the parties.
01:41 22 Next slide, please.
01:41 23 Won't read through those, but you'll see
01:41 24 they're many and varied. And the idea is if there's
01:41 25 only an instruction to use the plain and ordinary

01:41 1 meaning, the jury's left with, well, which of these do
01:41 2 I use, if any of them?
01:41 3 So if you look at the examples that are
01:41 4 there, even if you limit them to electronics, you're
01:41 5 still going to have questions -- practical questions
01:41 6 that the jury may be in a position to debate where
01:41 7 you're asking questions like, well, if we're active,
01:41 8 does that mean that the headset in the claims is
01:41 9 powered on? And sitting on a table? Does it mean just
01:41 10 that the headset is charged? Does it mean that the
01:41 11 headset is playing music from some source other than
01:42 12 the claimed wireless device? Does it mean you detect
01:42 13 the headset is moving? The headset is connected to a
01:42 14 cloud? The headset is paired with a mobile device?
01:42 15 So you can understand, Your Honor, that
01:42 16 there are a litany of things that still, even if you
01:42 17 restrict this to an electronics communication space,
01:42 18 there's still many questions that would have to be
01:42 19 resolved if the jury's just left with the instruction
01:42 20 to use plain and ordinary meaning.
01:42 21 So the difference between the
01:42 22 construction that Apple has proposed and the
01:42 23 construction that IngenioSpec is proposing is that
01:42 24 the -- Apple's construction resolves these questions.
01:42 25 And while IngenioSpec doesn't say exactly

01:42 1 what its plain and ordinary meaning construction is, it
01:42 2 argues what it believes it is not. And that draws out
01:42 3 the significant points of contention that should be
01:42 4 resolved sooner rather than later.
01:42 5 And the two major points are as I said
01:42 6 before. So first, there's --
01:42 7 Next slide, Slide 8.
01:42 8 We have the most concise statement by
01:43 9 IngenioSpec of their issues with the construction. And
01:43 10 they're saying that: The inquiry concerns the status
01:43 11 of the headset itself, not the existence of a
01:43 12 connection or link with another device. The claims do
01:43 13 not require, or even mention, a communication link.
01:43 14 (Clarification by Reporter.)
01:43 15 MR. DECOSTA: So this is the what of the
01:43 16 dispute. And IngenioSpec claims that determining that
01:43 17 the wireless headset is active does not require a
01:43 18 communication link between the wireless headset and the
01:43 19 wireless device. And that's just wrong.
01:43 20 So if you look at Claim 1, again,
01:43 21 intrinsic evidence, if you look at Claim 1, the
01:43 22 independent claim from which all the claims that we're
01:43 23 discussing depend, and that's at Column 15, Lines 54,
01:43 24 55, that claim expressly recites: A wireless
01:43 25 communication device capable of wirelessly

01:43 1 communicating with the wireless headset. That's in the
01:43 2 claim.
01:44 3 And as seen in Claim 2, the wireless
01:44 4 communication device must determine whether the
01:44 5 wireless headset is active.
01:44 6 So you have the communication between the
01:44 7 devices in Claim 1, Independent Claim 1, and you have
01:44 8 Dependent Claim 2 that requires determining activity.
01:44 9 So how else would that happen if there's not a
01:44 10 communication link between the two?
01:44 11 And there's a lot of discussion about the
01:44 12 term "link" and whether it appears and doesn't appear.
01:44 13 Your Honor, we're not wed to the term "link." So if
01:44 14 there's some other word that you would like better that
01:44 15 communicates that there's -- the activity being
01:44 16 contemplated in the claims requires communication
01:44 17 between the two devices, that would be sufficient for
01:44 18 resolving this issue. So link is not a magical term,
01:44 19 it's just our best to try to get that notion across.
01:44 20 The second distinction is the when, so
01:44 21 that's the timing requirement.
01:44 22 So let's go to Slide 9.
01:44 23 So IngenioSpec argues that there's no
01:45 24 timing requirement imposed by the construed phrase, but
01:45 25 they do concede that this term defines a prerequisite.

01:45 1 And we're at a loss, Your Honor, as to how something
01:45 2 can be a prerequisite but it can't impose a timing
01:45 3 requirement.
01:45 4 So a prerequisite, it is a timing
01:45 5 limitation. It just means that the wireless headset is
01:45 6 active before the converting step happens. A
01:45 7 prerequisite is an active determination that happens
01:45 8 first and conversion happens afterwards.
01:45 9 We would have thought that the
01:45 10 ordinary -- plain and ordinary meaning of the term
01:45 11 "provided that" would connote clearly that -- that
01:45 12 meaning of something happening first before the other
01:45 13 thing happening but apparently there's a dispute over
01:45 14 that. So we looked for other words to try to make
01:45 15 clear exactly what we're talking about by the provided
01:45 16 that limitation with respect to timing.
01:46 17 And, Your Honor, there's also some
01:46 18 discussion in the briefing about automatic and whether
01:46 19 there's a dispute about something automatically
01:46 20 happening or immediately happening. And I don't think
01:46 21 those disputes are really germane for the Court's
01:46 22 consideration because neither party is trying to
01:46 23 construe automatic.
01:46 24 Automatic is there. The jury can figure
01:46 25 out what that means. And there are other timing

01:46 1 limitations in the claims. So this has nothing to do
01:46 2 with automatic. It really is the "provided that"
01:46 3 phrase and its interaction with the other elements of
01:46 4 the claim.
01:46 5 So Apple's recognized that there are many
01:46 6 possible plain and ordinary meanings and doesn't
01:46 7 believe it would be helpful to place the burden of
01:46 8 selecting from among many candidates with just an
01:46 9 instruction to use the plain and ordinary meaning.
01:46 10 And we want to equip the jury to resolve
01:46 11 the evidence and competing arguments that we know
01:46 12 already at this point, even before discovery is
01:46 13 started, are going to be presented by the parties.
01:46 14 So I'll stop there, Your Honor, and be
01:46 15 prepared to answer any questions that you have.
01:47 16 THE COURT: I don't have any questions
01:47 17 but I'll hear a response.
01:47 18 MS. GLAUSER: Thank you, Your Honor.
01:47 19 Nikki Glauser on behalf of IngenioSpec.
01:47 20 I'll hit share here.
01:47 21 The major problem with Apple's argument
01:47 22 on this point is that the parties are not in dispute
01:47 23 about the plain and ordinary meaning. The issue is
01:47 24 that Apple isn't seeking to construe or provide meaning
01:47 25 to the terms of the claim, but instead seeking to

01:47 1 entirely replace two plain condition terms, "provided
01:47 2 that" and the "headset is active" with "upon" and
01:47 3 "establishing a communication link." And that language
01:47 4 isn't in the claims, isn't in the spec, and there's no
01:47 5 lexicography or other disclaimer that would authorize
01:47 6 that kind of substitution. And we see that here in
01:48 7 their first substitution.
01:48 8 So provided that is, as Mr. DeCosta said,
01:48 9 a prerequisite, meaning something that happens before.
01:48 10 Once it's met, the question is whether it's met.
01:48 11 But Apple, in its construction,
01:48 12 particularly as understood by its briefing, is changing
01:48 13 or substituting that phrase for "upon," which it has
01:48 14 argued doesn't just mean before and after, as it said
01:48 15 "provided that" would mean, but instead means
01:48 16 immediately without any intervening steps.
01:48 17 And so in doing so, they've converted
01:48 18 what is effectively a prerequisite or a condition, an
01:48 19 if, only if, it is in this state, do you then do the
01:48 20 conversion into a timing trigger. Upon this state, you
01:48 21 then do the conversion. And that's the problem. And
01:49 22 it's not one of a difference in plain and ordinary
01:49 23 meaning. It's a difference in the claim scope.
01:49 24 Because the claims themselves talk about whether and
01:49 25 not when.

01:49 1 And this becomes particularly important
01:49 2 when we look at Apple's second replacement, which is to
01:49 3 remove the wireless headset is active and to replace
01:49 4 that with the language establishing a communication
01:49 5 link.
01:49 6 By the claims, the device that you're
01:49 7 looking at to determine its condition is the headset
01:49 8 and the condition that you're looking for is whether
01:49 9 that headset is active. By rewriting the claims to be
01:49 10 establishing a communication link, Apple wants the
01:49 11 claim to instead be looking at the link between the
01:49 12 device and another device or a system. But that
01:49 13 communication link could exist without the headset
01:49 14 itself being active.
01:50 15 And so the problem is when you read in
01:50 16 these two substitutions, you have that a communication
01:50 17 link could exist even without the headset being active.
01:50 18 But nevertheless, under Apple's
01:50 19 construction, upon that communication link existing,
01:50 20 the text is converted to audio signals. And that's not
01:50 21 what the patentee drafted. The patentee did not
01:50 22 establish that conversion happened simply because there
01:50 23 was a communication link. Instead, it required looking
01:50 24 at the status of the device on the other end of that
01:50 25 communication link.

01:50 1 Apple pointed to Figure 5 in the patents
01:50 2 but neither Figure 6 -- neither Figure 5 nor 6, which
01:50 3 it cited in its briefing, actually support the
01:50 4 arguments that it's making here.
01:50 5 Because while you do look to the status
01:50 6 of the headset, there is nothing in either of the
01:50 7 flowchart that is Figure 5 nor the flowchart that is
01:51 8 Figure 6 that suggests that upon determining is the
01:51 9 correct replacement for the claim language. There's no
01:51 10 immediacy indicated here. In fact, there's no timing
01:51 11 indicated here.
01:51 12 The question in Figure 5 at that 502
01:51 13 block is, is headset active? If yes, then you do Y.
01:51 14 It does not say when you do Y, that you do Y
01:51 15 immediately upon determination of yes. And so that --
01:51 16 these figures simply don't support Apple's argument nor
01:51 17 is there anything else in the specification that would
01:51 18 do so.
01:51 19 In fact, in addition to the claim
01:51 20 language itself for the disputed terms, the claim
01:51 21 structure of the '104 claims further reflects that this
01:51 22 "provided that" term is a conditional status check
01:51 23 determining whether conversion happens, not a timing
01:52 24 trigger. And it does that because Claim 5 asks the
01:52 25 question of whether or not the conversion should

01:52 1 happen, and Claim 6 adds the additional requirement
01:52 2 that you check to see that the headset is active.
01:52 3 Now, Mr. DeCosta pointed to Claim 1,
01:52 4 which refers to a wireless communications device that's
01:52 5 capable of wirelessly communicating with a wireless
01:52 6 headset to support Apple's rewrite here. But of course
01:52 7 Claim 1 doesn't support the rewrite. And that's
01:52 8 because Claim 1 is describing and addressing one
01:52 9 structural capability of the system. That is, that the
01:52 10 device is capable of wireless communication.
01:52 11 But the "active" term in Claim 2 and the
01:52 12 other terms that are at issue here, so 6 and 10, those
01:52 13 define a separate requirement, an additional condition
01:53 14 that for the specific operation to happen, for the
01:53 15 conversion to occur, that the headset be active.
01:53 16 So by Claim 1, the system can be capable
01:53 17 of the wireless communication and the headset still not
01:53 18 be active. Those are two different inquiries. And the
01:53 19 patentee, for the Claims 2, 6 and 10, was looking at
01:53 20 whether in fact the device on the other end of the
01:53 21 communication link was active for purposes of receiving
01:53 22 the converted text to audio signals.
01:53 23 Unless Your Honor has other specific
01:53 24 questions on this term, I'm happy to turn it back to
01:53 25 Mr. DeCosta.

