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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE, INC.,) C-11-01846-LHK
)
PLAINTIFF,) JANUARY 20, 2012
)
V.)
)
SAMSUNG ELECTRONICS) PAGES 1 - 237
COMPANY, LTD., ET AL.,)
)
DEFENDANTS.)
-----)

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE LUCY H. KOH

A P P E A R A N C E S:

FOR THE PLAINTIFF: MORRISON & FOERSTER
BY: HAROLD J. MCELHINNY
DEOK KEUN MATTHEW AHN
ANDREW E. MONACH
MICHAEL A. JACOBS
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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A P P E A R A N C E S : (CONT'D)

FOR THE PLAINTIFFS: WILMER, CUTLER, PICKERING, HALE
AND DORR
BY: DAVID B. BASSETT
MARK D. SELWYN
WILLIAM F. LEE
399 PARK AVENUE
NEW YORK, NEW YORK 10022

FOR THE DEFENDANTS: QUINN, EMANUEL, URQUHART &
SULLIVAN
BY: CHARLES VERHOEVEN
KEVIN P.B. JOHNSON
TODD M. BRIGGS
VICTORIA F. MAROULIS
ALAN WHITEHURST
555 TWIN DOLPHIN DRIVE
5TH FLOOR
REDWOOD SHORES, CALIFORNIA 94065

ALSO PRESENT: UNIVERSITY OF TORONTO
DEPARTMENT OF COMPUTER SCIENCE
BY: RAVIN BALAKRISHNAN
40 ST. GEORGE STREET, ROOM 5270
TORONTO, ONTARIO CANADA M5S 2E4

1 SAN JOSE, CALIFORNIA JANUARY 20, 2012

2 P R O C E E D I N G S

3
4 (WHEREUPON, COURT CONVENEED AND THE
13:29:08 5 FOLLOWING PROCEEDINGS WERE HELD:)

13:33:34 6 THE CLERK: CALLING CASE NUMBER
13:33:38 7 C-11-01846-LHK, APPLE, INCORPORATED, VERSUS SAMSUNG
13:33:43 8 ELECTRONICS COMPANY LIMITED, ET AL.

13:33:45 9 COUNSEL, STATE YOUR APPEARANCES, PLEASE.

10:12:00 10 MR. JACOBS: GOOD MORNING, YOUR HONOR.
10:12:02 11 MICHAEL JACOBS FOR MORRISON & FOERSTER FOR APPLE
10:12:06 12 AND WITH ME FROM MORRISON & FOERSTER IS HAROLD
10:12:11 13 MCELHINNY, ANDREW MONACH, AND MATT AHN.

10:12:13 14 MR. LEE: GOOD MORNING, YOUR HONOR. BILL
10:12:14 15 LEE FROM WILMER HALE FOR APPLE AND WITH ME ARE MARK
10:12:17 16 SELWYN AND DAVID BASSETT.

10:12:18 17 THE COURT: GOOD MORNING.

10:12:21 18 MR. VERHOEVEN: GOOD MORNING, YOUR HONOR.
10:12:22 19 CHARLES VERHOEVEN REPRESENTING SAMSUNG. WITH ME AT
10:12:25 20 COUNSEL TABLE ARE MY PARTNERS KEVIN JOHNSON,
10:12:29 21 VICTORIA MOURALIS, ALAN WHITEHURST, AND TODD
10:12:37 22 BRIGGS.

10:12:37 23 WE ALSO HAVE SEVERAL REPRESENTATIVES FROM
10:12:39 24 SAMSUNG HERE INCLUDING SENIOR VICE PRESIDENT
10:12:43 25 KI JOONG KANG.

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10:13:53 17
10:13:58 18
10:14:02 19
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THE COURT: ALL RIGHT. GOOD MORNING.

I GUESS LET'S HANDLE THE MOTION TO STRIKE
FIRST.

LET ME HEAR FROM APPLE, I GUESS, WHAT
YOUR RESPONSE IS TO SAMSUNG'S RESPONSE TO YOUR
MOTION AND WHAT IS THE EXACT RELIEF THAT YOU'RE
REQUESTING.

MR. LEE: YOUR HONOR, LET ME START AT THE
END AND EXACTLY IS TO STRIKE FROM THE RECORD THOSE
22 REFERENCES AND THE ARGUMENTS THAT ARE PREDICATED
UPON THEM IN THE MARKMAN BRIEFINGS, YOUR HONOR, ON
THE TERM "APPLET." I THINK THAT'S THE RULING.

AND TO BE MORE SPECIFIC, YOUR HONOR, IT
IS TO STRIKE PARAGRAPHS 13 TO 15, 17 TO 23, 35 TO
37, 39 TO 42, 45 TO 46, 51 TO 57, AND 64 TO 65 OF
THE COLE DECLARATION, ALONG WITH EXHIBITS 2 THROUGH
4 AND 6 THROUGH 12 AND THE CORRESPONDING PARAGRAPHS
OF SAMSUNG'S CLAIMS CONSTRUCTION BRIEF ARE SECTIONS
5(B)(1) PARAGRAPHS 4 THROUGH 6.

THE COURT: OKAY. I'M NOT GOING TO DO
THAT. SO LET'S TALK ABOUT SOMETHING ELSE.

LET ME FIRST SAY, I MEAN, WITH REGARD TO
THE FILE HISTORY, THE PREJUDICE AS TO INCLUDING
EXCERPTS OF THE FILE HISTORY OF THE PATENT, I JUST
DON'T REALLY SEE THAT IT WAS A SURPRISE OR THAT IT

10:14:22 1 WAS PREJUDICIAL TO APPLE.

10:14:24 2 MR. LEE: YOUR HONOR, IF I COULD ADDRESS
10:14:26 3 THE CHRONOLOGY AND THEN I THINK OUR FOCUS IS LESS
10:14:30 4 ON THE FILE HISTORY AND MORE ON THE EXTRINSIC
10:14:35 5 EVIDENCE WHICH ARE THE INDEPENDENT REFERENCES, THAT
10:14:37 6 THEY NOW CLAIM DEMONSTRATE THAT AN APPLETT WOULD BE
10:14:42 7 OPERATING INDEPENDENT. THAT'S THE FOCUS.

10:14:44 8 THE COURT: I AGREE WITH YOU -- I'M SORRY
10:14:45 9 TO INTERRUPT YOU -- THAT THAT'S THE STRONGEST OF
10:14:47 10 THE THREE BECAUSE ALSO THE INVENTOR DEPOSITION
10:14:50 11 TESTIMONY, I MEAN, YOU KIND OF WERE AWARE OF THAT
10:14:53 12 AND YOU WERE THERE AT THE DEPOSITIONS AND WHERE IS
10:14:54 13 THE PREJUDICE ON THAT?

10:14:56 14 MR. LEE: WELL, YOUR HONOR, THE PREJUDICE
10:14:58 15 IS THAT THEY AREN'T INVENTORS.

10:15:00 16 YOUR HONOR, THE LOCAL RULES REQUIRE THAT
10:15:02 17 IF YOU'RE GOING TO RELY UPON EXTRINSIC EVIDENCE FOR
10:15:06 18 REFERENCES THAT YOU MAKE A PRELIMINARY DISCLOSURE
10:15:08 19 TO US AND THIS IS UNDER RULE 4.2 AND THAT WAS
10:15:11 20 OCTOBER 31ST.

10:15:12 21 AND THAT DATE IS IMPORTANT I THINK IN
10:15:14 22 THIS CONTEXT, YOUR HONOR, BECAUSE IT'S NOT
10:15:20 23 SOMETHING THAT WE HAD TO FILE WITH YOUR HONOR, BUT
10:15:22 24 THAT'S THE DATE ON WHICH EACH PARTY DISCLOSED THEIR
10:15:25 25 CLAIM INTERPRETATION. SO WE KNEW WHAT THEY WERE

10:15:28 1 GOING TO SAY AND THEY KNEW WHAT WE WERE GOING TO
10:15:30 2 SAY AND THERE WAS A DISCLOSURE OF THE EXTRINSIC
10:15:33 3 EVIDENCE.

10:15:33 4 THEY DISCLOSED THE TWO REFERENCES, AND WE
10:15:35 5 ADDRESSED THOSE TWO REFERENCES.

10:15:37 6 TWO WEEKS LATER WE FILED WITH THE COURT
10:15:40 7 THE JOINT CLAIMS CONSTRUCTION STATEMENT THAT HAS
10:15:42 8 THOSE SAME REFERENCES BOTH WAYS.

10:15:44 9 AND YOU WILL SEE THAT WE DISCLOSED
10:15:46 10 EVERYTHING ON BOTH DATES THAT WE RELY UPON.

10:15:49 11 OUR EXPERT FILED HIS DECLARATION ON THAT
10:15:54 12 DAY AND ADDRESSES SPECIFICALLY THE ONLY TWO
10:15:57 13 REFERENCES THAT HAVE BEEN DISCLOSED ON
10:15:59 14 OCTOBER 31ST. HE HAD NO OPPORTUNITY TO ADDRESS
10:16:01 15 ANYTHING ELSE.

10:16:01 16 ONE WEEK LATER THEIR EXPERT, AS HE'S NOW
10:16:07 17 TESTIFIED, FOR THE FIRST TIME LOOKS FOR THESE OTHER
10:16:11 18 REFERENCES AND TWO WEEKS LATER DISCLOSES THEM FOR
10:16:14 19 THE FIRST TIME WITH NO OPPORTUNITY FOR OUR EXPERT
10:16:17 20 TO ADDRESS THEM.

10:16:18 21 SO, YOUR HONOR, WE'RE NOT FIGHTING OVER
10:16:21 22 THE FILE HISTORY. YOU KNOW, IT'S SOMETHING THAT
10:16:23 23 SHOULD HAVE BEEN DISCLOSED. WE'LL SET IT ASIDE.

10:16:25 24 THE COURT: OKAY.

10:16:26 25 MR. LEE: THE INVENTOR IS THEIR INVENTOR.

10:16:29 1 IF YOUR INVENTOR HAS SOMETHING TO SAY ABOUT WHAT
10:16:31 2 THE MEANING OF THE CLAIM TERMS ARE, AND I THINK WE
10:16:34 3 CAN FIGHT OVER IN THE THEORETICAL SENSE WHETHER AN
10:16:39 4 EXPERT INVENTOR SHOULD HAVE ANYTHING TO SAY,
10:16:41 5 PARTICULARLY IN THIS CASE WHERE THE INVENTOR'S
10:16:45 6 TESTIMONY IS THAT I DID SOMETHING AND IT WAS
10:16:47 7 OPERATING SYSTEM DEPENDENT AND IT'S NOT DISCLOSED
10:16:50 8 IN THE PATENT.

10:16:51 9 THERE'S A QUESTION OF HOW MUCH WEIGHT IT
10:16:56 10 WOULD GET IN ANY EVENT, BUT IT'S THEIR INVENTOR,
10:16:57 11 YOUR HONOR.

10:16:57 12 THE COURT: OKAY. BUT WHEN WAS THAT
10:16:59 13 DEPOSITION AND WEREN'T YOU ALL THE ONES DEPOSING
10:17:03 14 THAT INVENTOR?

10:17:04 15 MR. LEE: THAT DEPOSITION WAS AFTER
10:17:05 16 NOVEMBER 14TH, THEY'RE CORRECT, AND WE WERE THE
10:17:07 17 PARTY DEPOSING IT.

10:17:08 18 THE COURT: OKAY. THAT'S NOVEMBER 17TH.
10:17:10 19 OKAY.

10:17:11 20 MR. LEE: I'M SORRY.

10:17:12 21 THE COURT: LET ME ASK A QUESTION, THERE
10:17:13 22 WAS AN AGREEMENT BETWEEN THE PARTIES TO DISCLOSE
10:17:18 23 THE EXPERT DECLARATION LATER BUT NOT EXTRINSIC
10:17:21 24 EVIDENCE UPON WHICH THE EXPERTS WOULD RELY; IS THAT
10:17:25 25 CORRECT?

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10:17:43 10
10:17:45 11
10:17:48 12
10:17:51 13
10:17:54 14
10:17:57 15
10:18:00 16
10:18:05 17
10:18:08 18
10:18:10 19
10:18:12 20
10:18:14 21
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MR. LEE: I THINK THAT'S THE CORRECT READING, YOUR HONOR.

THE COURT: SO WHAT WAS THE AGREEMENT AS TO WHEN EXTRINSIC EVIDENCE WOULD BE EXCHANGED WITH THE JOINT STATEMENT?

MR. LEE: THAT WAS OUR UNDERSTANDING, YOUR HONOR. IT REFERENCES EXTRINSIC EVIDENCE.

HERE IS -- IF I COULD JUST STEP BACK FOR A SECOND. I THINK, YOUR HONOR, WE DISCLOSED REFERENCES AND EXTRINSIC EVIDENCE AND THEN OUR EXPERT FILED A DECLARATION IN WHICH HE PROVIDED OPINIONS BASED UPON THAT.

THEIR EXPERT TWO WEEKS LATER FILED A DECLARATION THAT IS HIS OPINION BUT IT'S BASED UPON 22 NEW REFERENCES NEVER PREVIOUSLY DISCLOSED.

THAT, WE SUGGEST, DOESN'T COMPLY WITH THE COURT'S RULE AND GIVEN THE SEQUENCE THROUGH WHICH WE'RE MOVING THROUGH THE MARKMAN PROCESS IS PREJUDICE TO US.

AND JUST FOR A SECOND, YOUR HONOR, NOT TO GO BACK TO IT IF YOUR HONOR DOES NOT WANT ME TO, BUT ON THE INVENTOR TESTIMONY, IF YOUR INVENTOR HAS SOMETHING TO SAY ABOUT THE MANNER IN WHICH THE CLAIMS SHOULD BE INTERPRETED, IF HE OR SHE HAS DONE SOMETHING THAT HAS IMPLICATIONS FOR HOW IT SHOULD

10:18:29 1 BE INTERPRETED, YOU, WE, WHOEVER THE SPONSORING
10:18:34 2 PARTY IS, OUGHT TO DISCLOSE THAT ON OCTOBER 31ST.

10:18:37 3 WE WOULD THEN HAVE KNOWN ON OCTOBER 31ST,
10:18:40 4 THAT THEIR INVENTOR WAS GOING TO SAY SOMETHING THAT
10:18:43 5 THEY WOULD CLAIM SHOULD GUIDE THE COURT IN CLAIM
10:18:46 6 INTERPRETATION.

10:18:47 7 WE HAD NO CLUE. WE HAD NO CLUE UNTIL
10:18:51 8 NOVEMBER 17TH, THAT HE WAS GOING TO SAY IT, AND
10:18:56 9 THEY WERE GOING TO RELY UPON IT.

10:18:58 10 AND THE SAME IS TRUE FOR THESE 22
10:19:00 11 REFERENCES, WE HAD NO IDEA UNTIL NOVEMBER 28TH THAT
10:19:03 12 THEY WERE GOING TO SAY OPERATING SYSTEM DEPENDENT,
10:19:06 13 SOMETHING THAT HAS BEEN AN ISSUE SINCE
10:19:09 14 OCTOBER 31ST.

10:19:09 15 WE NOW HAVE 22 REFERENCES THAT WOULD
10:19:11 16 SUGGEST SOME OTHER INTERPRETATION. IF THEY HAD
10:19:15 17 BEEN DISCLOSED ON OCTOBER 31ST, WE WOULD HAVE HAD
10:19:18 18 AN OPPORTUNITY TO DO TWO THINGS. WE WOULD HAVE HAD
10:19:23 19 AN OPPORTUNITY TO COLLECT OTHER EXTRINSIC EVIDENCE
10:19:26 20 THAT MIGHT PUT THOSE IN CONTEXT OR DEMONSTRATE THAT
10:19:30 21 THEY WERE SIMPLY NOT INTERPRETING THEM CORRECTLY.

10:19:34 22 WE CERTAINLY COULD HAVE HAD DR. GIVARGIS
10:19:39 23 ADDRESS THEM ON NOVEMBER 14TH, WHEN HE FILED HIS
10:19:41 24 DECLARATION.

10:19:42 25 I THINK WHAT SAMSUNG IS SAYING, YOUR

10:19:44 1 HONOR, IS THAT EXPERT TESTIMONY IS EXTRINSIC
10:19:49 2 EVIDENCE. WE AGREED THAT EXPERT TESTIMONY WOULD
10:19:51 3 COME IN ON NOVEMBER 14TH AND THEREAFTER, THEREFORE,
10:19:54 4 ALL EXTRINSIC EVIDENCE COULD COME IN ON
10:19:56 5 NOVEMBER 14TH OR THEREAFTER.

10:19:58 6 THAT'S NOT A FAIR READING OF WHAT THE
10:20:01 7 PARTIES DID. AND ACTUALLY, IN SOME SENSE, WHAT
10:20:05 8 SPEAKS LOUDEST IS WHAT THE PARTIES DID.

10:20:07 9 AND WHAT THE PARTIES DID IS THAT THEY
10:20:09 10 DISCLOSED THE REFERENCES THAT THEY WERE GOING TO
10:20:12 11 RELY UPON.

10:20:13 12 IN FACT, YOUR HONOR, HERE THE UNDISPUTED
10:20:15 13 RECORD IS THAT THESE 22 REFERENCES, OR MOST OF
10:20:18 14 THEM, THEY DIDN'T EVEN FIND THEM ON NOVEMBER 21ST.

10:20:22 15 SO THE PREJUDICE HERE, YOUR HONOR, IS THE
10:20:25 16 FACT THAT BOTH FOR THE INVENTOR TESTIMONY -- AND I
10:20:28 17 THINK, YOUR HONOR, THIS IS DIFFERENT. IF IT WERE
10:20:30 18 OUR INVENTOR, IT'S MUCH HARDER FOR ME TO CLAIM
10:20:34 19 PREJUDICE THAT THEY'RE RELYING UPON OUR INVENTOR TO
10:20:37 20 MAKE AN INTERPRETATION.

10:20:38 21 BUT FOR THE INVENTOR TESTIMONY, WHICH IS
10:20:40 22 ENTIRELY WITHIN THEIR CONTROL, AND FOR THESE
10:20:45 23 REFERENCES NOT DISCOVERED UNTIL SEVEN DAYS -- THREE
10:20:52 24 WEEKS AFTER THE PRELIMINARY DISCLOSURE, THAT'S THE
10:20:54 25 PREJUDICE AND YOUR HONOR KNOWS BETTER THAN I.

10:20:56 1 I MEAN, THE RULES EXIST FOR A REASON. WE
10:20:59 2 HAVE TO MOVE THROUGH THIS IN AN ORDERLY WAY, AND WE
10:21:01 3 THOUGHT WE MOVED THROUGH IT IN AN ORDERLY WAY.
10:21:04 4 SAMSUNG DID NOT MOVE THROUGH IT IN AN ORDERLY WAY.

10:21:06 5 AND TO HAVE LITERALLY THE NUMBER OF
10:21:09 6 REFERENCES GROW BY A MAGNITUDE IS PREJUDICIAL.

10:21:15 7 THE COURT: OKAY. WELL, LET ME ASK A
10:21:18 8 COUPLE MORE QUESTIONS. SO WHEN YOU EXCHANGED THE
10:21:20 9 PRELIMINARY CLAIM CONSTRUCTIONS ON OCTOBER 31, I
10:21:23 10 THINK BOTH SIDES KNEW AT THAT POINT WHAT THE ISSUES
10:21:25 11 WERE GOING TO BE EITHER, YOU KNOW, OPERATING SYSTEM
10:21:28 12 INDEPENDENT OR DEPENDENT AND WHETHER IT WAS GOING
10:21:31 13 TO BE WITHIN THE APPLICATION MODULE OR WITHIN A
10:21:36 14 PROGRAM.

10:21:37 15 THOSE SEEMED TO BE THE ONLY TWO DISPUTES
10:21:41 16 WITH REGARD TO APPLETT; IS THAT RIGHT?

10:21:43 17 MR. LEE: AND THIS QUESTION OF THE WORD
10:21:45 18 "SMALL," BUT THAT'S CORRECT.

10:21:46 19 THE COURT: SO WHAT IS THE PREJUDICE IF
10:21:48 20 BOTH SIDES KNEW WHERE YOU WERE GOING ON THAT?
10:21:50 21 WOULDN'T YOU JUST ANTICIPATE THAT THEY WERE GOING
10:21:51 22 TO TRY TO FIND SOME EXTRINSIC EVIDENCE ON THE
10:21:55 23 OPERATING SYSTEM ISSUE?

10:21:57 24 MR. LEE: THE ANSWER IS YES, AND YOU
10:21:59 25 WOULD HAVE ANTICIPATED THEY WOULD HAVE FOUND IT AND

10:22:01 1 YOU WOULD HAVE ANTICIPATED THEY WOULD HAVE
10:22:02 2 DISCLOSED IT.

10:22:03 3 AND THEY DISCLOSED TWO REFERENCES. AND
10:22:06 4 DR. GIVARGIS SPECIFICALLY ADDRESSES THOSE TWO
10:22:09 5 REFERENCES.

10:22:09 6 AND I THINK, YOUR HONOR, WHAT IS GOOD FOR
10:22:12 7 THE GOOSE NEEDS TO BE GOOD FOR THE GANDER IN THIS
10:22:15 8 CONTEXT.

10:22:16 9 IF YOUR HONOR LOOKS AT THIS DISCLOSURE,
10:22:18 10 YOU'LL SEE THAT OUR DISCLOSURE IS LENGTHY AND DEALS
10:22:20 11 WITH SOME OF WHAT WE HAVE BRIEFED YOUR HONOR ON THE
10:22:24 12 PLAIN MEANING OF AN APPLLET IN 2005, AND
10:22:29 13 APPLICATIONS AND PROGRAMS AND THAT SORT OF THING.

10:22:31 14 EVERYTHING THAT WE RELIED UPON WAS
10:22:33 15 DISCLOSED ON OCTOBER 31ST AND THEN WE REITERATED IT
10:22:38 16 ON NOVEMBER 14TH AND THEN DR. GIVARGIS PROVIDED HIS
10:22:42 17 DECLARATION.

10:22:43 18 AND I THINK IT GOES SPECIFICALLY TO YOUR
10:22:45 19 HONOR'S QUESTION, WHEN WE GOT THEIR DISCLOSURE ON
10:22:47 20 OCTOBER 31ST AND IT DIDN'T CHANGE ON NOVEMBER 14TH,
10:22:50 21 I THINK WE FAIRLY UNDERSTOOD THAT TO THE EXTENT
10:22:53 22 THAT THEY DISPUTE OPERATING SYSTEM DEPENDENCE OR
10:22:58 23 INDEPENDENCE, IT'S ALL THERE AND THAT'S WHAT WE
10:23:01 24 HAVE TO DEAL WITH.

10:23:02 25 AND THAT'S THE PREJUDICE. AND I THINK

10:23:03 1 THAT'S WHAT THE FRAMEWORK OF THE RULES EXIST FOR.

10:23:09 2 THE COURT: SO YOUR EXPERT WOULD HAVE NOT
10:23:11 3 HAVE SAID ANYTHING DIFFERENT IN HIS NOVEMBER 14TH
10:23:13 4 DECLARATION, HE JUST WOULD HAVE SAID MORE?

10:23:16 5 OR ARE YOU SAYING THAT YOU TOOK A
10:23:17 6 POSITION THAT YOU WOULD WANT TO MODIFY HAD YOU
10:23:19 7 KNOWN ABOUT THESE ADDITIONAL EXTRINSIC EVIDENCE?

10:23:22 8 MR. LEE: THE FORMER. I THINK HE WOULD
10:23:23 9 HAVE SAID MORE AND HE WOULD HAVE DEALT WITH THEM --
10:23:26 10 THERE ARE TWO THINGS. HE WOULD HAVE SAID MORE FOR
10:23:28 11 SURE TO DEAL WITH THEM SPECIFICALLY AND, YOU KNOW,
10:23:31 12 TO BE CANDID WITH THE COURT, HE ADDRESSED THEM WHEN
10:23:34 13 ASKED IN HIS DEPOSITION. I THINK YOUR HONOR KNOWS
10:23:36 14 THAT WE RELIED ON HIS DEPOSITION TO OFFER WHAT SOME
10:23:39 15 OF HIS VIEWS MIGHT HAVE BEEN.

10:23:41 16 BUT THE SECOND THING WE WOULD HAVE DONE
10:23:42 17 AND HE CERTAINLY WOULD HAVE DONE IS GONE OUT AND
10:23:44 18 FIND OTHER REFERENCES TO PUT SOME OF THIS IN
10:23:46 19 CONTEXT SO YOUR HONOR COULD UNDERSTAND JUST WHAT
10:23:49 20 MOVIE AND FLASH AND THE MICROSOFT APPLLET WERE.

10:23:54 21 AND I THINK, YOUR HONOR, PARTICULARLY FOR
10:23:59 22 EXTRINSIC EVIDENCE, ONE OF THE REASONS FOR THE
10:24:01 23 DISCLOSURE IS THAT IT'S NOT THE CLAIM, THE
10:24:04 24 SPECIFICATION OR THE FILE HISTORY, WHICH ARE AT
10:24:06 25 LEAST A SET SET OF DOCUMENTS.

10:24:10 1 WHEN WE MOVE TO EXTRINSIC EVIDENCE, ONE
10:24:12 2 OF THE REASONS I THINK THE RULE EXISTS IS, IS THAT
10:24:14 3 IT'S AN INFINITE UNIVERSE. ALL RIGHT. THERE'S AN
10:24:18 4 AWFUL LOT THAT CAN COME IN ONCE YOU MOVE BEYOND THE
10:24:21 5 PATENT FILE HISTORY AND THE SPECIFICATION.

10:24:23 6 THIS IS TO CABIN WHAT THE PARTIES ARE
10:24:26 7 DEALING WITH AND WHAT THE COURTS ARE GOING TO DEAL
10:24:29 8 WITH AND IT'S BOTH LOGICAL GIVEN YOUR DEALING WITH
10:24:33 9 EXTRINSIC EVIDENCE, AND IT'S, I THINK, FAIR TO BOTH
10:24:37 10 PARTIES BUT IT'S ONLY FAIR IF BOTH PARTIES LIVE BY
10:24:41 11 THE SAME RULES.

10:24:41 12 THE COURT: LET ME ASK, BECAUSE ANOTHER
10:24:43 13 ARGUMENT THAT SAMSUNG MAKES IS THAT, WELL, YOU DID
10:24:46 14 HAVE THE DEPOSITION OF YOUR EXPERT AFTER, YOU DID
10:24:49 15 HAVE THE OPPORTUNITY TO FILE YOUR OPPOSITION, AND
10:24:51 16 THOSE GAVE YOU THE OPPORTUNITIES TO ADDRESS THOSE
10:24:54 17 ADDITIONAL DICTIONARY DEFINITIONS.

10:24:57 18 MR. LEE: AND, YOUR HONOR, MY
10:24:58 19 ANTICIPATION IS THAT YOU WOULD WANT US TO ADDRESS
10:25:00 20 THEM ON THE MERITS IN ANY EVENT AND WE ARE PREPARED
10:25:03 21 TO DO THAT.

10:25:04 22 AND WHEN WE GET TO APPLETON PROBABLY THIS
10:25:06 23 AFTERNOON, WE WILL.

10:25:09 24 BUT, YOUR HONOR, THE WAY THAT -- IF
10:25:11 25 THAT'S THE ARGUMENT, IF THAT'S THE ARGUMENT THAT A

10:25:14 1 PARTY CAN MAKE THAT THERE'S NO PREJUDICE, THEN WE
10:25:18 2 OUGHT TO JUST FORGET ABOUT RULE 4.2 AND RULE
10:25:25 3 4.2(B).

10:25:26 4 I MEAN, THAT IS GOING TO PUT ANY PARTY IN
10:25:29 5 A SITUATION LIKE THIS IN A PROFILE LIKE THIS, TO
10:25:34 6 SAY, OKAY, YOU KNOW, I KNOW THE DEPOSITIONS ARE
10:25:36 7 COMING AFTER THE DISCLOSURE, AND I KNOW I'M GOING
10:25:38 8 TO FILE MY DECLARATION AND I'M GOING TO DISCLOSE
10:25:40 9 THEIR EXPERT AND I KNOW I CAN ASK THEIR EXPERT
10:25:42 10 ABOUT THOSE REFERENCES AFTER WE PUT THEM IN THE
10:25:46 11 RECORD.

10:25:46 12 AND THE ANSWER WILL BE NO PREJUDICE.

10:25:48 13 AND, YOUR HONOR, I'M NOT HERE TO SAY THAT
10:25:50 14 WE DIDN'T HAVE A CHANCE TO HAVE OUR EXPERT DEPOSED,
10:25:54 15 I'M NOT SAYING THAT HE DIDN'T ADDRESS THEM AND I
10:25:57 16 ASKED THAT HE ADDRESS THEM FULLY AND COMPLETELY IN
10:25:59 17 A WAY AND HONESTLY IN A DISPOSITIVE WAY.

10:26:03 18 I'M SAYING WE WOULD HAVE DONE MORE AND WE
10:26:05 19 WOULD HAVE DONE IT DIFFERENTLY IF WE HAD COMPLIED
10:26:08 20 WITH THE RULE. THERE WOULD PROBABLY BE MORE
10:26:11 21 DOCUMENTS BEFORE YOU ON FLASH AND RUBY AND THE
10:26:14 22 MICROSOFT APPLLET TO PUT THEM IN FULL CONTEXT SO
10:26:17 23 THAT YOU CAN SEE, IN FACT, WHAT DR. GIVARGIS SAID
10:26:21 24 IN HIS DEPOSITION, WHICH WAS THAT EVERY SINGLE ONE
10:26:23 25 OF THEM HAS AN INTERPRETER EXCEPT FOR MICROSOFT

10:26:27 1 APPLET AND THE MICROSOFT APPLET SITS ON TOP OF AN
10:26:30 2 OPERATING SYSTEM. SO IT'S OPERATING SYSTEM
10:26:34 3 DEPENDENT AND DOESN'T EXIST WITHIN ANOTHER PROGRAM.
10:26:36 4 WE ACTUALLY COULD HAVE BROUGHT TO THE
10:26:39 5 COURT THE DOCUMENTS THAT WOULD DEMONSTRATE THAT OUR
10:26:42 6 INTERPRETATION GIVEN BY DR. GIVARGIS AT HIS
10:26:47 7 DEPOSITION IS AS A MATTER OF DOCUMENTARY PROOF TRUE
10:26:50 8 THAT THEY ARE OPERATING SYSTEM INDEPENDENT IN
10:26:52 9 ONE CASE AND MICROSOFT DOESN'T FIT WITH ANYBODY'S
10:26:57 10 DEFINITION.

10:26:58 11 THAT'S WHAT WE WERE DEPRIVED OF THE
10:26:59 12 OPPORTUNITY TO DO.

10:27:03 13 AND IT ALSO DEPRIVES THE COURT OF THE
10:27:05 14 OPPORTUNITY TO SEE THAT. SO NOW WHAT YOU HAVE
10:27:08 15 BEFORE YOU IS THEIR DECLARATION WITH THEIR EXHIBITS
10:27:10 16 ON NOVEMBER 28TH, AND OUR EXPERT BEING ASKED ABOUT
10:27:13 17 IT IN THE DEPOSITION, AND YOU'RE ASKED TO DECIDE
10:27:16 18 HOW DOES THAT EXTRINSIC EVIDENCE AFFECT THE CLAIM
10:27:19 19 INTERPRETATION OF APPLE?

10:27:20 20 THE COURT: WELL, LET ME ASK, BECAUSE I'M
10:27:22 21 INCLINED TO GIVE YOU SOME RELIEF. I DON'T WANT TO
10:27:27 22 STRIKE IT. I THINK THIS IS ONE WHERE, FRANKLY,
10:27:33 23 WHAT HAS BEEN PRESENTED BY BOTH SIDES IS NOT
10:27:35 24 CONCLUSIVE.

10:27:36 25 BUT I THINK WHAT HAS BEEN PRESENTED IS

10:27:40 1 HELPFUL. AND I THINK EXCLUDING IT WOULDN'T ENHANCE
10:27:42 2 THE TRUE SEEKING FUNCTION OF WHAT WE'RE SUPPOSED TO
10:27:47 3 BE ABOUT HERE.

10:27:47 4 SO TELL ME WHAT -- BUT ON THE OTHER HAND,
10:27:50 5 I DON'T WANT TO COMPLETELY REOPEN, RETHINK
10:27:55 6 DEPOSITIONS AND NOW BOTH SIDES ARE GOING TO GO FIND
10:27:58 7 MORE EXTRINSIC EVIDENCE.

10:28:00 8 TELL ME WHAT IS A NARROW RELIEF THAT
10:28:02 9 WOULD NOT -- BECAUSE I WOULD LIKE TO TRY TO ISSUE
10:28:04 10 AN ORDER FAIRLY PROMPTLY, BUT IF WE EXTEND THE
10:28:10 11 BRIEFING, IT'S GOING TO DELAY THAT. SO GO AHEAD.

10:28:13 12 MR. LEE: AND I THINK, YOUR HONOR, OUR
10:28:15 13 INTEREST IS THE SAME AS YOURS WHICH IS TO HAPPEN
10:28:17 14 QUICKLY.

10:28:18 15 MAYBE I CAN MAKE A SUGGESTION. WE'LL
10:28:20 16 ARGUE APPELTON PROBABLY LAST TODAY.

10:28:22 17 THE COURT: OKAY.

10:28:23 18 MR. LEE: PERHAPS AT THE END OF THE
10:28:25 19 ARGUMENT BOTH OF US CAN COME BACK TO YOU AND SAY
10:28:27 20 HERE'S OUR SUGGESTION OF WHAT WE DO.

10:28:29 21 IT MAY BE THAT WHATEVER DISPUTES EXIST ON
10:28:33 22 THIS EXTRINSIC EVIDENCE, WHICH IS THE PLAIN AND
10:28:36 23 ORDINARY MEANING TO ONE OF ORDINARY SKILL IN THE
10:28:38 24 ART IN 2005, WILL NOT BE AS IMPORTANT ONCE WE WALK
10:28:42 25 YOU THROUGH THE INTRINSIC EVIDENCE.

10:28:46 1 IT MAY BE THAT IT'S MORE IMPORTANT THAN
10:28:48 2 WE THINK IT IS NOW, AND THEN WE MIGHT ASK FOR SOME
10:28:52 3 OPPORTUNITY TO OFFER SOMETHING IN ADDITION.

10:28:54 4 BUT IT MIGHT BE BETTER IF WE ADDRESS IT
10:28:56 5 SPECIFICALLY AT THE CONCLUSION OF THAT ARGUMENT.

10:28:59 6 THE COURT: WELL, LET ME GIVE A CHANCE
10:29:01 7 TO, MR. VERHOEVEN OR MR. JOHNSON, WHOEVER IS GOING
10:29:05 8 TO ADDRESS THIS ISSUE.

10:29:07 9 MR. JOHNSON: THANK YOU, YOUR HONOR. THE
10:29:10 10 AGREEMENT BETWEEN THE PARTIES WAS THAT EXTRINSIC
10:29:15 11 EVIDENCE COULD CONTINUE TO BE EXCHANGED.

10:29:16 12 THE COURT: I DON'T FIND THAT TO BE THE
10:29:18 13 CASE, AND I DON'T THINK THAT YOUR BRIEF EVEN SAYS
10:29:20 14 THAT. I THINK YOUR BRIEF IS KIND OF QUIET.

10:29:23 15 IT SAYS THERE WAS AN AGREEMENT THAT
10:29:25 16 EXPERT DECLARATIONS WOULDN'T BE EXCHANGED ON THE
10:29:27 17 31ST OF OCTOBER, AND IT'S A LITTLE BIT KIND OF
10:29:30 18 VAGUE ABOUT THE EXTRINSIC EVIDENCE WHICH IS WHY I
10:29:32 19 ASKED THAT AT THE TUTORIAL BECAUSE YOU DON'T
10:29:35 20 EXPLICITLY SAY THAT AND YOU DIDN'T EXPLICITLY SAY
10:29:38 21 THAT ON TUESDAY. AND SO I'M HEARING THAT FOR THE
10:29:41 22 FIRST TIME TODAY WHICH MAKES IT A LITTLE SUSPECT.

10:29:45 23 MR. JOHNSON: IN ALL FAIRNESS, I DIDN'T
10:29:47 24 PARTICIPATE IN THE INITIAL MEET AND CONFERS THAT
10:29:51 25 TOOK PLACE BETWEEN THE PARTIES BUT GOING BACK AND

10:29:52 1 CHECKING WITH OUR TEAM, WHAT HAPPENED WAS IS THAT
10:29:55 2 WE RECEIVED DR. GIVARGIS'S EXPERT REPORT ON 10:51
10:30:01 3 P.M. ON THE NIGHT OF NOVEMBER 14TH.

10:30:04 4 AND WHAT HAD HAPPENED BEFORE THAT IS
10:30:06 5 IMPORTANT BECAUSE I HEARD MR. LEE SAY THAT THERE
10:30:08 6 WAS FULL DISCLOSURE WITH RESPECT TO THE PARTY'S
10:30:10 7 POSITIONS AND ALL OF THE EXTRINSIC EVIDENCE WAS
10:30:12 8 CITED IN THE CONTEXT OF 4-2, IN THE 4-2
10:30:18 9 DISCLOSURES.

10:30:18 10 AND THAT SIMPLY WASN'T THE CASE. IF YOU
10:30:20 11 LOOK AT THE 4-2 DISCLOSURES, WHICH I HAVE WITH ME
10:30:23 12 AND WHICH ARE PART OF THE RECORD, APPLE'S
10:30:27 13 CONSTRUCTIONS AND SUPPORT FOR THE CONSTRUCTION
10:30:30 14 INVOLVING SIX OUT OF THE EIGHT TERMS THAT WE'RE
10:30:33 15 DISCUSSING TODAY, THEY IDENTIFY NO CONSTRUCTION AND
10:30:36 16 NO SUPPORT FOR THE CONSTRUCTION.

10:30:37 17 SO THE PARTIES OPERATED UNDER THE
10:30:40 18 ASSUMPTION THAT THERE WAS GOING TO BE ANOTHER
10:30:42 19 OPPORTUNITY TO SUBMIT ADDITIONAL EVIDENCE.

10:30:45 20 AND WHEN WE RECEIVED DR. GIVARGIS'S
10:30:49 21 STATEMENT, LIKE I SAID, AT 10 -- ACTUALLY IT WAS
10:30:52 22 10:17 P.M. ON NOVEMBER 14TH, THE JOINT CLAIM
10:30:56 23 CONSTRUCTION STATEMENT WAS DUE BY MIDNIGHT, WE
10:30:58 24 DIDN'T HAVE THE OPPORTUNITY TO GO BACK AND SAY,
10:31:02 25 OKAY, NOW THAT WE HAVE SEEN THAT DR. GIVARGIS HAS

10:31:05 1 TAKEN THE POSITION THAT -- BECAUSE HE CITED THAT WE
10:31:08 2 HAD SEEN THAT THERE WERE JAVA REFERENCES THAT WERE
10:31:10 3 DISCLOSED. WE DID NOT KNOW THAT HE WAS GOING TO
10:31:13 4 SAY, OKAY, BECAUSE THERE WERE THESE JAVA REFERENCES
10:31:16 5 THAT THAT MEANS THAT ALL OF THESE APPLETS ARE
10:31:19 6 OPERATING SYSTEM INDEPENDENT.

10:31:21 7 THE COURT: WHY DIDN'T YOU KNOW THAT?
10:31:23 8 WASN'T IT IN THE CLAIM CONSTRUCTION THAT THEY GAVE
10:31:25 9 YOU ON OCTOBER 31ST?

10:31:26 10 MR. JOHNSON: THE OCTOBER 31ST CLAIM
10:31:28 11 CONSTRUCTION HAD APPLETS AND IT HAD THAT THEY WERE
10:31:31 12 ARGUING OPERATING SYSTEM INDEPENDENT.

10:31:32 13 THE COURT: SO WHY DIDN'T YOU KNOW THAT?

10:31:35 14 MR. JOHNSON: WE DIDN'T KNOW THAT
10:31:37 15 GIVARGIS WAS GOING TO TAKE THE NEXT STEP OF THEN
10:31:39 16 ARGUING THAT THESE JAVA DISCLOSURES, THESE JAVA
10:31:42 17 REFERENCES SOMEHOW THEN MEANT THAT EVERYTHING MUST
10:31:46 18 BE OS INDEPENDENT.

10:31:47 19 THAT WAS NEW NEWS THAT WE RECEIVED THAT
10:31:50 20 NIGHT. IT DIDN'T COME UP BEFORE THEN. AND SO IT
10:31:52 21 WAS ONLY AFTER THAT POINT.

10:31:54 22 AND THERE HAD BEEN AN AGREEMENT BETWEEN
10:31:56 23 THE PARTIES TO TAKE DEPOSITIONS AFTER THE FACT.

10:31:59 24 AND DR. GIVARGIS HAD THE OPPORTUNITY,
10:32:03 25 JUST GOING TO THE PREJUDICE ISSUE, DR. GIVARGIS HAD

10:32:06 1 THE OPPORTUNITY TO REVIEW MR. COLE'S DECLARATION
10:32:08 2 AND, IN FACT, HE WAS ASKED ABOUT THAT DURING HIS
10:32:10 3 DEPOSITION AND HE SAID THAT HE REVIEWED THE
10:32:12 4 DECLARATION ALONG WITH ALL OF THE EXHIBITS AND THAT
10:32:17 5 WERE REFERENCED IN THAT DECLARATION.

10:32:18 6 AND HE WAS SPECIFICALLY ASKED BY
10:32:20 7 MS. MAROULIS WHETHER ANY OF THOSE EXHIBITS CHANGED
10:32:24 8 HIS OPINIONS IN ANY WAY.

10:32:25 9 AND I'M READING FROM PAGE 26 FROM THE
10:32:28 10 TRANSCRIPT, "YOU KNOW, MY QUESTION WAS WHETHER UPON
10:32:30 11 REVIEWING MR. COLE'S DECLARATION YOUR OPINION
10:32:31 12 CHANGED IN ANY WAY?" AND HIS ANSWER WAS, "NO."

10:32:35 13 SO THE PREJUDICE HERE I THINK, PUTTING
10:32:39 14 ASIDE WHETHER THERE'S AN ARGUMENT OR A DISAGREEMENT
10:32:42 15 ON WHAT WAS EXPECTED WITH RESPECT TO ULTIMATELY
10:32:47 16 EXCHANGING REBUTTAL EXHIBITS, AND WHETHER IT WAS
10:32:50 17 PART OF THE JOINT CLAIMS CONSTRUCTION STATEMENT,
10:32:52 18 YOUR HONOR, I SUBMIT THAT THE PARTIES, EVEN GIVEN
10:32:55 19 APPLE'S OWN DISCLOSURES IN THE OCTOBER 31ST, 4-2
10:32:59 20 REPORT DIDN'T IDENTIFY -- I MEAN, YOU CAN LOOK AT
10:33:02 21 THIS PAGE AFTER PAGE CONSTRUCTIONS FOR THE TERMS
10:33:05 22 THAT ARE AT ISSUE.

10:33:06 23 SO THE PARTIES WERE OPERATING UNDER THAT
10:33:08 24 BASIS. AND, FRANKLY, THERE WAS A LOT GOING ON. I
10:33:12 25 MEAN, WE HAD TAKEN ALL OF THESE TERMS AND DISTILLED

10:33:14 1 THEM DOWN TO THE TEN, EACH SIDE CHOOSING FIVE AND
10:33:18 2 THEN DISTILLED THEM DOWN FURTHER.

10:33:21 3 AND SO THE OPPORTUNITY, APPLE HAD THE
10:33:24 4 PLAIN OPPORTUNITY TO AND, IN FACT, REDIRECTED
10:33:28 5 MR. GIVARGIS AT HIS OWN DEPOSITION. AND SO THEY
10:33:30 6 HAD THE OPPORTUNITY TO ASK ADDITIONAL QUESTIONS,
10:33:32 7 AND THEY HAD THE OPPORTUNITY TO SUPPLEMENT THE
10:33:34 8 RECORD, AND THEY HAD THE OPPORTUNITY TO BRING IN
10:33:36 9 ADDITIONAL EXHIBITS.

10:33:38 10 FROM OUR STANDPOINT, YOUR HONOR, THIS IS
10:33:40 11 WHAT THE RECORD, FRANKLY, SHOULD BE AT THIS POINT.

10:33:42 12 AND, YOU KNOW, WITH RESPECT --

10:33:44 13 THE COURT: WELL, YOU KNOW, I'M NOT GOING
10:33:46 14 TO EXCLUDE THE DEPOSITION TESTIMONY OF THE INVENTOR
10:33:52 15 OR THE FILE HISTORY OR THE EXTRINSIC EVIDENCE THAT
10:33:54 16 YOU CITED, BUT I'M OPEN TO SOME OTHER RELIEF AND
10:33:58 17 I'M FINE WITH SORT OF POSTPONING WHAT THAT MAY OR
10:34:00 18 MAY NOT BE UNTIL THE END AND MAYBE BOTH SIDES CAN
10:34:03 19 MEET AND CONFER AT SOME POINT DURING A BREAK ON
10:34:05 20 THAT ISSUE.

10:34:05 21 MR. JOHNSON: OKAY. WHY DON'T WE DO
10:34:07 22 THAT. THAT'S FINE.

10:34:08 23 THE COURT: ALL RIGHT. LET'S GO TO THE
10:34:10 24 -- THANK YOU FOR STIPULATING TO THE CONSTRUCTION
10:34:13 25 FOR TIMER.

10:34:15 1 AND WHAT YOU AGREED TO IS HOW I WAS GOING
10:34:18 2 TO CONSTRUE THAT CLAIM ANYWAY. SO THANK YOU FOR
10:34:26 3 STIPULATING TO STARTING A TIMER'S CONSTRUCTION.

10:34:28 4 WERE YOU NOT ABLE TO REACH AN AGREEMENT
10:34:32 5 ON GROUP? WHAT ABOUT GROUP AND PIXEL GROUP? NO
10:34:36 6 AGREEMENT ON THAT ONE?

10:34:37 7 MR. JACOBS: THAT'S CORRECT, YOUR HONOR.
10:34:39 8 AND SAMSUNG I BELIEVE IS ARGUING ONE OR MORE AND I
10:34:42 9 THINK A GROUP IS MORE THAN ONE.

10:34:43 10 THE COURT: I THINK A GROUP IS MORE THAN
10:34:46 11 ONE. HOW CAN ONE PERSON BE A GROUP?

10:34:48 12 MR. VERHOEVEN: I'M SORRY, YOUR HONOR. I
10:34:50 13 DIDN'T HEAR THE QUESTION.

10:34:51 14 THE COURT: HOW CAN ONE PERSON BE -- OR
10:34:55 15 ONE THING BE A GROUP?

10:34:57 16 MR. VERHOEVEN: WELL, A GROUP IS LIKE A
10:34:58 17 SET. AND A SET IS ONE OR MORE, YOUR HONOR.

10:35:00 18 WELL, TO BACK UP, YOUR HONOR, I THINK AS
10:35:02 19 YOU KNOW, WE DON'T THINK THIS TERM NEEDS TO BE
10:35:05 20 CONSTRUED. WE DON'T THINK IT MATTERS -- EXCUSE ME,
10:35:07 21 YOUR HONOR -- IT MATTERS FOR ANY NON-INFRINGEMENT
10:35:09 22 OR ANY INVALIDITY REASON.

10:35:12 23 WE MADE A STRONG EFFORT TO REACH A
10:35:15 24 COMPROMISE OVER THE LAST TWO DAYS AND IN ITS BRIEF
10:35:22 25 YOUR HONOR MAY RECALL SAMSUNG NOTED THAT IF THE

10:35:26 1 CONSTRUCTION IS NECESSARY FOR THE TERM "PIXEL,"
10:35:30 2 THAT WE BELIEVED THAT IT WAS THE SMALLEST
10:35:33 3 DISCERNABLE PART OF AN IMAGE.

10:35:35 4 ON JANUARY 18TH, WHEN WE WERE
10:35:38 5 NEGOTIATING --

10:35:38 6 THE COURT: WELL, I DON'T WANT TO --
10:35:40 7 WE'LL TALK ABOUT PIXEL LATER. I DON'T WANT TO TALK
10:35:43 8 ABOUT THAT NOW, UNLESS YOU WANT TO DO THAT TERM
10:35:45 9 FIRST.

10:35:46 10 MR. VERHOEVEN: THAT'S FINE. OKAY.

10:35:49 11 THE COURT: ALL RIGHT. WELL, THERE'S NO
10:35:51 12 AGREEMENT ON GROUP.

10:35:52 13 WHAT ABOUT THE PERSONS OF ORDINARY SKILL
10:35:54 14 IN THE ART? HAVE YOU COME TO ANY MORE AGREEMENTS
10:35:59 15 AS TO WHAT THAT PERSON WOULD HAVE BY WAY OF
10:36:02 16 EDUCATION OR EXPERIENCE FOR THE DIFFERENT PATENTS?

10:36:06 17 MR. JACOBS: NOT SINCE THE SUBMISSION
10:36:09 18 YESTERDAY AFTERNOON. I DO BELIEVE TWO THINGS.
10:36:11 19 ONE, I BELIEVE IF WE WORK ON IT SOME MORE WE'LL GET
10:36:14 20 MUCH CLOSER AND RESOLVE SOME OF THE DISAGREEMENTS.

10:36:17 21 I ALSO BELIEVE THAT I CAN SPEAK FOR BOTH
10:36:19 22 SIDES ON THIS, THAT OUR CLAIM CONSTRUCTION
10:36:21 23 ARGUMENTS WON'T TURN ON OUR VARYING, OUR CURRENT
10:36:24 24 VARYING VIEWS ON THE LEVEL OF A PERSON OF ORDINARY
10:36:28 25 SKILL IN THE ART.

10:36:28 1 THE COURT: DO YOU AGREE WITH THAT?

10:36:29 2 MR. JOHNSON: I AGREE WITH THE LAST
10:36:31 3 STATEMENT. I THINK THE PARTIES ARE CLOSE AND IT
10:36:32 4 WOULD BENEFIT THE PARTIES TO BE GIVEN THE
10:36:35 5 OPPORTUNITY TO TALK A LITTLE BIT MORE ABOUT THESE.

10:36:37 6 THE COURT: OKAY. LET ME ASK YOU, THE
10:36:39 7 ONE WHERE THE LEVEL OF SKILL IN THE ART MAY HAVE
10:36:43 8 SOME EFFECT MIGHT BE ACTUALLY APPLE AND WHAT
10:36:49 9 SOMEONE WOULD UNDERSTAND, YOU KNOW, JAVA VERSUS
10:36:55 10 INDEPENDENT OPERATING SYSTEM OR NOT. DO YOU ALL
10:36:58 11 THINK THAT --

10:36:58 12 MR. JOHNSON: I THINK WE'RE CLOSE ON
10:37:00 13 THAT. THE ISSUE THAT WE HAVE WITH APPLE'S
10:37:02 14 CONSTRUCTION ON THAT IS THAT IF YOUR HONOR HAS THE
10:37:04 15 DOCUMENT THAT WE SUBMITTED, OUR ISSUE WITH IT IS
10:37:08 16 THAT APPLE'S CONSTRUCTION -- APPLE'S DEFINITION
10:37:12 17 INCLUDES EXPERIENCE IN THE AREAS OF MULTITASKING
10:37:16 18 SYSTEMS, WHICH IS FINE WITH US.

10:37:17 19 THE COURT: OKAY.

10:37:18 20 MR. JOHNSON: IMBEDDED SYSTEMS, I DON'T
10:37:21 21 KNOW WHAT IMBEDDED SYSTEMS MEANS.

10:37:23 22 AND THEN THE NEXT PART IS OR PROGRAMMING
10:37:25 23 FOR HANDHELD DEVICES?

10:37:27 24 WE TRIED TO MEET IN THE MIDDLE AND OUR
10:37:29 25 CONSTRUCT, YOU KNOW, OUR DEFINITION INCLUDES

10:37:32 1 EXPERIENCE IN MULTITASKING SYSTEMS AND COMPUTER
10:37:35 2 PROGRAMMING BUT IMBEDDED SYSTEMS, I JUST DON'T
10:37:38 3 UNDERSTAND WHAT THAT MEANS AND I ASKED THEM IF THEY
10:37:40 4 WOULD BE WILLING TO DROP IT AND THE ANSWER WAS NO.

10:37:45 5 THE COURT: WELL, THE REASON I'M SAD
10:37:47 6 ABOUT '711 IS THAT YOU ALL WERE CLOSER IN YOUR
10:37:51 7 EXPERT DECLARATIONS TO AN AGREEMENT ON WHAT A
10:37:55 8 PERSON OF ORDINARY SKILL IN THE ART WOULD HAVE BY
10:37:57 9 WAY OF EXPERIENCE AND YOU HAVE GONE FURTHER AFTER
10:37:59 10 MEETING AND CONFERRING, WHICH IS UNFORTUNATE.

10:38:02 11 MR. JOHNSON: I THINK WE'RE VERY CLOSE.
10:38:04 12 THE ISSUE IS THE IMBEDDED SYSTEMS ISSUE.

10:38:16 13 THE COURT: OKAY. DID YOU ALL CHANGE
10:38:18 14 BASED ON MR. COLE AND DR. GIVARGIS'S DECLARATIONS?
10:38:24 15 DID YOU ALL CHANGE WHAT YOU BELIEVED WOULD BE A
10:38:26 16 PERSON OF ORDINARY SKILL IN THE ART? BECAUSE I
10:38:28 17 REMEMBER THINKING THAT THEY WERE, THEY WERE VERY,
10:38:31 18 VERY CLOSE BEFORE.

10:38:33 19 OKAY. I GUESS DR. GIVARGIS STILL HAD
10:38:36 20 IMBEDDED SYSTEMS --

10:38:44 21 MR. JOHNSON: WELL, WE ALSO TRIED TO
10:38:46 22 EXPLAIN THAT IF SOMEONE HAS A MASTER'S DEGREE, THEN
10:38:48 23 YOU DON'T NEED AS MUCH REAL WORLD EXPERIENCE IN
10:38:51 24 THAT SENSE BECAUSE WITH THE MASTER'S DEGREE YOU'RE
10:38:54 25 GOING TO GET AN EXTRA YEAR.

10:38:55 1 THE COURT: AND HE, I THINK, AT LEAST
10:38:57 2 DR. GIVARGIS AGREES WITH YOU.

10:38:59 3 HE SAYS IF YOU HAVE A MORE ADVANCED
10:39:01 4 DEGREE, THEN YOU CAN HAVE SOMEWHAT LESS RESEARCH OR
10:39:05 5 WORK EXPERIENCE.

10:39:06 6 MR. JOHNSON: RIGHT.

10:39:06 7 THE COURT: I THINK THAT PART IS THE
10:39:08 8 SAME.

10:39:09 9 MR. JOHNSON: I AGREE WITH YOU, IT'S JUST
10:39:10 10 THE WORDING IS A LITTLE BIT DIFFERENT FOR US AND
10:39:13 11 THE ISSUE WAS IMBEDDED SYSTEMS.

10:39:16 12 THE COURT: SO LET ME ASK, FROM YOUR
10:39:18 13 PERSPECTIVE, THAT'S THE ONLY DIFFERENCE THAT IS
10:39:20 14 SIGNIFICANT?

10:39:20 15 MR. JOHNSON: YES.

10:39:21 16 THE COURT: OTHER THAN SORT OF --

10:39:23 17 MR. JOHNSON: RIGHT.

10:39:24 18 THE COURT: ALL RIGHT. LET ME HEAR FROM
10:39:26 19 MR. LEE.

10:39:27 20 DO YOU AGREE THAT THAT'S THE ONLY
10:39:29 21 DIFFERENCE BETWEEN THE PARTIES USE AS IMBEDDED
10:39:34 22 SYSTEMS, OR NOT?

10:39:35 23 MR. LEE: WELL, YOUR HONOR, IF IT IS, AT
10:39:37 24 LEAST THE MOST RECENT VERSION THAT I HAVE OF
10:39:40 25 SAMSUNG'S PROPOSAL HAS NOTHING IN IT ABOUT

10:39:43 1 MULTITASKING SYSTEMS AND PROGRAMMING FOR HANDHELD
10:39:48 2 DEVICES .

10:39:48 3 NOW, I MAY BE HEARING THAT'S NOT AN
10:39:53 4 ISSUE -- BUT WE HAVE THREE THINGS THAT WE'VE SAID,
10:39:56 5 YOUR HONOR, THAT REQUIRES PARTICULARLY FOR SOMEONE
10:39:58 6 WITH A BACHELOR'S DEGREE AND MORE SPECIFIC
10:40:00 7 EXPERIENCE, AND IT'S MULTITASKING IMBEDDED SYSTEMS
10:40:03 8 AND PROGRAMMING FOR HANDHELD DEVICES .

10:40:06 9 AND THE REASON THAT WE HAVE TRIED TO
10:40:09 10 IDENTIFY THOSE THREE IS, PARTICULARLY THE PERSON
10:40:12 11 WITH THE BACHELOR'S DEGREE WHO HAS A LESS ADVANCED
10:40:15 12 DEGREE, IS THE EXPERIENCE BECOMES MORE IMPORTANT .

10:40:17 13 AND AS YOUR HONOR KNOWS THE '711 THAT
10:40:20 14 CONCERNS THE HANDHELD DEVICE, IT CONCERNS
10:40:24 15 MULTITASKING AND IT CONCERNS DIFFERENT TYPES OF
10:40:29 16 IMBEDDED SYSTEMS FOR ACCOMPLISHING THE
10:40:31 17 MULTITASKING .

10:40:33 18 AND THE KEY HERE WILL BECOME JUST WHAT IS
10:40:35 19 AN APPLICATION MODULE AND WHAT IS APPLICATION
10:40:39 20 SOFTWARE?

10:40:39 21 SO IN ORDER TO READ THE SPECIFICATION AND
10:40:42 22 ITS REFERENCES TO THOSE TERMS, TO READ THE KOKUBO
10:40:46 23 REFERENCE, YOU NEED TO HAVE SOMEONE WHO HAS A
10:40:49 24 BACHELOR'S DEGREE AND SOME EXPERIENCE IN THOSE
10:40:55 25 AREAS, AND THAT'S WHY WE HAVE IDENTIFIED THOSE

10:40:57 1
10:41:03 2
10:41:04 3
10:41:07 4
10:41:08 5
10:41:10 6
10:41:12 7
10:41:15 8
10:41:17 9
10:41:22 10
10:41:26 11
10:41:27 12
10:41:29 13
10:41:32 14
10:41:35 15
10:41:37 16
10:41:39 17
10:41:41 18
10:41:44 19
10:41:46 20
10:41:47 21
10:41:48 22
10:41:49 23
10:41:53 24
10:41:54 25

THREE.

THE COURT: BOIL THAT DOWN FOR ME. SO YOU THINK THE DIFFERENCES ARE IMBEDDED SYSTEMS AND THE PROGRAMMING EXPERIENCE HAS TO BE SPECIFIC TO HANDHELD DEVICES.

MR. LEE: I WOULD SAY YES, YOUR HONOR, AND I WOULD ADD MULTITASKING SYSTEMS.

THE COURT: OKAY. BUT SAMSUNG HAS THAT IN THEIR DEFINITION AS WELL, SEVERAL YEARS OF EXPERIENCE IN MULTITASKING SYSTEMS AND COMPUTER PROGRAMMING IS WHAT THEY HAVE.

MR. LEE: AND THERE HAVE BEEN A COUPLE OF DIFFERENT DEFINITIONS THAT HAVE FLOWN AROUND, AND I'M LOOKING AT THE DEFINITION THAT CAME IN COLE'S DECLARATION, WHICH IS BROADER THAN THAT.

MR. JOHNSON: THIS IS -- WE DID THIS AS PART OF THE MEET AND CONFER WITH YOUR TEAM.

THE COURT: YEAH. MR. COLE'S JUST SAYS RELATIVE EXPERIENCE AND IT DOESN'T DEFINE THE SPECIFIC AREA.

MR. LEE: RIGHT.

THE COURT: BUT I THINK YOU'RE IN AGREEMENT ON MULTITASKING SYSTEMS NOW.

MR. LEE: RIGHT.

THE COURT: OKAY.

10:41:57 1 MR. JOHNSON: OUR ISSUE WITH HANDHELD
10:41:59 2 DEVICES IS THAT THE CLAIMS ARE NOT SO LIMITED WITH
10:42:02 3 HANDHELD DEVICES. THE PATENT IS NOT SO LIMITED TO
10:42:05 4 HANDHELD DEVICES NECESSARILY.

10:42:06 5 SO I THINK OUR DEFINITION COVERS THE
10:42:09 6 EXPERIENCE THAT APPLE HAS IN MIND BUT IT'S NOT SO
10:42:16 7 LIMITED TO HANDHELD DEVICES.

10:42:19 8 THE COURT: OKAY. LET ME ASK, HOW IS THE
10:42:24 9 COURT TO DECIDE WHICH ONE IS CORRECT? IT SEEMS
10:42:27 10 SOMEWHAT -- WHAT WOULD THE BASIS BE, JUST LOOKING
10:42:30 11 AT THE PATENT AND WHAT WAS WITHIN THE SCOPE OF THE
10:42:33 12 PATENT LIKE MR. JOHNSON SUGGESTS OR --

10:42:38 13 MR. LEE: YOUR HONOR, IT'S A HARD
10:42:40 14 QUESTION. I THINK THE ANSWER IS ONCE THE COURT
10:42:42 15 CONSIDERS THE PATENTS, THE CLAIM, AND THE
10:42:45 16 SPECIFICATION, BUT ALSO CONSIDERS THE FILE HISTORY,
10:42:48 17 THE QUESTION THEN BECOMES WHO IS THE PERSON OF
10:42:51 18 ORDINARY SKILL IN THE ART FOR THAT INTRINSIC
10:42:54 19 EVIDENCE?

10:42:55 20 AND I THINK THAT'S WHERE WE HAVE A LITTLE
10:42:57 21 BIT OF A DISPUTE. WE THINK THAT WHEN THE COURT
10:43:02 22 CONSIDERS WHAT THE PATENT SAYS AND IT SAYS ABOUT
10:43:06 23 APPLICATION SYSTEMS AND IMBEDDED PROGRAMS, THE
10:43:11 24 REQUIREMENT THAT THERE BE A HIGHER LEVEL OF
10:43:15 25 EXPERIENCE WITH SOMEONE WITH A BACHELOR'S DEGREE

10:43:17 1 MAKES SENSE TO US.

10:43:26 2 THE COURT: WHEN WE COVER APPLLET LATER,
10:43:28 3 WILL YOU BE ARGUING THAT WHETHER IMBEDDED SYSTEMS
10:43:31 4 AND HANDHELD DEVICES PROGRAMMING IS INCLUDED OR NOT
10:43:36 5 IN WHAT A PERSON OF ORDINARY SKILL IN THE ART WOULD
10:43:40 6 KNOW THAT THAT'S GOING TO MAKE A DIFFERENCE AS TO
10:43:42 7 SMALL OR WITHIN AN APPLICATION MODULE OR WHETHER
10:43:46 8 THE OPERATING SYSTEM IS DEPENDENT OR INDEPENDENT?

10:43:53 9 MR. LEE: I THINK, YOUR HONOR, ON THE
10:43:57 10 FIRST TWO I THINK THE ANSWER IS NO. I THINK UNDER
10:44:00 11 THE FIRST TWO ENTRIES, NO, BECAUSE WE CAN ADDRESS
10:44:01 12 THAT WITH MR. COLE'S TESTIMONY ITSELF.

10:44:04 13 I THINK AS TO THE LATTER IT GOES BACK A
10:44:06 14 LITTLE BIT TO THE MOTION TO STRIKE AND THE QUESTION
10:44:10 15 OF HOW MUCH YOUR HONOR HAS BEFORE YOU.

10:44:11 16 THE QUESTION OF SOME OF THESE OTHER
10:44:13 17 REFERENCES THAT MR. COLE RELIES UPON LIKE RUBY,
10:44:16 18 LIKE FLASH, SOMEONE WHO HAS A BACHELOR'S DEGREE BUT
10:44:19 19 SOME EXPERIENCE WITH IMBEDDED SYSTEMS IS GOING TO
10:44:22 20 KNOW THAT THEY OPERATE THROUGH AN INTERPRETER, AND,
10:44:24 21 THEREFORE, OPERATING SYSTEM INDEPENDENT.

10:44:30 22 NOW, IF THE ARGUMENT -- I'M NOT SURE
10:44:32 23 THERE'S A DIFFERENCE IN THE ARGUMENT, DEPENDING
10:44:34 24 UPON WHO THE PERSON OF ORDINARY SKILL IS.

10:44:38 25 IF THE ARGUMENT TO BE MADE BY SAMSUNG IS

10:44:41 1 THE PERSON WITH THE LOWER LEVEL OF SKILL IN THE ART
10:44:44 2 WOULD NOT KNOW THAT THEY WERE OPERATING SYSTEMS
10:44:47 3 INDEPENDENT, THEN WE DO HAVE A DISPUTE.

10:44:48 4 IF THAT'S NOT GOING TO BE THE ARGUMENT,
10:44:51 5 THEN IT MAY NOT MAKE A DIFFERENCE.

10:44:53 6 MR. JOHNSON: I'M NOT SURE IT'S -- IT'S
10:44:57 7 APPLE'S ARGUMENT IN THAT SENSE. I MEAN, FROM OUR
10:45:01 8 STANDPOINT WE ARE -- THEY'RE MAKING THE ARGUMENT TO
10:45:03 9 TRY AND LIMIT APPLLET TO OPERATING SYSTEMS
10:45:05 10 INDEPENDENT APPLLET.

10:45:07 11 AND SO IT SOUNDS LIKE THE DEFINITION TO
10:45:09 12 INCLUDE, YOU KNOW, SOMEBODY HAS EXPERIENCE WITH
10:45:12 13 PARTICULARLY HANDHELD DEVICES IS TIED TO THAT.

10:45:15 14 I DON'T THINK THE PATENT -- I DON'T THINK
10:45:17 15 THE PATENT IS SO LIMITED, AND I THINK YOUR HONOR IS
10:45:19 16 CORRECT TO THINK ABOUT IT IN TERMS OF LOOKING AT
10:45:22 17 THE PATENT, THE SPECIFICATION, THE CLAIMS, THE
10:45:25 18 PROSECUTION HISTORY TO DETERMINE WHO IS THIS PATENT
10:45:31 19 BASICALLY AIMED AT AND WHO ARE THE PERSONS OF
10:45:34 20 ORDINARY SKILL IN THE ART.

10:45:35 21 AND, YOU KNOW, THE PRIOR ART THAT WAS
10:45:37 22 DISCUSSED, I DON'T THINK THE PRIOR ART THAT WAS
10:45:39 23 DISCUSSED EVEN IN THE CITED REFERENCES, I'LL CHECK,
10:45:42 24 BUT I DON'T THINK IT WAS LIMITED TO HANDHELD
10:45:44 25 DEVICES.

10:45:45 1 SO I THINK THAT THIS IS IMPORTING ANOTHER
10:45:48 2 SORT OF LIMITATION INTO EVEN THE DEFINITION OF
10:45:52 3 ORDINARY SKILL IN THE ART.

10:45:52 4 NOW I UNDERSTAND WHY APPLE WAS TRYING TO
10:45:55 5 DO IT.

10:45:56 6 THE COURT: OKAY. CAN I ASK A QUESTION?

10:45:59 7 MR. JOHNSON, DO YOU AGREE THAT OTHER THAN
10:46:02 8 FOR APPLT, WHO A PERSON OF ORDINARY SKILL IN THE
10:46:06 9 ART IS REALLY SHOULDN'T CHANGE THE CONSTRUCTION?

10:46:09 10 MR. JOHNSON: YES.

10:46:09 11 THE COURT: OKAY. SO THE PARTIES AGREE
10:46:11 12 ON THAT?

10:46:12 13 MR. LEE: YES.

10:46:12 14 THE COURT: OKAY. SO LET'S SEE IF WE CAN
10:46:14 15 NARROW AT LEAST FOR APPLT WHETHER IT MATTERS.

10:46:17 16 DO YOU THINK -- DO BOTH SIDES THINK THAT
10:46:19 17 FOR "SMALL" IT MATTERS WHETHER EXACTLY THE TYPE OF
10:46:24 18 EXPERIENCE THE PERSON HAS?

10:46:27 19 MR. LEE: I THINK THE ARGUMENT CAN BE
10:46:28 20 SUBMITTED, YOUR HONOR, AND THE ANSWER IS NO.

10:46:31 21 THE COURT: OKAY. SO YOU AGREE WITH
10:46:33 22 THAT? OKAY. IT DOESN'T MATTER.

10:46:35 23 OKAY. WHAT ABOUT WITHIN AN APPLICATION
10:46:37 24 MODULE BEING EITHER WITHIN AN APPLICATION PROGRAM.
10:46:40 25 DOES IT MATTER?

10:46:41 1
10:46:42 2
10:46:43 3
10:46:45 4
10:46:46 5
10:46:48 6
10:46:49 7
10:46:52 8
10:46:54 9
10:46:55 10
10:46:56 11
10:47:00 12
10:47:03 13
10:47:04 14
10:47:04 15
10:47:06 16
10:47:10 17
10:47:13 18
10:47:15 19
10:47:15 20
10:47:22 21
10:47:25 22
10:47:28 23
10:47:30 24
10:47:33 25

MR. LEE: YES.

THE COURT: IT MATTERS?

MR. LEE: YES, THAT'S THE IMBEDDED
SYSTEMS ISSUE.

THE COURT: DO YOU AGREE THAT IT MATTERS?

MR. JOHNSON: WELL, I GUESS IT DOES. I
WOULD HAVE SAID STARTING OUT THAT IT DOESN'T
NECESSARILY MATTER, BUT NOW THAT I HEAR HIS
ARGUMENT, I THINK IT DOES.

THE COURT: IT MATTERS. OKAY. AND THEN
I ASSUME THAT BOTH SIDES AGREE THAT WITH REGARD TO
OPERATING SYSTEM INDEPENDENT IT MATTERS?

MR. LEE: YES.

MR. JOHNSON: YES.

THE COURT: ALL RIGHT. THEN WHY DON'T WE
DO THIS, WHEN WE GET TO APPLE, CAN BOTH SIDES AT
THAT -- DURING THAT TERM EXPLAIN WHY IT MATTERS AND
HOW IT MATTERS?

MR. LEE: YES.

THE COURT: OKAY. ALL RIGHT. ALL RIGHT.
I'M SORRY THE HOUSEKEEPING STUFF IS TAKING A LONG
TIME. I THINK THAT WAS IT, RIGHT, THE MOTION TO
STRIKE AND THEN -- ALL RIGHT. THEN WHY DON'T WE
START WITH WHATEVER TERM YOU WANT TO START WITH.

MR. JOHNSON: I THINK WE'RE STARTING WITH

10:47:34 1 THE '002 PATENT.

10:47:36 2 THE COURT: THE '002?

10:47:38 3 MR. JACOBS: YES. AND PER YOUR
10:47:48 4 INSTRUCTIONS, YOUR HONOR, WE'LL ALTERNATE BETWEEN
10:47:50 5 THE PATENTS. IN ONE PARTICULAR CASE WE HAVE A
10:47:54 6 SLIGHTLY DIFFERENT ORDER WITHIN A PATENT, BUT I'LL
10:47:56 7 HIGHLIGHT THAT FOR YOU WHEN WE GET TO THAT.
10:47:58 8 MEANING I'LL GO FIRST AND THEN SAMSUNG WILL RESPOND
10:48:02 9 ON THE CLAIM CONSTRUCTION DISPUTE ON THAT PATENT.

10:48:06 10 THE COURT: OKAY. AND WE'RE STARTING
10:48:07 11 WITH THE '002 --

10:48:09 12 MR. JACOBS: THE '002 PATENT, THE CONTROL
10:48:14 13 STRIP.

10:48:15 14 THE COURT: OKAY.

10:48:31 15 MR. JACOBS: YOUR HONOR, YOU WILL I
10:48:32 16 BELIEVE RECALL THAT THIS PATENT IS ABOUT HAVING A
10:48:35 17 CONTROL STRIP THAT APPEARS IN FRONT OF APPLICATION
10:48:37 18 WINDOWS AND PROVIDES STATUS INFORMATION.

10:48:42 19 IF ONE THINKS OF A MODERN MOBILE DEVICE
10:48:45 20 THIS WOULD BE THE BAR THAT TELLS YOU THAT YOUR
10:48:47 21 BATTERY STRENGTH AND YOUR SIGNAL STRENGTH AND THAT
10:48:50 22 KIND OF STATUS INFORMATION THAT WANTS TO BE IN
10:48:54 23 FRONT OF A USER IN MOST CASES. AND THAT'S WHAT
10:48:58 24 THIS PATENT DESCRIBES.

10:49:02 25 THE SPECIFICATION AT FIGURE 2A SHOWS THE

10:49:04 1 STATUS BAR AT THE BOTTOM AND SHOWS IT APPEARING IN
10:49:07 2 FRONT OF APPLICATION WINDOWS THAT ARE ALSO OPEN ON
10:49:10 3 THE SCREEN.

10:49:15 4 LATER ON, YOUR HONOR, WE'RE GOING TO BE
10:49:17 5 TALKING ABOUT MATHEMATICALLY FITTING AN ELLIPSE AND
10:49:22 6 THE PROCESS OF FITTING. AND AS WE GET INTO THIS
10:49:25 7 CLAIM CONSTRUCTION ISSUES, IT STRUCK ME THAT WE'RE
10:49:29 8 DOING A FITTING PROCESS AS WELL.