01:53 1 THE COURT: I don't have any questions
01:53 2 for you. No.
01:53 3 MS. GLAUSER: Thank you, Your Honor.
01:53 4 MR. DECOSTA: Your Honor, I'm listening
01:53 5 for potential area of agreement, and I'll throw this
01:53 6 out there. Maybe there is an agreement. But it sounds
01:53 7 like there's agreement that the "provided that" phrase
01:53 8 means that something happens first and then other
01:54 9 things happen after that.
01:54 10 So if that's -- if we have agreement on
01:54 11 that point, then maybe that's something that we can
01:54 12 have made express in the Court's construction. If
01:54 13 there's not agreement on that, then I'm probably
01:54 14 misunderstanding IngenioSpec's argument. But it sounds
01:54 15 like they're agreeing that it is a condition that
01:54 16 happens first or a test that happens first, provided
01:54 17 that means first and the other things happen after
01:54 18 that.
01:54 19 So there's agreement there.
01:54 20 THE COURT: Let me ask opposing counsel
01:54 21 if they agree.
01:54 22 MS. GLAUSER: We don't, Your Honor. But
01:54 23 for this reason. It's a small reason.
01:54 24 THE COURT: I assumed you didn't. Okay.
01:54 25 We can go back to Apple's counsel.

01:54 1 MR. DECOSTA: Okay. And then with
01:54 2 respect to the statement that the system can be capable
01:54 3 of wireless communication but still not be active, that
01:54 4 illustrates our point exactly. If that's the case,
01:54 5 then what does "active" mean?
01:55 6 So if active is not connected somehow to
01:55 7 communication, if the device can be -- the wireless
01:55 8 headset can be active but there's no connection, then
01:55 9 what does "active" mean in that sense? It still opens
01:55 10 the array of possibilities that I listed at the
01:55 11 beginning. So, you know, there's no specificity to how
01:55 12 the jury can understand what "active" means in the
01:55 13 context of the claim.
01:55 14 So that's our response. Looked for
01:55 15 compromise. Looks like we don't have it on the
01:55 16 provided that language.
01:55 17 With respect to active, we need a working
01:55 18 definition of what "active" means among the many. It
01:55 19 sounds like, as counsel's argued, we're still going to
01:55 20 be left with that range of things that are complete
01:55 21 possibilities that need to be debated within the
01:55 22 context and application of the claim, that you need to
01:55 23 determine whether or not you have an active wireless
01:55 24 headset before you invoke conversion.
01:55 25 So if active can be some state that has

01:55 1 nothing to do with communication, then clearly the spec
01:56 2 doesn't answer this question. But the jury's going to
01:56 3 be left to debate what the word "active" is going to
01:56 4 mean in that context.
01:56 5 THE COURT: I'll be back in a second.
01:56 6 (Pause in proceedings.)
01:59 7 THE COURT: If we could go back on the
8 record.
01:59 9 The Court is going to maintain its
01:59 10 preliminary construction of plain and ordinary meaning,
01:59 11 and for the record, is going to reject the proposals
02:00 12 that Apple suggested during the hearing.
02:00 13 Next up, I have from the '789 patent
02:00 14 preamble, including input signals.
02:00 15 Give me one second.
02:00 16 I'll hear from the plaintiff first on
02:00 17 this, please.
02:00 18 MR. TUCKER: Thank you, Your Honor. Good
02:00 19 afternoon. Dan Tucker on behalf of -- I'm sorry. You
02:00 20 said plaintiff. I apologize.
02:00 21 THE COURT: I did. It's okay.
02:00 22 (Clarification by Reporter.)
02:00 23 MR. MCARTHUR: Good afternoon, Your
02:01 24 Honor. Rob McArthur for plaintiff IngenioSpec.
02:01 25 THE COURT: Okay.

02:01 1 MR. MCARTHUR: Share my screen here, Your
02:01 2 Honor.
02:01 3 Apologize. I'm having difficulty with my
02:01 4 screen sharing.
02:01 5 THE COURT: I don't know how to do it.
02:01 6 So it's okay.
02:01 7 MR. MCARTHUR: Perhaps one of my
02:01 8 co-counsel could share Slide 12, please.
02:01 9 MS. GLAUSER: I'll do it.
02:01 10 MR. MCARTHUR: Slide 12.
02:02 11 Thank you.
02:02 12 Your Honor, let's just start with the
02:02 13 idea that there's no disavowal and no lexicography with
02:02 14 respect to the term "input signals" here. Absent that,
02:02 15 plain and ordinary meaning should apply.
02:02 16 Now, we have the claim itself we can go
02:02 17 to --
02:02 18 THE COURT: What I'd like to hear from
02:02 19 you on is whether or not the preamble should be
02:02 20 limiting or not.
02:02 21 MR. MCARTHUR: Absolutely, Your Honor.
02:02 22 I'm happy to address that.
02:02 23 The -- we would like the preamble to be
02:02 24 limiting for a number of reasons, but for -- this
02:02 25 preamble in particular sets the table for the claim.

02:02 1 The claim's structural. You have a
02:02 2 wireless receiver, a down-converter configured to down
02:02 3 convert, a modifier and a speaker. That is the
02:03 4 structure of the claim.
02:03 5 If you look at the preamble, you have a
02:03 6 single enhancement apparatus for the user. That
02:03 7 apparatus is being connected to an audio system that's
02:03 8 not claimed in the body of Claim 13 and which is
02:03 9 configured to up-convert those signals to be wirelessly
02:03 10 transmitted.
02:03 11 So the claim itself relates to this
02:03 12 wireless hearing enhancement apparatus that has these
02:03 13 four components to it. And so you have a classic
02:03 14 situation where you have an environment of use for the
02:03 15 intended claimed body of the claim.
02:03 16 That's why we believe the preamble itself
02:03 17 is not limiting in this case.
02:03 18 THE COURT: Okay. You started by saying
02:03 19 it is limiting and now you're saying it's not.
02:03 20 MR. MCARTHUR: I'm sorry.
02:03 21 THE COURT: Which surprised me at first
02:03 22 when you said you wanted it to be limiting. I'd never
02:03 23 heard that from a plaintiff before. I thought I was on
02:03 24 a different planet.
02:03 25 So just to be clear, you -- the plaintiff

02:04 1 does not believe the preamble should be limiting,
02:04 2 correct?
02:04 3 MR. MCARTHUR: That's correct, Your
02:04 4 Honor. I'm sorry if I misspoke there. We believe the
02:04 5 preamble is not limiting. And is directed to an
02:04 6 environment of use only.
02:04 7 THE COURT: Okay. Did you have anything
02:04 8 else to add?
02:04 9 MR. MCARTHUR: No. I think our briefing
02:04 10 sets it forward. But the --
02:04 11 THE COURT: No. I'm just giving you an
02:04 12 opportunity.
02:04 13 MR. MCARTHUR: No. We have nothing
02:04 14 further to add on that point, Your Honor.
02:04 15 THE COURT: Okay. A response from Apple?
02:04 16 MR. TUCKER: Thank you, Your Honor. Dan
02:04 17 Tucker on behalf of Apple.
02:04 18 If we could just skip to Slide 12,
02:04 19 please.
02:04 20 So, Your Honor, the preamble is limiting
02:04 21 for at least the two reasons that we stated in the
02:05 22 briefs.
02:05 23 The first is that it establishes
02:05 24 antecedent basis for four different terms that appear
02:05 25 in the body of the claim: For the hearing apparatus,

02:05 1 for the user of that apparatus, for the audio system
02:05 2 that is wirelessly coupled to that apparatus, and for
02:05 3 the upconverted signals that the system generates in
02:05 4 the apparatus processes.
02:05 5 Those are four terms that span the entire
02:05 6 body of this preamble -- or the entire portion of this
02:05 7 preamble and cannot be divided up in any way.
02:05 8 The Federal Circuit, obviously as Your
02:05 9 Honor knows, has repeatedly held that a preamble is
02:05 10 limiting when it serves as antecedent basis for a term
02:05 11 appearing in the body of the claim. But here, we have
02:05 12 four that span the preamble from beginning to end. So
02:05 13 that's one reason why the preamble is limiting.
02:06 14 The other is that it provides essential
02:06 15 structure necessary to understand the claims. And it
02:06 16 really does this in two ways, as we've shown on Slide
02:06 17 13.
02:06 18 First, as shown in red, it defines the
02:06 19 structural relationship between the apparatus and the
02:06 20 audio system. It requires that those two components
02:06 21 are wirelessly coupled. That structure is invoked
02:06 22 later in the preamble and in the body because the
02:06 23 wireless coupling is needed to transmit and receive
02:06 24 those upconverted input signals between the wirelessly
02:06 25 coupled apparatus and system. So it's not just setting

02:06 1 up the environment, it's actually using that structural
02:06 2 limitation.
02:06 3 The other structure is shown in blue on
02:06 4 Slide 13 of our demonstratives. The preamble explains
02:06 5 where these upconverted signals come from. They start
02:07 6 as the input signals and they're upconverted by the
02:07 7 audio system that receives them. So the audio system
02:07 8 receives the input signals, upconverts them, and
02:07 9 generates the upconverted signals that are later
02:07 10 recited in the body of the claim.
02:07 11 This altogether is more than sufficient
02:07 12 under the law. Providing antecedent basis for four
02:07 13 terms defining the structural relationship between the
02:07 14 apparatus and the system that enables the wireless
02:07 15 transfer and being required to understand where the
02:07 16 signals come from all render this preamble limiting.
02:07 17 THE COURT: Response?
02:07 18 MR. MCARTHUR: Yes, Your Honor.
02:07 19 I think with respect to the antecedent
02:07 20 basis, there's no per se rule that says if there's an
02:07 21 antecedent basis in the preamble for the claim terms
02:07 22 that appear in the body, that necessarily forces the
02:08 23 preamble to be limiting.
02:08 24 I think what you need to do is you need
02:08 25 to look at structure of the preamble and what does the

02:08 1 preamble teach one of skill in the art? And in this
02:08 2 case the preamble sets the table for the remainder of
02:08 3 the structural body of the claim.
02:08 4 If you look at the other claims,
02:08 5 particularly Claim 1 in the patent, you've got an audio
02:08 6 system and a wireless receiver. Claim 13, on the other
02:08 7 hand, is just directed to the enhanced apparatus, in
02:08 8 this case, the wireless receiver and the other
02:08 9 structure that's delineated in the body of the claim.
02:08 10 So you have the distinction there between
02:08 11 a system claim and a claim that's limited to one
02:08 12 apparatus. So that, I believe, when you read all the
02:08 13 intrinsic evidence together, it suggests that the
02:08 14 preamble in Claim 13 is not limiting.
02:08 15 THE COURT: Anything else from Apple?
02:08 16 MR. TUCKER: Just, Your Honor, obviously
02:08 17 to note that claim differentiation between two
02:08 18 independent claims is a pretty weak doctrine.
02:09 19 And second, just because the Claim 13
02:09 20 recites a device, it also recites that device in the
02:09 21 way it is coupled, wirelessly coupled to the system.
02:09 22 And that is a requirement of the device in this claim.
02:09 23 That's what makes it different from Claim 1 but still
02:09 24 have meaning.
02:09 25 THE COURT: And anything Apple wants to

02:09 1 add about the construction of input signal?
02:09 2 MR. TUCKER: Yes, Your Honor. We would
02:09 3 like to talk about input signal --
02:09 4 THE COURT: Please.
02:09 5 MR. TUCKER: -- in some detail, if that's
02:09 6 okay.
02:09 7 THE COURT: No. It's why we're here.
02:09 8 MR. TUCKER: Okay. So if we can go
02:09 9 straight to Slide 14 of our demonstratives.
02:09 10 So in terms of the actual construction of
02:09 11 the phrase "input signal," our construction, as shown
02:09 12 on this slide, is input -- signals input to the audio
02:09 13 system, whereas IngenioSpec is arguing for plain
02:09 14 meaning. And the dispute here is really whether those
02:10 15 input signals need to be input to the audio system.
02:10 16 The audio system that in this claim processes those
02:10 17 input signals.
02:10 18 And so both the plain meaning --
02:10 19 THE COURT: Do you have -- I'm sorry,
02:10 20 counsel. Do you have the ability to put up the entire
02:10 21 claim from which signal inputs comes?
02:10 22 MR. TUCKER: Yes. Of course, Your Honor.
02:10 23 THE COURT: You say of course. I
02:10 24 wouldn't know how to do it.
02:10 25 MR. TUCKER: Slide 12 has the entire --

02:10 1 THE COURT: Okay.
02:10 2 MR. TUCKER: -- Claim 13 on the left-hand
02:10 3 side.
02:10 4 So within that preamble, input signals
02:10 5 appears in the third line of the preamble.
02:10 6 Unfortunately we were trying to prove a different point
02:10 7 on this slide, so it doesn't highlight input signals.
02:10 8 THE COURT: No. I just -- so what it's
02:10 9 saying -- what I'm -- configured to up-convert input
02:11 10 signals into upconverted signals. It seems to me that
02:11 11 this is written -- and this is what I'd like you to
02:11 12 address.
02:11 13 It seems to me that this is written in a
02:11 14 way that indicates that the author who's drafting this
02:11 15 is just assuming that a POSITA would understand this
02:11 16 like if you -- someone said you remove a lug nut and
02:11 17 replace the wheel. I mean, that's probably a terrible
02:11 18 analogy.
02:11 19 All I'm saying is that here, it seems to
02:11 20 me that input signal is used in a way that, it seems to
02:11 21 me, the author just assumes everyone is going to have a
02:11 22 understanding of what that means. What is your
02:11 23 response to that?
02:11 24 MR. TUCKER: I think that that's correct,
02:11 25 Your Honor. And I think that is precisely what our

02:12 1 argument is in the brief, which is that both the way
02:12 2 that this is written and the plain meaning of input
02:12 3 signals means the signals that are input into the
02:12 4 system. For two reasons really.
02:12 5 The first goes to what does input signal
02:12 6 mean and what does input mean to a person of skill in
02:12 7 the art?
02:12 8 And if we look to Slide 15, we started
02:12 9 with, okay, what does the plain meaning of "input"
02:12 10 mean. And we had technical dictionaries. We had
02:12 11 technical definitions from general dictionaries. All
02:12 12 confirming that the plain meaning of input is input --
02:12 13 information put into a system.
02:12 14 THE COURT: Let me -- I understand what
02:12 15 you're saying. Let me bounce over to opposing counsel
02:12 16 for just a second, if I could, and I'll come back to
02:12 17 you.
02:12 18 If I could hear from the plaintiff. It
02:12 19 seems to me here -- I understand plaintiff's argument
02:13 20 which is -- if someone could put the claim language
02:13 21 back up for just a second.
02:13 22 Okay. So.
02:13 23 MR. TUCKER: Slide 12.
02:13 24 THE COURT: There we go. Thanks.
02:13 25 So for the -- this is a question for the

02:13 1 plaintiff. I understand that you are arguing -- or I
02:13 2 think you're arguing -- you can tell me if I'm wrong,
02:13 3 but I think you're arguing is that input signals is --
02:13 4 the way it's drafted here was simply so the reader
02:13 5 would know which signals are the ones that are being
02:13 6 upconverted. I get that argument.
02:13 7 What I don't understand is if I -- if my
02:13 8 understanding of Apple's argument is correct, that
02:14 9 input signals are signals which have to be input, how
02:14 10 could an input signal be anything other than a signal
02:14 11 which is to be input? I'm not -- I don't know what
02:14 12 your resistance to Apple's construction is.
02:14 13 MR. MCARTHUR: Well, I think that the --
02:14 14 you're absolutely correct, Your Honor, that the claim
02:14 15 as drafted instructs exactly what input signals are.
02:14 16 Those signals that are to be upconverted. And if you
02:14 17 have upconverted signals, the origin of those signals
02:14 18 are input signals.
02:14 19 I think Apple's construction does two
02:14 20 things. One, it doesn't advance the ball. Input
02:14 21 signals are signals that are input. Just flips the
02:14 22 adjective and the noun.
02:14 23 But what they do add is this extra piece.
02:14 24 Input to the audio system. This is a new pathway
02:14 25 limitation that the drafter never intended to be part

02:14 1 of the claim.

02:14 2 THE COURT: So let me -- I'm sorry. So

02:15 3 plaintiff isn't opposed -- isn't arguing that an input

02:15 4 signal isn't a signal that needs to be input, it's the

02:15 5 additional language that it cares about, right?

02:15 6 MR. MCARTHUR: That's correct, Your

02:15 7 Honor.

02:15 8 THE COURT: Okay. Let me flip back --

02:15 9 that's what I was getting stuck on.

02:15 10 So let me flip back to Apple's counsel

02:15 11 and hear -- you may have been arguing this and I just

02:15 12 wasn't catching up to you. If you would argue why the

02:15 13 language plaintiffs are objecting to, why that would be

02:15 14 appropriate, that'd be good.

02:15 15 MR. TUCKER: Sure, Your Honor.

02:15 16 I think because what Mr. McArthur just

02:15 17 agreed to kind of begs the question, right? We agree

02:15 18 that the signals have to be input. Input to where?

02:15 19 The only natural understanding is that they are input

02:15 20 into this system that, by definition or by the claim

02:15 21 language themselves, is the one that is upconverting

02:16 22 those input signals.

02:16 23 So it only makes sense that the input

02:16 24 signals be input into the system that is -- that is

02:16 25 converting them. Again, that is clear from the plain

02:16 1 meaning, the dictionary definitions of the term.
02:16 2 One distinction that IngenioSpec makes in
02:16 3 the brief when trying to argue against this plain
02:16 4 meaning is that the input is used to distinguish input
02:16 5 signals from what it says, quote, are signals output by
02:16 6 the system.
02:16 7 And in their demonstratives at Slide 17,
02:16 8 they say that even more clearly: Input is
02:16 9 distinguished from output. Well, we agree. That's the
02:16 10 whole point of this construction is that the input
02:16 11 signals are the signals that are input into the system
02:16 12 as opposed to signals that are output from the system.
02:17 13 It -- if "input" didn't mean signals
02:17 14 input into the system, they could have used any other
02:17 15 descriptor. They could have used red signals or blue
02:17 16 signals or first signals. It wouldn't have mattered.
02:17 17 But that's not the word that the patentee used. The
02:17 18 patentee used the word "input signals."
02:17 19 So on just the plain meaning and the
02:17 20 structure of the claims, that's where we think we
02:17 21 stand. There are other reasons why the specification
02:17 22 supports that construction, but I understand that Your
02:17 23 Honor may have additional questions, so I'll pause
02:17 24 there for a second.
02:17 25 THE COURT: A response to that from

02:17 1 plaintiffs?

02:17 2 MR. MCARTHUR: Yes, Your Honor.

02:17 3 I think this is a perfect example of the

02:17 4 mischief that gets created when you try and construe

02:17 5 terms that don't need construction. I think you're

02:17 6 right initially to see that the --a person of skill in

02:17 7 the art, the jury would understand what an input signal

8 is.

02:18 9 There's no additional requirement to go

02:18 10 back and say, well, that's being input into the system.

02:18 11 Because when you look at the specification, the

02:18 12 specification has embodiments that talk about

02:18 13 filtering. They talk about amplifying.

02:18 14 So now you have signals that are coming

02:18 15 into the system in Apple's construction, things that

02:18 16 are happening to those signals within the audio system,

02:18 17 and then they're being upconverted.

02:18 18 Now, did they cease to become input

02:18 19 signals because they were filtered and amplified,

02:18 20 therefore, those input signals are no longer being the

02:18 21 signals that are being upconverted? So I think that

02:18 22 you create more mischief when you start injecting new

02:18 23 limitations into the claim.

02:18 24 And I'd like to go back to the first

02:18 25 thing that Mr. Tucker said. He said input signals are

02:18 1 here in the claim, it's clear. And then instead of
02:18 2 looking at the intrinsic evidence which teaches that
02:18 3 input signals are those signals that upconverted, he
02:18 4 went straight to extrinsic evidence and started talking
02:18 5 about, well, what does "input" mean in the context of
02:19 6 dictionaries and all this extrinsic evidence.
02:19 7 I think the starting point is always the
02:19 8 claim language and the intrinsic evidence. And here,
02:19 9 it's exactly what it teaches. Input signals are
02:19 10 upconverted. And that's the meaning of the claim. So
02:19 11 if we have to ascribe a meaning to the term "input
02:19 12 signals," it's those that are upconverted. Plain
02:19 13 meaning right in the claim language, teaches everyone.
02:19 14 THE COURT: Anything else from Apple's
02:19 15 counsel?
02:19 16 MR. TUCKER: Yes, Your Honor.
02:19 17 I would like to speak to the
02:19 18 specification because we agree that obviously the
02:19 19 specification is critically important to understanding
02:19 20 the meaning of the term. The point of using the
02:19 21 dictionaries was to show both, like I said with
02:19 22 technical dictionaries, which Phillips said can be
02:19 23 important for technical terms, helps to understand the
02:19 24 plain meaning.
02:19 25 But the crux of our argument in our

02:19 1 briefing is that the specification uniformly supports
02:20 2 interpreting input signals as signals input into the
02:20 3 system because in every embodiment, they explain that
02:20 4 the signals that are upconverted -- and we've been
02:20 5 talking about this in the claim, that the input signals
02:20 6 are upconverted. The signals that are upconverted in
02:20 7 every embodiment are the same as the signals that are
02:20 8 input into the system.
02:20 9 And if we can turn to Slide 16, I'd like
02:20 10 to just walk through the different parts of the
02:20 11 specification that each party cited.
02:20 12 So in our opening claim construction
02:20 13 brief, we cited to these two portions that are on Slide
02:20 14 16 of the specification and explain that in both of
02:20 15 these instances, the audio signals that are being
02:20 16 converted, so those that correspond to the input
02:20 17 signals in the claims, are the ones that are
02:20 18 transmitted to the system from other instruments like
02:21 19 home entertainment systems, phones, or microphones.
02:21 20 And so the only two embodiments that
02:21 21 actually talk about converting or upconverting signals
02:21 22 and use that term consistently describe them as signals
02:21 23 being input into the system.
02:21 24 When we did this, IngenioSpec responded
02:21 25 in its response brief --