10:49:30 9 WE'RE LOOKING AT THE EVIDENCE, WE ARE
10:49:31 10 LOOKING AT THE EVIDENCE IN THE HIERARCHY THAT THE
10:49:32 11 FEDERAL CIRCUIT HAS DIRECTED US THAT WE LOOK AT THE
10:49:34 12 EVIDENCE, AND WE'RE DETERMINING WHAT IS THE BEST
10:49:36 13 FIT AND WHETHER IT'S IMPORTANT TO GO BEYOND THE
10:49:40 14 PLAIN LANGUAGE OF THE CLAIM AND NARROW IT OR EXPAND
10:49:45 15 UPON IT IN SOME WAY TO ADD CLARITY.

10:49:47 16 IN THIS PARTICULAR CASE WE URGE THAT THE
10:49:49 17 BEST FIT IS TO STAY WITH THE PLAIN LANGUAGE AND
10:49:53 18 THAT TO ADD SAMSUNG'S PROPOSED LIMITATION WOULD BE
10:49:58 19 LEGAL ERROR AND AN ERROR IN THE SENSE OF JUST
10:50:02 20 LOOKING AT THE EVIDENCE AND TRYING TO FIGURE OUT
10:50:04 21 WHAT THE INVENTION IS AND WHAT THE APPLICANT WAS
10:50:08 22 CLAIMING AS PROSECUTION PROCEEDED THROUGH THE
10:50:10 23 PATENT OFFICE.

10:50:11 24 SO IN THIS PARTICULAR CASE ONE CAN SEE
10:50:13 25 FROM SAMSUNG'S PROPOSED INSTRUCTION SOME VERY

10:50:17 1 POWERFUL CLAIM CONSTRUCTION WORDS, WORDS THAT YOU
10:50:20 2 JUST KNOW WHERE THE NON-INFRINGEMENT ARGUMENT IS
10:50:23 3 GOING.

10:50:23 4 THERE IS NEVER OBSCURED BY ANY PORTION OF
10:50:27 5 ANY APPLICATION WINDOWS THAT ARE GENERATED OR THAT
10:50:31 6 ARE CAPABLE OF BEING GENERATED.

10:50:32 7 THAT IS A PROPOSED NARROWING OF THE CLAIM
10:50:36 8 LANGUAGE THAT ON ITS FACE SIGNALS TO US WHERE
10:50:40 9 SAMSUNG WOULD PROPOSE TO GO WITH ITS
10:50:43 10 NON-INFRINGEMENT POSITION.

10:50:44 11 SO ONE CAN ASK A COUPLE OF QUESTIONS
10:50:46 12 ABOUT THIS CLAIM LANGUAGE IN THE PATENT. DOES IT
10:50:49 13 APPLY IF THE USER TOGGLES KIND OF AN ON AND OFF ON
10:50:53 14 THE STATUS BAR?

10:50:54 15 IS THE CLAIM LANGUAGE TO BE NARROWED SUCH
10:50:56 16 THAT SAMSUNG WOULD HAVE AN ARGUMENT OF
10:50:59 17 NON-INFRINGEMENT IF THE USER HAS THAT KIND OF
10:51:02 18 CAPABILITY?

10:51:02 19 WHAT IF THERE IS KIND OF A TOGGLING ON
10:51:06 20 AND OFF OF THE STATUS BAR ON ACCOUNT OF A
10:51:07 21 PARTICULAR APPLICATION THAT IS RUNNING?

10:51:09 22 WHAT IF THE APPLICATION -- WHAT IF THE
10:51:11 23 SYSTEM GIVES AN APPLICATION THE CAPABILITY TO SAY
10:51:14 24 TO IT, YOU KNOW WHAT, I WANT THE WHOLE SCREEN, I
10:51:17 25 WANT TO OBSCURE THE CONTROL STRIP, AND I WANT TO

10:51:20 1 OBSCURE THIS FIRST WINDOW REGION?

10:51:25 2 NOW, THIS IS THE PARTICULAR CLAIM
10:51:31 3 LANGUAGE THAT IS AT ISSUE: "THE FIRST WINDOW
10:51:36 4 REGION AND THE PLURALITY OF INDEPENDENT DISPLAY
10:51:39 5 AREAS IMPLEMENTED IN A WINDOW LAYER THAT APPEARS ON
10:51:42 6 TOP OF APPLICATION PROGRAMMING WINDOWS THAT MAY BE
10:51:46 7 GENERATED."

10:51:47 8 AND WHAT SAMSUNG IS DOING, IN EFFECT, IS
10:51:50 9 THAT THEY'RE PROPOSING TO ADD AN "ANY" ON TOP OF
10:51:54 10 "ANY APPLICATION WINDOWS THAT MAY BE GENERATED" OR
10:51:58 11 "ALWAYS APPEARS ON TOP OF APPLICATION WINDOWS."

10:52:03 12 SO THE FIRST THING TO OBSERVE IS THAT THE
10:52:05 13 CLAIM LANGUAGE DOES NOT HAVE THAT -- DOES NOT
10:52:08 14 FORMULATE IT IN THAT WAY, AND THERE IS NO "ANY" OR
10:52:10 15 "ALWAYS" IN THIS PARTICULAR LOCATION OF CLAIM 1 OF
10:52:13 16 THE '002 PATENT.

10:52:19 17 THERE ARE EMBODIMENTS THAT ANSWER THE
10:52:21 18 QUESTION THAT I POSED AT THE BEGINNING: CAN THE
10:52:24 19 USER TOGGLE ON AND OFF? CAN AN APPLICATION PROGRAM
10:52:29 20 TOGGLE ON AND OFF?

10:52:32 21 AND SO IN THE '002 PATENT THERE IS AN
10:52:36 22 EMBODIMENT AND IT'S CLAIMED IN A DEPENDENT CLAIM IN
10:52:40 23 WHICH THE FIRST WINDOW -- THERE'S AN EMBODIMENT
10:52:41 24 THAT IS CLAIMED IN WHICH IT'S ALWAYS ON TOP AND
10:52:43 25 THERE'S ANOTHER EMBODIMENT IN WHICH THE USER CAN

10:52:45 1
10:52:47 2
10:52:50 3
10:52:54 4
10:52:57 5
10:53:00 6
10:53:02 7
10:53:04 8
10:53:08 9
10:53:11 10
10:53:13 11
10:53:16 12
10:53:18 13
10:53:20 14
10:53:24 15
10:53:27 16
10:53:27 17
10:53:30 18
10:53:35 19
10:53:38 20
10:53:42 21
10:53:46 22
10:53:47 23
10:53:49 24
10:53:53 25

HIDE THE CONTROL STRIP.

SO THE SPECIFICATION READS: "IN ONE EMBODIMENT TO MAKE THE CONTROL STRIP DISAPPEAR COMPLETELY, THE USER CAN CLICK THE HIDE BUTTON IN THE CONTROL STRIP CONTROL PANEL AS DESCRIBED LATER IN CONJUNCTION WITH FIGURE 3."

AND THEN FIGURE 3 SHOWS PRECISELY THIS KIND OF TOGGLING HIDE/DON'T HIDE CAPABILITY.

BUT THE SPECIFICATION ALSO ANSWERS MY SECOND QUESTION, WHICH IS WHAT ABOUT IN THE CAPABILITY OF AN APPLICATION PROGRAM TO SAY HIDE THE CONTROL STRIP?

CAN AN APPLICATION PROGRAM SAY THAT I WANT TO OCCUPY THE WHOLE SCREEN? I DON'T WANT A LAYER OR A PORTION AT THE TOP OR BOTTOM HIDDEN BY A CONTROL STRIP?

THIS IS LANGUAGE, BY THE WAY, THAT COMES FROM THE ATTACHMENT TO THE CHRISTENSEN TESTIMONY THAT SAMSUNG ADDED AND PUT IN ITS OPPOSITION.

SO THE INVENTOR IS ASKED, DOES THE -- WAS YOUR INVENTION TO HIDE -- TO HAVE THE CONTROL STRIP BE ON TOP?

AND HE SAYS SOMETHING ALONG THE LINES OF, YES, IT WAS TO BE ON TOP. THEY NEVER ASKED HIM ALWAYS AND THEY NEVER ASKED HIM ABOUT THE MATERIAL

10:53:55 1 ATTACHED TO THAT TRANSCRIPT, WHICH IS HIS
10:53:58 2 DISCLOSURE, INTERNAL DISCLOSURE OF THE
10:54:00 3 SPECIFICATION WHICH FINDS ITS WAY INTO THE
10:54:02 4 SPECIFICATION.

10:54:03 5 AND WHAT THE SPECIFICATION SAYS IS,
10:54:06 6 THERE'S A SHOW HIDE CONTROL STRIP ROUTINE. IT
10:54:11 7 PROVIDES A MEANS FOR OTHER SOFTWARE TO HIDE THE
10:54:14 8 CONTROL STRIP WHEN IT IS IN THE WAY.

10:54:15 9 SO THE SPECIFICATION ANSWERS BOTH OF MY
10:54:19 10 QUESTIONS AT THE BEGINNING. AS DISCLOSED, AS
10:54:23 11 DESCRIBED, CAN THE USER TOGGLE ON AND OFF? AND CAN
10:54:27 12 AN APPLICATION PROGRAM HIDE THE CONTROL STRIP?

10:54:33 13 THE COURT: LET ME ASK YOU A QUESTION.
10:54:37 14 WOULD YOU AGREE THAT THE FIRST WINDOW REGION IS
10:54:40 15 EITHER HIDDEN OR NOT VISIBLE OR IF IT IS VISIBLE
10:54:46 16 THEN IT HAS TO BE ON TOP?

10:54:55 17 MR. JACOBS: I DON'T THINK THAT IS THE
10:54:57 18 CASE.

10:54:57 19 THE COURT: WHY?

10:54:58 20 MR. JACOBS: BECAUSE THERE IS NO SUCH
10:54:59 21 LIMITATION IN THE CLAIM LANGUAGE. IT IS ON TOP OF
10:55:03 22 APPLICATION PROGRAMMING WINDOWS THAT MAY BE
10:55:05 23 GENERATED IMPLIES A, TO ME, A SOME OR ALL. BOTH
10:55:20 24 CASES WOULD BE MET BY THE CLAIM LANGUAGE.

10:55:22 25 SO WHAT ARE SAMSUNG'S LEGAL ERRORS? THIS

10:55:25 1 NEGATIVE LIMITATION THAT THERE IS NEVER, ALWAYS,
10:55:28 2 ANY KIND OF APPROACH THAT THEY'VE ADOPTED IN THEIR
10:55:31 3 CONSTRUCTION IS PUTTING A NEGATIVE LIMITATION IN
10:55:33 4 THE CLAIM THAT SHOULD JUST NOT BE FOUND THERE.

10:55:36 5 AS INDICATED EARLIER, THEIR PROPOSED
10:55:38 6 CONSTRUCTION WOULD IMPROPERLY EXCLUDE THESE HIDE
10:55:41 7 CONTROL STRIP EMBODIMENTS, AND THEY VIOLATE THE
10:55:46 8 DOCTRINE OF CLAIM DIFFERENTIATION.

10:55:48 9 I SHOULD SAY ONE THING THAT BECAME
10:55:51 10 APPARENT IN PREPARING FOR THIS MARKMAN, I THINK THE
10:55:54 11 CLAIM LANGUAGE ITSELF IN MORE CASES THAN THE
10:55:56 12 PARTIES HAVE FOCUSSED ANSWERS A LOT OF THESE CLAIMS
10:56:01 13 CONSTRUCTIONS AND THIS IS AN EXAMPLE OF ONE.

10:56:03 14 AND IN PARTICULAR IN CLAIM 1, WHAT IS
10:56:06 15 NOTEWORTHY IS "ANY" WAS USED WHEN "ANY" WAS MEANT.

10:56:12 16 SO ELSEWHERE IN THIS CLAIM WHERE IT SAYS,
10:56:15 17 "WITHIN THE FIRST WINDOW REGION IS INDEPENDENTLY
10:56:18 18 DISPLAYED AND INDEPENDENTLY ACTIVE OF ANY
10:56:21 19 APPLICATION PROGRAM."

10:56:23 20 SO "ANY" APPEARS RIGHT THERE. IT IS
10:56:24 21 INDEPENDENTLY DISPLAYED AND INDEPENDENTLY ACTIVE OF
10:56:28 22 ANY APPLICATION PROGRAM.

10:56:29 23 BUT LATER ON WHEN WE'RE TALKING ABOUT THE
10:56:31 24 APPEARANCE ON TOP QUESTION, THE "ANY" IS OMITTED.

10:56:35 25 SO THE CLAIM DRAFTERS KNEW WHERE TO WRITE

10:56:38 1 "ANY" WHEN THEY MEANT "ANY" AND WHERE NOT TO.

10:56:44 2 THERE IS, OF COURSE, AN EMBODIMENT, ONE
10:56:47 3 EMBODIMENT WHERE "THE CONTROL STRIP WINDOWS APPEARS
10:56:49 4 ON TOP OF ALL APPLICATION PROGRAMMING WINDOWS THAT
10:56:52 5 MAY BE GENERATED AS PART OF THE EXECUTION OF AN
10:56:54 6 APPLICATION PROGRAM."

10:56:56 7 AND THAT EMBODIMENT AS CLAIMED IN CLAIM
10:57:02 8 12 OR 13 IS IN SLIGHTLY DIFFERENT WAYS.

10:57:04 9 IN CLAIM 12 "ALWAYS" IS IN THE CLAIM
10:57:07 10 LANGUAGE. "THE DISPLAY SYSTEM DEFINED IN CLAIM 1
10:57:11 11 WHEREIN THE FIRST WINDOW REGION ALWAYS APPEARS IN
10:57:15 12 FRONT OF THE APPLICATION WINDOWS."

10:57:18 13 OR IN CLAIM 13, "THE DISPLAY SYSTEM
10:57:22 14 DEFINED IN CLAIM 1 WHEREIN THE FIRST WINDOW REGION
10:57:25 15 IS IMPLEMENTED IN A PRIVATE WINDOW LAYER THAT
10:57:28 16 APPEARS IN FRONT OF WINDOWS FOR ALL APPLICATION
10:57:31 17 LAYERS."

10:57:33 18 AND ALSO IN THE CLAIM OF THE '002 PATENT
10:57:36 19 ONE WILL FIND THIS LIMITATION AS WELL.

10:57:38 20 SO THIS IS A CASE WHERE THE CLAIM
10:57:41 21 DIFFERENTIATION ARGUMENT IS QUITE SYNERGISTIC AND
10:57:44 22 REENFORCING OF THE OTHER ARGUMENTS.

10:57:46 23 WE HAVE ALTERNATIVE EMBODIMENTS DISCLOSED
10:57:48 24 IN THE SPECIFICATION; AND WE HAVE CLAIM LANGUAGE
10:57:51 25 WHICH IT DISTINGUISHES IN THE INDEPENDENT CLAIM

10:57:53 1 BETWEEN THE "ANY" AND THE "NON-ANY" CASE; AND THEN
10:57:55 2 WE HAVE DEPENDENT CLAIMS THAT THROUGH THE USE OF
10:57:58 3 THE WORD "ALWAYS" CLAIM THE "ALWAYS IN FRONT"
10:58:02 4 NARROWING LIMITATION.

10:58:13 5 THE OFFICE ACTION AND FILE HISTORY
10:58:16 6 ARGUMENT THAT SAMSUNG MAKES FOCUSES ON SOME
10:58:21 7 LANGUAGE THAT THE APPLICANT PUT BEFORE THE PATENT
10:58:25 8 OFFICE IN EXPLAINING WHAT THE INVENTION WAS ALL
10:58:27 9 ABOUT.

10:58:27 10 THIS IS WHERE FITTING AND HIERARCHY COMES
10:58:31 11 INTO PLAY BECAUSE THE LANGUAGE IS NOT A CRISP,
10:58:37 12 CLEAR DISCLAIMER SUCH THAT THAT "ANY" LIMITATION
10:58:44 13 SHOULD BE READ INTO CLAIM 1.

10:58:45 14 IN FACT, THE LANGUAGE ITSELF IS LARGELY
10:58:48 15 INCONSISTENT WITH THE TAILEND OF CLAIM 1, WHICH
10:58:50 16 ITSELF DOES NOT HAVE THIS "ANY" OR "ALWAYS"
10:58:52 17 LANGUAGE.

10:58:53 18 AND IN PARTICULAR, ESPECIALLY IF ONE
10:58:56 19 READS THE ACTUAL LANGUAGE OF THE OFFICE ACTION
10:59:00 20 RESPONSE AT THE LOWER LEVEL AT THE P.T.O., ALL THAT
10:59:03 21 THE APPLICANT SAID WAS THAT IT ALLOWS THE USER TO
10:59:06 22 HAVE AN UNOBSTRUCTED VIEW OF THE AREA AND THUS THE
10:59:10 23 WINDOW ALWAYS MAY BE VISIBLE -- I'M SORRY -- MAY BE
10:59:14 24 ALWAYS VISIBLE. THERE'S AN ERROR IN SAMSUNG'S
10:59:17 25 BRIEF. THE WINDOW MAY BE ALWAYS VISIBLE. AND SO

10:59:21 1
10:59:24 2
10:59:26 3
10:59:30 4
10:59:33 5
10:59:34 6
10:59:38 7
10:59:38 8
10:59:40 9
10:59:46 10
10:59:48 11
10:59:50 12
10:59:52 13
10:59:57 14
11:00:00 15
11:00:02 16
11:00:04 17
11:00:07 18
11:00:09 19
11:00:12 20
11:00:17 21
11:00:19 22
11:00:21 23
11:00:23 24
11:00:25 25

MAY BE -- IT DOESN'T SAY "ALWAYS VISIBLE."

THE COURT: I'M SORRY TO INTERRUPT YOU.
I AGREE WITH YOU THAT I DON'T AGREE WITH SAMSUNG
THAT IT HAS TO AL -- THAT IT CAN NEVER BE OBSCURED.

BUT WHERE I'M NOT AGREEING WITH YOU IS IF
IT IS VISIBLE WHETHER IT HAS TO BE ON TOP OF THE
APPLICATION.

SO MAYBE YOU CAN TALK ABOUT APPLE
DISTINGUISHED THE HANSEN REFERENCE IN THE
PROSECUTION HISTORY BECAUSE I THINK THAT'S WHERE
SAMSUNG ARGUES THAT --

MR. JACOBS: I THINK YOU HAVE TO LOOK
VERY CLOSELY AT HANSEN. HANSEN ITSELF IS A PRIOR
ART REFERENCE THAT IF YOU LOOK AT THE CLAIM, IT HAS
A KIND OF ALWAYS CHARACTERISTIC.

I THINK WHAT YOU HAVE TO DO IN THIS CASE
WHEN LOOKING AT THE WAY THAT APPLICANTS DISTINGUISH
PRIOR ART REFERENCE AND LOOK AT WHAT THEY'VE SAID
AND WHETHER THERE'S A CLEAR DISCLAIMER OR NOT.

APPLE CAN ADVANCE ARGUMENTS AND SAY
THINGS TO THE P.T.O. I THINK ONE OF SAMSUNG'S
APPROACHES TO CLAIM CONSTRUCTION HERE IS TO LOOK --
TO SAY LOOK AT THE PRIOR ART AND LOOK AT THIS
ARGUMENT, AND THIS ARGUMENT CAN ONLY MEAN X WHEN
THE ARGUMENT WAS NOT X. THE ARGUMENT WAS SOMETHING

11:00:28 1 MUCH SHORT OF X. AND THAT IS THE RIGHT THING TO DO
2 HERE BECAUSE WHAT APPLE SAYS IN ITS APPEAL BRIEF,
3 AGAIN DISTINGUISHING HANSEN, IS IT MAKES IT VERY
4 CLEAR IS THAT WE ARE JUST TALKING ABOUT IN ONE
5 EMBODIMENT THE CONTROL STRIP THAT IS IMPLEMENTED IN
6 A PRIVATE WINDOW LAYER THAT APPEARS IN FRONT OF THE
11:00:51 7 WINDOWS OF ALL OF THE OTHER APPLICATION LAYERS.

11:00:51 8 THIS PREVENTS OTHER WINDOWS FROM OBSCURING IT.

11:00:54 9 SO I THINK MY ARGUMENT IS TWO-FOLD. ONE,
11:00:55 10 WE CAN HYPOTHEZIZE ABOUT WHAT MIGHT HAVE BEEN IN
11:00:58 11 THE MINDS OF THE EXAMINER WITH THAT REFERENCE IN
11:01:01 12 FRONT OF HIM IN TRYING TO REINTERPRET THE ACTUAL
11:01:04 13 LANGUAGE THAT APPLE USED.

11:01:05 14 I THINK THAT'S ERROR.

11:01:10 15 WHEN YOU LOOK AT THAT PROSECUTION
11:01:12 16 HISTORY, WE SHOULD LOOK AT THAT LANGUAGE MORE AT
11:01:14 17 FACE VALUE. AND, SECONDLY, IF YOU DO DRILL DOWN, I
11:01:18 18 JUST DON'T THINK THAT YOU'LL SEE THE RESTRICTION IN
11:01:20 19 CLAIM 1 THAT SAMSUNG IS PROPOSING.

11:01:23 20 AND I THINK IT'S IMPORTANT THAT CLAIM
11:01:25 21 DIFFERENTIATION ARGUMENT BEARS ON THIS ISSUE AS
11:01:27 22 WELL.

11:01:27 23 ONE OF THE THINGS THAT CLAIM
11:01:30 24 DIFFERENTIATION HELPS US WITH HERE IS THAT HAD THE
11:01:33 25 EXAMINER HAD IT IN ITS HEAD THAT THIS HAS TO APPEAR

11:01:36 1 IN FRONT OF ANY APPLICATION PROGRAMS THAT ARE
11:01:40 2 VISIBLE, I THINK THAT'S THE QUESTION THAT YOU'RE
11:01:43 3 ASKING, AND THEN HE SEES DOWN THE DEPENDENT CLAIMS
11:01:46 4 THAT THERE ARE ALWAYS LIMITATIONS, HE WOULD ASK,
11:01:49 5 WELL, SHOULDN'T YOU BE INSERTING "ALWAYS" IN CLAIM
11:01:49 6 1.

11:01:52 7 AND IT'S RIGHT IN FRONT OF HIM THAT APPLE
11:01:56 8 IS DISTINGUISHING THE CASE OF "NOT ALWAYS" FROM
11:02:05 9 "ALWAYS."

11:02:05 10 THE COURT: CAN I ASK YOU WHAT WINDOW
11:02:08 11 LAYER IS AND HOW IT RELATES TO THE FIRST REGION
11:02:16 12 WINDOW?

11:02:17 13 MR. JACOBS: I THINK THE RIGHT WAY TO
11:02:19 14 UNDERSTAND WINDOW LAYER IS IN A KIND OF A WAY OF
11:02:21 15 WHAT THE USER SEES WAY.

11:02:24 16 WHEN THE USER LOOKS AT A SCREEN WHICH IS,
11:02:26 17 OF COURSE, PHYSICALLY AND ONLY TWO DIMENSIONS, THE
11:02:29 18 USER SEES THE WINDOWS APPEARING IN A KIND OF A
11:02:32 19 LAYERED SORT OF WAY. IT'S AN IMPRESSION THAT THE
11:02:40 20 SYSTEM CREATES WHEN GENERATING THESE IMAGES.

11:02:43 21 THAT MAY HAVE SOME UNDERLYING TECHNICAL
11:02:45 22 BACKUP THAT SUPPORTS LAYERING. OF COURSE, THE
11:02:50 23 CLAIM IS NOT REALLY DIRECTED TO THE UNDERLYING
11:02:53 24 TECHNICAL BACKUP, BUT, OF COURSE, THERE MUST BE
11:02:55 25 SOMETHING IN THE SYSTEM THAT SAYS THAT MAKE IT LOOK

11:02:57 1 LIKE I'M ON TOP.

11:02:58 2 SO I THINK WINDOW LAYER HERE SIMPLY MEANS
11:03:02 3 IMAGINE THAT YOU'RE LOOKING AT THIS TWO DIMENSIONAL
11:03:05 4 OBJECT AND YOUR EYE IS GIVEN A THREE-DIMENSIONAL
11:03:09 5 SENSE, THE LAYERS ARE THE EFFECT OF THE DIFFERENT
11:03:14 6 WINDOW REGIONS ON TOP OF EACH OTHER AND NOTHING
11:03:17 7 MORE THAN THAT.

11:03:19 8 THE COURT: SO THE WINDOW LAYER IS THE
11:03:22 9 COMPILATION OF ALL OF THE WINDOW REGIONS OR REGION
11:03:28 10 WINDOWS?

11:03:29 11 MR. JACOBS: SO MAYBE LET'S LOOK AT 2A
11:03:31 12 AND I CAN EXPLAIN THIS IN THE WAY THAT WE'RE SEEING
11:03:35 13 IT.

11:03:42 14 SO FIGURE 2A IN THE PATENT IS THE
11:03:45 15 DOMINANT DISCLOSURE, IF YOU WILL. IT'S THE DRAWING
11:03:50 16 THAT REALLY SHOWS THE CONTROL STRIP IN ITS FULL
11:03:58 17 EXTENSION.

11:03:58 18 AND WHAT YOU CAN SEE IS THE LAYERS. AND
11:04:00 19 SO THE CONTROL STRIP DOWN AT THE BOTTOM IS IN A
11:04:03 20 LAYER THAT IS ON TOP OF AN APPLICATION WINDOW THAT
11:04:09 21 IS UNDERNEATH IT.

11:04:11 22 THAT FINDER WINDOW IN THE MIDDLE WHERE IT
11:04:19 23 SAYS APPLICATIONS IS IN A LAYER THAT IS ON TOP OF
11:04:22 24 EXTENSIONS.

11:04:24 25 AND IT'S JUST AN APPEARANCE. IT'S A

11:04:27 1 WINDOW LAYER THAT IS CREATED BY APPEARANCE.

11:04:29 2 THE COURT: SO APPLICATIONS IS A WINDOW
11:04:31 3 LAYER AND EXTENSIONS IS A SEPARATE WINDOW LAYER OR
11:04:35 4 WINDOW LAYER IS --

11:04:37 5 MR. JACOBS: WINDOW LAYER IS THE -- I
11:04:39 6 WOULD SAY -- I WOULD SAY IT SLIGHTLY DIFFERENT.

11:04:43 7 APPLICATIONS IS PRESENTED IN A WINDOW
11:04:45 8 LAYER AND EXTENSIONS IS PRESENTED IN A DIFFERENT
11:04:48 9 WINDOW LAYER.

11:04:48 10 THE COURT: OH, OKAY. WHAT ABOUT IF THE
11:04:55 11 FIRST WINDOW REGION, THE CONTROL STRIP?

11:05:00 12 MR. JACOBS: YES.

11:05:10 13 THE COURT: WHAT HAPPENS IF THE CONTROL
11:05:15 14 STRIP IS VISIBLE, IT'S NOT HIDDEN, BUT IT'S
11:05:20 15 OBSCURED BY AN APPLICATION WINDOW, BY ANOTHER
11:05:24 16 WINDOW LAYER?

11:05:36 17 MR. JACOBS: IT'S A CASE THAT IS NOT
11:05:38 18 SPECIFICALLY DESCRIBED IN THE SPECIFICATION.

11:05:39 19 THE COURT: UH-HUH.

11:05:40 20 MR. JACOBS: IT'S A CASE THAT IS NOT
11:05:43 21 SPECIFICALLY DISCLAIMED, I WOULD BELIEVE, IN CLAIM
11:05:46 22 1.

11:05:47 23 IT'S ALSO NOT SOMETHING THAT I YET
11:05:52 24 BELIEVE IS AN ISSUE IN THE CASE.

11:05:54 25 SO I DON'T THINK THAT EITHER OF US

11:05:56 1 DEBATED THIS CONSTRUCTION ISSUE, AND I'M NOT AWARE
11:05:59 2 YET OF AN INFRINGEMENT ISSUE THAT TURNS ON THIS.

11:06:02 3 I CAN --

11:06:03 4 THE COURT: OKAY.

11:06:05 5 MR. JACOBS: YOUR HONOR, I DO THIS WITH
11:06:07 6 HESITATION. IF YOU DON'T -- IF THIS IS GETTING TOO
11:06:11 7 CLOSE TO INFRINGEMENT, STOP ME, BUT I CAN SHOW YOU
11:06:13 8 ON SLIDE 89 WHAT WE ARE LOOKING AT IN THE SAMSUNG
11:06:17 9 PHONE.

11:06:20 10 SO WE HAVE -- THIS IS FROM A SAMSUNG
11:06:24 11 DROID AND WHAT YOU CAN SEE IS THE CONTROL STRIP AT
11:06:26 12 THE TOP AS I DESCRIBED IT WITH THE BATTERY POWER
11:06:29 13 AND THE ANTENNA STRENGTH AND THE LIKE.

11:06:31 14 AND THEN THERE ARE APPLICATIONS THAT ARE
11:06:33 15 IN WINDOW LAYERS UNDERNEATH THAT CONTROL STRIP.

11:06:38 16 AND IN THE OVERWHELMING MAJORITY OF THE
11:06:40 17 CASES THAT WE HAVE SEEN THE CONTROL STRIP IS
11:06:43 18 PRESENTED ON TOP OF THE APPLICATIONS PROGRAM.

11:06:50 19 BUT THERE ARE CASES INVOLVING PHOTOGRAPHY
11:06:53 20 IN WHICH WE INFER THAT THE SYSTEM HAS PRECISELY
11:06:56 21 THAT MODULE THAT IS DESCRIBED IN THE SPECIFICATION
11:07:00 22 WHERE AN APPLICATION CAN SAY I WANT THE WHOLE
11:07:03 23 SCREEN, I DON'T WANT TO BE OBSCURED BY A CONTROL
11:07:06 24 STRIP.

11:07:07 25 AND SO WE -- I'M TRYING TO ANTICIPATE --

11:07:10 1 I'M TRYING TO ANSWER YOUR HONOR'S QUESTION FROM THE
11:07:13 2 TUTORIAL.

11:07:14 3 OUR IMAGINATION, IF YOU WILL, OUR
11:07:17 4 SURMISE, IS THAT THIS IS SAMSUNG'S NON-INFRINGEMENT
11:07:20 5 ARGUMENT BASED ON "ALWAYS."

11:07:21 6 WE HAVE NOT SEEN -- FRANKLY, I HAVE NOT
11:07:24 7 SEARCHED FOR THE CASE THAT YOUR HONOR HAS POSITED
11:07:26 8 WHERE THERE'S AN APPLICATION PROGRAM, I GUESS,
11:07:29 9 PARTIALLY OBSCURING THE CONTROL STRIP.

11:07:38 10 SO PART OF THE REASON I DON'T HAVE A
11:07:40 11 SUPER CRISP ANSWER TO YOUR HONOR'S QUESTION IS THAT
11:07:43 12 THE PARTIES HAVE NOT BRIEFED IT AND WE HAVE NOT
11:07:45 13 SEEN THAT CASE IN OUR OBSERVATION OF THE SAMSUNG
11:07:48 14 PHONES.

11:07:49 15 THE COURT: I DON'T WANT TO GO DEEPLY
11:07:51 16 INTO EITHER INFRINGEMENT OR INVALIDITY TODAY,
11:07:56 17 EITHER SIDE.

11:07:56 18 TO THE EXTENT THAT IT'S HELPFUL TO TRY TO
11:07:58 19 UNDERSTAND THE CONTEXT OF WHY THIS ARGUMENT IS
11:08:01 20 COMING UP, I'M OKAY WITH A LITTLE BIT, BUT I DON'T
11:08:03 21 WANT TO GO INTO THAT. WE CAN HAVE A SUMMARY
11:08:08 22 JUDGMENT BRIEF ABOUT THIS.

11:08:09 23 SO YOU'RE SAYING THE ISSUE IS THAT IN
11:08:15 24 CERTAIN ACCUSED DEVICES THERE MAY OR MAY NOT BE
11:08:17 25 SOME OBSCURING OF A CONTROL STRIP?

11:08:22 1 MR. JACOBS: CORRECT. AND JUST TO PUT A
11:08:24 2 FINER POINT ON IT, THE ARGUMENT WOULD BE THAT'S AN
11:08:26 3 APPLICATION PROGRAM AND IT'S OPERATING IN A WINDOW
11:08:28 4 LAYER AND THAT WINDOW LAYER IS FOR VISIBILITY
11:08:33 5 PURPOSES ON TOP OF THE CONTROL STRIP AND THE
11:08:35 6 CONTROL STRIP HAS DISAPPEARED.

11:08:36 7 THE COURT: AND WHY ARE YOU FIGHTING NOT
11:08:39 8 HAVING THE CONTROL STRIP BE ON TOP? WHY ARE YOU
11:08:42 9 FIGHTING THAT?

11:08:48 10 MR. JACOBS: I'M SORRY.

11:08:48 11 THE COURT: I HAD ASKED YOU EARLIER. I
11:08:51 12 AGREE THAT THE CONTROL STRIP DOESN'T ALWAYS HAVE TO
11:08:53 13 BE VISIBLE, BUT IF IT IS VISIBLE IT NEEDS TO BE ON
11:08:56 14 TOP AND YOU'RE RESISTING THAT AND YOU'RE SAYING,
11:08:59 15 NO, NO, NO, THAT'S NOT HOW WE DISTINGUISH HANSEN.

11:09:03 16 WHY ARE YOU FIGHTING THAT?

11:09:05 17 MR. JACOBS: I'M FIGHTING THAT BECAUSE --
11:09:07 18 IN ALL HONESTY, YOUR HONOR, IT'S A CASE THAT
11:09:09 19 NEITHER SIDE BRIEFED IT AND I'M A LITTLE CONCERNED
11:09:13 20 ABOUT CONCEDING THAT CASE WHEN I DON'T KNOW ALL OF
11:09:15 21 THE POSSIBLE DESIGN-AROUND THAT SAMSUNG MAY ADVANCE
11:09:17 22 AND I DON'T WANT TO GIVE THEM A NON-INFRINGEMENT
11:09:21 23 ARGUMENT THAT IS A LITTLE DIFFERENT THAN THE ONE
11:09:23 24 WE'RE SEEING HERE WHERE THEY JUST PARTIALLY
11:09:25 25 OBSCURED THE CONTROL STRIP.

11:09:27 1 THE COURT: I HAVE TO SAY I WASN'T
11:09:28 2 CONVINCED ON HOW YOU ADDRESSED HANSEN. I'LL GIVE
11:09:31 3 YOU ONE LAST OPPORTUNITY AND THEN I'D LIKE TO HEAR
11:09:33 4 FROM SAMSUNG.

11:09:34 5 ANYTHING ELSE ON THAT ISSUE BECAUSE IT
11:09:36 6 DOES SEEM LIKE IF IT'S VISIBLE, IT DOES NEED TO BE
11:09:40 7 ON TOP?

11:09:45 8 MR. JACOBS: I DON'T THINK THAT APPLE --
11:09:48 9 THE APPLICANT WAS ADDRESSING THAT SITUATION IN
11:09:50 10 HANSEN WITH ITS RESPONSE BECAUSE IT WASN'T DEALING
11:09:56 11 WITH A CASE, FOR EXAMPLE, WHERE HANSEN HAD A
11:10:00 12 PARTIALLY OBSCURED CONTROL STRIP, WHICH IS REALLY I
11:10:03 13 THINK THE CASE THAT YOUR HONOR IS POSITING.

11:10:05 14 SO IMAGINE THAT THE APPL -- IF IT'S FULLY
11:10:09 15 OBSCURED, THEN WE HAVE MY CASE, THE ONE -- AND WE
11:10:14 16 HAVE THE ONE ILLUSTRATED BY THE SLIDES.

11:10:17 17 THE COURT: UH-HUH.

11:10:18 18 MR. JACOBS: IF IT'S PARTIALLY OBSCURED,
11:10:20 19 THEN WE HAVE THE CASE THAT YOUR HONOR IS POSITING,
11:10:22 20 WHERE THE APPLICATION PROGRAM IS ON TOP OF THE
11:10:27 21 CONTROL STRIP BUT THE CONTROL STRIP IS STILL
11:10:30 22 VISIBLE IN SOME WAY.

11:10:31 23 THE COURT: OKAY.

11:10:32 24 MR. JACOBS: HANSEN DID NOT PRESENT THAT
11:10:34 25 CASE.

11:10:39 1 THE COURT: OKAY.

11:10:50 2 MR. VERHOEVEN: YOUR HONOR, I HAVE SOME
11:10:51 3 SLIDES I WOULD LIKE TO HAND UP IF I MAY.

11:10:54 4 THE COURT: OKAY. PLEASE.

11:11:10 5 MR. VERHOEVEN: GIVEN YOUR HONOR'S
11:11:10 6 COMMENTS, I THINK I WOULD LIKE TO START MY
11:11:12 7 PRESENTATION IF IT'S ALL RIGHT WITH THE COURT ON
11:11:15 8 SLIDE 10 WITH THE PROSECUTION HISTORY.

11:11:16 9 THE COURT: OKAY.

11:11:24 10 MR. VERHOEVEN: THIS PARTICULAR PATENT,
11:11:27 11 YOUR HONOR, WENT THROUGH MANY, MANY REJECTIONS AND
11:11:29 12 IT HAD TO BE APPEALED BEFORE IT WAS FINALLY
11:11:29 13 ALLOWED.

11:11:37 14 AND I THINK THE PROSECUTION HISTORY, TO
11:11:37 15 THE EXTENT YOUR HONOR IS NOT CONVINCED BY THE
11:11:37 16 SPECIFICATION WITH RESPECT TO THE ISSUE "ALWAYS"
11:11:38 17 I THINK THE PROSECUTION HISTORY FAIRLY READ DOES
11:11:39 18 PROVIDE A DISCLAIMER, AND I'D LIKE TO GO THROUGH IT
11:11:42 19 IN DETAIL WITH YOUR HONOR.

11:11:47 20 THE COURT: OKAY.

11:11:48 21 MR. VERHOEVEN: SO WHAT WE'RE LOOKING AT
11:11:50 22 IS THE CLAIMS THAT WERE AMENDED IN 1998.

11:11:53 23 AND YOU CAN SEE I JUST HIGHLIGHTED WHERE
11:11:55 24 THE LANGUAGE WOULD HAVE BEEN.

11:11:56 25 THERE IS NO LIMITATION -- THE LIMITATION

11:11:59 1 WE'RE TALKING ABOUT DID NOT EXIST.

11:12:01 2 IF YOU GO TO THE NEXT SLIDE, YOUR HONOR,
11:12:03 3 SLIDE 11, ON MAY 3, 1999 THERE WAS AN OFFICE ACTION
11:12:10 4 WHERE THAT VERSION OF THE CLAIMS WAS REJECTED BY
11:12:13 5 THE PATENT OFFICE. AND WE JUST PULLED OUT THE
11:12:16 6 PARAGRAPH, YOUR HONOR, FROM THE PROSECUTION HISTORY
11:12:18 7 TO ILLUSTRATE THAT. IT WAS REJECTED IN VIEW OF
11:12:24 8 TAKAGI.

11:12:27 9 AND THEN IF YOU GO TO THE NEXT SLIDE,
11:12:29 10 YOUR HONOR, NOVEMBER 8TH, 1999, THERE'S AN
11:12:31 11 AMENDMENT AND THIS IS WHEN THE PHRASE APPEARS. AND
11:12:38 12 WE HAVE HIGHLIGHTED THAT. THAT'S NOVEMBER 8TH,
11:12:43 13 1999.

11:12:43 14 "THE FIRST WINDOW REGION AND THE
11:12:46 15 PLURALITY INDEPENDENT DISPLAY AREAS IMPLEMENTED IN
11:12:48 16 A WINDOW LAYER THAT APPEARS ON TOP OF APPLICATION
11:12:52 17 PROGRAMMING WINDOWS THAT MAY BE GENERATED."

11:12:55 18 IF YOU GO TO SLIDE 13, YOUR HONOR, THE
11:12:58 19 REMARKS THAT WENT TOGETHER WITH THAT AMENDMENT
11:13:01 20 DEMONSTRATE THE AMENDMENT WAS MADE TO TRAVERSE
11:13:04 21 PRIOR ART.

11:13:05 22 SO I'VE HIGHLIGHTED THE SENTENCE:
11:13:08 23 "FURTHERMORE, THE PRESENT INVENTION AS CLAIMED SETS
11:13:10 24 FURTHER THAT THE FIRST WINDOW REGION AND THE
11:13:13 25 PLURALITY OF INDEPENDENT DISPLAY AREAS IMPLEMENTED

11:13:16 1 IN A WINDOW LAYER THAT APPEARS ON TOP OF
11:13:18 2 APPLICATION PROGRAMMING WINDOWS THAT MAY BE
11:13:21 3 GENERATED."

11:13:23 4 AND THEN IT DISTINGUISHES TAKAGI.
11:13:26 5 "TAKAGI DOES NOT DISCLOSE THE FIRST WINDOW REGION
11:13:29 6 AND INDEPENDENT DISPLAY AREAS BEING IN A WINDOW
11:13:32 7 LAYER THAT APPEARS ON TOP OF APPLICATION
11:13:34 8 PROGRAMMING WINDOWS THAT MAY BE GENERATED."

11:13:38 9 IF WE GO TO SLIDE 14, YOUR HONOR. THAT
11:13:41 10 WASN'T ENOUGH FOR THE EXAMINER.

11:13:47 11 AND ON JANUARY 21ST, 2000 THE PATENT
11:13:51 12 OFFICE REJECTS THE AMENDED CLAIM AS BEING
11:13:53 13 ANTICIPATED BY HANSEN, ANOTHER REFERENCE.

11:13:55 14 AND IF YOU LOOK HERE, I'LL JUST READ IT
11:13:58 15 INTO THE RECORD, THIS IS THE JANUARY 21, 2000
11:14:03 16 OFFICE ACTION.

11:14:04 17 "ON THE OTHER HAND, HANSEN, ET AL.,
11:14:07 18 HEREINAFTER HANSEN, TEACH A FIRST WINDOW REGION,
11:14:11 19 WITH DASHBOARD INTERFACE 10, HAVING A PLURALITY OF
11:14:12 20 INDEPENDENT DISPLAY AREAS, WITH VARIOUS PANELS, AT
11:14:14 21 FIGURE 1 AND COLUMN 3, LINES 27 THROUGH 43, WHEREIN
11:14:18 22 THE DASHBOARD INTERFACE IS INDEPENDENT DISPLAYED,
11:14:20 23 AS SHOWN THROUGHOUT FIGURES 1 THROUGH 37, AND
11:14:24 24 INDEPENDENTLY ACTIVE OF ANY APPLICATION PROGRAM,"
11:14:27 25 AND THERE WAS A CITE, "WHICH TEACHES THAT EACH

11:14:30 1 PANEL MODULE IS INDIVIDUALLY CONFIGURABLE."

11:14:33 2 AND THIS IS THE SENTENCE THAT I WOULD
11:14:35 3 LIKE YOUR HONOR TO FOCUS ON, AND I'VE HIGHLIGHTED
11:14:37 4 IT THAT THE PATENT OFFICE SAYS, "IN ADDITION,
11:14:40 5 HANSEN TEACHES THAT THE DASHBOARD INTERFACE AND THE
11:14:43 6 PLURAL PANEL MODULES ARE CONTINUALLY DISPLAYED ON
11:14:48 7 TOP OF ANY OTHER APPLICATION PROGRAMS."

11:14:58 8 SO WHAT I READ IS THAT THE EXAMINER IS
11:14:59 9 REJECTING THE '002 PATENT SAYING THAT HERE'S A
11:15:02 10 PIECE OF PRIOR ART IN WHICH THIS DASHBOARD
11:15:05 11 INTERFACE AND PLURAL PANEL MODULES ARE CONTINUALLY
11:15:10 12 DISPLAYED ON TOP OF ANY OTHER APPLICATION PROGRAMS.
11:15:16 13 THE VERY ISSUE THAT WE'RE TALKING ABOUT, THE
11:15:18 14 "ALWAYS" ISSUE.

11:15:19 15 NOW, THE NEXT SLIDE IS WHERE THERE IS A
11:15:22 16 CLEAR DISCLAIMER, YOUR HONOR, AND I PULLED THE
11:15:25 17 WHOLE PARAGRAPH OUT. I THINK EVERY SENTENCE OF THE
11:15:27 18 PARAGRAPH IS IMPORTANT.

11:15:28 19 THIS IS A RESPONSE TO THAT REJECTION THAT
11:15:31 20 WAS FILED ON JUNE 28TH, 2000 BY THE APPLICANT.

11:15:35 21 AND IN IT THE APPLICANT STATES:

11:15:38 22 "FURTHERMORE, THE PRESENT INVENTION AS
11:15:40 23 CLAIMED INCLUDES HAVING A WINDOW REGION WITH ITS
11:15:42 24 INDEPENDENT DISPLAY AREAS IN A WINDOW THAT APPEARS
11:15:45 25 ON TOP OF APPLICATION WINDOW PROGRAMS THAT MAY BE

11:15:48 1 GENERATED. THEREFORE, BY IMPLICATION, THOSE WINDOW
11:15:52 2 AREAS THAT ARE GENERATED AFTER THE GENERATION OF
11:15:55 3 THE WINDOW LAYER WILL STILL NOT APPEAR ON TOP OF
11:15:58 4 THE CONTROL/STATUS WINDOW IN THE PRESENT INVENTION
11:16:03 5 AS CLAIMED WHEN THEY ARE ACTIVE.

11:16:05 6 "THIS ALLOWS THE USER TO HAVE AN
11:16:08 7 UNOBSTRUCTED VIEW OF THE SYSTEM/CONTROLLER AREA
11:16:11 8 REGARDLESS OF THE WINDOW THAT'S SELECTED AS BEING
11:16:15 9 ACTIVE (EVEN WHEN THE WINDOWS OVERLAP EACH OTHER).

11:16:20 10 "THUS, THE WINDOW MAY BE ALWAYS VISIBLE
11:16:22 11 TO THE USER. THE EXAMINER BELIEVES THAT THIS IS
11:16:25 12 CLEARLY SHOWN IN HANSEN," AND WE JUST SAW THAT,
11:16:31 13 "SPECIFICALLY REFERRING TO THE DASHBOARD INTERFACE.

11:16:33 14 "HOWEVER, HANSEN ONLY ALLOWS THE USER AN
11:16:36 15 UNOBSTRUCTED VIEW OF THE SYSTEM IF A BUTTON IS
11:16:39 16 SELECTED. THUS, APPLICANT BELIEVES THAT ONE
11:16:41 17 FAMILIAR WITH THE ART WOULD NOT LOOK TO HANSEN TO
11:16:43 18 ARRIVE AT THE PRESENT INVENTION BECAUSE THE PRESENT
11:16:46 19 INVENTION IS DIRECTED AT USING INDIVIDUAL
11:16:50 20 PROGRAMMING MODULES THAT GENERATE DISPLAYS THAT ARE
11:16:54 21 'ALWAYS' VISIBLE ON A TOP LAYER."

11:17:01 22 HERE WE HAVE A CLEAR AND EXPRESS
11:17:04 23 LIMITATION, IF THERE'S ANY AMBIGUITY ABOUT THIS
11:17:06 24 CLAIM LANGUAGE, WHERE THEY DISTINGUISH HANSEN BY
11:17:09 25 SAYING THAT HANSEN DOESN'T ALWAYS HAVE ITS DISPLAY

11:17:14 1 UNOBSTRUCTED.

11:17:16 2 WE ARE DIFFERENT FROM HANSEN BECAUSE THE
11:17:20 3 PRESENT INVENTION, NOT ANY EMBODIMENTS, THE PRESENT
11:17:25 4 INVENTION IS DIRECTED AT USING INDIVIDUAL
11:17:27 5 PROGRAMMING MODULES THAT GENERATE DISPLAYS THAT ARE
11:17:31 6 ALWAYS VISIBLE ON A TOP LAYER.

11:17:33 7 NOW, COUNSEL SAID, YOUR HONOR, THAT THE
11:17:36 8 APPLICANT KNEW HOW TO USE THE WORD "ANY" WHEN IT
11:17:40 9 MEANT THE WORD "ANY."

11:17:41 10 WELL, I WOULD RESPECTFULLY SUBMIT THAT
11:17:43 11 THE APPLICANT KNEW HOW TO USE THE WORD "ALWAYS"
11:17:46 12 WHEN IT MEANT "ALWAYS."

11:17:47 13 AND HERE WE HAVE A DISCLAIMER IF THERE'S
11:17:50 14 ANY DOUBT IN THE SPECIFICATION OR CLAIMS, AND I'LL
11:17:52 15 GET TO THOSE IN A MOMENT, THAT IS VERY CLEAR AND
11:17:55 16 VERY UNAMBIGUOUS.

11:17:56 17 THE EXAMINER, IF YOU GO BACK TO SLIDE 14
11:17:59 18 AGAIN, THE EXAMINER SAID HANSEN CONTINUALLY
11:18:02 19 DISPLAYED ON TOP OF ANY OTHER APPLICATION PROGRAMS.

11:18:05 20 AND THEIR SOLE BASIS HERE IN THIS
11:18:08 21 PARAGRAPH FOR TRAVERSING HANSEN IS TO SAY THAT, NO,
11:18:11 22 IT DIDN'T, THERE WAS AN OPTION WHERE YOU COULD
11:18:13 23 OBSCURE THAT CONTROL STRIP AND WE'RE DIFFERENT FROM
11:18:18 24 THAT BECAUSE IN OUR PRESENT INVENTION AS CLAIMED,
11:18:22 25 THE PROGRAMMING MODULE DISPLAY IS ALWAYS VISIBLE ON

11:18:26 1 THE TOP LAYER. THERE'S NO AMBIGUITY IN THAT.

11:18:29 2 THE COURT: YEAH, BUT IF YOU GO UP JUST
11:18:32 3 ABOVE THAT, GO UP FIVE OR SIX LINES MORE WHERE IT
11:18:36 4 SAYS, "THUS, THE WINDOW MAY BE ALWAYS VISIBLE TO
11:18:44 5 THE USER."

11:18:45 6 SO IT'S NOT SAYING -- I AGREE WITH YOU IF
11:18:46 7 IT'S VISIBLE THEN IT NEEDS TO BE -- WELL, I DON'T
11:18:46 8 AGREE WITH YOU THAT THIS SUPPORTS THAT IT ALWAYS
11:18:49 9 HAS TO BE VISIBLE BECAUSE THIS SAYS THAT THE WINDOW
11:18:52 10 MAY BE ALWAYS VISIBLE TO THE USER.

11:18:55 11 MR. VERHOEVEN: THAT IN ISOLATION SAYS
11:18:58 12 THAT, BUT IF YOU LOOK AT THE CONTEXT OF THIS
11:19:00 13 PARAGRAPH AND YOU LOOK AT THE OFFICE ACTION THAT
11:19:02 14 PRECEDED THAT, THE DEBATE HERE IS WHETHER OR NOT
11:19:05 15 THIS PATENT SHOULD BE ISSUED BECAUSE UNLIKE HANSEN,
11:19:10 16 IT'S ALWAYS VISIBLE.

11:19:11 17 THE DISTINCTION MADE IN THIS PARAGRAPH,
11:19:17 18 YOUR HONOR, IF YOU READ ON PAST THE SENTENCE YOU'RE
11:19:19 19 FOCUSING ON IS SAYING HANSEN, HANSEN ONLY ALLOWS
11:19:24 20 THE USER AN UNOBSTRUCTED VIEW OF THE SYSTEM IF A
11:19:28 21 BUTTON IS SELECTED.

11:19:29 22 THAT'S JUST LIKE THE HIGH AND THE LAO
11:19:32 23 BUTTON IN THE SPECIFICATION. IT SAYS HANSEN HAS
11:19:37 24 THAT. YOU CAN TURN IT OFF. IT'S ONLY WHEN IT'S
11:19:40 25 TURNED ON THAT IT'S ALWAYS ON TOP OF THE

11:19:43 1
11:19:44 2
11:19:45 3
11:19:49 4
11:19:52 5
11:19:57 6
11:19:58 7
11:20:02 8
11:20:06 9
11:20:08 10
11:20:09 11
11:20:12 12
11:20:12 13
11:20:25 14
11:20:27 15
11:20:29 16
11:20:32 17
11:20:35 18
11:20:37 19
11:20:41 20
11:20:45 21
11:20:49 22
11:20:51 23
11:20:53 24
11:20:56 25

APPLICATION.

WE'RE DIFFERENT THAN THAT BECAUSE THE PRESENT INVENTION AS CLAIMED IS DIRECTED TO USING INDIVIDUAL PROGRAM MODULES THAT GENERATE DISPLAYS THAT ARE ALWAYS VISIBLE ON THE TOP LAYER.

SO I WOULD SUBMIT, YOUR HONOR, THAT FOCUSSED ON THE WORD "MAY BE" IN ISOLATION, DOES NOT FULLY APPRECIATE THE ENTIRE CONTEXT OF THE OFFICE ACTION IN THIS PARAGRAPH IN RESPONSE.

AND IF I COULD JUST GO BACK TO THE SPECIFICATION, YOUR HONOR, AND MAKE A FEW COMMENTS ON THAT.

THE COURT: OKAY.

MR. VERHOEVEN: EXCUSE ME. LET'S GO TO SLIDE 6, PLEASE.

NOW, I READ THIS PATENT AND I SAW TWO -- AS IT PERTAINS TO THIS CONTROL STRIP, I SAW TWO EMBODIMENTS, IF YOU WILL.

NOW -- AND ONLY TWO.

THE FIRST IS ILLUSTRATED IN FIGURE 2A. AND IN FIGURE 2A, AS YOU CAN SEE, THE CONTROL WINDOW, I DON'T THINK THERE'S ANY DISPUTE ABOUT THESE HIGHLIGHTS I PUT ON HERE.

THE CONTROL WINDOW THAT IS ILLUSTRATED YOU CAN SEE IS ON TOP OF THE APPE -- AN APPLICATION

11:21:01 1 WINDOW THAT OVERINTERSECTS WITH IT.

11:21:04 2 SO THAT'S AN EMBODIMENT.

11:21:10 3 AND IF YOU GO TO SLIDE 7, PLEASE. AND
11:21:14 4 SLIDE 7 IS DISCUSSING THIS EMBODIMENT, AND IT SAYS,
11:21:16 5 "IN ONE EMBODIMENT, THE CONTROL STRIP IS
11:21:19 6 IMPLEMENTED IN A PRIVATE WINDOW LAYER THAT APPEARS
11:21:22 7 IN FRONT OF THE WINDOWS OF ALL OF THE APPLICATION
11:21:24 8 LAYERS AND THAT IS THE CONTROL STRIP WINDOW APPEARS
11:21:27 9 ON TOP OF ALL OF APPLICATION PROGRAMMING WINDOWS
11:21:29 10 THAT MAY BE GENERATED AS PART OF THE EXECUTION OF
11:21:32 11 AN APPLICATION PROGRAM. THIS PREVENTS OTHER
11:21:36 12 WINDOWS FROM OBSCURING IT."

11:21:37 13 THAT IS DESCRIBING THIS FIRST EMBODIMENT,
11:21:41 14 YOUR HONOR.

11:21:41 15 SO IN READING THE SPECIFICATION -- SO
11:21:49 16 THIS IS ONE EMBODIMENT, READING THE SPECIFICATION,
11:21:52 17 THIS EMBODIMENT IS CLEARLY STATING "ALL, ALWAYS."
11:21:57 18 YOU CAN'T OBSCURE IT.

11:21:59 19 NOW, THERE'S ONLY ONE OTHER EMBODIMENT
11:22:02 20 THAT IS IN THE SPECIFICATION, YOUR HONOR.

11:22:03 21 LET'S GO TO SLIDE 8, PLEASE. AND I HAVE
11:22:06 22 PULLED OUT -- THERE'S MORE CITES TO IT THAN THIS,
11:22:10 23 BUT I'VE PULLED OUT A REPRESENTATIVE DESCRIPTION OF
11:22:14 24 THE SECOND EMBODIMENT. AND THIS IS FROM COLUMN 7,
11:22:17 25 LINES 29 THROUGH 32.

11:22:20 1 IT SAYS, "THE USER MAY ALSO HIDE THE
11:22:23 2 CONTROL STRIP. IN ONE EMBODIMENT, TO MAKE THE
11:22:26 3 CONTROL STRIP DISAPPEAR COMPLETELY, THE USER CAN
11:22:29 4 CLICK THE HIDE BUTTON IN THE CONTROL STRIP CONTROL
11:22:32 5 PANEL AS DESCRIBED LATER IN CONJUNCTION WITH FIGURE
11:22:34 6 3."

11:22:35 7 AND THEN WE ILLUSTRATED FIGURE 3 WHICH
11:22:38 8 WILL SHOW THAT YOU CAN CLICK A BUTTON THAT WILL
11:22:41 9 HIDE IT OR YOU CAN CLICK A BUTTON THAT WILL SHOW
11:22:43 10 IT.

11:22:43 11 AND THAT'S IT, YOUR HONOR. AND I BELIEVE
11:22:47 12 COUNSEL CONCEDED IN RESPONSE TO YOUR QUESTION,
11:22:50 13 THERE'S NO DISCUSSION OR DISCLOSURE OF AN OBSCURED,
11:22:53 14 A PARTIALLY OBSCURED CONTROL STRIP. THERE'S NO
11:22:55 15 DISCLOSURE IN THE SPECIFICATION OF THE EMBODIMENT
11:22:59 16 WHERE AN APPLICATION OVERLAPS WITH THE CONTROL
11:23:05 17 STRIP THAT IS BEING DISPLAYED. THE APPLICATION
11:23:08 18 WOULD BE ON TOP OF IT.

11:23:09 19 IT'S EITHER YOU TURN ON THE CONTROL STRIP
11:23:11 20 AND NO APPLICATIONS EVER COVER IT OR YOU TURN IT
11:23:15 21 OFF AND IT'S JUST NOT THERE.

11:23:18 22 THE COURT: I GUESS THAT'S WHAT I DON'T
11:23:19 23 UNDERSTAND ABOUT YOUR CONSTRUCTION. YOU'RE SAYING
11:23:22 24 YOU NEVER OBSCURE IT BUT ONE OF YOUR EMBODIMENTS
11:23:25 25 SAY YOU CAN HIDE IT. SO HOW DID DO YOU --

11:23:29 1 MR. VERHOEVEN: IF YOU LOOK AT 8, THIS
11:23:31 2 EMBODIMENT IS NOT CLAIMED. THE HIDE, THE CONTROL
11:23:36 3 STRIP BY ANY CONSTRUCTION WOULD NOT MEET THIS
11:23:40 4 LANGUAGE.

11:23:40 5 THE LANGUAGE IS, "THE FIRST WINDOW REGION
11:23:44 6 AND THE PLURALITY OF INDEPENDENT DISPLAY AREAS
11:23:47 7 IMPLEMENTED IN A WINDOW LAYER THAT APPEARS ON TOP
11:23:50 8 OF APPLICATION PROGRAMMING WINDOWS THAT MAY BE
11:23:53 9 GENERATED."

11:23:54 10 IN THE EMBODIMENT WHERE YOU HAVE HIDDEN
11:23:56 11 THE CONTROL STRIP HE DOESN'T EVEN DISPLAY MUCH LESS
11:24:00 12 ON TOP OF OTHER APPLICATIONS. THIS EMBODIMENT WAS
11:24:03 13 NOT CLAIMED. AND IT'S A VERY COMMON PRACTICE, YOUR
11:24:06 14 HONOR, TO CLAIM ONE EMBODIMENT BUT NOT CLAIM OTHER
11:24:08 15 EMBODIMENTS.

11:24:09 16 THIS LANGUAGE DOES NOT EVEN CONCERN THE
11:24:13 17 FUNCTIONALITY OF HIDING A CONTROL STRIP.

11:24:15 18 THEY CAN FILE A CONTINUATION AND WRITE A
11:24:18 19 DIFFERENT CLAIM THAT TALKS ABOUT THAT, YOUR HONOR,
11:24:19 20 BUT THEY DIDN'T.

11:24:20 21 AND THIS CLAIM, THIS SECOND EMBODIMENT IS
11:24:25 22 NOT CLAIMED. SO WE HAVE A SITUATION, I WOULD
11:24:28 23 SUBMIT, YOUR HONOR, WHERE WE HAVE TWO EMBODIMENTS.

11:24:30 24 ONE IS ALWAYS ON TOP, AND ONE IS HIDDEN.
11:24:33 25 AND THE CLAIM IS SAYING ON TOP. IT HAS

11:24:37 1 TO BE REFERRING TO THE ALWAYS ON TOP EMBODIMENT.

11:24:41 2 IT'S NOT CLAIMING THE HIDDEN EMBODIMENT.

11:24:45 3 THE COURT: WHY CAN'T IT JUST BE SAYING
11:24:47 4 IF IT'S NOT HIDDEN AND IT'S VISIBLE, THEN IT'S ON
11:24:50 5 TOP?

11:24:50 6 I GUESS I DON'T THINK THAT'S INCONSISTENT
11:24:52 7 WITH THE TWO EMBODIMENTS. ONE IS THAT YOU CAN HIDE
11:24:55 8 IT AND ONE IS THAT YOU DON'T HIDE IT AND IF IT'S
11:24:58 9 NOT HIDDEN, IT'S ON TOP.

11:25:01 10 MR. VERHOEVEN: IF IT'S NOT HIDDEN, IT'S
11:25:05 11 THE EMBODIMENT THAT IS CLAIMED HERE. BUT IF YOU
11:25:08 12 LOOK AT THE SPECIFICATION, YOUR HONOR, THAT
11:25:10 13 EMBODIMENT CLEARLY SAYS, LET'S GO BACK TO IT, SLIDE
11:25:14 14 7, PLEASE, AND I DON'T REALLY HIGHLIGHT IT
11:25:16 15 APPROPRIATELY, BUT THIS IS COLUMNS 6, LINE 40
11:25:21 16 THROUGH 46.

11:25:22 17 AND THIS IS THE FIRST EMBODIMENT. AND IT
11:25:23 18 SAYS, "THE CONTROL STRIP IS IMPLEMENTED IN A
11:25:26 19 PRIVATE WINDOW LAYER THAT APPEARS IN FRONT OF THE
11:25:28 20 WINDOWS OF ALL OF THE APPLICATION LAYERS." IT USES
11:25:30 21 THE WORD "ALL."

11:25:32 22 "THAT IS, THE CONTROL STRIP APPEARS ON
11:25:35 23 TOP OF ALL APPLICATION PROGRAMMING WINDOWS THAT MAY
11:25:37 24 BE GENERATED AS PART OF THE EXECUTION OF AN
11:25:40 25 APPLICATION PROGRAM." WHY? BECAUSE THIS PREVENTS

11:25:43 1 OTHER WINDOWS FROM OBSCURING IT.

11:25:45 2 I WOULD SUBMIT, YOUR HONOR, TWO
11:25:47 3 EMBODIMENTS. ONE IS YOU HAVE THE CONTROL
11:25:50 4 DISPLAYED, AND IT HAS THIS FUNCTIONALITY. AND TO
11:25:52 5 THE EXTENT THAT YOUR HONOR IS CONCERNED BECAUSE THE
11:25:55 6 CLAIM LANGUAGE DOESN'T SAY THE WORD "ALL," IT JUST
11:25:58 7 SAYS "ON TOP OF," I WOULD SUBMIT THAT YOU NEED TO
11:26:01 8 READ THAT IN LIGHT OF THE SPECIFICATION.

11:26:03 9 BUT THE THING THAT SEALS THE DEAL FOR ME
11:26:05 10 PERSONALLY AS I LOOK THROUGH THE INTRINSIC EVIDENCE
11:26:09 11 IS GOING BACK TO -- EXCUSE ME -- SLIDE 15 AGAIN.

11:26:15 12 AND THE DISTINCTION IN HANSEN WHERE
11:26:17 13 THEY'RE CLEARLY SAYING THAT THE PRESENT INVENTION
11:26:20 14 AS CLAIMED, IT TALKS ABOUT THE WINDOW REGION ON
11:26:23 15 TOP, THAT'S THIS EMBODIMENT, AND IT VERY CLEARLY
11:26:27 16 SAYS THAT THE DISPUTE WITH THE PATENT OFFICE IS
11:26:29 17 WHETHER OVER HANSEN HAD THIS FUNCTIONALITY OF
11:26:35 18 ALWAYS HAVING THIS FUNCTIONAL SCROLL STRIP ON TOP.

11:26:38 19 THEY SAID, NO, HANSEN DOESN'T. HANSEN
11:26:40 20 ONLY ALLOWS THE USER OF AN UNOBSTRUCTED VIEW IF A
11:26:44 21 BUTTON IS SELECTED. THAT MEANS YOU CAN TURN IT
11:26:48 22 OFF.

11:26:49 23 "THUS, APPLICANT BELIEVES THAT ONE
11:26:51 24 FAMILIAR WITH THE ART WOULD NOT LOOK TO HANSEN TO
11:26:53 25 ARRIVE AT THE PRESENT INVENTION BECAUSE THE PRESENT

11:26:55 1 INVENTION IS DIRECTED AT USING INDIVIDUAL
11:26:57 2 PROGRAMMING MODULES THAT GENERATE DISPLAYS THAT ARE
11:27:00 3 ALWAYS VISIBLE ON A TOP LAYER."

11:27:02 4 AND TO ME, TO THE EXTENT THAT THERE'S ANY
11:27:04 5 AMBIGUITY OF THE CLAIMS IN THE SPEC, THIS IS A
11:27:09 6 DISCLAIMER THAT REQUIRES THAT THIS CLAIM LANGUAGE
11:27:11 7 BE INTERPRETED IN THE MANNER THAT WE'RE SUGGESTING.

11:27:14 8 THE COURT: LET ME ASK YOU TWO QUESTIONS.
11:27:16 9 FIRST, DO YOU AGREE THAT THE FIRST WINDOW
11:27:19 10 REGION IS THE CONTROL STRIP? I THOUGHT YOU ALL
11:27:24 11 AGREED TO THAT AT THE TUTORIAL?

11:27:27 12 MR. VERHOEVEN: YEAH, I THINK WE DO AGREE
11:27:29 13 TO THAT.

11:27:29 14 THE COURT: ALL RIGHT. AND LET ME ASK
11:27:30 15 YOU IF YOU AGREED WITH WHAT MR. JACOBS SAID ABOUT
11:27:35 16 WINDOW LAYER? BECAUSE --

11:27:37 17 MR. VERHOEVEN: I'M NOT SURE. HE SAID A
11:27:39 18 LOT OF THINGS ABOUT WINDOW LAYER.

11:27:40 19 THE COURT: ALL RIGHT. WELL, LET ME JUST
11:27:42 20 ASK YOU WHY WINDOW LAYER IS NOT IN YOUR CLAIM
11:27:46 21 CONSTRUCTION?

11:27:47 22 MR. VERHOEVEN: I THINK WE WERE JUST
11:27:48 23 TRYING TO FOCUS ON WHERE WE PERCEIVED THERE WAS A
11:27:51 24 DISPUTE AS TO THE INTERPRETATION OF THE CLAIM.

11:27:53 25 AND I THINK THAT THE REASON THAT THIS

11:27:56 1 "ALWAYS" ISSUE IS IMPORTANT IS BECAUSE, QUITE
11:28:00 2 FRANKLY, THE ACCUSED CONTROL STRIPS DON'T EXIST AT
11:28:05 3 THAT FUNCTIONALITY IN THE ACCUSED DEVICES.

11:28:07 4 SO, YOU KNOW, WE'RE TRYING TO NARROW --
11:28:10 5 IT'S A BIG PHRASE, I KNOW, BUT WE'RE TRYING TO
11:28:14 6 NARROW THE CONSTRUCTION TO THE PARTS OF IT THAT WE
11:28:17 7 THINK MATTER.

11:28:18 8 THE COURT: OKAY. BUT WHAT DO YOU THINK
11:28:20 9 WINDOW LAYER IS AND IT MAY ULTIMATELY BE THAT IT'S
11:28:22 10 NOT REALLY RELEVANT.

11:28:26 11 MR. VERHOEVEN: LET ME MAKE SURE I DON'T
11:28:28 12 MAKE A MISTAKE. CAN I CONFER WITH COUNSEL FOR ONE
11:28:31 13 SECOND?

11:28:32 14 THE COURT: SURE. GO AHEAD.

11:28:50 15 (PAUSE IN PROCEEDINGS.)

11:28:51 16 MR. VERHOEVEN: BY WAY OF EXAMPLE, MAYBE
11:28:53 17 THAT'S THE EASIEST WAY TO ANSWER. GO BACK TO SLIDE
11:28:56 18 6.

11:28:56 19 THE COURT: OKAY.

11:28:57 20 MR. VERHOEVEN: SLIDE 6 IN THE RED
11:28:59 21 HORIZONTAL BOX WHERE IT SAYS CONTROL WINDOW.

11:29:02 22 THE COURT: YES.

11:29:03 23 MR. VERHOEVEN: IF YOU WERE TO READ THE
11:29:05 24 CLAIM LANGUAGE ONTO THIS, THAT ENTIRE BOX WOULD BE
11:29:07 25 THE WINDOW LAYER.

11:29:09 1 THE COURT: IS THERE A REASON WHY YOU
11:29:10 2 SAID CONTROL WINDOW AND EVERYWHERE ELSE IN THE
11:29:13 3 PATENT IT SAYS CONTROL STRIP?

11:29:15 4 MR. VERHOEVEN: NO.

11:29:16 5 THE COURT: OKAY. AND YOU THINK
11:29:21 6 APPLICATIONS IS A WINDOW LAYER AND EXTENSIONS IS A
11:29:24 7 WINDOW LAYER?

11:29:31 8 MR. VERHOEVEN: YES. THERE'S ONE THING I
11:29:33 9 HAVE NOT REACHED IF I CAN TAKE TWO SECONDS ON IT.

11:29:36 10 THE COURT: PLEASE.

11:29:36 11 MR. VERHOEVEN: THE CLAIM DIFFERENTIATION
11:29:39 12 ARGUMENT.

11:29:39 13 THE COURT: UH-HUH.

11:29:40 14 MR. VERHOEVEN: GO TO SLIDE 23.

11:29:45 15 THE PROSECUTION DISCLAIMER BLACK LETTER
11:29:48 16 LAW TAKES PRIORITY OVER ANY CLAIM DIFFERENTIATION
11:29:52 17 ARGUMENT. AND HERE IT SOUNDS LIKE IF WE'RE GOING
11:29:55 18 TO PERSUADE YOUR HONOR, THE ONLY CHANCE IS THROUGH
11:29:59 19 OUR PROSECUTION HISTORY ARGUMENT, AND I JUST WANTED
11:30:01 20 TO POINT OUT THAT IF YOU FIND A DISCLAIMER THEN
11:30:04 21 THAT TRUMPS ANY CLAIM DIFFERENTIATION ARGUMENT.

11:30:08 22 AND THE OTHER THING I WOULD POINT OUT,
11:30:10 23 YOUR HONOR, IS THAT IF YOU GO TO SLIDE 10. THE
11:30:15 24 DEPENDENT CLAIMS THAT THEY POINT TO THAT USE THE
11:30:17 25 WORD "ALL," THOSE WERE FILED BEFORE THIS NARROWING

11:30:26 1 OF THE CLAIM LANGUAGE OCCURRED.

11:30:28 2 SO I DON'T KNOW IF THIS IS EXACTLY WHEN
11:30:30 3 THEY WERE FILED, YOUR HONOR, BUT I WILL REPRESENT
11:30:33 4 TO YOU THAT THEY WERE -- THOSE DEPENDENT CLAIMS
11:30:36 5 EXISTED BEFORE THE APPLICANT AMENDED ON SLIDE 12 TO
11:30:44 6 ADD THIS LANGUAGE TO TRAVERSE PRIOR ART.

11:30:49 7 SO WHAT MAY HAVE HAPPENED HERE IS THAT
11:30:53 8 THE EXAMINER SIMPLY DIDN'T DO SOME OF THE CLEANUP
11:30:57 9 THAT MAY BE HE OR SHE SHOULD HAVE DONE IN POINTING
11:31:01 10 OUT THOSE DEPENDENT CLAIMS WERE A LITTLE BIT
11:31:03 11 REDUNDANT, BUT I JUST WANT TO POINT THAT OUT, YOUR
11:31:06 12 HONOR.

11:31:06 13 IT'S NOT LIKE THIS WAS ALL WRITTEN AT THE
11:31:09 14 SAME TIME. THERE WERE MANY, MANY REJECTIONS AND
11:31:12 15 THE EXAMINERS WAS FOCUSSED ON THE INDEPENDENT
11:31:14 16 CLAIMS AND THE VALIDITY ISSUES WITH THE INDEPENDENT
11:31:19 17 CLAIMS. WITH THAT I'LL SIT DOWN.

11:31:22 18 THE COURT: ALL RIGHT. THANK YOU.

11:31:22 19 MR. JACOBS: YOUR HONOR, CAN I HAVE A
11:31:23 20 MINUTE?

11:31:24 21 THE COURT: VERY BRIEFLY, VERY BRIEFLY

11:31:25 22 MR. JACOBS: I THINK I DIDN'T QUITE
11:31:26 23 CAPTURE THE DISTINCTION THAT HANSEN HAS OVER THE
11:31:29 24 CLAIMED INVENTION, AND I THINK THAT ALL ONE REALLY
11:31:32 25 NEEDS TO DO ON HANSEN IS LOOK AT THE APPEAL BRIEF

11:31:35 1 JUST THE ABOVE THE PORTION THAT SAMSUNG CITES ON
11:31:40 2 PAGE 16.

11:31:41 3 AGAIN, THE POINT HERE IS NOT TO DRILL
11:31:45 4 DOWN SO DEEPLY THAT ONE EXAMINES WHETHER ONE NOW
11:31:49 5 AGREES OR DISAGREES WITH THE DISTINCTION THAT THE
11:31:51 6 APPLICANT WAS DRAWING, BUT THE APPLICANT DID NOT
11:31:55 7 DRAW A DISTINCTION BASED ON "ALWAYS ON TOP IF THERE
11:31:58 8 IS AN APPLICATION PROGRAM PRESENT."