02:21 1 If we go to Slide 17.
02:21 2 -- with two different citations. To
02:21 3 Figure 10 and Column 12 and then to Column 5. And we
02:21 4 explained in our reply brief how all of those new
02:21 5 examples supported our construction. Because in all of
02:21 6 them, just like we said in our opening brief, the
02:21 7 signals being described are input into the system. And
02:21 8 so all of these were consistent with our proposed
02:21 9 construction.
02:21 10 In its surreply, IngenioSpec did not
02:21 11 defend those positions. It didn't cite back to them
02:21 12 again. It didn't try to prove us wrong because it
02:21 13 couldn't. Instead, it cited to an entirely new
02:22 14 portion, and that is the portion I believe Mr. McArthur
02:22 15 was talking about today, in Columns 6 and Column 7 that
02:22 16 it said supported its position.
02:22 17 There are two problems with this newly
02:22 18 cited portion in the surreply. The first is it never
02:22 19 describes upconverting signals. Which is again a
02:22 20 requirement of the claims. The signals need to be
02:22 21 upconverted. So it is not relevant to the claim
02:22 22 language. It says it's transmitted to a user but it
02:22 23 never says that those signals are upconverted.
02:22 24 Second, in that embodiment, the
02:22 25 systems -- the signals that are being processed are

02:22 1 also input into the system. And so a portion of those
02:22 2 signals are being filtered out before they're
02:22 3 processed, but a subset of those signals, the ones that
02:22 4 are not filtered out, are both put into the system,
02:22 5 they were received by the system, and then they were
02:22 6 processed.
02:22 7 Again, that processing is not described
02:23 8 as up-conversion from this column of the specification,
02:23 9 but a portion of the signals that were input into the
02:23 10 system are also the ones being processed.
02:23 11 And so that newly cited portion in no way
02:23 12 undermines our construction. In fact, it just confirms
02:23 13 that any relevant embodiment shows that the signals
02:23 14 that were being processed are the signals that are
02:23 15 being input into the system.
02:23 16 THE COURT: A response?
02:23 17 MR. MCARTHUR: Yes, Your Honor.
02:23 18 I think that we're focusing on this idea
02:23 19 that input signals aren't necessarily input into the
02:23 20 audio system, and that's not our position at
02:23 21 IngenioSpec. I think input signals is clear without
02:23 22 the additional language of into the audio system.
02:23 23 What creates the mischief here and what
02:23 24 we're not okay with is the fact that there could be
02:23 25 this exclusion of input signals within the system

02:23 1 before they are upconverted.
02:23 2 If you do something, you modify a signal,
02:23 3 you change it, you filter it, you amplify it, then it
02:24 4 no longer has the character of an input signal and then
02:24 5 the claim is not met if that signal is then upconverted
02:24 6 because it's just -- it's a little vague as to what
02:24 7 Apple's actually asking the entering system. Is it to
02:24 8 stop being an input signal as soon as it enters the
02:24 9 system? You know, we don't know.
02:24 10 And my point of the specification
02:24 11 citation is that it does contemplate other actions in
02:24 12 processing of the signals. You have an analog signal
02:24 13 being put in. There could be an analog to digital
02:24 14 converter of this nature. Does it change the character
02:24 15 as an input signal at that point? We don't know. And
02:24 16 this is the mischief I was referring to when you take
02:24 17 something that doesn't need construction and you start
02:24 18 construing it.
02:24 19 So I think the claims are very clear.
02:24 20 You have an input signal and they're to be upconverted.
02:24 21 If you have upconverted signals, then those are the
02:24 22 input signals that are there. It doesn't need
02:24 23 construction and we don't need to go to the extrinsic
02:24 24 evidence to support that. I think just the reference
02:25 25 to the claim language itself is sufficient.

02:25 1 THE COURT: I'll be back in a second.
02:25 2 (Pause in proceedings.)
02:29 3 THE COURT: The Court is going to find
02:29 4 that the preamble is limiting but is going to reject
02:29 5 Apple's suggestion that the signal has to be input to
02:29 6 the audio system in the language that they proposed.
02:29 7 Next up, we have head-worn personal
02:29 8 electronic apparatus, head-worn wearable electric
02:29 9 device, et cetera. And my understanding is that,
02:29 10 generally speaking, the fight here is over whether or
02:29 11 not this would include or exclude -- whether this is
02:29 12 limited in some way to eyewear which -- and I know I'm
02:30 13 not going to take into consideration the actual
02:30 14 products that are involved, but clearly the fight here,
02:30 15 in my opinion, is over whether or not this claim would
02:30 16 extend to the Apple products that are, for lack of a
02:30 17 better word, audio only, like the ear pods. So I
02:30 18 understand what the fight is over.
02:30 19 I'll start with the defendant and have
02:30 20 you argue as to why -- I don't want Apple to focus on
02:30 21 pushing against plain and ordinary meaning in the sense
02:30 22 that if I accept what Apple is arguing, my construction
02:30 23 probably would be plain and ordinary meaning in
02:30 24 which -- and then I would adopt Apple's construction as
02:31 25 the plain and ordinary meaning. So I get what the

02:31 1 fight's over.

02:31 2 So if, however Apple wants to argue this,

02:31 3 including anything that was in the prosecution history

02:31 4 that indicated that this related to -- either

02:31 5 affirmatively related to eyewear or affirmatively said

02:31 6 it did not relate to non-eyewear or only audio or

02:31 7 however you want to put it. So.

02:31 8 But I understand what the fight is over.

02:31 9 So I'll start with Apple and we'll just go till we get

02:31 10 finished.

02:31 11 MR. TUCKER: Sure. Thank you, Your

02:31 12 Honor. Dan Tucker again on behalf of Apple.

02:31 13 And I think we can just jump right in and

02:31 14 start with Slide 20.

02:31 15 And Apple's position here for really --

02:31 16 and I may just phrase it a little differently than Your

02:31 17 Honor for --

02:31 18 THE COURT: No, no. You're -- I just --

02:31 19 your phraseology is -- I just -- I get what the fight

02:32 20 is over.

02:32 21 MR. TUCKER: Yeah. And just to recap,

02:32 22 you know, we had proposed a construction of electronic

02:32 23 eyewear or headwear based on disclaimer that is really

02:32 24 prevalent in the patent specification itself. And to

02:32 25 us, the fight is whether or not that excludes

02:32 1 standalone in-ear devices. And that's what we think
02:32 2 that IngenioSpec is trying to capture with their plain
02:32 3 meaning.
02:32 4 THE COURT: I think so too.
02:32 5 MR. TUCKER: Yeah. But the key to us is
02:32 6 that not only are there these disclaimed statements
02:32 7 where the inventors, where in the background of their
02:32 8 patent, describing their problem as eyewear related,
02:32 9 then characterizing their invention as related to
02:32 10 eyewear, they went a step further and then they
02:32 11 disparaged standalone in-ear devices like hearing aids.
02:33 12 They said people don't want to wear them.
02:33 13 There's a stigma associated with them.
02:33 14 And the problem to us is that Apple's
02:33 15 plain meaning interpretation, which it says encompasses
02:33 16 devices worn anywhere on the head, including at or in
02:33 17 the ear, would encompass those devices that the
02:33 18 patentees disparaged.
02:33 19 And so --
02:33 20 THE COURT: Let me ask you this also.
02:33 21 I'm not sure why headwear makes it any better for any
02:33 22 of us in terms of the fight that you're identifying
02:33 23 because headwear, it seems to me -- I get eyewear. I
02:33 24 get that. But I don't know that headwear -- if the
02:33 25 effort is to limit the coverage of the patent in a way

02:34 1 that would not include the ear pods, for example, I
02:34 2 don't know that having the word "headwear" would
02:34 3 exclude the ear pods. And it certainly would not be an
02:34 4 appropriate construction to say headwear other than
02:34 5 what are the accused products here.
02:34 6 So again, I get the fight, which is
02:34 7 whether or not -- in my opinion, whether or not there
02:34 8 is something in the patent, in this claim term, it says
02:34 9 head-worn personal -- in fact, that may be the problem.
02:34 10 Head-worn personal electronic apparatus, one of you
02:34 11 wants it to include -- may want to include glasses and
02:34 12 one of you may want to make it more expansive.
02:34 13 So I don't think -- I'm just saying I
02:34 14 don't think headwear gets you very far in what Apple's
02:34 15 trying to accomplish.
02:34 16 MR. TUCKER: Yeah. Understood, Your
02:34 17 Honor.
02:34 18 And what we were trying to do, and maybe
02:35 19 I can walk through the evidence. I mean, we think that
02:35 20 the background and the disclaimer clearly tied, like I
02:35 21 said, the --
02:35 22 THE COURT: No. I get what you're trying
02:35 23 to do. What I'm saying is headwear I think is -- for
02:35 24 example, if you took out the word "or." If you said
02:35 25 the patents disclaim any scope beyond eyewear headwear,

02:35 1 then that would make more sense to me than, for your
02:35 2 purposes, than eyewear or headwear.
02:35 3 Because right now it says head-worn
02:35 4 personal electronic apparatus, which I think all of you
02:35 5 would agree is headwear. The question is what is the
02:35 6 limitation of that head-worn personal electronic
02:35 7 apparatus, right?
02:35 8 MR. TUCKER: I'm sorry. I'm not sure I
02:35 9 follow your question.
02:35 10 THE COURT: Well, I don't think y'all are
02:35 11 fighting over whether or not -- I mean, the patent says
02:35 12 head-worn personal electronic apparatus which means
02:35 13 headwear. But I think y'all -- Apple wants it to be
02:36 14 limited to electronic eyewear. The headwear to be
02:36 15 limited to electronic eyewear. So it seems to me that
02:36 16 what you all would want me to say is electronic eyewear
02:36 17 headwear and leave out the word "or."
02:36 18 MR. TUCKER: So I think under our
02:36 19 interpretation of what headwear is, just to be clear, I
02:36 20 don't think things like an ear bud would be headwear.
02:36 21 THE COURT: Where is your
02:36 22 interpretation -- what I'm saying?
02:36 23 MR. TUCKER: Sure. So our inclusion of
02:36 24 headwear and the reason why we included it in the
02:36 25 construction is really because almost every single

02:36 1 embodiment is eyewear. It's eyeglasses. Except there
02:36 2 are a couple embodiments that describe a nightcap.
02:36 3 And if we go to Slide --
02:37 4 THE COURT: So for you, headwear --
02:37 5 framing it this way doesn't exclude an embodiment?
02:37 6 MR. TUCKER: Right. So to us, we were
02:37 7 trying to stay true to two principles: One,
02:37 8 disclaimer, and two --
02:37 9 THE COURT: I got it.
02:37 10 MR. TUCKER: -- that we move to exclude
02:37 11 embodiments. And we didn't want to exclude this
02:37 12 embodiment of Figure 39 which shows a nightcap. That
02:37 13 while it shows it --
02:37 14 THE COURT: No.
02:37 15 MR. TUCKER: -- over the eyes here, it's
02:37 16 not necessarily so. So that's the origin of it.
02:37 17 THE COURT: Okay.
02:37 18 MR. TUCKER: So if it's okay, I would
02:37 19 like to just kind of walk through some of the evidence
02:37 20 and why we do think there -- this is a case really
02:37 21 about disclaimer.
02:37 22 THE COURT: No. Sure.
02:37 23 MR. TUCKER: If we start on Slide 21.
02:37 24 So as I mentioned a few minutes ago, it's
02:37 25 really like a four-step combination. The first is that

02:38 1 all these patents, the backgrounds of every single one
02:38 2 of them describe the problem that the inventors were
02:38 3 trying to solve, and it was an eyewear specific
02:38 4 problem. They were trying to incorporate electronic
02:38 5 components into eyeglasses.
02:38 6 Slide 21 shows it, an example from the
02:38 7 '693 patent but all of them include similar
02:38 8 disclosures. And then they back that up after
02:38 9 describing that problem --
02:38 10 If we go to Slide 22.
02:38 11 -- by then describing the, quote,
02:38 12 invention as pertaining to eyewear. Specifically to
02:38 13 providing eyewear with electrical components. The '693
02:38 14 patent says the invention pertains to techniques for
02:38 15 providing eyewear. The '355 patent describes the
02:38 16 present invention regarding glasses. The parent
02:38 17 application to the '901 patent, which is incorporated
02:38 18 by reference, explains that the invention pertains to
02:39 19 techniques for providing eyewear with electrical
02:39 20 components.
02:39 21 These weren't just isolated sentences.
02:39 22 They were repeated throughout 13 different priority
02:39 23 applications that are incorporated by reference into
02:39 24 these patents.
02:39 25 And so again, this kind of one-two punch

02:39 1 of describing the problem in the background as putting
02:39 2 electronic components into eyeglasses and then
02:39 3 describing the inventions as incorporating electronic
02:39 4 components into eyeglasses, that puts this case
02:39 5 squarely in line with cases like SciMed and Trustees of
02:39 6 Columbia from the Federal Circuit that found disclaimer
02:39 7 in similar circumstances.
02:39 8 And so instead of confronting this
02:39 9 language, IngenioSpec points to other language in the
02:39 10 specification that is broader than these statements.
02:39 11 They weren't in the parent applications, they weren't
02:39 12 added until these continuation applications were filed,
02:40 13 but they say things like head-worn electronic devices
02:40 14 such as eyewear.
02:40 15 Well, our point here is that those later
02:40 16 added sentence can't -- they can't unring the
02:40 17 disclaimer bell. They can't take away from the
02:40 18 otherwise clear statements about the invention that are
02:40 19 in these patents.
02:40 20 And that's what the Federal Circuit said
02:40 21 in Trustees of Columbia versus Symantec when it said
02:40 22 that the patentee can't rely on its own use of
02:40 23 inconsistent and confusing language to support a broad
02:40 24 construction which is otherwise foreclosed. That's the
02:40 25 case here.

02:40 1 And like I said, the other main point is,
02:40 2 in addition to this kind of background and then
02:40 3 identifying the invention, the real reason why
02:40 4 IngenioSpec's construction can't be right is on Slide
02:40 5 23, is because it would capture disparaged embodiments.
02:40 6 So if we go to Slide 23.
02:40 7 The patents disparage standalone in-ear
02:41 8 devices like hearing aids.
02:41 9 Again, IngenioSpec's interpretation or
02:41 10 its proposed plain meaning would encompass devices worn
02:41 11 including at or in the ear. Anywhere on the head,
02:41 12 including at or in the ear. That would include hearing
02:41 13 aids.
02:41 14 But hearing aids are disparaged. The
02:41 15 patents explain people don't want to wear them. They
02:41 16 don't want to be perceived as being old. This '898
02:41 17 patent that's incorporated says that even if the
02:41 18 government gives them away for free, people don't want
02:41 19 to use them.
02:41 20 And then after disparaging these hearing
02:41 21 aids, the patents contrast those devices with their
02:41 22 invention to it, which is, again, to incorporate
02:41 23 electronics into eyewear or headwear.
02:41 24 I have a few other slides but I think
02:41 25 we've touched on this other main point that they make

02:41 1 which is that all of the other embodiments describe --
02:41 2 they all exclusively describe eyeglasses or eyewear or
02:42 3 headwear.
02:42 4 There's one other point that I would just
02:42 5 like to make because I think IngenioSpec will probably
02:42 6 address this.
02:42 7 If we go to Slide 25.
02:42 8 This is an example embodiment of
02:42 9 eyeglasses that are shown in the patent. They include
02:42 10 an extension of the tube that also goes into the ear.
02:42 11 And IngenioSpec made a point in its brief that this
02:42 12 would be excluded under Apple's construction.
02:42 13 I just want to make clear that it
02:42 14 wouldn't be because this is also eyewear. This is the
02:42 15 side view of a frame of eyeglasses. Apple's
02:42 16 construction doesn't exclude connections to those
02:42 17 eyewear that also go in the ear. It's just excluding
02:42 18 the type of standalone in-ear devices that the patents
02:42 19 disparaged.
02:42 20 THE COURT: All right. Let me get over
02:42 21 to the other side and then I'll come back to you if I
02:43 22 need to.
02:43 23 For plaintiff?
02:43 24 MS. GLAUSER: Thank you, Your Honor.
02:43 25 Nikki Glauser again.

02:43 1 Let me see if I can get my Screen Share
02:43 2 proper here. Courtney, can you confirm, is that in
02:43 3 presentation mode the way it should be?
02:43 4 MS. KASUBOSKI: This is right, yes.
02:43 5 MS. GLAUSER: Thanks so much.
02:43 6 As Your Honor very correctly noted in its
02:43 7 questioning, "head-worn" is a term that's easily
02:43 8 understandable by the jury. It goes to the position of
02:43 9 the device. Is it worn on the head? Apple wants to,
02:43 10 again, rewrite that to be something else. A limited
02:43 11 class of certain forms of eyewear.
02:43 12 And those two forms in Apple's
02:43 13 construction are either eyewear or headwear, but
02:43 14 there's an asterisk there which is only certain
02:43 15 headwear, meaning it needs to be either on the eyes or
02:43 16 on the crown of the head, such as a cap, and if it has
02:44 17 any in or at the ear component, that ear component has
02:44 18 to be attached by a frame or some other structural
02:44 19 piece to the eyewear or the limited set of headwear.
02:44 20 Now, of course there's nothing in the
02:44 21 claims that supports that. It's three different
02:44 22 patents across dozens of claims that all use the word
02:44 23 "head-worn." They don't use eyewear. They don't use
02:44 24 headwear. They don't refer to an earpiece that is
02:44 25 attached exclusively to a frame of eyewear or crown

02:44 1 headwear.
02:44 2 In addition, the specification
02:44 3 specifically describes that it isn't limited to
02:44 4 eyewear. It in multiple instances across the patents
02:44 5 uses "such as eyewear" to describe embodiments here.
02:44 6 And of course that means that it's illustrative or
02:45 7 eyewear is illustrative, but it incorporates beyond
02:45 8 just eyewear.
02:45 9 And the '901 patent makes this explicit
02:45 10 when it says -- when it refers to providing eyewear or
02:45 11 other head-worn personal electronic apparatus. And as
02:45 12 a result, Apple wants to take the other head-worn and
02:45 13 limit it to particular types of devices that might be
02:45 14 worn on the head.
02:45 15 Now, of course the plain and ordinary
02:45 16 meaning of head-worn would include anywhere on the
02:45 17 head. The top of the head, the eyes, in or at the ear.
02:45 18 And there's nothing that supports Apple's construction
02:45 19 that instead limits it to this particular positions.
02:45 20 And in fact, if we go to Apple's briefing
02:45 21 here in their reply, they acknowledge that the issue
02:45 22 here is not whether or not the claimed device or
02:46 23 apparatus can operate at or in the ear. Instead, they
02:46 24 want to read in that somehow that at or in the ear
02:46 25 apparatus only satisfies the claims if it's attached to

02:46 1 eyewear or headwear. But there's nothing in the claims
02:46 2 that suggest that.
02:46 3 With regard to Apple's description that
02:46 4 the background addresses a problem in terms of eyewear
02:46 5 and labels or describes the invention by that example,
02:46 6 nothing about that is equal to a surrender of all other
02:46 7 head-worn devices other than eyewear and this subset of
02:46 8 headwear.
02:46 9 And in fact, the Federal Circuit's cases
02:46 10 with Apple versus WiLAN and a number of others
02:46 11 precludes that. The background description is not the
02:46 12 definition of the claims absent some manifest
02:46 13 restriction or exclusion, none of which exists here.
02:47 14 Nor did Mr. Tucker point to any. He
02:47 15 pointed to illustrative examples of what exists in the
02:47 16 specification, none of which constitute any manifest
02:47 17 disclaimer or attempt to restrict or exclude what would
02:47 18 otherwise be the normal meaning of head-worn. Worn on
02:47 19 the head.
02:47 20 Mr. Tucker also suggested that the
02:47 21 paragraph in the -- or the portion of the specification
02:47 22 that disparaged hearing aids somehow constituted a
02:47 23 disclaimer but it doesn't. That portion of the
02:47 24 specification criticizes the stigma that exists with
02:47 25 regard to traditional hearing aids. But nothing about

02:47 1 it disclaims the idea that head-worn includes devices
02:47 2 worn in the ear.
02:47 3 And in fact, the Continental Circuits
02:47 4 versus Intel case, it's a Fed Circuit case that
02:48 5 specifically forecloses a disparagement as equaling
02:48 6 disclaimer.
02:48 7 So here, what you have is a specification
02:48 8 that broadly speaks to eyewear as a mere example of
02:48 9 head-worn. It broadly refers to head-worn as a
02:48 10 positional description of where the device is, not what
02:48 11 the device is. And as a result, the term should be
02:48 12 given its plain and ordinary meaning of worn on the
02:48 13 head.
02:48 14 Unless Your Honor has specific questions,
02:48 15 that's all I have for now.
02:48 16 THE COURT: Are there any figures in the
02:48 17 specification that indicate something that is headwear
02:48 18 and not eyewear?
02:48 19 MS. GLAUSER: There are figures in the
02:48 20 specification that Mr. Tucker directed you to that are,
02:49 21 for example, the cap. There are not figures in the
02:49 22 specification that illustrate a standalone in-the-ear
02:49 23 device. But of course, what the patentee decided to
02:49 24 illustrate is not coextensive.
02:49 25 THE COURT: No. I got it.