11:32:00 9 WHAT THE APPLICANT SAID WAS AS FOLLOWS:
11:32:03 10 "HOWEVER --" AND AGAIN, THIS IS ON PAGE 16,
11:32:07 11 "HOWEVER, AS DISCUSSED ABOVE, HANSEN DISCUSSES A
11:32:10 12 DASHBOARD. HOWEVER, HANSEN ONLY ALLOWS THE USER AN
11:32:14 13 UNOBSTRUCTED VIEW OF THE SYSTEM IF A BUTTON IS
11:32:17 14 SELECTED." CITING HANSEN AT COLUMN 4, LINES 45 TO
11:32:22 15 51. AND HANSEN AT THOSE PORTIONS, THERE'S A
11:32:26 16 DISCUSSION OF THE TOGGLING THAT IS ALLOWED THE
11:32:28 17 USER.

11:32:31 18 FOR EXAMPLE, SEE FIGURE 18 OF HANSEN THE
11:32:35 19 DASHBOARD IS OBSCURED BY A WINDOW. THUS, HANSEN
11:32:38 20 DOES NOT TEACH OR SUGGEST WINDOW LAYER APPEARS ON
11:32:41 21 TOP OF APPLICATION PROGRAMMING WINDOWS THAT MAY BE
11:32:44 22 GENERATED. THE APPLICANT DIDN'T SAY ANYTHING MORE
11:32:47 23 THAN THAT ON THIS TOPIC OF YOUR HONOR'S I'LL CALL
11:32:51 24 IT THE INTERMEDIATE CASE WHERE THERE IS SOME --
11:32:54 25 THERE IS A VISIBLE CONTROL STRIP, AND IS IT ON TOP

11:32:57 1 OF ANY APPLICATION PROGRAMS.

11:33:01 2 SO THE REASON THAT WE RESIST THAT IT MUST
11:33:04 3 BE ON TOP OF ANY APPLICATION PROGRAMS THAT ARE
11:33:07 4 PRESENT, WHICH I THINK IS YOUR HONOR'S QUESTION, IS
11:33:09 5 THAT IT'S NOT CLAIMED IN THE INDEPENDENT CLAIM, AND
11:33:12 6 IT IS CLAIMED IN THE DEPENDENT CLAIMS, AND IT'S NOT
11:33:16 7 THE DISTINCTION THAT THE APPLICANT DREW SUFFICIENT
11:33:19 8 TO CALL FOR A CLEAR DISCLAIMER OF THAT CASE.

11:33:25 9 THANK YOU, YOUR HONOR.

11:33:26 10 THE COURT: OKAY. THANK YOU. I HOPE THE
11:33:29 11 '002 IS THE ONE THAT WAS GOING TO TAKE THE MOST
11:33:32 12 TIME.

11:33:32 13 DO YOU AGREE OR NO OR ARE WE GOING TO BE
11:33:35 14 HERE UNTIL MIDNIGHT?

11:33:36 15 MR. MCELHINNY: IT DEPENDS ON YOU, YOUR
11:33:38 16 HONOR.

11:33:38 17 THE COURT: ALL RIGHT. SORRY. LET ME
11:33:40 18 ASK MS. RODRIGUEZ.

11:33:53 19 ALL RIGHT. LET'S GO TO THE NEXT ONE,
11:33:55 20 PLEASE.

11:33:57 21 MR. JACOBS: THE NEXT ONE IS THE 381,
11:33:59 22 THIS IS THE RUBBERBANDING OF THE EDGE PATENT. AND
11:34:03 23 YOUR HONOR MAY RECALL THAT IT ADDRESSES SOME
11:34:07 24 PROBLEM IN USER INTERFACE AND IN PARTICULAR IN USER
11:34:09 25 NAVIGATION PARTICULARLY IN THE CONTEXT OF

11:34:11 1 TOUCHSCREENS AND IT ADDRESSES THE CONCERN THAT A
11:34:14 2 USER MIGHT HAVE WHETHER THE SCREEN WAS FROZEN OR
11:34:16 3 WHETHER THE USER WAS LOST IN DESERT FOG.

11:34:19 4 WE HAVE ILLUSTRATED THE FROZEN SCREEN
11:34:23 5 PROBLEM WITH AN ANIMATION.

11:34:25 6 SO TOUCHSCREENS, ESPECIALLY WHEN THEY
11:34:29 7 WERE INTRODUCED, IS IT REALLY WORKING, IS THE
11:34:31 8 SCREEN RESPONSIVE OR IS THE SCREEN NOT? IF THE
11:34:34 9 SCREEN JUST STOPS? YOU DON'T KNOW THE ANSWER TO
11:34:41 10 THAT.

11:34:42 11 THEN THE DESERT FOG PROBLEM, WHICH I
11:34:42 12 THOUGHT WHEN I LEARNED ABOUT THE DESERT FOG PROBLEM
11:34:45 13 I IMMEDIATELY THOUGHT OF MICROSOFT EXCEL WHERE
11:34:48 14 YOU'RE DOWN IN THE ZZ'S OR THE YY'S IN THE CELLS
11:34:52 15 AND YOU DON'T KNOW WHAT HAPPENED TO YOU.

11:34:54 16 AND THE PARTICULARLY DESERT FOG PROBLEM
11:34:57 17 THAT ONE COULD ENCOUNTER IS WONDERING WHETHER ONE
11:35:00 18 WAS -- WHERE ONE WAS NAVIGATIONALLY IF ONE HAD GONE
11:35:05 19 OFF THE EDGE OF A DOCUMENT.

11:35:06 20 THE COURT: CAN I -- MAYBE I -- IF IT'S
11:35:09 21 OKAY. CAN I JUST ASK MY QUESTIONS AND THEN I'LL
11:35:12 22 GIVE YOU LIKE MAYBE A MINUTE TO SUMMARIZE OR STATE
11:35:16 23 WHATEVER YOU'RE HOPING TO CONVEY?

11:35:19 24 MR. JACOBS: YEP.

11:35:20 25 THE COURT: AND LET ME FIRST ASK WHAT,

11:35:24 1 YOU KNOW, BOTH SIDES KEEP USING CONTENT BUT IT'S
11:35:26 2 NOT REALLY DEFINED.

11:35:28 3 SO WHAT DO YOU MEAN BY CONTENT AND IN THE
11:35:34 4 PAPER IMAGE CONTENT?

11:35:35 5 MR. JACOBS: I DON'T BELIEVE WE PROPOSED
11:35:37 6 CONTENT, YOUR HONOR.

11:35:39 7 WE THINK WHAT SAMSUNG IS DOING TO ITS
11:35:42 8 PROPOSED INSTRUCTION IS ADDING CONTENT WHERE
11:35:44 9 CONTENT NOT -- IS, IN FACT, NOT PART OF THE CLAIM
11:35:47 10 LANGUAGE AND NOT PART OF ANYTHING IN THE SPEC THAT
11:35:49 11 IS RELEVANT TO "EDGE OF A DOCUMENT."

11:35:51 12 SO MAYBE TO UNPACK THAT SLIGHTLY, THE
11:35:54 13 SPECIFICATION DOES TALK ABOUT EXEMPLARY DOCUMENTS.
11:35:58 14 IT TALKS ABOUT A WEB PAGE. IT TALKS ABOUT A
11:36:00 15 PRESENTATION. IT TALKS ABOUT AN IMAGE, BUT IT
11:36:06 16 DOESN'T TALK ABOUT SUBDIVISIONS OF CONTENT WITHIN A
11:36:08 17 WEB PAGE, WHICH IS THE HEART OF SAMSUNG'S ARGUMENT.

11:36:11 18 THE HEART OF SAMSUNG'S ARGUMENT IS THAT
11:36:13 19 YOU COULD CROSS THE BOUNDARY OF SOMETHING LIKE A
11:36:15 20 WEB PAGE, THE BOUNDARY AND CONTENT OF A WEB PAGE,
11:36:19 21 OR SOMETHING LIKE A WEB PAGE, AND THAT'S THE EDGE
11:36:22 22 OF THE DOCUMENT. THAT'S NOT WHAT THE SPECIFICATION
11:36:24 23 SAYS. IT SAYS, "EDGE OF A DOCUMENT."

11:36:26 24 SO WE DON'T HAVE A DEFINITION FOR
11:36:28 25 "CONTENT" BECAUSE WE DON'T THINK THAT CONTENT IS

11:36:33 1 APPROPRIATE HERE FOR A CLAIM CONSTRUCTION.

11:36:34 2 THE COURT: WELL, I KNOW YOU WANT PLAIN
11:36:35 3 AND ORDINARY MEANING, BUT -- AND MAYBE THIS IS NOT
11:36:42 4 RIPE, BUT DID YOU IMPLICITLY OR WOULD YOU AGREE TO
11:36:46 5 AN EXTERNAL EDGE BEYOND WHICH THERE IS AN AREA WITH
11:36:49 6 NO CONTENT?

11:36:51 7 MR. JACOBS: I SEE WHERE YOU'RE GOING.
11:36:52 8 THAT WASN'T PART OF OUR DEFINITION.

11:36:54 9 THE COURT: OKAY.

11:36:55 10 MR. JACOBS: SO IF THERE IS NO CONTENT,
11:37:01 11 DO WE MEAN -- I'LL DO IT THIS WAY SO WE ARE ALL
11:37:01 12 LOOKING AT THIS THE SAME WAY.

11:37:03 13 IF YOU SLIDE THIS PICTURE OVER TO THE
11:37:05 14 LEFT AND THERE CAN'T BE ANOTHER PICTURE OVER TO THE
11:37:08 15 RIGHT WITH SOME SUBSTANTIAL BOUNDARY IN BETWEEN
11:37:12 16 INDICATING THAT THIS IS A DOCUMENT AND THIS IS A
11:37:14 17 DOCUMENT, THAT CASE IS PROVIDED FOR BY THE ORDINARY
11:37:16 18 MEANING OF THE CLAIM LANGUAGE.

11:37:17 19 YOU COULD HAVE RUBBERBANDING AT THIS
11:37:20 20 FIRST PICTURE. THERE WOULD STILL BE CONTENT BEYOND
11:37:22 21 THE EDGE OF THE DOCUMENT.

11:37:24 22 WE WEREN'T ARGUING -- THAT WAS SOMETHING
11:37:26 23 THAT SAMSUNG INFERRED THAT WE NEVER STATED AND
11:37:32 24 DON'T BELIEVE AND DON'T PROPOSE.

11:37:37 25 THE COURT: WELL, DO YOU THINK THAT A

11:37:39 1 WALLPAPER IMAGE COULD BE CONTENT?

11:37:41 2 MR. JACOBS: NO. WALLPAPER IMAGE WAS
11:37:44 3 EXPRESSED IN THE SPECIFICATION AS A KIND OF A
11:37:46 4 BACKGROUND. IT'S IN A STRING OF IT COULD BE A
11:37:49 5 COLOR, IT COULD BE BLACK, OR IT COULD BE WALLPAPER
11:37:55 6 CONTENT.

11:37:55 7 WALLPAPER I THINK IS WHAT IT SAYS. SO IF
11:37:58 8 WE'RE INTO A WORLD OF CONTENT, I DON'T THINK THAT
11:38:00 9 IT'S CONTENT AND I THINK THAT IS BACKGROUND.

11:38:02 10 THE COURT: AND, NOW, IS AN ELECTRONIC
11:38:05 11 IMAGE ALWAYS AN ELECTRONIC DOCUMENT?

11:38:13 12 MR. JACOBS: AN ELECTRONIC IMAGE IF IT
11:38:15 13 HAS DEFINED BOUNDARIES AND IT'S NOT WITHIN A WEB
11:38:18 14 PAGE, SUCH AS, FOR EXAMPLE, A DISTINCT PHOTOGRAPH,
11:38:20 15 WOULD BE AN ELECTRONIC DOCUMENT.

11:38:23 16 THAT'S A SLIGHTLY LONGER ANSWER THAN YOU
11:38:25 17 MAY HAVE ASKED FOR, BUT I NEEDED TO BE PRECISE
11:38:28 18 ABOUT THAT BECAUSE ONE COULD IMAGINE -- SINCE WE
11:38:30 19 HAVE WEB PAGE IS AN ELECTRONIC DOCUMENT, THAT'S
11:38:33 20 JUST WHAT THE SPECIFICATION SAYS, I THINK THAT
11:38:35 21 TRUMPS THE POSSIBILITY OF AN IMAGE WITHIN A WEB
11:38:38 22 PAGE BEING THE RELEVANT ELECTRONIC DOCUMENT. THE
11:38:43 23 WEB PAGE IN THAT CONTEXT IS THE ELECTRONIC
11:38:45 24 DOCUMENT.

11:38:46 25 THE COURT: OKAY. WELL, THAT WAS THE

11:38:47 1 NEXT QUESTION. ALL RIGHT.

11:38:59 2 WELL, GO AHEAD WITH WHATEVER ELSE YOU
11:39:02 3 WERE GOING TO SAY.

11:39:03 4 MR. JACOBS: SO BRIEFLY WHAT I THINK THE
11:39:05 5 SPECIFICATION REALLY DOES IS MAKE THIS CLEAR
11:39:07 6 BECAUSE WHAT THE SPECIFICATION IS SHOWING IN
11:39:09 7 FIGURES 8A THROUGH D IS A WEB PAGE WITH BLOCKS OF
11:39:15 8 CONTENT TO USE SAMSUNG'S FORMULATION.

11:39:17 9 AND WHAT FIGURES 8A AND 8D SHOW IS THAT
11:39:22 10 WE HAVE ANIMATED THE FIGURES TO SHOW THAT IT ONLY
11:39:26 11 RUBBERBANDS WHEN THE EDGE OF THE WEB PAGE IS
11:39:28 12 REACHED. THAT'S THE EDGE OF THE ELECTRONIC
11:39:31 13 DOCUMENT. THERE'S NO RUBBERBANDING FOR --

11:39:33 14 THE COURT: FOR BLOCK 5, FOR EXAMPLE?

11:39:36 15 MR. JACOBS: EXACTLY. AND SIMILARLY IN A
11:39:39 16 MODERN DEVICE LIKE HERE ILLUSTRATED THE IPHONE, OF
11:39:44 17 COURSE IT RUBBERBANDS AT THE EDGE OF THE WEB PAGE
11:39:48 18 AND NOT CONTENT WITHIN THE WEB PAGE.

11:39:51 19 THE IMPORTANT POINT HERE FROM THE
11:39:53 20 CONCEPTUAL STANDPOINT IS THAT WITHIN A WEB PAGE,
11:39:55 21 YOU HAVE NEITHER THE FROZEN SCREEN NOR THE DESERT
11:39:59 22 FOG PROBLEM.

11:40:04 23 THAT IS WHAT I WISH TO CONVEY TO YOUR
11:40:06 24 HONOR.

11:40:06 25 THE COURT: OKAY. ALL RIGHT. BUT YOU

11:40:10 1 WOULD SAY THAT WHAT IS BEYOND THE EDGE OF AN
11:40:14 2 ELECTRONIC DOCUMENT CAN BE GREY, IT CAN BE WHITE OR
11:40:18 3 IT CAN BE WALLPAPER?

11:40:21 4 MR. JACOBS: AND TO FINISH THE THOUGHT,
11:40:23 5 YES, AND THAT WOULD NOT NEGATE THAT THEY'RE
11:40:25 6 SPEAKING ABOUT THE EDGE OF AN ELECTRONIC DOCUMENT
11:40:29 7 IF IT IS OTHERWISE AN ELECTRONIC DOCUMENT.

11:40:31 8 I THINK THIS IS NOT A -- LET ME SEE IF I
11:40:39 9 CAN SAY THIS AND GIVE YOU THE PRECISE FORMULATION
11:40:41 10 IN RESPONSE TO YOUR ANSWER.

11:40:42 11 AN ELECTRONIC DOCUMENT IS AN ELECTRONIC
11:40:45 12 DOCUMENT. IT MAY HAVE AN ADJACENT ELECTRONIC
11:40:51 13 DOCUMENT OR IT MAY NOT. IT MAY BE BOUNDED BY A
11:40:57 14 KIND OF A BACKGROUND BLACKNESS, COLOR OR WALLPAPER.

11:41:03 15 ALL OF THOSE CASES ARE CONSISTENT WITH
11:41:05 16 THE ELECTRONIC DOCUMENT AND THE EDGE OF THE
11:41:08 17 ELECTRONIC DOCUMENT BEING THE EDGE OF THE
11:41:10 18 ELECTRONIC DOCUMENT.

11:41:11 19 THE COURT: OKAY. ALL RIGHT. LET ME
11:41:13 20 HEAR FROM SAMSUNG. AND THE FIRST QUESTION I WANTED
11:41:18 21 TO ASK YOU IS WHAT DO YOU MEAN BY "CONTENT" IN YOUR
11:41:20 22 PROPOSED CONSTRUCTION?

11:41:22 23 MR. VERHOEVEN: JUST TEXT, IMAGES,
11:41:25 24 INFORMATION AS IT'S COMMONLY USED WHEN PEOPLE ARE
11:41:28 25 DESCRIBING CONTENT ON THE INTERNET, FOR EXAMPLE.

11:41:33 1 THE COURT: SO TEXT, IMAGES, INFORMATION.
11:41:34 2 WOULD YOU INCLUDE WALLPAPER IMAGE OR NOT AS
11:41:36 3 CONTENT?

11:41:38 4 MR. VERHOEVEN: YEAH. AND ELECTRONIC
11:41:41 5 DOCUMENT IMAGE IN OUR VIEW, YOUR HONOR, IS ALWAYS
11:41:43 6 AN ELECTRONIC DOCUMENT.

11:41:52 7 THE COURT: NOW, DR. VAN DAM APPEARS TO
11:41:55 8 SUGGEST THAT THERE CAN'T BE CONTENT BEYOND THE EDGE
11:41:57 9 OF AN ELECTRONIC DOCUMENT. DO YOU WANT TO ADDRESS
11:42:00 10 THAT? THAT'S A POINT THAT APPLE MAKES.

11:42:02 11 MR. VERHOEVEN: WELL, I WILL ADDRESS
11:42:04 12 THAT, YOUR HONOR.

11:42:05 13 I HAVE SOME SLIDES.

11:42:16 14 THE COURT: HAVE BOTH PARTIES EXCHANGED
11:42:18 15 THEIR SLIDES BECAUSE IF THERE'S GOING TO BE AN
11:42:19 16 OBJECTION, I WOULD LIKE TO KNOW BEFORE WE GET
11:42:22 17 STARTED.

11:42:22 18 MR. VERHOEVEN: YES.

11:42:36 19 THE COURT: RATHER THAN DRIBBLE OUT
11:42:38 20 PATENT BY PATENT, LET'S JUST DO A COMPLETE EXCHANGE
11:42:42 21 NOW.

11:42:42 22 IF THERE'S ANY OBJECTION THAT EITHER SIDE
11:42:44 23 HAS TO EITHER SIDE'S POWERPOINT, PLEASE LET ME KNOW
11:42:48 24 BEFORE WE START.

11:42:50 25 MR. JACOBS: VERY WELL, YOUR HONOR.

11:42:51 1 THE COURT: OKAY.

11:42:53 2 MR. VERHOEVEN: IF WE GO TO SLIDE 22, I
11:42:55 3 BELIEVE THIS IS THE EXCERPT -- WELL, THERE ARE TWO
11:42:58 4 DIFFERENT EXCERPTS THAT APPLE CITED, I BELIEVE.
11:43:01 5 THIS IS TO ILLUSTRATE VAN DAM'S DEPOSITION
11:43:06 6 TESTIMONY PAGE 3, LINES 5 THROUGH 18 AND THEY POINT
11:43:11 7 TO "NO NEW INFORMATION."

11:43:13 8 NOW, IF YOU GO TO THE NEXT SLIDE, I'VE
11:43:15 9 HIGHLIGHTED IT A LITTLE LATER IN THE QUOTE AND YOU
11:43:18 10 SEE THERE YOU SEE HE CONTINUES, "IF YOUR EXCURSION
11:43:24 11 BEYOND THE EDGE IS SMALL, AND YOU LIFT YOUR FINGER
11:43:29 12 OR YOUR STYLUS, WHATEVER YOUR POINTING DEVICE IS,
11:43:32 13 THEN THE VIEW WILL SNAP BACK SO THERE IS NO
11:43:37 14 UNRELATED INFORMATION TO BE SEEN."

11:43:39 15 SO WHAT HE'S SAYING HERE IN CONTEXT, YOUR
11:43:41 16 HONOR, IS THAT THERE'S NO NEW INFORMATION FROM THAT
11:43:43 17 SAME ELECTRONIC DOCUMENT AND THEN WHEN YOU SNAP
11:43:45 18 BACK, IF YOU GO BEYOND THE EDGE YOU MAY SEE SOME
11:43:47 19 UNRELATED INFORMATION AND SO IT SNAPS BACK SO YOU
11:43:49 20 DON'T SEE ANY -- THERE'S NO UNRELATED INFORMATION
11:43:51 21 TO BE SEEN.

11:43:52 22 SO WE DON'T THINK THAT THAT'S
11:43:54 23 INCONSISTENT WITH THE POSITIONS THAT WE'RE TAKING,
11:43:56 24 YOUR HONOR.

11:43:56 25 I WANT TO POINT OUT, YOUR HONOR, HOWEVER,

11:43:58 1 THAT APPLE IS -- THE CONSTRUCTION IT'S ADVOCATING
11:44:05 2 IS 100 PERCENT INCONSISTENT WITH THE POSITION IT'S
11:44:08 3 CURRENTLY TAKING IN THE I.T.C. CASE AGAINST H.T.C.
11:44:12 4 AND I WOULD DIRECT YOU TO SLIDE 11, AND IT'S A
11:44:15 5 PUBLIC DOCUMENT, AND WE'LL ASK YOUR HONOR TO TAKE
11:44:17 6 JUDICIAL NOTICE OF THIS.

11:44:18 7 MR. JACOBS: YOUR HONOR, WE'RE GOING TO
11:44:24 8 OBJECT.

11:44:24 9 THE COURT: HAVE YOU ALL EXCHANGED EACH
11:44:26 10 OTHER'S DEMONSTRATIVES? I WAS HOPING THAT WOULD
11:44:30 11 HAVE BEEN DONE BEFORE TODAY.

11:44:30 12 MR. JACOBS: NO, WE HAVEN'T.

11:44:32 13 THE COURT: YOU HAVEN'T. DO YOU NOW HAVE
11:44:35 14 EACH OTHER'S DEMONSTRATIVES FOR ALL THE PATENTS?

11:44:37 15 MR. VERHOEVEN: WE HAVE HANDED THEM ALL
11:44:39 16 OUT.

11:44:40 17 THE COURT: WHAT IS YOUR OBJECTION?

11:44:41 18 MR. JACOBS: THIS WAS NOT SOMETHING THAT
11:44:43 19 WAS DISCLOSED IN ANY PRIOR MATERIALS THAT WE
11:44:46 20 RECEIVED FROM THEM, AND SO WE HAVE NOT BEEN ABLE TO
11:44:48 21 GO BACK AND CHECK OUT WHAT IT'S ALL ABOUT.

11:44:52 22 MR. VERHOEVEN: YOUR HONOR, THIS SHOULD
11:44:53 23 HAVE BEEN DISCLOSED TO THE COURT. IT WAS A
11:44:56 24 DOCUMENT FILED BY APPLE AT THE I.T.C. WHERE THEY
11:44:59 25 TAKE THE EXACT OPPOSITE POSITION THAT THEY'RE

11:45:01 1 TAKING HERE ABOUT THE EXTERNAL EDGE VERSUS INTERNAL
11:45:05 2 EDGE, AND IT SHOULD HAVE BEEN DISCLOSED TO US, AND
11:45:08 3 IT SHOULD HAVE BEEN DISCLOSED TO THE COURT.

11:45:10 4 IT'S NOT NEW EVIDENCE. IT'S AN ADMISSION
11:45:13 5 BY THIS VERY SAME -- IF YOU LOOK, YOUR HONOR, TO
11:45:15 6 THE SLIDE YOU CAN SEE.

11:45:19 7 MR. JACOBS: I WOULD APPRECIATE A RULING
11:45:20 8 BEFORE MR. VERHOEVEN EXPANDS ON --

11:45:25 9 MR. VERHOEVEN: HE DOESN'T WANT YOU TO
11:45:26 10 SEE THE INCONSISTENCY. YOUR HONOR, IF YOU LOOK AT
11:45:29 11 WHAT THEY ARE DOING HERE, THEY ARE CLAIMING AN
11:45:31 12 INTERNAL EDGE OF AN INTERNAL DOCUMENT AS MEETING
11:45:36 13 THIS VERY SAME CLAIM.

11:45:40 14 THE COURT: YOU KNOW, THIS WOULD HAVE
11:45:41 15 BEEN BETTER -- I KNOW THE SANDBAGGING IS VERY
11:45:44 16 STRATEGICALLY HELPFUL, BUT THIS WOULD HAVE BEEN
11:45:47 17 BETTER IF THE DISPUTES WOULD BE WORKED OUT IN
11:45:50 18 ADVANCE. I DON'T LIKE GETTING THIS RIGHT NOW.

11:45:53 19 MR. VERHOEVEN: I JUST DISCOVERED THIS
11:45:55 20 YESTERDAY, YOUR HONOR.

11:45:55 21 THE COURT: WE TALKED ABOUT ON TUESDAY
11:45:57 22 WHETHER YOU WERE GOING TO BRING IN OTHER I.T.C.
11:46:00 23 MATERIAL AND THE DECISION WAS THAT YOU WERE NOT.

11:46:03 24 MR. VERHOEVEN: THAT WAS ABOUT A
11:46:04 25 DIFFERENT CASE, YOUR HONOR.

11:46:05 1 THE COURT: WELL, IT WASN'T EVEN
11:46:06 2 MENTIONED THEN THAT YOU WERE GOING TO BRING UP THIS
11:46:08 3 CASE ON TUESDAY.

11:46:09 4 MR. VERHOEVEN: I WASN'T AWARE OF THIS
11:46:11 5 DOCUMENT, YOUR HONOR, AND IT'S VERY PROBATIVE
11:46:13 6 BECAUSE IT SHOWS APPLE REPRESENTING TO ANOTHER
11:46:17 7 TRIBUNAL THAT THIS VERY LANGUAGE APPLIES TO AN
11:46:22 8 INTERNAL DOCUMENT WITHIN A LARGER DOCUMENT AND IT
11:46:25 9 SHOWS ON AN APPLE PRODUCT AN INTERNAL DOCUMENT SNAP
11:46:29 10 BACK.

11:46:30 11 AND THERE'S A CLAIM CHART THAT THEY
11:46:32 12 PREPARED TO DEMONSTRATE TO THE I.T.C. THAT THEIR
11:46:35 13 OWN PRODUCT HAS DOMESTIC INDUSTRY PRACTICES THESE
11:46:40 14 CLAIMS BY USING AN INTERNAL SNAP BACK.

11:46:43 15 THE COURT: WELL, THAT IS WHAT I'M GOING
11:46:44 16 TO DO, WE'RE NOT GOING TO CONSIDER THIS RIGHT NOW
11:46:47 17 BECAUSE I THINK IT IS SANDBAGGING.

11:46:49 18 DO YOU HAVE THE REST OF YOUR PRESENTATION
11:46:51 19 ON THIS? LET'S DO IT AND THEN WE CAN DISCUSS THIS
11:46:56 20 LATER.

11:46:56 21 MR. VERHOEVEN: YES, YOUR HONOR.

11:47:02 22 CAN I ASK ONE QUESTION, YOUR HONOR? THEY
11:47:04 23 HAVE BEEN USING DEMONSTRATIVES FROM THEIR OWN PHONE
11:47:06 24 THAT WERE NOT DISCLOSED AS PART OF THEIR
11:47:09 25 PRESENTATION.

11:47:10 1 MAY I AT LEAST SHOW YOU THE DEMONSTRATIVE
11:47:13 2 OF THIS INTERNAL PRODUCT THAT THEY HAVE THAT SNAPS
11:47:17 3 BACK TO SHOW YOU WHY IT WOULD BE USEFUL FOR A SNAP
11:47:20 4 BACK TO OCCUR WITHIN AN INTERNAL DOCUMENT WITHIN A
11:47:23 5 LARGER DOCUMENT?

11:47:23 6 THE COURT: DID YOU GET THIS FROM THE
11:47:25 7 I.T.C. CASE?

11:47:27 8 MR. VERHOEVEN: NO. THIS IS AN
11:47:28 9 APPLICATION THAT APPLE SELLS THAT HAS AN INTERNAL
11:47:32 10 SNAP BACK, AND IT'S CALLED STOCKS.

11:47:34 11 THE COURT: ALL RIGHT. WHAT IS YOUR
11:47:35 12 POSITION?

11:47:37 13 MR. JACOBS: YOUR HONOR, I'M ALWAYS HAPPY
11:47:39 14 TO HAVE THE COURT SEE THE IPHONE, BUT I REALLY
11:47:42 15 THINK THIS IS PRETTY TANGENTIAL HERE.

11:47:46 16 THE IPHONE MAY OR MAY NOT IMPLEMENT MORE
11:47:49 17 THAN THE SNAP BACK THAT IS CLAIMED IN THE '381
11:47:52 18 PATENT.

11:47:53 19 I'M NOT -- UNLIKE QUINN EMANUEL, WE'RE
11:47:57 20 NOT IN THE H.T.C. CASE, SO I DON'T KNOW WHAT IS
11:47:59 21 BEING ARGUED THERE. I CAN'T RESPOND TO THE
11:48:01 22 SUBSTANCE OF THE ARGUMENT, AND I THINK WHAT
11:48:04 23 MR. VERHOEVEN IS TRYING TO DO IS BACK-DOOR ON THE
11:48:07 24 RULING YOU JUST MADE.

11:48:08 25 MR. VERHOEVEN: WHAT I'D LIKE TO SHOW,

11:48:10 1 YOUR HONOR, IS THAT THE CLAIM LANGUAGE DOES NOT SAY
11:48:13 2 EXTERNAL EDGE.

11:48:14 3 THEY'RE SAYING UNDER THE GUISE OF THE
11:48:16 4 PLAIN MEANING THEY'RE ADVOCATING, YOUR HONOR, TO
11:48:18 5 IMPORT AN INTERPRETATION OF THE CLAIM LANGUAGE THAT
11:48:20 6 SAYS THAT THE EDGE HAS TO BE AN EXTERNAL EDGE, YOU
11:48:23 7 CAN'T BE AN INTERNAL EDGE AS PART OF A SUBDOCUMENT
11:48:27 8 IN A LARGER DOCUMENT.

11:48:28 9 THIS INVENTION OF THEIRS, TO THE EXTENT
11:48:31 10 THAT IT IS VALID, IS JUST AS USEFUL ON AN INTERNAL
11:48:35 11 DOCUMENT SO THAT YOU CAN SEE YOU HAVE REACHED THE
11:48:38 12 EDGE OF THE SCROLL AS IT IS ON AN EXTERNAL, AND, IN
11:48:44 13 FACT, IT'S IMPLEMENTED IN APPS ON THE IPHONE AND
11:48:48 14 JUST I WOULD LIKE TO SHOW YOU SO YOU CAN SEE HOW IT
11:48:52 15 WORKS.

11:48:52 16 THEY HAVE SHOWN, YOUR HONOR, WHEN THEY
11:48:54 17 THINK IT'S HELPFUL TO THEM WITHOUT PREVIOUS
11:48:56 18 DISCLOSURE ON THEIR SLIDES PICTURES OF THEIR IPHONE
11:48:59 19 AND HOW IT WORKS.

11:49:00 20 AND YOU JUST SAW HIM SHOW PICTURES OF
11:49:02 21 THEIR IPHONE AND HOW IT WORKS WITH RESPECT TO THIS
11:49:05 22 CLAIM CONSTRUCTION. I'M MERELY REQUESTING AN
11:49:07 23 OPPORTUNITY TO DO THE SAME.

11:49:16 24 THE COURT: GO AHEAD.

11:49:17 25 MR. VERHOEVEN: THANK YOU.

11:49:18 1
11:49:22 2
11:49:22 3
11:49:22 4
11:49:26 5
11:49:27 6
11:49:29 7
11:49:32 8
11:49:36 9
11:49:39 10
11:49:42 11
11:49:44 12
11:49:48 13
11:49:49 14
11:49:54 15
11:49:57 16
11:50:01 17
11:50:04 18
11:50:06 19
11:50:08 20
11:50:11 21
11:50:23 22
11:50:24 23
11:50:29 24
11:50:32 25

THIS IS A VIDEO OF THE STOCKS
APPLICATION, YOUR HONOR.

(WHEREUPON, A VIDEO WAS PLAYED IN OPEN
COURT.)

MR. VERHOEVEN: THAT'S THE STOCKS
APPLICATION. YOU CAN SEE THAT THERE'S A LARGER
APPLICATION DISPLAY AND INSIDE OF IT THERE ARE TWO
SUBDOCUMENTS AND YOU CAN SEE THAT THEY BOUNCE BACK
WITHIN THE LARGER DOCUMENT.

THE SAME FUNCTIONALITY AS WHEN YOU HAVE A
PICTURE THAT BOUNCES BACK AND IT'S THE WHOLE
SCREEN, BUT IT'S A BOUNCE BACK OF AN ELECTRONIC
DOCUMENT WITHIN A LARGER ELECTRONIC DOCUMENT. AND
THIS IS USEFUL. IT'S CONTEMPLATED. THERE'S
NOTHING IN THE CLAIM THAT EXCLUDES IT, YOUR HONOR.

AND SO, YES, THE PATENT DOESN'T SHOW A
BOUNCE BACK OF ONE OF THE BLOCKS WITHIN THE WEB
PAGE WITHIN THE SPECIFICATION, BUT NOTHING IN THE
CLAIM PRECLUDES THAT, YOUR HONOR.

IT'S, IT'S -- THE CLAIM LANGUAGE, IF WE
GO TO SLIDE 3, IT SIMPLY SAYS, "AN EDGE OF AN
ELECTRONIC DOCUMENT."

NOW, IF WE GO TO SLIDE 5, APPLE PURPORTS
THAT IT'S MERELY ADVOCATING THE PLAIN AND ORDINARY
MEANING OF THAT PHRASE, BUT NOBODY DISPUTES THAT IN

11:50:35 1 THE WEB PAGE YOU HAVE INTERNAL ELECTRONIC DOCUMENTS
11:50:38 2 AND THOSE ELECTRONIC DOCUMENTS HAVE EDGES.

11:50:41 3 AND THE PLAIN AND ORDINARY MEANING OF
11:50:43 4 EDGE AND ELECTRONIC DOCUMENT WOULD APPLY EQUALLY TO
11:50:48 5 THOSE INTERNAL DOCUMENTS AS WELL AS TO THE EXTERNAL
11:50:50 6 WEB PAGE LARGER DOCUMENT.

11:50:52 7 AND WHAT APPLE IS REALLY ADVOCATING FOR
11:50:55 8 YOUR HONOR TO DO IS NOT PLAIN AND ORDINARY MEANING
11:50:57 9 BUT TO INTRODUCE A DISTINCTION THAT DOESN'T APPEAR
11:51:03 10 IN THE CLAIM LANGUAGE BETWEEN THE INTERNAL AND
11:51:06 11 EXTERNAL EDGES.

11:51:07 12 AND WE WOULD SUBMIT THAT WOULD BE
11:51:09 13 INAPPROPRIATE AND IT'S INCONSISTENT WITH THEIR
11:51:11 14 STATEMENT THAT THEY SIMPLY WANT TO USE THE PLAIN
11:51:15 15 AND ORDINARY MEANING.

11:51:16 16 THE CLAIMS DO NOT PRECLUDE ANOTHER
11:51:18 17 ELECTRONIC DOCUMENT OR OTHER CONTENT FROM APPEARING
11:51:21 18 BEYOND AN EDGE OF AN ELECTRONIC DOCUMENT.

11:51:24 19 AND IF WE LOOK AT, FOR EXAMPLE, WE'RE
11:51:36 20 TALKING ABOUT ORDINARY MEANING, IF YOU LOOK AT
11:51:40 21 SLIDE 17, PLEASE, DR. BALAKRISHNAN, APPLE'S EXPERT,
11:51:48 22 SAYS THAT "MY DEFINITION OF AN ELECTRONIC DOCUMENT
11:51:51 23 WOULD BE SOMETHING VISUALLY REPRESENTABLE ON THE
11:51:54 24 SCREEN THAT HAS A DEFINED SET OF BOUNDARIES."

11:51:58 25 WELL, THAT COULD BE AN IMAGE WITHIN A WEB

11:52:00 1 PAGE. IF YOU GO TO SLIDE 18.

11:52:06 2 HE ADMITS THAT "THE BOUNDARY OF AN
11:52:10 3 ELECTRONIC DOCUMENT, IN THIS CASE, THIS EDGE IS ONE
11:52:15 4 BOUNDARY OF IT DOES NOT HAVE TO MATCH THE EDGE OF
11:52:18 5 THE SCREEN."