02:49 1 But other -- he pointed out that -- the
02:49 2 hat and explained why he thought that that did not --
02:49 3 did not count for supporting ear wear. Do you have
02:49 4 anything -- is there anything else -- are there any
02:49 5 other -- is there anything else you can point to in the
02:49 6 spec that supports you?
02:49 7 MS. GLAUSER: I don't have a figure in
02:49 8 the spec that would suggest that the -- that
02:49 9 illustrates that -- it does suggest. I don't have a
02:49 10 figure in spec that illustrates a standalone in-the-ear
02:49 11 piece.
02:49 12 THE COURT: No, no. I get that.
02:50 13 Something that's not eyeglasses.
02:50 14 MS. GLAUSER: I think the only other
02:50 15 illustration in there, Your Honor, is the night cap. I
02:50 16 think it's Figure 8.
02:50 17 THE COURT: Okay. Anything else you
02:50 18 wanted to argue?
02:50 19 MS. GLAUSER: No. Of course, other than
02:50 20 the fact that the illustrations are not the definition
02:50 21 of the claim scope. But nothing else for now, Your
02:50 22 Honor.
02:50 23 THE COURT: Okay. And any short response
02:50 24 from Apple?
02:50 25 MR. TUCKER: Yes, Your Honor. Just

02:50 1 hopefully one minute or less.
02:50 2 I just wanted to level set and say, you
02:50 3 know, Apple is not -- is not trying to rewrite the
02:50 4 claim.
02:50 5 THE COURT: No.
02:50 6 MR. TUCKER: We are trying to hold the
02:50 7 patentee to his words. The patentee set forth the
02:50 8 problem in the background. It defined the invention
02:50 9 after that, and then it disparaged in-ear devices.
02:50 10 And to couple that, it did not disclose
02:50 11 any embodiment in figures or text of an in-ear -- a
02:50 12 standalone in-ear device. And that's why we think the
02:51 13 claim should be so limited.
02:51 14 THE COURT: I'll be back in a few
02:51 15 seconds.
02:51 16 (Pause in proceedings.)
02:53 17 THE COURT: The Court is going to go with
02:53 18 Apple's construction on this. Electronic eyewear or
02:53 19 headwear.
02:53 20 Next up, we have -- sorry. I have too
02:53 21 many devices here to run through.
02:53 22 And actually I have a/the speakers,
02:53 23 ellipses, proximate to an ear or the user.
02:53 24 MR. DECOSTA: Yes, Your Honor. Frank
02:53 25 DeCosta for Apple again.

02:53 1 THE COURT: I'm not sure -- I've said
02:54 2 this before. You're going to feel like just -- you
02:54 3 came here just for me to beat you up. But -- and I
02:54 4 promise that's not true.
02:54 5 But I find, generally speaking, when I
02:54 6 have a hard time accepting when someone takes proximate
02:54 7 to an ear and tells me they want near an ear. Because
02:54 8 I always feel like if the lawyer writing this had said
02:54 9 a/the speakers near the ear, then you would have come
02:54 10 in here and said, we want proximate.
02:54 11 I don't get the issue here. I don't get
02:54 12 what's the difference between proximate and near.
02:54 13 MR. DECOSTA: I appreciate that. So
02:54 14 would you have heartburn, Your Honor, if I came in
02:54 15 saying that "proximate to" means in the ear? And
02:54 16 that's the debate.
02:54 17 So the construction that IngenioSpec is
02:55 18 proposing is that proximate to includes in the ear.
02:55 19 And --
02:55 20 THE COURT: Well, no, no. What they're
02:55 21 saying is plain and ordinary meaning.
02:55 22 MR. DECOSTA: That's correct. But if you
02:55 23 read their briefing and you read their disparagement or
02:55 24 their problems against our construction, they're saying
02:55 25 that proximate to should include embodiments that are

02:55 1 in the ear or at least partially inserted into the ear.
02:55 2 So that's the debate. We've got a sort
02:55 3 of a triangle where we think proximate to should be
02:55 4 clear --
02:55 5 THE COURT: Well, let me say that
02:55 6 given -- I'm sorry. I didn't mean to interrupt. I
02:55 7 apologize. I was reading and I interrupted you.
02:55 8 But let me ask you this. It seems to me,
02:55 9 given what I just did with regard to the last
02:55 10 construction, I don't know how you would get in the ear
02:55 11 out of proximate.
02:55 12 MR. DECOSTA: Well, Your Honor, thank
02:55 13 you.
02:55 14 THE COURT: I mean, I'm -- again, I can't
02:55 15 rule at this point about, you know, practical
02:56 16 commercial embodiments of what it is. But it's clear
02:56 17 to me that the patent was designed to go after
02:56 18 something that one wore like head glasses, leaving the
02:56 19 hat example aside. And it would -- it'd be very
02:56 20 difficult to persuade at least me that this included
02:56 21 devices of Apple's that went inside the ear.
02:56 22 MR. DECOSTA: And that's our argument,
02:56 23 Your Honor.
02:56 24 And just to make it clear why we would
02:56 25 like a construction that makes what you just said

02:56 1 explicit now is because, you know, there's six patents.
02:56 2 This impacts three of the patents. There are 300 plus
02:56 3 claims. This impacts half of those claims and the vast
02:56 4 majority of products. So if we can have --
02:56 5 THE COURT: Well, you --
02:56 6 (Simultaneous conversation.)
02:56 7 MR. DECOSTA: -- that'll get us pretty
02:56 8 far along.
02:56 9 THE COURT: You have me saying on the
02:56 10 record, I think I'm pretty clear.
02:56 11 Anything from plaintiff?
02:56 12 MS. KASUBOSKI: Yes, Your Honor. Just a
02:57 13 moment, if I could share my screen.
02:57 14 Mr. DeCosta, I think I need you to stop
02:57 15 sharing your screen.
02:57 16 Thanks.
02:57 17 Okay. So, Your Honor, I think you're
02:57 18 correct that the main dispute here is whether or not
02:57 19 proximate to includes something that's in the ear of
02:57 20 the user. And Apple's attempting to add that negative
02:57 21 limitation there, defining "proximate" to exclude
02:57 22 speaker that are located within the ear.
02:57 23 There's two main arguments here as to why
02:57 24 we think that doesn't quite work with the patents. The
02:57 25 first is if you look at the claims.

02:57 1 So we have two dependent claims here that
02:58 2 further define speakers that are wearable proximate to
02:58 3 the ear of the user as being at least partially
02:58 4 inserted into an ear of the user. And we know that an
02:58 5 independent claim has to -- a dependent claim has to
02:58 6 fall under the scope of the independent claim.
02:58 7 So here we have on the left Claim 75,
02:58 8 which is from the '693 patent. It's an independent
02:58 9 claim that describes speakers that are configured to be
02:58 10 wearable proximate to an ear of the user. And
02:58 11 depending from that claim, giving an example of
02:58 12 speakers that are wearable proximate to the ear of a
02:58 13 user, we have speakers that are configured to be at
02:58 14 least partially inserted into an ear of the user.
02:58 15 We see the same thing here for the '355
02:58 16 patent, Claim 17, where the independent claim describes
02:58 17 a speaker being configured to be wearable proximate to
02:58 18 an ear of the user, and the dependent claim gives an
02:58 19 example of that, where the speaker's configured to be
02:58 20 at least partially inserted into the ear of the user.
02:58 21 And if we try putting in Apple's
02:59 22 construction, we say near but not touching, near but
02:59 23 not within, you can see here on Slide 32 that the
02:59 24 dependent claims actually are rendered nonsensical.
02:59 25 You can't have something that's partially inserted into

02:59 1 the ear but not touching the ear of the user.
02:59 2 And then our second reason why we think
02:59 3 that actually proximate does include things that are
02:59 4 partially inserted within an ear is because of the
02:59 5 specification.
02:59 6 So the specification actually
02:59 7 describes -- at the top, you can see a quote which
02:59 8 talks about the speaker pointing toward and inserted
02:59 9 into the corresponding ear of the user. That quote's
02:59 10 in all three patents that use the term "proximate to."
02:59 11 And below, you see a quote that's
02:59 12 described in Figure 9D on the right here which
02:59 13 describes an ear bud 974, that's that circle piece you
02:59 14 can see, and the ear bud can be placed in or near the
02:59 15 user's ear canal. So proximate to could be in or near.
03:00 16 And that ear bud 974 contains a speaker.
03:00 17 THE COURT: Anything else from Apple?
03:00 18 MR. DECOSTA: Your Honor, I learned a
03:00 19 long time ago when the Court sides with you to stop
03:00 20 arguing. But if you heard anything from counsel that
03:00 21 you'd like me to address, I will. Otherwise we have
03:00 22 nothing further.
03:00 23 THE COURT: I have not.
03:00 24 Anything else from plaintiff?
03:00 25 MS. KASUBOSKI: Nothing further, Your

03:00 1 Honor.
03:00 2 THE COURT: Then the Court is going to go
03:00 3 with its plain and ordinary meaning.
03:00 4 Next up, I have -- and I think this is
03:00 5 the last one. I'm just going to make sure I have this.
03:00 6 Yeah.
03:00 7 The last claim term I have is the
03:01 8 preamble from the '599 patent, which has to at least
03:01 9 help, and goes on from there. I'll hear first from
03:01 10 Apple on this.
03:01 11 And I have another -- we bumped back
03:01 12 another hearing from 3:00 to 3:30 but I really do have
03:01 13 to get to that one by 3:30, so just if everyone can
03:01 14 keep that in mind. Thanks.
03:01 15 MS. SPECHT: Yes, Your Honor. Kara
03:01 16 Specht from Finnegan on behalf of Apple, and I will
03:01 17 quickly share my slides and get straight to the point.
03:01 18 Okay. Okay. And I'm going to jump ahead
03:01 19 a few and begin on Slide 43, Your Honor.
03:01 20 So just a bit of brief background here.
03:01 21 We're talking about two issues for all independent
03:01 22 claims of the '599 patent. The threshold issue is
03:02 23 whether the preambles are limiting in their entirety.
03:02 24 And IngenioSpec has agreed that the preambles are at
03:02 25 least partially limiting.

03:02 1 Now, I want to start with Claim 1 here on
03:02 2 Slide 40 -- I'm sorry. I want to start with Slide 42.
03:02 3 I jumped a little too far ahead.
03:02 4 Okay. So starting on Slide 42, I want to
03:02 5 begin by noting that IngenioSpec focuses in its
03:02 6 briefing on Claim 1. And argues extensively that
03:02 7 Claim 1 is not supplying antecedent basis for the user
03:02 8 as it appears in the portions of the spec that we
03:02 9 dispute are limiting.
03:02 10 But Claim -- this did not go backwards.
03:02 11 But Claims 20, 22, and 24 have the exact opposite
03:02 12 issue.
03:02 13 So we know from the Federal Circuit, and
03:02 14 I believe that Mr. Tucker addressed this earlier for a
03:03 15 different term, to determine if a preamble is limiting,
03:03 16 the Federal Circuit has indicated that a strong
03:03 17 indication that a preamble is limiting is when terms
03:03 18 within the preamble provide antecedent basis for terms
03:03 19 that appear later in the claim body. This comes out of
03:03 20 the Bio-Rad case.
03:03 21 So I want to look at the specific claims
03:03 22 and I put Claim 20 on the board. Claims 22 and 24 have
03:03 23 the identical preamble. But the red portion is what is
03:03 24 disputed in this case, Your Honor. The blue portion is
03:03 25 what IngenioSpec has already acknowledged is limiting

03:03 1 and was recognized as such in Your Honor's tentative
03:03 2 constructions as well.
03:03 3 Now, unlike Claim 1 that IngenioSpec
03:03 4 focuses on, in Claims 20, 22, and 24, the red portion
03:03 5 is supplying antecedent basis for the term "the user."
03:03 6 You can see on the screen in the preamble, a user
03:03 7 appears in the red disputed portion. It appears later
03:03 8 in the blue portion that IngenioSpec has admitted is
03:04 9 limiting. And then it appears later on down in the
03:04 10 claim, and it's quite a long claim so I've excerpted it
03:04 11 down. It's Limitation G, where again, the user appears
03:04 12 in two different places, deriving its antecedent basis
03:04 13 from the disputed portion of the preamble.
03:04 14 These are strong indications that at
03:04 15 least the red portion of the preamble but likely the
03:04 16 preamble in its entirety should be limiting.
03:04 17 Now, I want to jump ahead a slide here to
03:04 18 Slide 43 and address Claim 1 as well. And this is
03:04 19 where IngenioSpec spends most of its time in the
03:04 20 briefing.
03:04 21 But the Federal Circuit has instructed
03:04 22 that antecedent basis is not the only indicator of when
03:04 23 a preamble is limiting. Instead, the
03:04 24 interconnectedness of the limitations within the
03:04 25 preamble, especially here, where part of it is already

03:04 1 admittedly limiting, is also an indication of when the
03:04 2 preamble is limiting.
03:04 3 So I want to focus here for Claim 1, not
03:04 4 just on antecedent basis, although, as we address in
03:04 5 our briefing, the red underlined audio outputs is
03:05 6 supplying antecedent basis for Claim 3. But the fact
03:05 7 that here, the blue portion is supplying antecedent
03:05 8 basis to the red portion.
03:05 9 So I've put the user within the red
03:05 10 portion actually in blue. This is an indication that
03:05 11 these two phrases, the blue and the red disputed
03:05 12 portion, are interconnected.
03:05 13 And it's not just that these are
03:05 14 interconnected just functionally within the claim but
03:05 15 they also provide structural components.
03:05 16 So IngenioSpec spends quite a bit of time
03:05 17 talking about how the red disputed portion to at least
03:05 18 help the user hear audio outputs produced by the device
03:05 19 is nothing more than an intended use. It's not
03:05 20 providing any structure.
03:05 21 But the phrase "outputs produced by the
03:05 22 device" surely is a structural component. It's
03:05 23 indicating that the device, the claimed wireless
03:06 24 wearable device is generating and producing audio
03:06 25 outputs.

03:06 1 That appears for the first time in the
03:06 2 disputed portion. It's supplying a structural
03:06 3 component. It's central to the -- it's central to the
03:06 4 claim itself and that appears in all four of the claims
03:06 5 at issue here.
03:06 6 Also want to note -- and I skipped my
03:06 7 slide with the case law, Your Honor, to be brief, but
03:06 8 we address in our briefing quite extensively the
03:06 9 Xencore case.
03:06 10 The Xencore case handles a phrase -- it's
03:06 11 parallel to this one, so I want to make sure that I say
03:06 12 it correctly. "Treating a patient" was the disputed
03:06 13 portion in the Xencore case. And the Federal Circuit
03:06 14 focused in quite closely on the article that connected
03:06 15 treating a patient with the second portion of the
03:06 16 preamble that was admittedly limiting, just like here.
03:07 17 The word in that case was "by." So the
03:07 18 full phrase was "treating a patient by administering a
03:07 19 particular antibody." Here, we have a similar article.
03:07 20 It's "to" this time, where the blue portion is
03:07 21 connected to the disputed red portion by the word "to."
03:07 22 So again, this is not just the necessary
03:07 23 structure of the claim, although it is audio outputs
03:07 24 produced by the device. But these are interconnected
03:07 25 and we have antecedent basis coming both out of the

03:07 1 blue portion that's acknowledged to be limiting and the
03:07 2 red portion that is disputed here.
03:07 3 And I want to make one particular note,
03:07 4 harkening back to one of the earlier limitations from a
03:07 5 different patent that was argued, and I believe
03:07 6 Mr. McArthur referenced the fact that it was for the
03:07 7 input signals term. But if the user -- if the patentee
03:07 8 wanted to claim something more than input signals, they
03:07 9 certainly could have used additional language.
03:07 10 Well, here the patentee did use
03:07 11 additional language. If the red portion was truly
03:08 12 functional and not intended to be limiting, the
03:08 13 patentee was well within their rights and abilities and
03:08 14 know-how to leave it out. Just as Mr. McArthur pointed
03:08 15 out earlier, here, the patentee did speak exactly how
03:08 16 they wanted their claim to be phrased. We need to
03:08 17 provide meaning to that and the user here is a
03:08 18 particular component that the patentee chose to
03:08 19 include.
03:08 20 So I'm going to pause there, Your Honor,
03:08 21 because the next portion of my argument is on the
03:08 22 indefiniteness of the term, but I want to pause for any
03:08 23 questions.
03:08 24 THE COURT: I'm good. You can deal with
03:08 25 the indefiniteness as well.

03:08 1 MS. SPECHT: Yes, Your Honor. Thank you.
03:08 2 So I'm going to jump -- my slides are
03:08 3 very touchy today -- to Slide 46 in the demonstratives.
03:08 4 And I am going to start with the
03:08 5 extrinsic evidence but I know that the intrinsic is
03:08 6 most important here. It's just the first way to start
03:08 7 here that gives us the clearest picture of where the
03:08 8 dispute lies.
03:09 9 And here, both parties refer to the same
03:09 10 Webster dictionary in the briefing. And IngenioSpec
03:09 11 focuses almost entirely on the first definition for
03:09 12 "help": Assist or support. And they claim this is not
03:09 13 a term of degree, criticizing Apple for instead
03:09 14 pointing out the make more pleasant or bearable
03:09 15 definition. But both definitions for "help," the first
03:09 16 one on the slide and the second one on the slide, are
03:09 17 both terms of degree.
03:09 18 The question is what assistance or
03:09 19 support is necessary to make audio outputs produced by
03:09 20 the device more pleasant or bearable? Or if we want to
03:09 21 throw away the more pleasant or bearable definition
03:09 22 entirely, what assistance or support is necessary to
03:09 23 allow a user to adequately hear audio outputs produced
03:09 24 by the device? And this is not an objective metric,
03:09 25 which is what we're looking for for the claim to be

03:09 1 definite.
03:09 2 So I want to turn now to the intrinsic
03:10 3 record and the specification of the '599 patent, which
03:10 4 does not use the phrase "to help a user hear audio
03:10 5 outputs" at all. That phrase doesn't appear.
03:10 6 So we've combed through the rest of the
03:10 7 record and there is one place in the family where the
03:10 8 phrase appears. It's in a related application that was
03:10 9 incorporated into the '599 specification. That
03:10 10 application confirms the indefiniteness nature of the
03:10 11 term.
03:10 12 And in this application, the patentee
03:10 13 stated that a user's ability to hear and the need for
03:10 14 help hearing audio is generally dependent on age,
03:10 15 subjective criteria, and it acknowledges the person
03:10 16 with mildly impaired hearing does not need the same
03:10 17 degree of hearing assistance or help as one with
03:10 18 severely impaired hearing.
03:10 19 This creates what I call the sliding
03:10 20 scale of degrees of enhancement or degrees of help that
03:10 21 a user would need. And the goal here of course is to
03:10 22 achieve the optimal hearing experience for the user
03:11 23 without overcompensating to the point of harming the
03:11 24 user's ability to hear. This, again, is not an
03:11 25 objective measure. There's not an objective measure in

03:11 1 the specification.

03:11 2 Turning to the last slide and this is --

03:11 3 second to last slide.

03:11 4 In its briefing, IngenioSpec provides

03:11 5 examples -- two categories of examples for why they

03:11 6 think the specification provides a metric to measure

03:11 7 the meaning of the term "help." The first is sound

03:11 8 delivery mechanisms. The second is noise cancellation.

03:11 9 They allege both provide some sort of metric by which

03:11 10 to measure the meaning of the term.

03:11 11 So starting with the sound delivery

03:11 12 examples, these are completely divorced from the claim

03:11 13 language. And through the whole presentation on the

03:11 14 preambles and why they are limiting, the term "user" is

03:11 15 an important limitation in this claim.

03:11 16 The patentee chose to claim helping a

03:11 17 user here. The term "user" appears elsewhere in the

03:12 18 bodies of the claims.

03:12 19 IngenioSpec focuses in its briefing on

03:12 20 how the user is not a claimed structure. And as true

03:12 21 as that may be, of course the user's not a separate

03:12 22 standalone limitation, but the claim is centered on

03:12 23 helping a user. On providing audio outputs to a user.

03:12 24 And so we can't just ignore the user's existence within

03:12 25 the claim. And that's exactly what IngenioSpec's

03:12 1 examples of sound delivery do, ignore the importance to
03:12 2 a user.
03:12 3 Turning to the second example, noise
03:12 4 cancellation certainly could be an example that helps
03:12 5 users hear audio signals, particularly if they're in a
03:12 6 noisy environment. But this single example doesn't
03:12 7 offer us any guidance on how much help or assistance is
03:12 8 needed to meet the claims.
03:12 9 And this is akin to another case that we
03:12 10 cite in our briefing, the Interval Licensing case. And
03:12 11 the Court in that case found the claim language in an
03:12 12 unobtrusive manner that does not distract the user. It
03:12 13 was about displaying icons on a screen, notifications
03:12 14 to a user, graphical user interface, displaying those
03:13 15 in an unobtrusive manner.
03:13 16 Now, the Court found that to be
03:13 17 indefinite, even though, as you can imagine, there are
03:13 18 examples that universally would be unobtrusive,
03:13 19 something minimized in the task bar, a flashing alert,
03:13 20 something like that surely is unobtrusive. Just as
03:13 21 here, noise cancellation may be one example, that can't
03:13 22 save these claims from the indefinite nature.
03:13 23 Moreover -- and I'm going to go to my
03:13 24 last slide now -- noise cancellation is almost
03:13 25 identical to the concept that was rejected as

03:13 1 indefinite by the examiner in the '599's parent
03:13 2 application. The examiner of the '599's parent
03:13 3 application rejected a similar, arguably more concrete
03:13 4 term than what we're dealing with here. There, the
03:13 5 term was "to help cancel at least some noise." Like
03:13 6 IngenioSpec's example from its briefing.
03:13 7 Now, that term in the parent does not
03:13 8 depend on the user's specific ability and, yet, the
03:14 9 examiner still rejected it as providing -- as not
03:14 10 providing a standard for ascertaining the requisite
03:14 11 degree. That was the language the examiner used in the
03:14 12 rejection.
03:14 13 Here, help a user here suffers from that
03:14 14 same fatal flaw but even more so because now we're
03:14 15 injecting the user's ability and how much help -- how
03:14 16 much assistance that user needs into the claim
03:14 17 limitations.
03:14 18 So to conclude briefly, Your Honor,
03:14 19 Apple's position is that the preamble is limiting in
03:14 20 its entirety and help a user here is a subjective term
03:14 21 of degree without an objective measure and, therefore,
03:14 22 is indefinite.
03:14 23 THE COURT: Response?
03:14 24 MR. MCARTHUR: Yes, Your Honor.
03:14 25 Apple starts out their briefing by saying