11:52:19 6 SO THIS IS THE ORDINARY YOU WOULD
11:52:21 7 UNDERSTAND EDGE AND ELECTRONIC DOCUMENT, AND IT'S
11:52:21 8 NOT REQUIRED TO BE COEXTENSIVE WITH THE DISPLAY
11:52:25 9 SCREEN.

11:52:25 10 AND IF WE LOOK AT SLIDE 19. AT HIS
11:52:28 11 DEPOSITION HE WAS SHOWN THIS MATRIX THAT YOU SEE
11:52:33 12 AND HE SAYS -- AND HE WAS ASKED A HYPOTHETICAL
11:52:37 13 QUESTION. AND HE WAS ASKED, "IF IN THIS
11:52:40 14 HYPOTHETICAL SCENARIO THIS DOCUMENT IS THIS 2-BY-4
11:52:45 15 GRID LABELLED 15, 16, 17, 18, 21, 22, 23, 24 AND IF
11:52:51 16 THAT IS THE DOCUMENT, THEN ANYTHING BEYOND THAT
11:52:54 17 EDGE WOULD BE AN AREA OUTSIDE OF THE DOCUMENT
11:52:56 18 BEYOND THE EDGE OF THE DOCUMENT. SO GIVEN THOSE
11:52:58 19 HYPOTHETICALS, AREA 14 AND 20 WOULD BE BEYOND THE
11:53:03 20 EDGE OF THE DOCUMENT GIVEN THAT SCENARIO."

11:53:06 21 SO THIS IS NOT CONTROVERSIAL. THIS IS
11:53:09 22 PLAIN AND ORDINARY MEANING WHEN YOU SAY EDGE OF A
11:53:11 23 DOCUMENT.

11:53:12 24 AND WE WOULD SUBMIT, YOUR HONOR, THAT
11:53:13 25 WHAT APPLE IS REALLY DOING HERE IS THAT THEY'RE

11:53:16 1 TRYING TO IMPORT A LIMITATION TO AVOID SOME PRIOR
11:53:22 2 ART INTO THIS PLAIN AND ORDINARY LANGUAGE.

11:53:24 3 IT'S NOT CONSISTENT WITH THE
11:53:25 4 SPECIFICATION OR CLAIMS AND IT'S NOT CONSISTENT
11:53:27 5 WITH THE WAY THAT APPLE ITSELF IS USING
11:53:37 6 APPLICATIONS ON ITS IPHONE.

11:53:40 7 IF YOUR HONOR HAS ANY FURTHER QUESTIONS,
11:53:44 8 OTHERWISE I'LL SIT DOWN.

11:53:45 9 THE COURT: I DO HAVE ONE QUESTION AND
11:53:46 10 THAT IS -- OKAY. SO THE DEFINITION -- OR I'M
11:53:50 11 SORRY -- THE CONSTRUCTION THAT YOU'RE PROPOSING IS
11:53:53 12 A BOUNDARY OF ELECTRONIC DOCUMENT THAT
11:53:56 13 DISTINGUISHES IT FROM ANOTHER ELECTRONIC DOCUMENT,
11:53:57 14 OTHER CONTENT OR OTHER BACKGROUND AREAS.

11:54:06 15 AND THE QUESTION THAT I HAVE IS THAT
11:54:08 16 CLAIM 14 SAYS THAT THE COMPUTER IMPLEMENTED METHOD
11:54:09 17 OF CLAIM 1 WHEREIN THE AREA BEYOND THE EDGE OF THE
11:54:11 18 DOCUMENT IS VISUALLY DISTINCT FROM THE EDGE OF THE
11:54:17 19 DOCUMENT.

11:54:18 20 SO I GUESS HOW DO YOU RECONCILE THAT? IF
11:54:22 21 CLAIM 1 IS SUPPOSED TO BE SEEING AN ELECTRONIC
11:54:25 22 DOCUMENT THAT DISTINGUISHES IT FROM ANOTHER
11:54:28 23 ELECTRONIC DOCUMENT, THEN WHY WOULD YOU EVER HAVE
11:54:33 24 CLAIM 14 SAYING THAT THE AREA BEYOND THE EDGE OF
11:54:35 25 THE DOCUMENT IS VISUALLY DISTINCT FROM THE

11:54:38 1 DOCUMENT? ISN'T THAT THE SAME THING?

11:54:58 2 MR. VERHOEVEN: THAT'S A GOOD QUESTION.

11:55:00 3 CAN I CONFER WITH MY COCOUNSEL?

11:55:05 4 THE COURT: PLEASE. GO AHEAD.

11:55:32 5 (PAUSE IN PROCEEDINGS.)

11:55:33 6 MR. VERHOEVEN: I GUESS MY RESPONSE WOULD
11:55:35 7 BE THAT OUR CONSTRUCTION IT SAYS DISTINGUISHES IT,
11:55:37 8 NOT VISUALLY DISTINGUISHES IT.

11:55:39 9 SO WE'RE TRYING TO FIND -- THE EDGE HAS
11:55:41 10 TO MEAN SOMETHING, THAT DOCUMENT ENDS AND SOMETHING
11:55:44 11 ELSE STARTS.

11:55:44 12 THE COURT: WELL, IF IT'S NOT VISUAL,
11:55:46 13 WHAT ARE THE OTHER WAYS THAT IT'S BEING
11:55:48 14 DISTINGUISHED THEN?

11:55:50 15 MR. VERHOEVEN: SO IT COULD BE -- WHAT
11:55:53 16 WE'RE TRYING TO SAY IS THAT YOU HAVE AN ELECTRONIC
11:55:56 17 DOCUMENT, IT HAS AN EDGE AND THEN IT DOESN'T EXIST
11:55:59 18 BEYOND THAT EDGE.

11:55:59 19 SO THERE MIGHT BE ANOTHER ELECTRONIC
11:56:02 20 DOCUMENT THERE, THERE MIGHT BE A BACKGROUND AREA
11:56:04 21 THERE, THERE MIGHT BE JUST SOME OTHER CONTENTS
11:56:06 22 THERE.

11:56:07 23 AND WE'RE JUST TRYING TO GET THAT CONCEPT
11:56:10 24 THAT THE MATERIAL CONTENT OR WHATEVER IN THE
11:56:16 25 ELECTRONIC DOCUMENT ENDS AT THAT EDGE.

11:56:19 1 AND THAT EDGE IS WHAT DISTINGUISHES THE
11:56:22 2 END OF THAT CONTENT TO THE START OF SOMETHING ELSE
11:56:26 3 IS BASICALLY ALL WE'RE TRYING TO SAY.

11:56:28 4 THE COURT: WELL, I WAS LEANING YOUR WAY
11:56:35 5 BUT THEN I THINK THAT TO SAY THAT DISTINGUISHED IS
11:56:40 6 DISTINCT FROM VISUALLY DISTINGUISHED, I DON'T THINK
11:56:43 7 THAT THAT'S GOING TO FLY.

11:56:45 8 MR. VERHOEVEN: MAY I CONFER AND SEE IF
11:56:46 9 WE CAN'T PROPOSE SOMETHING, YOUR HONOR.

11:56:48 10 THE COURT: IF THERE'S SOME WAY TO LIMIT
11:56:52 11 THE SCOPE OF AN ELECTRONIC DOCUMENT, I WANT TO HEAR
11:56:54 12 IT.

11:57:03 13 (PAUSE IN PROCEEDINGS.)

11:57:03 14 MR. VERHOEVEN: WELL, WHAT IF WE JUST
11:57:04 15 SAID A BOUNDARY OF ELECTRONIC DOCUMENT AND ENDED
11:57:08 16 IT? THAT'S REALLY WHAT WE'RE SAYING, THE BOUNDARY,
11:57:12 17 THE EDGE.

11:57:13 18 THE COURT: SO YOU'RE SAYING YOU WOULD
11:57:14 19 SUPPORT EDGE OF ELECTRONIC DOCUMENT MEANS A
11:57:17 20 BOUNDARY OF AN ELECTRONIC DOCUMENT?

11:57:21 21 MR. VERHOEVEN: YES.

11:57:21 22 THE COURT: LET ME HEAR FROM APPLE. CAN
11:57:23 23 YOU ALL AGREE TO THAT? CAN YOU STIPULATE TO THAT?

11:57:30 24 MR. JACOBS: YES, YOUR HONOR. I WOULD
11:57:31 25 NOTE THAT WE'RE SUBSTITUTING "BOUNDARY" FOR "EDGE"

11:57:35 1 BUT THAT'S FINE, I THINK AN EDGE IS A BOUNDARY.

11:57:35 2 MR. VERHOEVEN: MY UNDERSTANDING OF IT
11:57:41 3 THE PARTIES --

11:57:41 4 THE COURT: DO YOU WANT SOME TIME TO
11:57:43 5 THINK ABOUT THIS?

11:57:48 6 I MEAN THE BOUNDARY OF AN ELECTRONIC
11:57:49 7 DOCUMENT, THAT WOULD BE ACCEPTABLE TO THE COURT AND
11:57:51 8 IF THAT'S WHAT THE PARTIES STIPULATE TO, THAT WOULD
11:57:52 9 MAKE IT EASIER BUT IF YOU WANT TO THINK ABOUT IT.

11:57:54 10 MR. VERHOEVEN: CAN WE GET BACK TO YOU
11:57:56 11 AFTER WE HAVE OUR BREAK AND MAKE SURE OUR CLIENTS
11:57:59 12 ARE ON BOARD WITH EVERYTHING?

11:58:00 13 THE COURT: THAT'S FINE. THAT'S FINE.

11:58:07 14 OKAY. LET'S TAKE OUR LUNCH BREAK NOW. I
11:58:07 15 APPRECIATE EVERYONE'S PATIENCE.

11:58:10 16 IF IT'S OKAY WITH YOU ALL, GOING FORWARD
11:58:10 17 I WOULD JUST GO FORWARD AND ASK MY QUESTIONS. AND
11:58:13 18 IF THERE'S A MINUTE OR TWO THAT YOU WANT TO WRAP
11:58:16 19 UP, I THINK THAT WOULD MOVE IT A LITTLE FASTER THAN
11:58:18 20 GOING THROUGH YOUR FULL PRESENTATIONS.

11:58:20 21 BUT I WILL REVIEW YOUR FULL
11:58:22 22 PRESENTATIONS. SO THIS IS NOT WORK THAT HAS GONE
11:58:24 23 TO WASTE.

11:58:25 24 IF YOU HAVE ANY OBJECTIONS TO EITHER
11:58:27 25 SIDE'S PRESENTATIONS, LOOK AT IT OVER THE LUNCH

11:58:29 1
11:58:32 2
11:58:34 3
11:58:37 4
11:58:37 5
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BREAK AND THEN JUST LET ME KNOW WHEN WE GET BACK.

WE'RE GOING TO HAVE A ONE-HOUR BREAK
UNTIL 1:00 O'CLOCK.

MR. VERHOEVEN: THANK YOU, YOUR HONOR.

(WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

12:10:45 1
12:10:45 2
13:05:01 3
13:05:01 4
13:05:03 5
13:05:04 6
13:05:06 7
13:05:09 8
13:05:13 9
13:05:16 10
13:05:16 11
13:05:19 12
13:05:22 13
13:05:24 14
13:05:27 15
13:05:27 16
13:05:31 17
13:05:33 18
13:05:36 19
13:05:38 20
13:06:01 21
13:06:04 22
13:06:05 23
13:06:08 24
13:06:10 25

AFTERNOON SESSION

(WHEREUPON, COURT CONVENED AND THE
FOLLOWING PROCEEDINGS WERE HELD:)

THE COURT: DID YOU REACH ANY AGREEMENT
ON "EDGE OF THE DOCUMENT"?

MR. JACOBS: I DON'T BELIEVE SO, YOUR
HONOR. FOR TWO REASONS, NUMBER ONE, AS IN OTHER
CASES I THINK WE URGE THE RESISTANCE TO TINKERING
AND "EDGE" HAS A CONNOTATION TO IT THAT WE THINK IS
IMPORTANT.

PROBABLY MORE IMPORTANTLY, I THINK THAT
AGREEMENT DOESN'T REALLY RESOLVE THE DISAGREEMENT
OR THE PROPOSED AGREEMENT WOULDN'T RESOLVE THE
DISAGREEMENT WHICH IS LESS ABOUT EDGE AND MORE
ABOUT ELECTRONIC DOCUMENT.

SAMSUNG BELIEVES THAT AN ELECTRONIC
DOCUMENT INCLUDES CONTENT WITHIN A DOCUMENT, AND WE
DISAGREE WITH THAT PROPOSITION.

SO I THINK THAT'S THE REASON WE HAVE NOT
REACHED CLOSURE.

THE COURT: OKAY. WELL, WHY NOT JUST
LEAVE THAT ISSUE FOR THE JURY TO SHOW THAT
DEMONSTRATION AND LET A JURY DECIDE IT?

MR. JACOBS: AND IN A SENSE I THINK
THAT'S WHERE WE'RE GOING. OUR PROPOSITION IS THAT

13:06:13 1 EDGE OF THE ELECTRONIC DOCUMENT COUPLED WITH THE
13:06:17 2 DEPENDENT CLAIMS THAT SAYS WHETHER THE DOCUMENT IS
13:06:21 3 A WEB PAGE, THE ELECTRONIC DOCUMENT IS A
13:06:27 4 PRESENTATION, THOSE DEPENDENT CLAIMS WILL BE IN
13:06:32 5 FRONT OF THE JURY AS WELL. IT IS BEST LEFT -- THE
13:06:35 6 ENTIRE PHRASE "EDGE OF AN ELECTRONIC DOCUMENT" IS
13:06:38 7 BEST LEFT TO ITS ORDINARY MEANING AND THEN LEFT TO
13:06:41 8 THE TRIAL.

13:06:41 9 NOW, IT MAY TURN OUT THAT IN THE COURSE
13:06:43 10 OF THE TRIAL IT BECOMES APPARENT TO YOUR HONOR THAT
13:06:45 11 ACTUALLY ONE SIDE OR THE OTHER URGES ON YOU THERE
13:06:48 12 IS REALLY A LEGAL ISSUE HERE OF CLAIM CONSTRUCTION
13:06:51 13 THAT YOU HAVE TO CALL. OUR PROPOSAL IS LET'S DEAL
13:06:56 14 WITH IT WHEN IT ARISES.

13:06:59 15 THE COURT: LET ME HEAR FROM SAMSUNG.

13:07:01 16 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

13:07:02 17 FIRST TO REPORT BACK, I HAVE CONFERRED
13:07:04 18 WITH OUR CLIENT AND WE WOULD BE PREPARED TO MODIFY
13:07:10 19 OUR CONSTRUCTION TO "A BOUNDARY OF THE ELECTRONIC
13:07:14 20 DOCUMENT," PERIOD, IF THAT'S HELPFUL TO YOUR HONOR.

13:07:17 21 THE COURT: OKAY.

13:07:18 22 MR. VERHOEVEN: AND I AGREE THERE IS
13:07:19 23 STILL A DISPUTE IN THAT EVEN THOUGH APPLE IS SAYING
13:07:23 24 THAT THEY'RE USING THE PLAIN AND ORDINARY MEANING,
13:07:26 25 THEY HAVE TOLD US THAT THEIR INTERPRETATION OF THIS

13:07:29 1 SUPPOSED PLAIN AND ORDINARY MEANING WOULD EXCLUDE
13:07:35 2 DOCUMENTS WITHIN DOCUMENTS THAT HAVE EDGES.

13:07:37 3 AND I DISAGREE WITH COUNSEL IN SAYING
13:07:43 4 THAT IT'S APPROPRIATE TO LET THIS GO TO THE JURY
13:07:45 5 UNDER THE '02 MICRO CASE, I'M SURE YOUR HONOR IS
13:07:48 6 FAMILIAR WITH IT, IF THERE IS A GENUINE DISPUTE
13:07:51 7 THAT IS MEANINGFUL, AND HERE THIS DISPUTE RELATES
13:07:52 8 TO SOME VALIDITY ISSUES WITH SOME PRIOR ART, IT'S
13:07:56 9 INCUMBENT UPON THE COURT TO RESOLVE INTERPRETATIONS
13:07:58 10 OF THE CLAIMS.

13:08:01 11 I HAD A CASE JUST RECENTLY IN THE FEDERAL
13:08:03 12 CIRCUIT LAST YEAR, COMPUTER, C.A.I.C. VERSUS YAHOO
13:08:10 13 WHERE THE JUDGE LET AN ISSUE THAT WASN'T EVEN
13:08:13 14 RAISED FORMALLY IN CLAIMS CONSTRUCTION, BUT IT WAS
13:08:15 15 RAISED BEFORE TRIAL, AND SAID WE'LL LET THE JURY
13:08:18 16 DECIDE THAT.

13:08:19 17 AND THE FEDERAL CIRCUIT REVERSED AND SAID
13:08:22 18 EVEN IN THAT SCENARIO IF THERE'S A MEANINGFUL
13:08:24 19 DISPUTE AS TO HOW TO INTERPRET THE WORDS, IT'S FOR
13:08:27 20 THE COURT TO DECIDE.

13:08:29 21 THE COURT: BUT I DON'T THINK YOUR
13:08:32 22 DEFINITION OR YOUR CONSTRUCTION SOLVES THAT ISSUE.

13:08:33 23 YOU CAN SAY "A BOUNDARY OF ELECTRONIC
13:08:36 24 DOCUMENT," AND WE'RE STILL GOING TO HAVE THAT SAME
13:08:38 25 ISSUE AT TRIAL AS TO WHETHER THAT STOPPED

13:08:41 1 APPLICATION.

13:08:42 2 MR. VERHOEVEN: WE BELIEVE THIS
13:08:44 3 CONSTRUCTION WOULD COVER INTERNAL EDGES OF
13:08:46 4 DOCUMENTS AND EXTERNAL EDGES OF DOCUMENTS, YOUR
13:08:49 5 HONOR, AND THAT'S WHY WE PROPOSED IT.

13:08:51 6 THE REASON WE DON'T HAVE A FRAMED ISSUE
13:08:56 7 SQUARELY IS BECAUSE WHAT APPLE IS DOING IS THEY'RE
13:08:58 8 SAYING NO CONSTRUCTION NECESSARY OR PLAIN AND
13:09:00 9 ORDINARY MEANING INSTEAD OF PROPOSING THE
13:09:02 10 CONSTRUCTION FORMALLY, AT LEAST, THAT THEY'RE
13:09:04 11 ACTUALLY INTERPRETING, WHICH IS TO INSERT, IN OUR
13:09:07 12 OPINION, THE LIMITATION IN THIS PLAIN CLAIM
13:09:10 13 LANGUAGE THAT IT HAS TO BE AN EXTERNAL OR OUTER
13:09:13 14 MOST EDGE OF AN ELECTRONIC DOCUMENT AND IT CAN'T
13:09:19 15 INCLUDE A DOCUMENT WITHIN A DOCUMENT THAT HAS ITS
13:09:21 16 OWN EDGES.

13:09:22 17 AND THEY HAVEN'T PUT THAT AS A FORMAL
13:09:24 18 CONSTRUCTION, BUT THEY'RE TELLING US THIS IS HOW
13:09:26 19 WE'RE GOING TO INTERPRET IT. AND THEY SHOULDN'T BE
13:09:29 20 ABLE TO AVOID HAVING THE COURT RULE ON THIS DISPUTE
13:09:33 21 SIMPLY BY NOT PROFFERING A CONSTRUCTION AT ALL AND
13:09:36 22 URGING THE COURT TO DEFER IT.

13:09:39 23 THE COURT: IS THE DISPUTE REALLY WHAT IS
13:09:41 24 THE CONSTRUCTION OF AN ELECTRONIC DOCUMENT MORE
13:09:45 25 THAN WHAT IS EDGE?

13:09:46 1 BECAUSE IF THAT'S THE CASE, NEITHER SIDE
13:09:48 2 HAS DEFINED ELECTRONIC DOCUMENT FOR ME.

13:09:55 3 MR. VERHOEVEN: I'LL TRY TO FRAME IT AS
13:09:56 4 BEST I CAN. I THINK THE DISPUTE IS WHETHER OR NOT
13:09:58 5 THIS LANGUAGE, THIS "EDGE OF ELECTRONIC DOCUMENT"
13:10:02 6 CAN READ ON A DOCUMENT WITHIN A DOCUMENT.

13:10:06 7 SO THE DISPUTE IS THAT YOU CAN TAKE THIS
13:10:08 8 EXACT CLAIM AND COULD YOU HAVE THIS BOUNCE BACK
13:10:15 9 FUNCTIONALITY, WITHIN, SAY YOU HAD A WEB PAGE, AND
13:10:17 10 THE SIMILAR THING I JUST SHOWED YOU, YOUR HONOR,
13:10:20 11 YOU HAD A PAGE OF AN APPLICATION AND WITHIN IT
13:10:22 12 THERE WERE TWO DIFFERENT SUB BOXES THAT WERE
13:10:25 13 SEPARATE DISPLAYS THAT HAD THEIR OWN BOUNCE BACK
13:10:28 14 FUNCTIONALITY.

13:10:29 15 AND THE QUESTION IS, IS IT APPROPRIATE TO
13:10:32 16 LIMIT AN EDGE OF ELECTRONIC DOCUMENT TO EXCLUDE
13:10:37 17 THOSE INTERNAL DOCUMENTS THAT HAVE THEIR OWN EDGES
13:10:40 18 AND AS YOU SAW HAVE THEIR OWN BOUNCE BACK
13:10:43 19 FUNCTIONALITY?

13:10:44 20 THE COURT: WHAT DOES BOUNDARY ADD OVER
13:10:50 21 EDGE?

13:10:57 22 MR. VERHOEVEN: IT DOESN'T ADD MUCH, YOUR
13:10:59 23 HONOR.

13:11:00 24 FRANKLY, THE DISTINCTION HERE IS WHETHER
13:11:02 25 OR NOT IT'S APPROPRIATE TO INSERT UNDER THE GUISE

13:11:03 1 OF NO CONSTRUCTION NECESSARY OR UNDER PLAIN AND
13:11:08 2 ORDINARY MEANING ADDITIONAL WORDS TO THE EDGE OF
13:11:11 3 THE ELECTRONIC DOCUMENT TO SAY EXTERNAL OR OUTER
13:11:13 4 MOST EDGE OF A DOCUMENT THAT DOES NOT INCLUDE
13:11:15 5 SUBDOCUMENTS.

13:11:16 6 AND THAT'S WHAT THEY ARE, UNDER THE GUISE
13:11:18 7 OF INTERPRETING THE PLAIN LANGUAGE, THAT'S WHAT
13:11:20 8 THEY'RE SAYING THAT THAT MEANS.

13:11:22 9 AND WE'RE SAYING THIS MEANS WHAT IT SAYS.

13:11:24 10 WE HAVE TRIED TO PROPOSE A CONSTRUCTION
13:11:27 11 THAT WE BELIEVE IS THE PLAIN AND ORDINARY MEANING.

13:11:29 12 SO I THINK WE ACTUALLY HAVE, IN MY VIEW,
13:11:31 13 YOUR HONOR, THE OUTWARD APPEARANCE OF APPLE SAYING
13:11:37 14 WE'RE JUST DOING PLAIN AND ORDINARY MEANING AND
13:11:39 15 WE'RE PROPOSING A CONSTRUCTION, BUT IN REALITY,
13:11:42 16 WE'RE ATTEMPTING TO GET THE COURT AND HELP THE
13:11:46 17 COURT DEFINE THE PLAIN AND ORDINARY MEANING.

13:11:48 18 AND WHAT APPLE IS DOING UNDER THE GUISE
13:11:50 19 OF PLAIN AND ORDINARY MEANING NOT PROPOSING ANY
13:11:53 20 CONSTRUCTION AND SAYING IN THE ARGUMENT OF THEIR
13:11:56 21 BRIEF THAT THIS EXCLUDES, AND I'VE HEARD IT SEVERAL
13:11:58 22 TIMES TODAY, THIS EXCLUDES HAVING AN EDGE OF A
13:12:00 23 DOCUMENT WITHIN A DOCUMENT THAT HAS BOUNCE BACK
13:12:02 24 FUNCTIONALITY.

13:12:04 25 MR. JACOBS: MAY I, YOUR HONOR?

13:12:06 1 THE COURT: WHY DO YOU OPPOSE A BOUNDARY
13:12:09 2 OF ELECTRONIC DOCUMENT?

13:12:10 3 MR. JACOBS: WHY?

13:12:11 4 THE COURT: UH-HUH.

13:12:12 5 MR. JACOBS: THE CLAIM LANGUAGE IS EDGE
13:12:14 6 AND THE EDGE TO US HAS AN EDGE TO IT.

13:12:17 7 IT HAS A CONNOTATION OF BEING OF
13:12:21 8 SOMETHING YOU WOULD FALL OFF OF IF YOU REACHED IT.

13:12:24 9 AND THAT'S CLOSER, THAT'S MUCH CLOSER TO
13:12:26 10 THE ILLUSTRATION IN THE SPECIFICATION THAT IS
13:12:28 11 CLOSER TO THE WAY THAT IT ACTUALLY IS IMPLEMENTED
13:12:31 12 AND IT DEALS A LITTLE BIT WITH THIS QUESTION THAT
13:12:34 13 MR. VERHOEVEN IS RAISING OF DOCUMENTS WITHIN
13:12:39 14 DOCUMENTS.

13:12:41 15 IF I CAN RESPOND SLIGHTLY BRIEFLY TO HIS
13:12:45 16 COMMENTS?

13:12:45 17 THE COURT: BRIEFLY.

13:12:48 18 MR. JACOBS: THE DEFINITION HAS NOW
13:12:49 19 CHANGED. THE PROPOSED DEFINITION IS "CONTENT."
13:12:53 20 NOW IT'S SUBDOCUMENTS WITHIN DOCUMENTS. THE
13:12:55 21 CHALLENGE HE WAS RAISING WITH HIS ANIMATION WAS TO
13:12:59 22 DOCUMENTS WITHIN APPLICATIONS.

13:13:00 23 SO WE'RE NOT BEING REALLY CLEAR ON THE
13:13:03 24 SAMSUNG SIDE EXACTLY WHAT THEY'RE URGING.

13:13:06 25 THAT VIDEO THAT MR. VERHOEVEN SHOWED OF

13:13:09 1 THE IPHONE AND THAT STOCK APPLICATION IS PERFECTLY
13:13:12 2 CONSISTENT WITH OUR PROPOSED CONSTRUCTION.

13:13:13 3 THE END OF THE LIST WAS THE EDGE OF THE
13:13:16 4 DOCUMENT.

13:13:17 5 THE END -- WHEN THE END OF THE LIST WAS
13:13:20 6 REACHED, RUBBERBANDING OCCURRED.

13:13:23 7 THE DEPENDENT CLAIMS STATE THAT THE
13:13:26 8 ELECTRONIC DOCUMENT CAN BE A LIST. SO WE'RE ALL --
13:13:31 9 THAT'S PERFECTLY IN ALIGNMENT.

13:13:33 10 THE CLAIM CONSTRUCTION DISPUTE IN THAT
13:13:35 11 CASE IS OVER WHETHER AN ELECTRONIC DOCUMENT
13:13:39 12 INCLUDES DATA. THAT'S WHAT THE RESPONDENT IS
13:13:43 13 ARGUING THERE. AND WE SAY, NO, AN ELECTRONIC
13:13:45 14 DOCUMENT IS A DOCUMENT.

13:13:46 15 IT IS, BY EXAMPLE, A WEB PAGE, AN IMAGE
13:13:50 16 ON A STAND-ALONE BASIS NOT IMBEDDED WITHIN A WEB
13:13:54 17 PAGE AS WE DISCUSSED EARLIER.

13:13:55 18 AND I THINK WE COME BACK TO WHERE YOU
13:13:58 19 STARTED. I THINK THIS CAN GO TO THE JURY AND IF
13:14:00 20 THE JURY NEEDS TO BE INSTRUCTED AT THE END OF THE
13:14:02 21 TRIAL ON A LEGAL ISSUE THAT YOUR HONOR CONCLUDES
13:14:06 22 BASED ON ARGUMENTS BY OTHER SIDES, THEN THAT CAN BE
13:14:09 23 DONE.

13:14:09 24 I DON'T THINK WE'RE ADVANCING THE BALL
13:14:11 25 RIGHT NOW IN THE ABSTRACT BY TRYING TO PUT MORE

13:14:13 1 WORDS INTO THIS CLAIM LANGUAGE.

13:14:15 2 THE COURT: SO YOUR POSITION IS THAT ON
13:14:20 3 THE ANIMATION THERE WERE TWO SEPARATE ELECTRONIC
13:14:22 4 DOCUMENTS SO THERE WERE TWO SEPARATE EDGES OF THE
13:14:26 5 ELECTRONIC DOCUMENT.

13:14:26 6 MR. JACOBS: THERE WERE MULTIPLE EDGES TO
13:14:29 7 THOSE ELECTRONIC DOCUMENTS, BUT THE FIRST PART WAS
13:14:30 8 RIGHT. IF I'M LOOKING AT THE ANIMATION FOR THE
13:14:33 9 FIRST TIME AND I SAW THE TOP --

13:14:35 10 MR. VERHOEVEN: WE CAN PUT IT UP.

13:14:37 11 MR. JACOBS: THAT WOULD BE FINE, BUT IT'S
13:14:39 12 A GOOD MOVE THOUGH.

13:14:41 13 I SAW THE TOP LIST SCROLL AND THE BOTTOM
13:14:44 14 LIST SCROLL, AND MR. VERHOEVEN DESCRIBED IT AS
13:14:46 15 SCROLLING WITHIN THE APPLICATION IMPLYING THAT WE
13:14:49 16 WERE ARGUING THAT THE APPLICATION OR THE FULL
13:14:51 17 SCREEN IS THE EDGE OF THE ELECTRONIC DOCUMENT,
13:14:53 18 WHICH IS NOT OUR ARGUMENT. IT DOESN'T HAVE TO BE
13:14:55 19 THE EDGE OF THE SCREEN, IT DOESN'T HAVE TO BE A
13:14:57 20 WHOLE APPLICATION WINDOW. IT DOES HAVE TO BE AN
13:15:02 21 ELECTRONIC DOCUMENT.

13:15:03 22 THE COURT: BUT YOU WERE SAYING -- YOUR
13:15:04 23 POSITION IS THAT THERE ARE TWO ELECTRONIC DOCUMENTS
13:15:07 24 ON THAT SCREEN?

13:15:09 25 MR. JACOBS: CORRECT, THAT'S THE WAY I

13:15:12 1 UNDERSTOOD IT.

13:15:12 2 THE COURT: WELL, CAN WE MOVE TO GLASS
13:15:15 3 MEMBER?

13:15:15 4 MR. JACOBS: YES.

13:15:16 5 THE COURT: THANK YOU. IT'S HELPFUL. IT
13:15:18 6 STILL MAKES IT PRETTY COMPLICATED FOR THE COURT,
13:15:20 7 BUT I APPRECIATE IT.

13:15:21 8 OKAY. CAN WE GO TO GLASS MEMBER? AND
13:15:25 9 THIS IS MY QUESTION, IT SEEMS LIKE IN THE PATENT
13:15:27 10 THERE ARE CONFLICTING STATEMENTS ON THE ONE HAND
13:15:30 11 SAYING A GLASS, A GLASS MEMBER CAN BE ANY SUITABLE
13:15:36 12 GLASS OR GLASS PLASTIC MEMBER BUT THEN ON THE OTHER
13:15:39 13 HAND IT SAYS NO GLASS, IS THAT RELATIVELY A THICK
13:15:42 14 CLEAR PIECE OF GLASS.

13:15:44 15 SO I DON'T THINK IT'S AS CLEAR AND
13:15:45 16 DELIBERATE ENOUGH FOR YOU TO SAY THAT YOUR INVENTOR
13:15:50 17 WAS HIS OR HER OWN LEXICOGRAPHER AND CAME UP WITH
13:15:54 18 THEIR OWN DEFINITION OF THAT.

13:15:55 19 I JUST DON'T THINK THAT IT'S THAT CLEAR.
13:15:58 20 IT'S AMBIGUOUS. SO WHAT AM I SUPPOSED TO DO IF
13:16:01 21 THEY'RE JUST CONFLICTING STATEMENTS?

13:16:05 22 MR. JACOBS: TWO -- A COUPLE OF
13:16:07 23 RESPONSES. FIRST, I THINK IT'S IMPORTANT
13:16:09 24 TO THINK OF THIS AS GLASS MEMBER AS A KIND OF A
13:16:15 25 COINED TERM IN THE PATENT.

13:16:18 1 GLASS MEMBER IS NOT AN EVERY DAY USAGE.
13:16:20 2 AND SO WHEN ONE ENCOUNTERS GLASS MEMBER, THERE'S AN
13:16:22 3 AMBIGUITY LURKING IN THAT PHRASE, WHICH IS, ARE WE
13:16:27 4 TALKING ABOUT GLASS, THE SUBSTANCE, OR ARE WE
13:16:29 5 TALKING ABOUT GLASS AS WE THINK ABOUT IT THROUGH
13:16:31 6 THE LOOKING GLASS, LET'S SAY, WHICH IS, I THINK,
13:16:35 7 NEUTRAL ON THE QUESTION OF WHAT THE LOOKING GLASS
13:16:38 8 IS COMPOSED OF.

13:16:39 9 MEMBER WE KNOW FROM READING LOTS OF
13:16:42 10 PATENTS TOGETHER. MEMBER IS USED TO DENOTE READING
13:16:47 11 A STRUCTURE. SO WE'RE TALKING ABOUT SOME KIND OF A
13:16:49 12 STRUCTURE THAT IS GLASS-LIKE IN SOME RESPECT.

13:16:52 13 SO I START WITH THAT, THAT WE'RE TALKING
13:16:54 14 ABOUT GLASS MEMBER THAT ITSELF DOES NOT HAVE AN
13:16:57 15 ORDINARY USAGE.

13:16:58 16 AND THEN WE READ THE SPECIFICATION TO TRY
13:17:01 17 AND GET THE CLEAREST, THE CLEAREST LANGUAGE ON WHAT
13:17:03 18 A GLASS MEMBER IS.

13:17:05 19 AND THERE ARE -- I THINK WE CAN DIVIDE
13:17:08 20 THOSE STATEMENTS INTO SEVERAL BUCKETS.

13:17:10 21 THERE ARE A LOT OF USAGES OF GLASS ON A
13:17:13 22 STAND-ALONE BASIS WITHOUT ASSOCIATION WITH GLASS
13:17:15 23 MEMBER.

13:17:16 24 THERE IS A -- I THINK I SPOTTED ONE GLASS
13:17:21 25 IN ASSOCIATION WITH GLASS MEMBER, WHICH I THINK

13:17:26 1 MAYBE IS THE ONE YOU'RE THINKING OF WHEN YOU RAISE
13:17:28 2 YOUR QUESTION.

13:17:28 3 AND THEN THERE IS THIS LANGUAGE, WHICH IS
13:17:30 4 IN, BY THE WAY, A SECTION ENTITLED "DETAILED
13:17:38 5 DESCRIPTION OF THE INVENTION." "DETAILED
13:17:42 6 DESCRIPTION OF THE INVENTION," I BELIEVE.

13:17:43 7 AND WE'RE GOING TO BE -- SO THIS IS AT
13:17:47 8 COLUMN 4. THAT'S THE HEADING.

13:17:50 9 AND WE'RE GOING TO -- I'M GOING TO BE
13:17:52 10 FOCUSING ON THESE HEADINGS A LITTLE BIT IN SOME OF
13:17:55 11 THE OTHER PATENTS. THIS IS DETAILED DESCRIPTION OF
13:17:57 12 THE INVENTION.

13:17:58 13 LATER ON WE'RE GOING TO SEE DESCRIPTION
13:18:00 14 OF PREFERRED EMBODIMENTS, AND I THINK THAT HAS SOME
13:18:03 15 IMPORTANCE TO IT.

13:18:04 16 HERE WE'RE TALKING ABOUT A DETAILED
13:18:06 17 DESCRIPTION OF THE INVENTION AND THEN WE HAVE THIS
13:18:09 18 LANGUAGE. SLIDE 42.

13:18:19 19 "FURTHERMORE, EACH OF THE LAYERS MAY BE
13:18:22 20 FORMED WITH VARIOUS MATERIALS. BY WAY OF EXAMPLE,
13:18:25 21 EACH PARTICULAR TYPE OF LAYER MAY BE FORMED FROM
13:18:27 22 THE SAME OR DIFFERENT MATERIAL. FOR EXAMPLE, ANY
13:18:29 23 SUITABLE GLASS OR PLASTIC MATERIAL MAY BE USED FOR
13:18:32 24 THE GLASS MEMBERS. IN A SIMILAR MANNER, ANY
13:18:36 25 SUITABLE BONDING AGENT MAY BE USED FOR THE BONDING

13:18:38 1 LAYERS."

13:18:39 2 NOW, I THINK THAT LANGUAGE HAS A COUPLE
13:18:41 3 OF -- THAT LANGUAGE HAS A COUPLE OF SIGNIFICANCES
13:18:51 4 TO IT. THE FIRST IS JUST THE PLAIN WORDS
13:18:55 5 THEMSELVES, "ANY SUITABLE GLASS OR PLASTIC MATERIAL
13:18:59 6 MAY BE USED FOR THE GLASS MEMBERS."