03:14 1 the preamble cannot be neatly packaged into two
03:14 2 separate portions.
03:14 3 Now, if we could share our slide here at
03:14 4 Slide 36, please.
03:15 5 (Off-the-record discussion.)
03:15 6 MR. MCARTHUR: So here's the claim
03:15 7 language, Your Honor. And I submit this is a preamble
03:15 8 that couldn't be more neatly packaged to be parsed into
03:15 9 two separate portions. You've got commas separating
03:15 10 the two.
03:16 11 In each of the independent claims,
03:16 12 there's an intended use. And what's that intended use?
03:16 13 The claim tells us: To at least help the user hear
03:16 14 some audio outputs produced by the device. This falls
03:16 15 squarely within the TomTom case and its grant of
03:16 16 parsing preambles.
03:16 17 Now, Apple would like to focus you away
03:16 18 from TomTom and into Bio-Rad and Xencore. But if you
03:16 19 look at the preambles in those cases, they are single
03:16 20 part preambles. Counsel made a point about how the
03:16 21 Federal Circuit focused on the interconnection of the
03:16 22 terms within the preamble. They were single part
03:16 23 preambles. All those terms were interconnected.
03:16 24 If you look at TomTom, we are actually
03:16 25 even better situated for a parsing of a preamble. And

03:16 1 even beyond that, if you actually look at what the
03:16 2 preamble here, the words that are highlighted on the
03:16 3 screen, to at least help a user hear audio outputs to
03:16 4 produce by the device, that is an intended use. It
03:16 5 couldn't be more clear.
03:16 6 So you've got an intended use and a
03:17 7 structural portion of the claim which we made -- is
03:17 8 limiting.
03:17 9 Now, moving on to antecedent basis angle.
03:17 10 I think counsel overstates the importance of antecedent
03:17 11 basis here to bootstrap in a preamble as limiting.
03:17 12 You've got two terms. The user, antecedent basis
03:17 13 provided by admittedly the structural part of the
03:17 14 preamble, and audio outputs, a term that doesn't show
03:17 15 up into a dependent claim.
03:17 16 Now, Apple cites no case and none that
03:17 17 I'm aware of that says an independent preamble should
03:17 18 be limiting simply because a term appears in the
03:17 19 preamble of the independent claim and the body of a
03:17 20 later dependent claim.
03:17 21 In fact, there's at least one court from
03:17 22 the Northern District of California which has rejected
03:17 23 that idea, and that's the Creagri/Pinnaclife case at
03:17 24 2013 Westlaw 1663611. So this is a very, very weak
03:18 25 antecedent basis argument to, you know, bootstrap that

03:18 1 limiting argument.
03:18 2 If you have any questions with the
03:18 3 limiting aspect of the claim, otherwise, I'll continue
03:18 4 on with the...
03:18 5 THE COURT: You can go on, please.
03:18 6 MR. MCARTHUR: Okay. So with respect to
03:18 7 Apple's argument that the term is indefinite, I think
03:18 8 we're coming about it all backwards here. The point of
03:18 9 view is not the listener. The point of view is the
03:18 10 structure of the claim. This is a structural claim. A
03:18 11 wireless wearable device. What does that wireless
03:18 12 wearable device have? It has a portion of -- to be
03:18 13 worn in at least one ear of a user. It's got a
03:18 14 speaker, electrical connectors, conductive areas and so
03:18 15 forth. So this is a structural claim.
03:18 16 And so what the preamble here does is it
03:18 17 tells you the structure of the claim is designed to
03:19 18 help the user hear the audio outputs. The
03:19 19 specification itself gives you multiple examples -- and
03:19 20 counsel went over this and I'll be respectful of the
03:19 21 Court's time here -- but the multiple examples of how
03:19 22 the structure disclosed in the specification and
03:19 23 claimed by this claim help the user hear audio outputs.
03:19 24 I think there's a lot to be said for, oh,
03:19 25 you know, here's the hearing impaired spectrum and

03:19 1 things like that. But when you focus it from the
03:19 2 position of the structure of the claim and not the
03:19 3 position of the intended listener, it becomes clear
03:19 4 this claim isn't indefinite.
03:19 5 Now, one last point. I believe counsel
03:19 6 was referring to -- this is not a standalone claim and
03:19 7 you have to think about it in terms of the intended
03:19 8 listener. That's exactly what we're saying, Your
03:19 9 Honor. This is an intended -- this claim is intended
03:19 10 to help a listener. It is a preamble that is -- the
03:20 11 environment of use for the listener. And the listener
03:20 12 is not part of the claim. Therefore -- the structure
03:20 13 is. So we have to look at the structure of the
03:20 14 specification and how it is -- satisfies that intent.
03:20 15 So we'll submit on that, Your Honor. I
03:20 16 know -- respectful of the Court's time -- that this is
03:20 17 not an indefinite claim and the preamble is certainly
03:20 18 not limiting and can be parsed according to the Federal
03:20 19 Circuit law in TomTom.
03:20 20 THE COURT: Anything else from Apple?
03:20 21 MS. SPECHT: A brief response, Your
03:20 22 Honor. And I'm going to take them in reverse order.
03:20 23 So on the last point about how this a
03:20 24 structural claim to the indefiniteness point, it
03:20 25 certainly is. None of the structural examples from

03:20 1 IngenioSpec's briefing or from Mr. McArthur appear in
03:20 2 the claim at all.
03:20 3 And I want to take that idea and go back
03:20 4 to the language of the TomTom case that Mr. McArthur
03:20 5 mentioned was very akin to the situation here. But he
03:20 6 didn't read it to you, and I would argue that it
03:20 7 actually is completely dissimilar from the situation
03:21 8 here.
03:21 9 In that case, the language was a method
03:21 10 for generating and updating data, that was deemed to be
03:21 11 intended use. The next phrase is what the Court found
03:21 12 to be structural, and notice what words it begins with:
03:21 13 For use in a destination tracking system of at least
03:21 14 one mobile unit.
03:21 15 In that case, despite the words "for
03:21 16 use," which in my -- if I were not a patent attorney
03:21 17 and I was giving you my uneducated opinion could not be
03:21 18 clearer that it was trying to indicate intended use.
03:21 19 That's the portion that the Federal Circuit found to be
03:21 20 limiting as a structural component in that case.
03:21 21 Now, to the beginning portion that the
03:21 22 Court in TomTom did say was intended use, generating
03:21 23 and updating, the reason why the Federal Circuit
03:21 24 indicated that that language was intended use and not a
03:21 25 structural limitation is because they were later

03:21 1 defined in greater detail within the body of the claim.
03:21 2 There are three portions of the claim,
03:22 3 each separate limitation that begins with the phrase
03:22 4 "generating" and further defines what generating means.
03:22 5 It does not need to be limiting there.
03:22 6 Here, like Mr. McArthur just pointed out,
03:22 7 we have not even the method claim. A device claim and
03:22 8 the structures that he referenced about how to help a
03:22 9 user here are not later defined in the claim. That is
03:22 10 dissimilar to the Federal Circuit's finding in the
03:22 11 TomTom case and we are unlike the Court's decision
03:22 12 there.
03:22 13 Last point on antecedent basis, I just
03:22 14 want to level set briefly on the dependent claim
03:22 15 antecedent basis. That is from Claim 1. IngenioSpec
03:22 16 provided no response really at all specific to Claims
03:22 17 20, 22, and 24 which do not have that problem where
03:22 18 we're not focusing on dependent claims.
03:22 19 And Apple's position has never been that
03:22 20 antecedent basis being derived by a dependent claim is
03:22 21 dispositive. It is simply another indication that
03:22 22 shows the importance of the preamble, the structural
03:23 23 components of the preamble, and the interconnectedness
03:23 24 of the preamble with the body of the claims.
03:23 25 And with that, I have nothing further,

03:23 1 Your Honor.
03:23 2 THE COURT: Anything else from plaintiff?
03:23 3 MR. MCARTHUR: Just one point, Your
03:23 4 Honor, and I'll be brief.
03:23 5 I think if you read the TomTom case in
03:23 6 detail and understand what the Federal Circuit's trying
03:23 7 to say there, they weren't focused on the for use
03:23 8 language. They were focused on the destination
03:23 9 tracking system aspect of it. So I think that to try
03:23 10 and, you know, bootstrap in the for use language and
03:23 11 apply it to our situation here is not a correct reading
03:23 12 of TomTom.
03:23 13 But be that as it may, TomTom accepts the
03:23 14 inquiry as if you delete the preamble phrase, does it
03:23 15 affect the structure of the claim? Here, it does not.
03:23 16 If you delete to help a user hear audio outputs
03:23 17 produced by the device, it does not affect the
03:23 18 structure of the claim and it satisfies that test
03:23 19 articulated by the Federal Circuit.
03:23 20 Thank you.
03:24 21 THE COURT: Anything else?
03:24 22 MS. SPECHT: No, Your Honor. Thank you.
03:24 23 THE COURT: I'll be back in a few
03:24 24 seconds.
03:24 25 (Pause in proceedings.)

03:25 1 THE COURT: If we could go back on the
03:25 2 record.
03:25 3 Let me say, as I try to do as often as
03:25 4 possible, I'm always amazed at the quality of arguments
03:25 5 I get. I wouldn't be able to make any of the arguments
03:25 6 that you all just did so well. By both sides. It's --
03:25 7 it makes it -- this job enjoyable.
03:25 8 So the Court is going to -- let me just
03:25 9 make sure I am maintaining -- I know what I want to do
03:26 10 but let me see if that's maintaining or not.
03:26 11 The Court is going to find a partial --
03:26 12 preamble's partially limiting. I think this was our
03:26 13 preliminary construction but I agree with it and I'm
03:26 14 going to impose it. The structural component of the
03:26 15 preamble is limiting but the -- to at least help, that
03:26 16 language, that the -- I think Apple wanted in here
03:26 17 component is not limiting.
03:26 18 I only have a minute or two left, but if
03:26 19 there's anything that needs my attention now, if anyone
03:26 20 wants to raise it, I'm happy to take it up before I
03:26 21 jump into something else.
03:26 22 So Apple's counsel's in front of me. Is
03:26 23 there anything, Apple, you want to take up? Please let
03:26 24 me know. If not, I'll hear from plaintiff and then
03:26 25 we'll say good-bye and until we meet again.

03:26 1 Nothing else from Apple.
03:26 2 Anything from plaintiff?
03:26 3 MS. GLAUSER: No, Your Honor. Thank you
03:26 4 for your time this afternoon. Good luck at the next
03:27 5 hearing.
03:27 6 THE COURT: Always. I'll do my best.
03:27 7 Maybe I'll get the hang of this at some point so.
03:27 8 Y'all have a good afternoon. Take care.
03:27 9 (Hearing adjourned.)
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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4
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