13:19:02 7 BUT WHAT THAT LANGUAGE IS ALSO TELLING US
13:19:05 8 THIS IS NOT -- WE'RE NOT DRAWING THE BOUNDARIES IN
13:19:08 9 THE INVENTION AROUND WHAT THE SUBSTANCE IS FOR THE
13:19:11 10 MEMBER, FOR THE GLASS MEMBER.

13:19:12 11 THIS IS NOT WHAT WE WANT YOU, PATENT
13:19:14 12 OFFICE, TO FOCUS ON WHEN YOU'RE DECIDING WHETHER OR
13:19:17 13 NOT THIS IS PATENTABLE OVER THE PRIOR ART.

13:19:19 14 WHAT IS GOING TO RENDER THIS PATENTABLE
13:19:22 15 OVER THE PRIOR ART IS OTHER ELEMENTS OF THE CLAIMS,
13:19:25 16 NOT THE LIMITATION OF GLASS MEMBER TO SOME
13:19:27 17 PARTICULAR GLASS SUBSTANCE.

13:19:29 18 THAT -- SO THERE ARE TWO LAYERS TO THAT
13:19:33 19 HERE. IT HAS SIGNIFICANCE IN TERMS OF JUST ARE WE
13:19:37 20 INFORMING THE READER WHAT GLASS MEMBER MEANS WHEN
13:19:40 21 GLASS MEMBER IS NOT A TERM THAT IS USED ORDINARILY
13:19:43 22 AND IT'S INFORMING THE EXAMINER -- WE'RE NOT
13:19:46 23 RESTING OUR CLAIM TO PATENTABILITY ON SOME
13:19:49 24 DISTINCTION OF GLASS OVER SOME OTHER CLEAR
13:19:51 25 SUBSTANCE.

13:19:55 1 THE COURT: THE PROBLEM IS THAT STATEMENT
13:19:57 2 THAT "GLASS MEMBERS ARE ALSO A PIECE OF CLEAR
13:20:05 3 GLASS" IS ALSO IN THE DETAILED DESCRIPTION OF THE
13:20:07 4 INVENTION.

13:20:08 5 MR. JACOBS: YES.

13:20:09 6 THE COURT: SO WHAT AM I SUPPOSED TO DO
13:20:11 7 IF THE DETAILED DESCRIPTION OF THE INVENTION HAS
13:20:14 8 SEEMINGLY CONFLICTING --

13:20:17 9 MR. JACOBS: OUR POSITION OR OUR ARGUMENT
13:20:19 10 IS THAT THIS LANGUAGE TRUMPS THE LANGUAGE I FOCUS
13:20:21 11 THE COURT ON AT COLUMN 16, 43 TO 49 TRUMPS.

13:20:26 12 THE COURT: WHY?

13:20:28 13 MR. JACOBS: BECAUSE IT IS THE LANGUAGE
13:20:29 14 THAT IS SAYING WHAT CAN YOU USE FOR THE "GLASS
13:20:31 15 MEMBERS."

13:20:31 16 I MAY HAVE USED "GLASS MEMBERS" EARLIER
13:20:34 17 IN MY SPECIFICATION, BUT HERE I'M TELLING YOU PLAIN
13:20:38 18 AND SIMPLE WHAT YOU CAN USE FOR THE GLASS MEMBERS,
13:20:40 19 AND I'M TELLING YOU GLASS OR PLASTIC.

13:20:46 20 IT'S NOT A GLANCING DESCRIPTION. IT'S
13:20:51 21 NOT AN IMBEDDED IN SOMETHING ELSE DESCRIPTION WHERE
13:20:55 22 THE WORD "GLASS" HAS TO BE USED. IT'S FRONT AND
13:21:00 23 CENTER, "ANY SUITABLE GLASS OR PLASTIC MATERIAL MAY
13:21:03 24 BE USED FOR THE GLASS MEMBERS."

13:21:05 25 THE COURT: LET ME ASK YOU WHERE IT SAYS,

13:21:08 1 "IN EITHER CASE THE GLASS MEMBER IS A RELATIVELY
13:21:08 2 THICK PIECE OF CLEAR GLASS," DO YOU THINK THAT
13:21:12 3 MEANS GLASS OR PLASTIC IN THAT SENTENCE?

13:21:16 4 MR. JACOBS: IN THAT SENTENCE? WHERE ARE
13:21:17 5 YOU, YOUR HONOR?

13:21:17 6 THE COURT: I'M AT COLUMN 12, LINES 38
13:21:24 7 THROUGH 41.

13:21:36 8 MR. JACOBS: IN THAT CASE, YOUR HONOR, I
13:21:37 9 THINK THE RIGHT INTERPRETATION IS THAT THAT IS
13:21:39 10 GLASS, THE GLASS, THE SUBSTANCE.

13:21:40 11 THE COURT: OKAY. ALL RIGHT. ANYTHING
13:21:43 12 ELSE ON THIS, OTHERWISE I'LL HEAR FROM
13:21:45 13 MR. VERHOEVEN?

13:21:46 14 MR. JACOBS: NO, YOUR HONOR.

13:21:47 15 THE COURT: OKAY. THANK YOU.

13:21:52 16 MR. VERHOEVEN: CAN WE GO TO SLIDE 20,
13:21:54 17 PLEASE. I'M GOING TO ANSWER YOUR HONOR'S PRECISE
13:21:57 18 QUESTION TO MY OPPOSING COUNSEL IF I MAY?

13:21:59 19 WHAT DO YOU DO IF IT'S AMBIGUOUS? UNDER
13:22:02 20 NINTH CIRCUIT LAW, "TO THE EXTENT THE CLAIM IS
13:22:04 21 AMBIGUOUS, A NARROW READING WHICH EXCLUDES THE
13:22:11 22 AMBIGUOUSLY COVERED SUBJECT MATTER MUST BE
13:22:17 23 ADOPTED."

13:22:17 24 AND THAT'S THE CASE WE HAVE HERE, YOUR
13:22:33 25 HONOR.

13:22:33 1 IF I MAY GO TO SLIDE 7, PLEASE. OH, I
13:22:37 2 NEGLECTED TO HAND THESE UP.

13:22:40 3 THE COURT: OH, OKAY.

13:22:42 4 MR. VERHOEVEN: I'M GOING TO HAND ALL OF
13:22:44 5 THESE UP.

13:22:45 6 THE COURT: THAT WOULD BE GREAT.

13:23:04 7 MR. VERHOEVEN: THESE ARE ALL OF THE
13:23:05 8 REMAINING TERMS.

13:23:06 9 THE COURT: OKAY. THANK YOU.

13:23:08 10 MR. VERHOEVEN: IT'S NOT ON THE TOP, YOUR
13:23:10 11 HONOR. I APOLOGIZE.

13:23:11 12 THE COURT: THANK YOU. I'VE GOT IT.

13:23:18 13 MR. VERHOEVEN: SO WHAT I WOULD LIKE TO
13:23:19 14 DO HERE, YOUR HONOR, ON SLIDE 7, I HAVE PULLED OUT
13:23:22 15 THE TWO SENTENCES THAT APPLE IS RELYING ON.

13:23:27 16 AND I NOTE, BY THE WAY, THEY BOTH START
13:23:30 17 WITH "BY WAY OF EXAMPLE" OR "FOR EXAMPLE" WHICH IS
13:23:35 18 NOT LANGUAGE THAT IS DEFINITIONAL.

13:23:37 19 BUT I WANT TO TAKE A LOOK AT THE CONTEXT
13:23:39 20 IN WHICH THIS APPEARS.

13:23:40 21 SO IF WE GO TO SLIDE 8, THIS IS THE IN
13:23:46 22 THE CONTEXT OF THIS LARGER DISCUSSION IN COLUMNS 15
13:23:48 23 AND 16, YOU CAN'T READ IT YET, I'M JUST
13:23:51 24 HIGHLIGHTING IT THERE.

13:23:51 25 THIS IS A DISCUSSION OF FIGURE 10.

13:23:56 1 SO IF YOU GO TO SLIDE 9, I'VE PULLED OUT
13:23:59 2 THE FIRST SENTENCE OF THAT DISCUSSION. AND YOU SEE
13:24:12 3 IT SAYS, "FIGURE 10 IS A PARTIAL FRONT ELEVATION
13:24:17 4 VIEW, IN CROSS SECTION OF A DISPLAY ARRANGEMENT 170
13:24:21 5 IN ACCORDANCE WITH ONE EMBODIMENT OF THE PRESENT
13:24:26 6 INVENTION."

13:24:27 7 AND THIS WHOLE DISCUSSION IS BASICALLY OF
13:24:29 8 FIGURE 10.

13:24:30 9 WE'RE GOING TO THE NEXT SLIDE JUST TO
13:24:31 10 SHOW YOU FIGURE 10. AND THAT'S WHAT IT LOOKS LIKE.
13:24:35 11 THIS IS FIGURE 10. IT'S A VERY SPECIFIC STRUCTURE
13:24:39 12 THAT HAS SPECIFIC LAYERS. THIS IS SLIDE 10.

13:24:43 13 AND IF WE GO TO THE NEXT SLIDE, SLIDE 11,
13:24:47 14 FROM COLUMN 15:24 THROUGH COLUMN 16:33 THE PATENTEE
13:24:58 15 WALKS US THROUGH THAT STRUCTURE THAT IS ILLUSTRATED
13:25:00 16 IN FIGURE 10 AND UNIFORMLY DESCRIBES THAT
13:25:06 17 PARTICULAR STRUCTURE, THE THREE LAYERS THAT ARE
13:25:08 18 TRANSPARENT AS GLASS.

13:25:12 19 SO IT TALKS ABOUT A FIRST GLASS MEMBER,
13:25:14 20 178. AND IT TALKS ABOUT A SECOND GLASS MEMBER,
13:25:18 21 182.

13:25:19 22 AND IF WE TOGGLE BACK TO FIGURE 10 HERE,
13:25:22 23 YOU CAN SEE HERE THEY'RE IDENTIFIED BY NUMBER.

13:25:24 24 AND GOING BACK TO SLIDE 11, IT UNIFORMLY
13:25:29 25 DESCRIBES THIS PARTICULAR EMBODIMENT AS HAVING

13:25:32 1 GLASS AS THE TRANSPARENT LAYERS .

13:25:36 2 AND I'M NOT GOING TO READ THE WHOLE
13:25:38 3 THING, YOUR HONOR.

13:25:41 4 BUT THE LAST PARAGRAPH, YOUR HONOR,
13:25:44 5 BEFORE IT STARTS TALKING ABOUT FIGURE 11 IS WHERE
13:25:50 6 THE LANGUAGE THAT APPLE TALKS ABOUT IS PULLED OUT.

13:25:54 7 SO I'M GOING TO GO TO SLIDE 12, IF I MAY.

13:25:58 8 AND HERE AT SLIDE 12 WE PULLED OUT THE
13:26:01 9 LAST PARAGRAPH AND THIS IS, IF YOU READ THROUGH
13:26:08 10 THIS, YOUR HONOR, YOU'LL SEE THAT STARTING WITH
13:26:11 11 THIS PARAGRAPH, THEY STOP TALKING ABOUT THE
13:26:14 12 SPECIFIC STRUCTURE OF FIGURE 10 AND THEY ARE
13:26:18 13 BASICALLY SAYING, YOU CAN TAKE FIGURE 10 AND DO IT
13:26:21 14 A WHOLE BUNCH OF DIFFERENT WAYS.

13:26:23 15 SO THEY SAY, "WITH REGARDS TO
13:26:26 16 CONFIGURATION, EACH OF THE VARIOUS LAYERS MAY BE
13:26:30 17 FORMED WITH VARIOUS SIZES, SHAPES, AND THE LIKE.
13:26:34 18 FOR EXAMPLE, EACH OF THE LAYERS MAY HAVE THE SAME
13:26:37 19 THICKNESS OR A DIFFERENT THICKNESS THAN THE OTHER
13:26:39 20 LAYERS IN THE STRUCTURE. IN THE ILLUSTRATED
13:26:42 21 EMBODIMENT, THE FIRST GLASS MEMBER HAS A THICKNESS
13:26:45 22 OF ABOUT 1.1 MILLIMETER," AND IT GOES ON TO TALK
13:26:48 23 ABOUT THE SPECIFIC THICKNESSES.

13:26:49 24 AND THEN IN THE NEXT HIGHLIGHTED SECTION
13:26:54 25 IT SAYS, "FURTHERMORE, EACH OF THE LAYERS MAY BE

13:26:57 1 FORMED WITH VARIOUS MATERIALS."

13:26:59 2 SO IT'S SAYING WE HAVE JUST DESCRIBED A
13:27:02 3 SPECIFIC EMBODIMENT THAT HAS GLASS MEMBER, BUT YOU
13:27:07 4 CAN DO THIS A DIFFERENT WAY SO EACH OF THE LAYERS
13:27:12 5 FORM VARIOUS MATERIALS. "BY WAY OF AN EXAMPLE,
13:27:15 6 EACH PARTICULAR TYPE OF LAYER MAY BE FORMED FROM
13:27:17 7 THE SAME OR DIFFERENT MATERIAL."

13:27:21 8 THAT'S SAYING YOU CAN USE PLASTIC FOR ONE
13:27:23 9 LAYER AND GLASS FOR ANOTHER.

13:27:25 10 AND THEN IT CONTINUES, "FOR EXAMPLE, ANY
13:27:28 11 SUITABLE GLASS OR PLASTIC MATERIAL MAY BE USED FOR
13:27:30 12 THE GLASS MEMBERS."

13:27:32 13 NOW, I WOULD SUBMIT, YOUR HONOR, WHEN
13:27:34 14 READ IN CONTEXT, WHAT THAT IS SAYING IS THAT THE
13:27:37 15 ANTECEDENT OF THE GLASS MEMBER THERE IS FIGURE 10,
13:27:41 16 AND IT'S SAYING PROPERLY CONSTRUED, YOU COULD USE
13:27:44 17 ANY SUITABLE GLASS FOR THAT OR YOU CAN USE ANY
13:27:46 18 SUITABLE PLASTIC FOR THAT. THAT IS NOT
13:27:50 19 DEFINITIONAL.

13:27:50 20 THAT'S NOT SAYING AS USED IN THIS PATENT,
13:27:53 21 GLASS MEMBER MEANS GLASS AND PLASTIC AND ESPECIALLY
13:27:58 22 WHEN WHAT YOUR HONOR POINTED OUT THERE'S ANOTHER
13:28:00 23 PLACE WHERE THEY SAID, USED THE WORD "IS," THE
13:28:04 24 GLASS MEMBER IS MADE OF CLEAR GLASS, AND COUNSEL
13:28:07 25 ADMITS THAT'S GLASS, WHICH IS INCONSISTENT WITH THE

13:28:09 1 READING OF THIS.

13:28:14 2 ANOTHER THING I WOULD LIKE TO POINT OUT,
13:28:16 3 YOUR HONOR, IS IF YOU LOOK AT THE CLAIMS, AND IF
13:28:18 4 YOU GO TO SLIDE 5, PLEASE.

13:28:24 5 HERE YOU SEE FURTHER EVIDENCE THAT "GLASS
13:28:26 6 MEMBER" DOES NOT MEAN "ANY SUITABLE GLASS OR
13:28:29 7 PLASTIC MATERIAL" BECAUSE IN THE CLAIMS, THE TWO
13:28:32 8 INDEPENDENT CLAIMS HERE, CLAIM 1 IS MUCH BROADER
13:28:36 9 AND IS CLAIMED TO COVER ANY SUITABLE MATERIAL.

13:28:39 10 SO IT TALKS ABOUT A TOUCH PANEL
13:28:41 11 COMPRISING A TRANSPARENT CAPACITIVE SENSING MEDIUM.

13:28:46 12 THAT MEANS IT CAN BE ANY TRANSPARENT
13:28:48 13 ISOLATING MATERIAL.

13:28:49 14 AND THEN IT JUST TALKS ABOUT A FIRST
13:28:51 15 LAYER AND A SECOND LAYER. IT DOESN'T SPECIFY
13:28:58 16 WHETHER IT'S GLASS OR PLASTIC.

13:28:59 17 SO IN CLAIM 1 THE PATENTEE WROTE THE
13:29:03 18 CLAIM TO COVER GLASS AND PLASTIC.

13:29:05 19 IN CONTRAST, IN CLAIM 10, THE CLAIM WAS
13:29:08 20 LIMITED SPECIFICALLY TO GLASS, A GLASS MEMBER, THE
13:29:12 21 FIRST GLASS MEMBER, THE SECOND GLASS MEMBER, A
13:29:15 22 THIRD GLASS MEMBER. IT LOOKS A LOT LIKE FIGURE 10.

13:29:19 23 SO THE CLAIMS SUPPORT THE INTERPRETATION
13:29:23 24 THAT I'M TALKING ABOUT, YOUR HONOR, THAT CLAIM 10
13:29:27 25 IS TALKING ABOUT GLASS, AND CLAIM 1 IS TALKING

13:29:31 1 ABOUT THAT LAST PARAGRAPH WHERE YOU COULD USE ANY
13:29:34 2 SUITABLE MATERIAL AS LONG AS IT'S TRANSPARENT.

13:29:47 3 NOW, IF WE CAN GO TO SLIDE 13, I'LL TRY
13:29:50 4 TO BE BRIEF ON THIS, YOUR HONOR, THERE ARE OTHER
13:29:52 5 PLACES IN THE PATENT WHERE THE PATENTEE USED
13:29:56 6 BROADER PHRASES TO ENCOMPASS BOTH GLASS AND
13:29:59 7 PLASTIC.

13:30:00 8 SO, FOR EXAMPLE, IN COLUMN 10, LINES 39
13:30:03 9 THROUGH 40 IT REFERS TO THE OPTICALLY TRANSMISSIVE
13:30:08 10 MEMBER IS FORMED FROM A CLEAR MATERIAL SUCH AS
13:30:11 11 GLASS OR PLASTIC.

13:30:12 12 AT COLUMN 12, LINE 60 THROUGH 62, "THE
13:30:17 13 PROTECTIVE COVER SHEET MAY BE FORMED FROM ANY
13:30:20 14 SUITABLE CLEAR MATERIAL SUCH AS GLASS OR PLASTIC."

13:30:22 15 THEY WOULDN'T BE SAYING THIS IF THEY
13:30:24 16 INTENDED TO DEFINE GLASS MEMBER TO BE GLASS OR
13:30:27 17 PLASTIC. IT WOULD BE REDUNDANT. IT WOULDN'T MAKE
13:30:29 18 ANY SENSE.

13:30:30 19 IF YOU GO TO SLIDE 15, PLEASE.

13:30:34 20 THIS IS ANOTHER PLACE THAT YOUR HONOR WE
13:30:37 21 BELIEVE IS SPOTTED ON, COLUMN 12, LINE 35 THROUGH
13:30:43 22 41.

13:30:43 23 "THE TOUCHSCREEN INCLUDES A TRANSPARENT
13:30:47 24 ELECTRODE LAYER THAT IS POSITIONED OVER A GLASS
13:30:49 25 MEMBER. THE GLASS MEMBER MAY BE A PORTION OF THE

13:30:52 1 LCD DISPLAY OR IT MAY BE A PORTION OF THE
13:30:54 2 TOUCHSCREEN. IN EITHER CASE, THE GLASS MEMBER IS A
13:30:57 3 RELATIVELY," IS, IS MUCH MORE DEFINITIONAL, YOUR
13:31:02 4 HONOR, THAN "FOR EXAMPLE," AND "MAY."

13:31:06 5 IT SAYS, "IS A RELATIVELY THICK PIECE OF
13:31:11 6 CLEAR GLASS," WHICH COUNSEL HAS ADMITTED THAT'S
13:31:15 7 REFERRING TO GLASS NOT PLASTIC.

13:31:17 8 THIS IS A MORE DEFINITIONAL STATEMENT
13:31:18 9 ACTUALLY THAN THE ONE THEY POINT TO WHICH USES THE
13:31:20 10 WORD "FOR EXAMPLE" AND "MAY" WHICH I BELIEVE YOU
13:31:23 11 COULD INTERPRET THE WORD "FOR" IN THAT SENTENCE TO
13:31:25 12 MEAN "IN PLACE OF." IN PLACE OF THE GLASS MEMBER
13:31:28 13 IN FIGURE 10.

13:31:29 14 THE FINAL POINT ON THIS, YOUR HONOR, IF I
13:31:36 15 MAY, GO TO SLIDE 21, PLEASE.

13:31:45 16 I BELIEVE IN APPLE'S IN TERMS OF THE CASE
13:31:48 17 LAW CITED BY APPLE, THE ONLY CASE THEY CITE, I
13:31:52 18 THINK, IT'S AN UNREPORTED DISTRICT COURT CASE
13:31:56 19 TRANSWEB VERSUS 3M, AND IT CLAIMS THAT THAT
13:32:01 20 LANGUAGE THERE IS ANALOGOUS TO THE LANGUAGE IN THIS
13:32:06 21 CASE BUT TRANSWEB IS CLEARLY NOT APPOSITE.

13:32:11 22 TRANSWEB IS CLEARLY USING I.E. NOW,
13:32:16 23 I.E.: THAT IS. WHAT DO WE HAVE HERE? WE HAVE
13:32:19 24 "FOR EXAMPLE." WHAT IS FOR EXAMPLE? FOR EXAMPLE
13:32:22 25 IS E.G., NOT I.E. AND THERE'S NO CASE SAYING THAT

13:32:25 1
13:32:29 2
13:32:33 3
13:32:34 4
13:32:36 5
13:32:37 6
13:32:39 7
13:32:43 8
13:32:45 9
13:32:48 10
13:32:51 11
13:32:54 12
13:32:57 13
13:33:00 14
13:33:03 15
13:33:06 16
13:33:07 17
13:33:08 18
13:33:09 19
13:33:11 20
13:33:15 21
13:33:25 22
13:33:30 23
13:33:31 24
13:33:34 25

THE USE OF E.G. IS DEFINITIONAL.

SO THIS DOES NOT SUPPORT, WE WOULD
SUBMIT, YOUR HONOR, THIS ARGUMENT.

AND WITH THAT I'LL SIT DOWN UNLESS YOU
HAVE ANY FURTHER QUESTIONS.

THE COURT: NO THANK YOU. OKAY. JUST
VERY BRIEFLY IF YOU'RE GOING TO SAY ANYTHING.

MR. JACOBS: I THINK ACTUALLY THE MORE WE
READ IT, THE MORE OUR VIEW IS REINFORCED.

THAT LANGUAGE THAT WE'RE FOCUSSING ON IS
LANGUAGE WHERE THE DRAFTSMAN OF THE PATENT SAYS
THAT I KNOW I DESCRIBED A PARTICULAR EMBODIMENT OR
PARTICULAR EMBODIMENTS IN THIS PATENT, BUT DON'T
READ MY USAGE OF THE WORD "GLASS" IN "GLASS MEMBER"
AS A LIMITATION TO "GLASS." THAT'S WHAT THAT
PARAGRAPH IS ALL ABOUT.

THE COURT: AND WHICH PARAGRAPH ARE YOU
REFERRING?

MR. JACOBS: THE ONE WE'RE FOCUSSING ON
IN THE --

THE COURT: COLUMN 16, LINES 43 THROUGH
49?

MR. JACOBS: COLUMN 16, YES. SO THAT'S
THE PLACE WHERE THE DRAFTSMAN SAYS, YOU KNOW, I
BETTER REALLY MAKE IT CLEAR BECAUSE I'M USING --

13:33:37 1 AROUND THIS APPLICATION I'M USING THE WORD "GLASS"
13:33:41 2 AND HERE'S WHAT I MEAN BY THAT. I DON'T MEAN GLASS
13:33:44 3 AND GLASS MEMBER, AND I DON'T MEAN THE SUBSTANCE
13:33:46 4 GLASS. I MEAN ANY SUITABLE PLASTIC OR GLASS THAT
13:33:49 5 WILL SERVE THE PURPOSE OF THE GLASS MEMBER THAT I
13:33:51 6 HAVE DESCRIBED.

13:34:03 7 THE COURT: OKAY. LET'S GO TO THE NEXT
13:34:04 8 ONE. DO YOU WANT TO DO PIXEL OR --

13:34:08 9 MR. JACOBS: SURE. SO LET ME GO TO 44,
13:34:15 10 PLEASE.

13:34:19 11 THE HEART OF THE ISSUE HERE, YOUR HONOR,
13:34:20 12 IS THAT A PIXEL IS BEING USED IN A DIFFERENT WAY IN
13:34:24 13 THIS PATENT AND IN THE '828 PATENT THAN IT IS USED
13:34:29 14 ORDINARILY IN, FOR EXAMPLE, DISPLAY ARTS OR PHOTO
13:34:36 15 SENSITIVE DEVICES.

13:34:42 16 AND WE THINK IT IS IMPORTANT TO CLARIFY
13:34:44 17 THAT BECAUSE THERE IS A POTENTIAL FOR CONFUSION
13:34:46 18 WHEN THE JURY HEARS THE WORD "PIXEL" IF ANY OF THEM
13:34:50 19 ARE TECHNICALLY ASTUTE AND THEY HAVE NOT READ THE
13:34:53 20 SPECIFICATION, THEY MAY NOT GRASP THAT PIXEL HERE
13:34:56 21 IS BEING USED A LITTLE BIT DIFFERENTLY.

13:34:57 22 SO I THINK WE SHOULD START WITH THE CLAIM
13:35:00 23 LANGUAGE. AS I MENTIONED AT THE OUTSET, THIS IS A
13:35:03 24 CASE WHERE THE CLAIM LANGUAGE HELPS US A GREAT DEAL
13:35:05 25 IN UNDERSTANDING WHAT THE WORD MEANS.

13:35:07 1 WE'RE GOING TO RECEIVE AT LEAST ONE
13:35:11 2 PROXIMITY IMAGE REPRESENTING A SCAN OF A PLURALITY
13:35:16 3 OF ELECTRODES OF THE TOUCH SENSITIVE SURFACE.

13:35:19 4 SO WE KNOW TO BEGIN WITH THAT WE'RE
13:35:21 5 TALKING ABOUT ELECTRODES ON A TOUCH SENSITIVE
13:35:24 6 SURFACE NOT LIKE A CLASSIC DISPLAY PIXEL LIKE AN
13:35:29 7 LCD PIXEL THAT WE'RE ALL FAMILIAR WITH WHEN YOU GET
13:35:34 8 GRANULATED SCREEN.

13:35:34 9 AND THEN WE'RE GOING TO SEGMENT EACH
13:35:36 10 PROXIMITY IMAGE INTO ONE OR MORE PIXEL GROUPS THAT
13:35:38 11 INDICATES SIGNIFICANT PROXIMITY. EACH PIXEL GROUP
13:35:42 12 REPRESENTING PROXIMITY OF A DISTINGUISHABLE HAND
13:35:45 13 PART, ET CETERA.

13:35:46 14 SO WE'RE GOING TO PICK UP SIGNALS FROM
13:35:48 15 THE ELECTRODES AND THEN WE'RE GOING TO SEGMENT THAT
13:35:50 16 IMAGE INTO PIXEL GROUPS.

13:35:52 17 THE COURT: CAN I STOP YOU HERE A SECOND?

13:35:55 18 MR. JACOBS: YOU BET.

13:35:55 19 THE COURT: WOULD BOTH SIDES, AND I'M
13:35:58 20 THROWING THIS OUT, AGREE THAT THE SMALLEST
13:36:00 21 DISCERNIBLE PART OF A PROXIMITY IMAGE. SO IT'S
13:36:04 22 ADDING PROXIMITY TO IMAGE.

13:36:07 23 MR. VERHOEVEN: WE WOULD, YOUR HONOR.

13:36:08 24 THE COURT: AND WOULD YOU AGREE?

13:36:10 25 MR. JACOBS: WE DO NOT.

13:36:10 1 THE COURT: WHY IS THAT?

13:36:11 2 MR. JACOBS: AND I'M NOT SURE,
13:36:12 3 DISCERNIBLE BY WHAT? DISCERNIBLE TO THE EYE?
13:36:16 4 DISCERNIBLE TO THE ELECTRONICS TO THE SYSTEM?
13:36:21 5 DISCERNIBLE TO AN ELECTRON MICROSCOPE THAT IS
13:36:24 6 ANALYZING THE SUBSTANCE?

13:36:25 7 SO WE THINK THAT DISCERNABLE ADDS A LOT
13:36:30 8 OF CONFUSION. AND IN THIS CASE I THINK
13:36:38 9 UNAMBIGUOUSLY WE HAVE DEFINITIONAL LANGUAGE IN THE
13:36:38 10 PATENT.

13:36:42 11 AT COLUMN 18, 1 THROUGH 15 ON SLIDE 48 WE
13:36:44 12 HAVE PIXEL IN QUOTES. SO "THE PROXIMITY DATA
13:36:47 13 MEASURED AT ONE ELECTRODE DURING A PARTICULAR SCAN
13:36:50 14 CYCLE CONSTITUTES ONE 'PIXEL' OF THE PROXIMITY
13:36:54 15 IMAGE CAPTURED IN THAT SCAN CYCLE."

13:36:56 16 SO THE PATENTEE COULD NOT HAVE BEEN
13:36:59 17 CLEARER HERE ABOUT WHAT IT WAS REFERRING TO WHEN IT
13:37:01 18 USED THE WORD "PIXEL."

13:37:03 19 AND THEN, OF COURSE, IF WE GO A LITTLE
13:37:06 20 DEEPER INTO THE SPECIFICATION WE SEE THE PROXIMITY
13:37:09 21 DATA BEING CAPTURED AS PIXELS. AND ON --

13:37:13 22 THE COURT: SORRY.

13:37:14 23 SO FOR YOUR CONSTRUCTION, ARE YOU SAYING
13:37:16 24 THAT PIXEL CORRESPONDS TO THE PROXIMITY DATA
13:37:19 25 MEASURED AT ONE ELECTRODE AND THEN PIXEL GROUP IS

13:37:23 1 THE PROXIMITY DATA MEASURED AT MORE ELECTRODES, OR
13:37:30 2 WHEN DO YOU GO FROM ONE TO MORE?

13:37:32 3 MR. JACOBS: SO I SHOULD REPORT THAT WE
13:37:34 4 DID REACH AGREEMENT THAT I HOPE WILL SIMPLIFY THIS
13:37:36 5 AND THAT WE'RE NOT URGING A CONSTRUCTION OF "PIXEL
13:37:39 6 GROUPS" AT THIS TIME.

13:37:39 7 IF WE GET A CONSTRUCTION OF "PIXEL" THEN
13:37:42 8 "GROUP" WILL FOLLOW NATURALLY. I BELIEVE I'M
13:37:47 9 ACCURATELY RECITING AND SAMSUNG IS COMFORTABLE ALSO
13:37:50 10 PROCEEDING JUST TO DEFINE PIXEL.

13:37:52 11 MR. VERHOEVEN: WE ARE FINE WITH THAT.
13:37:54 12 SO THE PHRASE TO BE CONSTRUED NOW WILL BE PIXEL.

13:37:59 13 THE COURT: NOW, AM I JUST KICKING THE
13:38:01 14 CAN DOWN THE ROAD AND THEN YOU WOULD FIGHT WHETHER
13:38:05 15 A "GROUP" IS ONE OR MORE? I WAS JUST GOING TO DO
13:38:07 16 PLAIN AND ORDINARY MEANING OF "GROUP."

13:38:10 17 MR. JACOBS: THAT'S FINE.

13:38:11 18 MR. VERHOEVEN: THAT'S FINE.

13:38:17 19 THE COURT: BUT ARE WE GOING TO FIGHT
13:38:18 20 ABOUT WHAT "GROUP" MEANS? I DON'T WANT US TO THEN
13:38:21 21 HAVE A WHOLE FIGHT ABOUT WHAT "GROUP" MEANS AT
13:38:23 22 TRIAL.

13:38:27 23 MR. JACOBS: WE'RE NOT SURE WHERE THEY'RE
13:38:29 24 GOING ON THIS ISSUE YET, YOUR HONOR. SO IT'S A
13:38:30 25 LITTLE HARD FOR US TO TELL WHETHER THIS IS REAL.

13:38:32 1 BUT I THINK ONE REASON WE'RE COMFORTABLE
13:38:35 2 WITH THIS IS THAT GROUP CONNOTES MORE THAN JUST A
13:38:38 3 NUMERICAL ASPECT TO THIS. "GROUP" CONNOTES A
13:38:38 4 GROUPING, A TOGETHERNESS, A CO-RELATIONSHIP, AND
13:38:41 5 THAT'S WHAT IS GOING ON HERE IF YOU LOOK AT FIGURE
13:38:43 6 13. WE SEE THESE PIXELS IN A GROUP ASSOCIATED WITH
13:38:47 7 THE FINGER IMAGE.

13:39:00 8 THE COURT: WELL, WHAT IS THE ISSUE HERE?
13:39:02 9 ARE YOU WORRIED ABOUT PRIOR ART RELATING TO T.V.'S
13:39:07 10 AND CAMERAS? IS THAT IT?

13:39:13 11 MR. JACOBS: THAT'S OUR HYPOTHESIS ABOUT
13:39:15 12 WHERE SAMSUNG IS GOING ON THIS ONE. BUT THIS IS
13:39:18 13 ONE THAT IS A LITTLE MYSTERIOUS BECAUSE THERE'S SO
13:39:21 14 MUCH TO THIS CLAIM THAT IT'S HARD FOR US TO SEE HOW
13:39:24 15 IT'S GOING TO GET THEM VERY FAR, EVEN IF THEY GET
13:39:27 16 IT.

13:39:27 17 BUT NONETHELESS, GIVEN THE CLEAR
13:39:29 18 DEFINITION IN THE SPECIFICATION, WE THOUGHT WE
13:39:31 19 SHOULD ADOPT THAT.

13:39:32 20 THE COURT: IS THAT WHY, MR. VERHOEVEN,
13:39:34 21 YOUR CLIENT CARES ABOUT THIS BECAUSE YOU WANT TO
13:39:36 22 BRING IN T.V.'S AND CAMERAS?

13:39:38 23 MR. VERHOEVEN: I'M SORRY. WE DON'T
13:39:39 24 THINK THIS NEEDS TO BE CONSTRUED. WE DON'T THINK
13:39:42 25 THERE IS AN ISSUE HERE. WE DON'T THINK THIS IS A

13:39:46 1 MICRO '02 SITUATION.

13:39:49 2 THE COURT: SO HOW DOES LOPPING OFF
13:39:52 3 "GROUP" AFFECT YOUR PROPOSED CONSTRUCTION?

13:39:55 4 MR. JACOBS: OUR PROPOSED CONSTRUCTION
13:39:57 5 WOULD BE THAT A PIXEL IS A PORTION OF A PROXIMITY
13:40:05 6 IN THE IMAGE THAT INDICATES THE PROXIMITY DATA
13:40:07 7 MEASURED AT AN ELECTRODE.

13:40:16 8 THE COURT: A PORTION OF A PROXIMITY
13:40:18 9 IMAGE THAT INDICATES THE PROXIMITY DATA MEASURED AT
13:40:21 10 AN ELECTRODE?

13:40:23 11 MR. JACOBS: YES.

13:40:23 12 THE COURT: OKAY.

13:40:26 13 MR. JACOBS: AND JUST TO GIVE YOU COMFORT
13:40:28 14 THAT I'M NOT GOING FAR FROM WHAT THE DRAFTSMAN OF
13:40:31 15 THE PATENT SAID. IN M48 IT SAYS ONE. I'M
13:40:37 16 PERFECTLY COMFORTABLE WITH ONE AS WELL, BUT ROAD
13:40:40 17 WAS JUST INTENDED TO BE A SMOOTHER WAY OF
13:40:43 18 EXPRESSING THE THOUGHT.

13:40:44 19 THE COURT: OKAY. DO YOU HAVE ANY MORE?
13:40:55 20 I'M OKAY WITH THAT.

13:40:58 21 ALL RIGHT. LET ME ASK MR. VERHOEVEN, IS
13:41:02 22 THERE ANYTHING IN THE SPECIFICATION OR ANYTHING
13:41:04 23 THAT SUGGESTS THAT A PIXEL REFERS TO ANYTHING OTHER
13:41:07 24 THAN AN ELEMENT OF A PROXIMITY IMAGE?

13:41:14 25 BECAUSE I DON'T THINK THIS APPLIES TO

13:41:16 1
13:41:18 2
13:41:20 3
13:41:21 4
13:41:23 5
13:41:43 6
13:41:44 7
13:41:45 8
13:41:48 9
13:41:49 10
13:41:51 11
13:41:53 12
13:41:55 13
13:42:00 14
13:42:02 15
13:42:04 16
13:42:05 17
13:42:08 18
13:42:09 19
13:42:13 20
13:42:15 21
13:42:17 22
13:42:19 23
13:42:22 24
13:42:22 25

T.V.'S AND CAMERAS.

MR. VERHOEVEN: I'LL HAVE TO CONFER TO
GIVE YOU THE ANSWER.

THE COURT: OKAY, PLEASE. IF YOU COULD
DO THAT.

(PAUSE IN PROCEEDINGS.)

MR. VERHOEVEN: I'M TOLD BY SOMEBODY WHO
KNOWS THE PATENT THAT WE DON'T THINK THERE IS.

THE COURT: THERE'S NO SUPPORT OTHER THAN
THE PROXIMITY IMAGE?

MR. VERHOEVEN: IS THAT RIGHT? COULD I
HAVE MR. WHITEHURST COME UP?

THE COURT: YES, PLEASE.

MR. WHITEHURST: WE BELIEVE PIXEL AS USED
IN THE PATENT IS REFERRING TO PART OF THE PROXIMITY
IMAGE.

THE COURT: OKAY.

MR. WHITEHURST: THAT'S WHY WE HAD
PROPOSED A COMPROMISE, "SMALLEST DISCERNIBLE PART
OF THE PROXIMITY IMAGE."

I THINK WE'RE TRYING TO REACH THE SAME
DEFINITION FROM TWO DIFFERENT DIRECTIONS.

I DON'T KNOW THAT THERE'S A REAL DISPUTE
HERE.

APPLE'S PROPOSED CONSTRUCTION IS NOW

13:42:25 1 TALKING ABOUT ELECTRODES.

13:42:26 2 IF YOU LOOK AT THE FIGURES OF THE PATENT,
13:42:29 3 WHAT IS MEASURED AT THE ELECTRODES WE BELIEVE IS
13:42:31 4 THE SMALLEST DISCERNIBLE PART OF THE IMAGE.

13:42:34 5 I'M NOT SURE THERE'S A REAL DISPUTE HERE.
13:42:38 6 GIVEN THE CHOICE BETWEEN THE TWO CONSTRUCTIONS, WE
13:42:41 7 THINK OURS IS MORE ACCURATE AND MORE PRECISE AND
13:42:43 8 WILL SERVE THE COURT BETTER DOWN THE ROAD, BUT WE
13:42:45 9 DON'T FEEL STRONGLY ONE WAY OR THE OTHER, YOUR
13:42:49 10 HONOR.

13:42:49 11 THE COURT: ALL RIGHT. BECAUSE I WAS
13:42:50 12 THINKING GOING WITH PORTION OF PROXIMITY IMAGE THAT
13:42:54 13 INDICATES THE PROXIMITY DATA MEASURED AT ONE
13:42:57 14 ELECTRODE.

13:42:57 15 SO YOU'RE FINE WITH THAT?

13:43:01 16 MR. WHITEHURST: WE'D LIKE TO CHECK WITH
13:43:02 17 OUR CLIENT. IF WE CAN CHECK WITH OUR CLIENT, YOUR
13:43:05 18 HONOR.

13:43:05 19 THE DEFINITION THAT YOU'RE CONSIDERING?

13:43:07 20 THE COURT: IT'S BASICALLY ADOPTING
13:43:09 21 APPLE'S CONSTRUCTION ON THIS ONE.

13:43:16 22 MR. VERHOEVEN: WELL, YOUR HONOR, WHAT WE
13:43:18 23 WOULD PROPOSE IS THE DEFINITION THAT YOU PROPOSED
13:43:20 24 AT THE OUTSET, IN FACT, WE DID PROPOSE THAT
13:43:23 25 DEFINITION DURING OUR MEET AND CONFER, WHICH WAS

13:43:26 1 THE SMALLEST DISCERNIBLE -- EXCUSE ME. LET ME
13:43:29 2 START OVER.

13:43:29 3 "THE SMALLEST DISCERNIBLE PART OF A
13:43:31 4 PROXIMITY IMAGE," I THINK THAT THAT'S MORE
13:43:36 5 ACCURATE.

13:43:37 6 THE COURT: NO. WHAT YOU ORIGINALLY
13:43:39 7 PROPOSED WAS JUST "SMALLEST DISCERNIBLE PART OF AN
13:43:42 8 IMAGE," AND I DON'T WANT THIS GETTING INTO CAMERAS
13:43:45 9 AND SCREENS AND OTHER THINGS BECAUSE I DON'T THINK
13:43:47 10 THAT THAT'S WHAT THE INVENTORS MEANT HERE.

13:43:51 11 MR. WHITEHURST: AND THAT'S WHY WE SINCE
13:43:52 12 CLARIFIED IT AND OFFERED IT AS A COMPROMISE,
13:43:55 13 "SMALLEST DISCERNIBLE PART OF THE PROXIMITY IMAGE,"
13:43:57 14 HOPEFULLY ADDRESSING YOUR CONCERN, YOUR HONOR, AND
13:43:59 15 TYING IT BACK TO THE PROXIMITY DATA.

13:44:03 16 BUT I DON'T BELIEVE YOU NEED TO INTERJECT
13:44:05 17 THE ADDITIONAL AMBIGUITY OF MEASURED AT ONE OF THE
13:44:10 18 ELECTRODES AND SOME OF THE LANGUAGE THAT IS
13:44:12 19 CURRENTLY IN APPLE'S PROPOSED CONSTRUCTION.

13:44:15 20 WE BELIEVE THAT BY TYING IT BACK TO THE
13:44:18 21 PROXIMITY IMAGE THAT'S THE MOST ACCURATE AND
13:44:20 22 SUFFICIENT FOR ADDRESSING YOUR HONOR'S CONCERN.

13:44:22 23 THE COURT: ALL RIGHT. WELL, THANK YOU.
13:44:24 24 I THINK I HAVE HEARD ENOUGH ON THIS ONE.

13:44:26 25 CAN WE GO TO FITTING AN ELLIPSE BECAUSE

13:44:31 1 THAT ONE IS PRETTY COMPLICATED.

13:44:33 2 MR. JACOBS: IT CAN BE COMPLICATED, YOUR
13:44:36 3 HONOR, BUT I THINK IT MAY HAVE GOTTEN A LITTLE
13:44:40 4 OVERCOMPLICATED.

13:44:41 5 AND THE REASON I SAY THAT AS WE RETURN TO
13:44:43 6 MY THEMES, ONE, THE STRUCTURE OF THE CLAIMS; AND,
13:44:45 7 TWO, THE LANGUAGE OF THE SPECIFICATION IN WHICH THE
13:44:48 8 PORTION THAT SAMSUNG RELIES ON SO HEAVILY.

13:45:01 9 THE HEADING, YOUR HONOR, IN THE SECTION
13:45:03 10 IN WHICH THE LANGUAGE APPLYING WOULD BE UNITARY
13:45:12 11 TRANSFORMATION OF THE GROUP COVARIANCE MATRIX OF
13:45:14 12 SECOND MOMENTS OF PROXIMITY DATA FOR ALL PIXELS IN
13:45:16 13 THAT PIXEL GROUP TO FIT AN ELLIPSE.

13:45:18 14 SAMSUNG'S PROPOSED DEFINITION, THE SOURCE
13:45:21 15 OF THAT DEFINITION IS FOUND IN A DESCRIPTION OF THE
13:45:23 16 PREFERRED EMBODIMENT.

13:45:24 17 AND SO WE'RE IN THAT TERRITORY, YOUR
13:45:26 18 HONOR, WHERE THE DECISIONAL LAW ON CLAIM
13:45:35 19 CONSTRUCTION GUIDES US POWERFULLY AGAINST TOYING
13:45:37 20 WITH THE CLAIM LANGUAGE AND READING LIMITATIONS
13:45:39 21 INTO THE CLAIM.

13:45:40 22 "MATHEMATICALLY FITTING AN ELLIPSE" IS A
13:45:44 23 CONCEPT THAT THROUGH THE TUTORIAL I THINK SOME
13:45:48 24 CLARITY WAS GAINED ABOUT WHAT THE MEANING OF
13:45:52 25 "MATHEMATICALLY FITTING AN ELLIPSE" IS AND THAT

13:45:54 1 IT'S NOT A PARTICULARLY MATHEMATICALLY TECHNIQUE
13:45:58 2 FOR FITTING AN ELLIPSE.

13:46:00 3 SO I THINK AS A MATTER OF CLAIM
13:46:04 4 CONSTRUCTION LAW THAT IF YOU WROTE AN OPINION THAT
13:46:06 5 SAID, THE LANGUAGE THAT SAMSUNG FOUND IS IN THE
13:46:08 6 SECTION CALLED THE DESCRIPTION OF THE PREFERRED
13:46:10 7 EMBODIMENT, AND THIS IS A SINGLE EMBODIMENT BEING
13:46:14 8 DISCLOSED AND I'M NOT GOING TO READ THE LIMITATION
13:46:17 9 INTO THE CLAIM AND CITE THE RELEVANT FEDERAL CASES,
13:46:20 10 IT'S UNASSAILABLE.

13:46:22 11 BY CONTRAST, IF IT'S READ INTO THE CLAIM,
13:46:25 12 THIS VERY NARROW, VERY PARTICULAR FORMULA, JUST
13:46:28 13 BECAUSE THE WORD "REQUIRED" APPEARED IN THAT
13:46:31 14 PARTICULAR FLOW OF THE TEXT, THEN I THINK WE'RE
13:46:35 15 VIOLATING THE BASIC CANONS OF CLAIM CONSTRUCTION.

13:46:38 16 NOW, HAVING SAID THAT AS THE -- THAT
13:46:41 17 SIMPLIFIES IT. THAT'S IN A WAY ALL YOU NEED TO DO.

13:46:44 18 LET'S GO TO ONE ADDITIONAL -- IT'S NOT
13:46:48 19 REALLY A COMPLICATION, IT'S A REINFORCEMENT, WHICH
13:46:52 20 IS THAT IN THIS PATENT -- I'M ON SLIDE 57 NOW --
13:46:55 21 THERE ARE MANY PLACES IN WHICH THE SPECIFICATION
13:46:58 22 WAS DEFINITIONAL.

13:46:59 23 WE CITED FROM COLUMNS 14, LINES 22
13:47:02 24 THROUGH 35 IN THIS SLIDE WHERE TERMS LIKE
13:47:06 25 PROXIMITY, HORIZONTAL, VERTICAL, INNER, OUTER,

13:47:09 1 CONTACT ARE DEFINED EXPLICITLY.

13:47:12 2 SO WE SEE THIS AS A SPECIFICATION WHERE
13:47:14 3 WHEN THE DRAFTSMAN INTENDED TO BE DEFINITIONAL, HE
13:47:17 4 WAS DEFINITIONAL; WHEN HE WAS INTENDING TO DESCRIBE
13:47:20 5 THE SPECIFIC EMBODIMENT, HE DISCLOSED THE SPECIFIC
13:47:27 6 EMBODIMENT.

13:47:27 7 LET'S GO ONE LEVEL DOWN IN TERMS OF OUR
13:47:30 8 KNOWLEDGE OF ELLIPSE FITTING.

13:47:32 9 WE POINTED OUT AND I BELIEVE THERE WAS
13:47:34 10 AGREEMENT AT THE TUTORIAL THAT ELLIPSE FITTING IS A
13:47:36 11 CONCEPT THAT PREDATES THIS PATENT.

13:47:41 12 THE INVENTION HERE IS NOT THE
13:47:42 13 MATHEMATICAL FORMULA FOR ELLIPSE FITTING.

13:47:45 14 THE INVENTION HERE IS A POWERFUL PATENT,
13:47:49 15 IT'S A POWERFUL INVENTION. IT'S ALL ABOUT THIS
13:47:52 16 CHALLENGE OF DETECTING THESE FINGERS ON A
13:47:54 17 TOUCHSCREEN AND ENABLING SOMETHING LIKE THE IPHONE.

13:47:57 18 THAT'S THE INVENTION.

13:47:59 19 ELLIPSE FITTING ITSELF WAS KNOWN IN THE
13:48:02 20 ART, AND THERE WERE VARIOUS METHODS OF DOING IT.

13:48:05 21 WE CITED SAMSUNG'S PRIOR ART FOR THAT
13:48:07 22 PROPOSITION, ELLIPSE FITTING IS A CONCEPT, IT'S AN
13:48:11 23 APPROACH TO GETTING AN ELLIPSE TO FIT AROUND A
13:48:14 24 GROUP.

13:48:14 25 AND SO WE CITED THEIR MACHINE VISION ART,

13:48:19 1 WE CITED SOME PATENTS IN WHICH ELLIPSE FITTING IS
13:48:23 2 DISCLOSED, AND SAMSUNG DID THE SAME THING.

13:48:28 3 IN ITS TUTORIAL SAMSUNG DESCRIBED VARIOUS
13:48:31 4 APPROACHES TO "FITTING AN ELLIPSE."

13:48:39 5 SO WE ENCOUNTER CLAIM LANGUAGE
13:48:42 6 "MATHEMATICALLY FITTING AN ELLIPSE," AND WE ASK
13:48:44 7 OURSELVES IS THAT UNDERSTOOD TO A MATHEMATICIAN OR
13:48:44 8 TO SOMEONE SKILLED IN THIS AREA?

13:48:49 9 ELLIPSE FITTING? WE KNOW WHAT THAT IS
13:48:49 10 AND WE CAN GO TO TEXTBOOKS AND WE CAN FIND OUT HOW
13:48:53 11 TO FIT AN ELLIPSE. AND IS THERE ANY REASON TO
13:48:55 12 NARROW THE PLAIN LANGUAGE OF THE CLAIM HERE? AND
13:48:59 13 THE ANSWER IS NO.

13:49:00 14 NOW, WE LOOK AT SAMSUNG'S PROPOSED
13:49:03 15 DEFINITION, AND I'M ON SLIDE 62, AND WE ASK
13:49:06 16 OURSELVES DOES UNITARY TRANSFORMATION OF GROUP
13:49:10 17 COVARIANCE MATRIX OF SECOND MOMENTS ACTUALLY
13:49:14 18 CALCULATE AN ELLIPSE?

13:49:15 19 BECAUSE SAMSUNG'S PROPOSED DEFINITION OF
13:49:18 20 "MATHEMATICALLY FITTING AN ELLIPSE" IS -- THEY WANT
13:49:24 21 THE JURY TO BE TOLD THIS -- FOR AT LEAST ONE OF THE
13:49:27 22 PIXEL GROUPS APPLYING A UNITARY TRANSFORMATION OF
13:49:31 23 THE GROUP COVARIANCE MATRIX OF SECOND MOMENTS OF
13:49:31 24 PROXIMITY DATA FOR ALL PIXELS IN THAT PIXEL GROUP
13:49:35 25 TO FIT AN ELLIPSE.

13:49:37 1 THAT IS WHAT THEY SAY MATHEMATICALLY
13:49:39 2 FITTING AN ELLIPSE IS. NOW, WE KNOW THAT ALREADY,
13:49:42 3 WE KNOW THAT IS NOT TRUE. WE KNOW "MATHEMATICALLY
13:49:44 4 FITTING AN ELLIPSE" IS A BROADER CONCEPT.

13:49:47 5 BUT WE ALSO KNOW THAT UNITARY
13:49:50 6 TRANSFORMATION OF GROUP COVARIANCE MATRIX OF SECOND
13:49:53 7 MOMENTS DOES NOT FIT AN ELLIPSE. IT'S KIND OF A
13:49:56 8 SET-UP STEP. IT'S A STEP IN THE FLOW OF PROCESSING
13:50:01 9 THAT IS DESCRIBED IN THE PATENT. AFTER YOU FIND
13:50:03 10 SOME OF THE PARAMETERS AND BEFORE YOU FIND SOME
13:50:05 11 OTHER PARAMETERS.

13:50:07 12 HOW DO WE KNOW THAT THAT'S TRUE? I THINK
13:50:09 13 WE KNOW IT FROM THE TUTORIALS AND WE ALSO KNOW IT
13:50:12 14 BECAUSE AS ILLUSTRATED ON SLIDE 63, WE SAID IT IN
13:50:18 15 OUR BRIEF AND SAMSUNG DID NOT RESPOND TO IT.

13:50:22 16 THE COURT: WHAT IF WE USE SAMSUNG'S
13:50:25 17 CONSTRUCTION BUT AT THE END JUST ADDED -- LET'S
13:50:33 18 READ THE WHOLE THING.

13:50:34 19 "AT LEAST ONE OF THE PIXEL GROUPS
13:50:36 20 APPLYING A UNITARY TRANSFORMATION OF THE GROUP
13:50:40 21 COVARIANCE MATRIX OF SECOND MOMENTS OF PROXIMITY
13:50:42 22 DATA FOR ALL PIXELS IN THAT PIXEL GROUP AS PART OF
13:50:48 23 MATHEMATICALLY FITTING AN ELLIPSE TO THAT PIXEL
13:50:50 24 GROUP."

13:50:50 25 THEY'RE NOT SAYING THAT THAT IS THE

13:50:53 1 MATHEMATICAL FITTING BUT THAT IS JUST PART OF IT.
13:50:55 2 BECAUSE YOU YOURSELF SAID IT IS ONE OF THE SET
13:50:59 3 TERMS WHICH YOU CAN MATHEMATICALLY FIT AN ELLIPSE.

13:51:02 4 MR. JACOBS: THAT WOULD ADDRESS THE
13:51:03 5 TECHNICAL POINT I HAVE JUST MADE.

13:51:05 6 THE COURT: OKAY.

13:51:06 7 MR. JACOBS: IT WOULD NOT ADDRESS THE
13:51:07 8 PROBLEM THAT WE'RE READING IN FROM THE PREFERRED
13:51:12 9 EMBODIMENT, A VERY NARROWING LIMITATION INTO THE
13:51:15 10 CLAIM.

13:51:15 11 ALL IT WOULD DO IS ADDRESS MY ARGUMENT
13:51:17 12 THAT THIS UNITARY TRANSFORMATION DOES NOT
13:51:25 13 NECESSARILY ITSELF FIT AN ELLIPSE.

13:51:26 14 THE COURT: OKAY. WELL, I AGREE WITH YOU
13:51:28 15 ON THAT. BUT YOU'RE GOING TO HAVE TO CONVINC ME
13:51:31 16 OTHERWISE THAT IT'S NOT REQUIRED AS PART OF THE
13:51:34 17 "MATHEMATICAL FITTING OF AN ELLIPSE."

13:51:39 18 MR. JACOBS: WELL, IN ORDER FOR YOU TO
13:51:41 19 REACH THAT CONCLUSION, THE COURT WOULD HAVE TO
13:51:43 20 CONCLUDE THAT IN THE FIRST EMBODIMENT, THE PATENTEE
13:51:46 21 WAS BEING DEFINITIONAL ABOUT "MATHEMATICALLY
13:51:48 22 FITTING AN ELLIPSE" RATHER THAN MERELY SAYING IN
13:51:51 23 THIS PARTICULAR APPROACH TO ELLIPSE FITTING THAT
13:51:54 24 I'M ELABORATING HERE, ONE OF THE THINGS THAT YOU
13:51:57 25 HAVE TO DO IS THIS COVARIANCE MATRIX TRANSFORMATION

13:52:04 1 PROCESS, WHICH IS ALL THAT THE APPLICANT, I SUBMIT,
13:52:08 2 ALL THE APPLICANT WAS SAYING THERE.

13:52:10 3 HE WAS NOT SAYING IN THIS -- THERE'S --
13:52:12 4 NONE OF THE LANGUAGE THAT YOU SEE SUCH AS IN THE
13:52:16 5 ELLIPSE FITTING OF THE INVENTION, THIS IS HOW YOU
13:52:18 6 DO IT. IT DOESN'T SAY OF THE INVENTION.

13:52:20 7 IT'S SIMPLY A PART OF THE FLOW OF THIS
13:52:22 8 EMBODIMENT.

13:52:23 9 AND SO TO READ THAT EMBODIMENT, WHAT YOU
13:52:28 10 NECESSARILY WOULD BE DOING IS READING THE WHOLE
13:52:30 11 EMBODIMENT IN BECAUSE THE LANGUAGE REQUIRES, IT'S
13:52:33 12 JUST PART OF THE EMBODIMENT.

13:52:35 13 THERE'S NO REASON TO SINGLE OUT THAT
13:52:36 14 LANGUAGE MERELY BECAUSE IN THE DESCRIPTION OF THE
13:52:39 15 EMBODIMENT, THIS PARTICULAR STEP WAS INDICATED AS
13:52:43 16 REQUIRED.

13:52:48 17 THE COURT: SO YOU'RE SAYING EMBODIMENTS
13:52:50 18 DON'T HAVE TO MATHEMATICALLY FIT AN ELLIPSE? IS
13:52:53 19 THAT WHAT YOU'RE SAYING?

13:52:55 20 MR. JACOBS: I'M SAYING THAT THERE ARE
13:53:00 21 MANY WAYS TO MATHEMATICALLY FIT AN ELLIPSE.

13:53:03 22 THE COURT: I'M OKAY WITH THAT.

13:53:05 23 MR. JACOBS: THE PATENTEE DESCRIBES, AS
13:53:07 24 IT HAPPENS, TWO WAYS TO MATHEMATICALLY FIT AN
13:53:09 25 ELLIPSE. WE HAVEN'T GOTTEN TO THE SECOND

13:53:11 1 EMBODIMENT. I KNOW THERE IS A DISPUTE AS TO WHAT
13:53:13 2 IS GOING ON THERE. BUT OUR VIEW IS THAT THE
13:53:16 3 PATENTEE DESCRIBED TWO OUT OF THE MANY.

13:53:18 4 THE QUESTION IS DO YOU READ THE TWO OUT
13:53:20 5 OF THE MANY INTO THE CLAIM LANGUAGE? AND WE'RE IN
13:53:23 6 THAT AREA WHERE IF THE COURT DOES THAT, IT'S
13:53:25 7 VIOLATING THE BASIC PRINCIPLES OF CLAIM
13:53:27 8 CONSTRUCTION THAT YOU DON'T READ A PREFERRED
13:53:29 9 EMBODIMENT INTO THE CLAIM LANGUAGE.

13:53:32 10 THE COURT: WELL, SO ARE YOU SAYING YES
13:53:33 11 OR NO, DOES AN EMBODIMENT HAVE TO MATHEMATICALLY
13:53:36 12 FIT AN ELLIPSE?

13:53:39 13 MR. JACOBS: I THINK I'M CONFUSED ABOUT
13:53:40 14 WHEN YOU SAY "AN EMBODIMENT"? WHEN YOU SAY AN
13:53:45 15 INFRINGING DEVICE?

13:53:46 16 THE COURT: DOES THE PATENT REQUIRE THE
13:53:48 17 "MATHEMATICAL FITTING OF AN ELLIPSE"?

13:53:50 18 MR. JACOBS: OH, YES, THE CLAIMS WE'RE
13:53:52 19 LOOKING AT REQUIRE "MATHEMATICALLY FITTING AN
13:53:55 20 ELLIPSE."

13:53:56 21 THE COURT: SO WHERE IS THAT IN COLUMN
13:53:58 22 27? WHERE IS THAT HAPPENING IN COLUMN 27.

13:54:00 23 MR. JACOBS: IN COLUMN 27, THAT'S THE
13:54:02 24 SECOND EMBODIMENT?

13:54:03 25 THE COURT: YES. WHERE IS THE

13:54:05 1 "MATHEMATICALLY FITTING THE ELLIPSE" THERE?

13:54:09 2 MR. JACOBS: SO WHAT HAPPENS IN COLUMN 27
13:54:11 3 IS THAT THE FIRST FEW STEPS OF COLUMN 26 HAD BEEN
13:54:20 4 PERFORMED -- LET ME -- I THINK THIS IS PROBABLY THE
13:54:25 5 EASIEST WAY TO SEE IT, YOUR HONOR. SO THE FIRST
13:54:28 6 THREE STEPS OF COLUMN 26 HAVE BEEN PERFORMED.

13:54:30 7 AND THEN IN COLUMN 27, SO WE HAVE GOT
13:54:32 8 THOSE G VALUES, AND ON LOW RESOLUTION ELECTRODE
13:54:37 9 ARRAYS, THE TOTAL GROUP PROXIMITY GZ IS A MORE
13:54:40 10 RELIABLE INDICATOR OF CONTEXT SIZE AS WELL AS
13:54:44 11 FINGER PRESSURE THAN THE FITTED ELLIPSE PARAMETERS.

13:54:47 12 THE COURT: WELL, I DISAGREE WITH YOU
13:54:49 13 THAT EVERYTHING IN 26 HAPPENS IN 27.

13:54:53 14 MR. JACOBS: AND THAT'S NOT WHAT I SAID.

13:54:55 15 THE COURT: THEN WHAT DID YOU SAY THEN?

13:54:57 16 MR. JACOBS: SO IF WE LOOK AT THE SLIDE
13:54:59 17 69.

13:54:59 18 THE COURT: OKAY.

13:55:00 19 MR. JACOBS: WE HAVE PUT BRACES AROUND
13:55:02 20 LINE -- THE FIRST -- THE G STEPS ABOVE THE TEXT
13:55:07 21 NOTE THAT.

13:55:08 22 THE COURT: OKAY.

13:55:10 23 MR. JACOBS: AND THAT'S COMPUTE SIZE AND
13:55:13 24 CENTROID.

13:55:13 25 THE COURT: OKAY.

13:55:15 1 MR. JACOBS: AND THOSE STEPS HAVE BEEN
13:55:16 2 PERFORMED. THE SIZE AND THE CENTROID HAVE BEEN
13:55:19 3 PERFORMED.

13:55:19 4 AND NOW AT COLUMN 27 WE'RE GOING TO SORT
13:55:24 5 OF BRANCH OFF AT THAT POSITION, AND INSTEAD OF
13:55:27 6 GOING AND DOING MORE ELLIPSE FITTING, INCLUDING THE
13:55:29 7 UNITARY TRANSFORMATION OF COVARIANCE MATRIX,
13:55:33 8 INSTEAD OF DOING THOSE ADDITIONAL STEPS, WE'RE
13:55:36 9 GOING TO TAKE GROUP PROXIMITY GZ AS AN INDICATOR OF
13:55:47 10 CONTEXT SIZE AS WELL AS FINGER PRESSURE, AND WE'RE
13:55:51 11 GOING TO SET ORIENTATION AND ECCENTRICITY OF SMALL
13:55:58 12 CONTEXT TO DEFAULT VALUES RATHER THAN THEIR
13:56:00 13 MEASURED VALUES AND TOTAL GROUP PROXIMITY GZ AS
13:56:05 14 USED AS THE PRIMARY MEASURE OF CONTACT SIZE INSTEAD
13:56:09 15 OF MAJOR AND MINOR AXIS LENGTHS.

13:56:12 16 SO WHAT THIS IS SAYING IS THAT ONCE YOU
13:56:14 17 HAVE CALCULATED THE G VALUES AT THE TOP OF COLUMN
13:56:17 18 26, WHEN WE'RE DEALING WITH SMALL GROUPS OF PIXELS,
13:56:21 19 IT TURNS OUT THAT IT'S GOING TO BE MORE ACCURATE IN
13:56:25 20 COMING UP WITH PARAMETERS IF WE USE THOSE VALUES
13:56:27 21 AND SOME DEFAULTS THAN IF WE GO THROUGH ALL OF THE
13:56:31 22 CALCULATIONS OF UNITARY TRANSFORMATION OF
13:56:34 23 COVARIANCE MATRIX IN AN ACTUAL COMPUTATION AS
13:56:37 24 OPPOSED TO DEFAULT VALUES FOR MAJOR AND MINOR AXIS
13:56:42 25 LENGTHS.

13:56:46 1 SO WE HAVE TWO WAYS TO FIT AN ELLIPSE:
13:56:48 2 ONE FOR LARGER GROUPS. WE'RE GOING TO GO THROUGH
13:56:52 3 THE WHOLE COLUMN OF 26. AND THE SECOND FOR SMALLER
13:56:54 4 GROUPS WE'RE GOING TO START IN THE TOP OF COLUMN
13:56:57 5 26, GO THROUGH THOSE STEPS AND THEN BRANCH OFF, OH,
13:57:00 6 I REALIZE THIS IS TOO SMALL. IF I RUN
13:57:03 7 CALCULATIONS, IT'S NOT GOING TO BE VERY GOOD HIGH
13:57:06 8 QUALITY ELLIPSE FITTING AND I MAY HAVE TO USE
13:57:09 9 HIGHER VALUES.

13:57:10 10 AND THAT'S WHAT WE THINK THE TESTIMONY
13:57:12 11 WAS SHOWING AND IT WAS DESCRIBED IN THE VARIOUS
13:57:14 12 PROCEEDINGS THAT YOU HAVE IN FRONT OF YOU AND WE
13:57:16 13 THINK THAT'S THE RIGHT WAY TO READ THE
13:57:18 14 SPECIFICATION AND WE THINK THAT'S CONSISTENT WITH
13:57:19 15 THE TUTORIAL THAT YOU RECEIVED THE OTHER DAY.

13:57:21 16 THE COURT: SO FROM YOUR VIEWPOINT
13:57:24 17 COMPUTING THE SIZE OF THE CENTROID THAN USING THOSE
13:57:28 18 DEFAULT VALUES THAT IS FITTING AN ELLIPSE? THAT'S
13:57:33 19 THE MATHEMATICALLY FITTING AN ELLIPSE?

13:57:37 20 MR. JACOBS: I THINK I WOULD SAY IT
13:57:39 21 SLIGHTLY DIFFERENTLY. IN THE DEFAULT CASE, IN THE
13:57:41 22 COLUMN 27 CASE, WE DO THOSE CALCULATIONS AND THEN
13:57:45 23 WE WOULD MAKE ANOTHER DECISION ABOUT WHETHER WE'RE
13:57:49 24 LOOKING AT LARGE OR SMALL GROUPS.

13:57:50 25 AND IF WE'RE LOOKING AT SMALL GROUPS, WE

13:57:52 1 SET THE REMAINING PARAMETERS TO THEIR DEFAULT
13:57:57 2 VALUES THAT HAVE BEEN SET BY THE SYSTEM.

13:58:00 3 AND THEN WHEN YOU HAVE THOSE PARAMETERS,
13:58:02 4 YOU HAVE FITTED AN ELLIPSE BECAUSE I THINK
13:58:05 5 MATHEMATICALLY FITTING AN ELLIPSE IS DETERMINING
13:58:08 6 THE PARAMETERS ASSOCIATED WITH A FITTED ELLIPSE.

13:58:12 7 AND WE HAVE DONE THAT IN TWO WAYS IN THIS
13:58:14 8 SPECIFICATION.

13:58:25 9 THE COURT: ON TUESDAY DR. BALAKRISHNAN
13:58:26 10 TALKED ABOUT THIS PRINCIPAL COMPONENT ANALYSIS.

13:58:38 11 TELL ME WHAT THAT IS AND HOW IT
13:58:40 12 MATHEMATICALLY RELATES TO FITTING AN ELLIPSE.

13:58:44 13 MR. JACOBS: YOUR HONOR, I PLANNED AHEAD,
13:58:46 14 AND DR. BALAKRISHNAN IS HERE IN CASE THIS COMES UP.

13:58:52 15 LET ME TRY THIS OUT AND I'LL TURN AROUND
13:58:52 16 AND SEE IF I'VE GOT IT RIGHT.

13:58:52 17 PRINCIPAL COMPONENT ANALYSIS IS A RUBRIC
13:58:54 18 FOR A SET OF TECHNIQUES FOR UNDERSTANDING DATA AND
13:58:58 19 ASSOCIATING IT WITH SOME PARAMETERS AND THEN
13:59:02 20 CREATING A, IN THIS CASE CREATING AN ELLIPSE AROUND
13:59:08 21 THE DATA SO THAT YOU CAN MANIPULATE THE
13:59:10 22 MATHEMATICAL PARAMETERS AND THE ELLIPSE -- THE
13:59:14 23 FITTED ELLIPSE, YOU'RE MANIPULATING THE ELLIPSE
13:59:16 24 THAT CIRCUMSCRIBE AS THIS GROUP OF DATA RATHER THAN
13:59:19 25 MANIPULATING THE DATA DIRECTLY.

13:59:20 1
13:59:22 2
13:59:23 3
13:59:38 4
13:59:52 5
13:59:52 6
13:59:53 7
13:59:55 8
13:59:59 9
13:59:59 10
14:00:02 11
14:00:03 12
14:00:05 13
14:00:08 14
14:00:12 15
14:00:17 16
14:00:22 17
14:00:22 18
14:00:22 19
14:00:34 20
14:00:35 21
14:00:38 22
14:00:41 23
14:00:43 24
14:00:44 25

AND THAT'S THE POINT OF PRINCIPAL
COMPONENT ANALYSIS.

AND CLOSE ENOUGH?

JUST GIVE ME ONE SECOND, YOUR HONOR.

(PAUSE IN PROCEEDINGS.)

MR. JACOBS: I WAS THANKFULLY
SUPPLEMENTED AND NOT CORRECTED, YOUR HONOR, THAT
COLUMN 26 IS ILLUSTRATING PRINCIPAL COMPONENT
ANALYSIS.

THE COURT: THE WHOLE THING?

MR. JACOBS: YES, I BELIEVE SO.

THE COURT: ALL FOUR BATCHES OF EQUATION.

MR. JACOBS: I THINK THE PCA MAY BE
PROPERLY FOCUSSED AROUND THE UNITARY TRANSFORMATION
OF THE COVARIANCE MATRIX STEPS AND THE COMPUTATION
OF THE MAJOR AXIS AND MINOR AXIS AND ORIENTATION.

THE COURT: SO IT'S EQUATION 15 THROUGH
21?

MR. JACOBS: YES.

THE COURT: SO DOES IT ALWAYS REQUIRE A
UNITARY TRANSFORMATION OF COVARIANCE MATRIX?

MR. JACOBS: DOES PRINCIPAL COMPONENT
ANALYSIS ALWAYS REQUIRE?

THE COURT: YES.

MR. JACOBS: YES. YOUR HONOR, I'D LIKE

14:01:03 1 TO FOCUS ON ONE OTHER ASPECT OF THE SPECIFICATION
14:01:07 2 TO REINFORCE THE BASIC POINT I'M MAKING, THAT WOULD
14:01:19 3 VIOLATE BASIC PRINCIPLES OF CLAIM CONSTRUCTION
14:01:22 4 BECAUSE IF YOU LOOK AT THE STRUCTURE OF THE CLAIMS
14:01:24 5 AND YOU LOOK AT CLAIM 5 YOU'LL SEE THAT IT IS "THE
14:01:30 6 METHOD OF CLAIM 1 WHEREIN FITTING AN ELLIPSE TO A
14:01:33 7 GROUP OF PIXELS COMPRISES COMPUTING ONE OR MORE
14:01:37 8 EIGENVALUES AND ONE OR MORE EIGENVECTORS OF A
14:01:41 9 COVARIANCE MATRIX ASSOCIATED WITH A PIXEL GROUP."

14:01:45 10 SO IN CLAIM 5 WE ACTUALLY SEE THE
14:01:47 11 COVARIANCE MATRIX DELINEATED AND WE SEE EIGENVALUES
14:01:50 12 AND EIGENVECTORS REFERRED TO.

14:01:52 13 NOW, IF WE THEN GO A LITTLE BIT FURTHER
14:01:54 14 INTO THE CLAIMS, WE SEE CLAIM 6 DEPENDING FROM
14:01:57 15 CLAIM 1, IT'S TALKING ABOUT A PATH OF PIXEL GROUPS
14:02:01 16 WITHOUT THE REFERENCE TO THE COVARIANCE MATRIX OR
14:02:10 17 THE EIGENVALUES AND EIGENVECTORS AND THEN CLAIM 9
14:02:16 18 DEPENDS ON CLAIM 6 AND NOW WE'RE GOING TO COMPUTE
14:02:20 19 ONE OR MORE EIGENVALUES OR EIGENVECTORS ASSOCIATED
14:02:24 20 WITH THE PIXEL GROUP.

14:02:25 21 AND IF WE GO BACK TO COLUMN 26 WE CAN SEE
14:02:29 22 A REFERENCE TO EIGENVALUES RIGHT AFTER THE
14:02:32 23 COVARIANCE MATRIX STEP, AND WE CAN SEE THAT THE
14:02:35 24 COVARIANCE MATRIX IS BEING REFERRED TO IN THOSE
14:02:41 25 CLAIMS, AND WE SEE THE REFERENCE TO EIGENVALUES

14:02:43 1 THAT ARE BEING REFERRED TO OR ILLUSTRATED IN THIS
14:02:47 2 EMBODIMENT FOR THOSE CLAIMS.

14:02:48 3 THE ONLY THING WE DON'T SEE IS THE WORD
14:02:52 4 EIGENVECTORS BUT EIGENVECTORS AND EIGENVALUES, ANY
14:02:59 5 MATH TREATISE WILL TELL YOU THEY GO TOGETHER. YOU
14:03:02 6 CAN'T CALCULATE AN EIGENVALUE WITHOUT AN
14:03:06 7 EIGENVECTOR.

14:03:06 8 SO ONE SHOULDN'T TARRY LONG WHEN ONE
14:03:10 9 OBSERVES THAT EIGENVECTORS IS NOT EXPLICITLY
14:03:13 10 DISCLOSED IN COLUMN 26. BECAUSE EIGENVALUES AND
14:03:17 11 EIGENVECTORS GO TOGETHER, THE REFERENCE TO
14:03:20 12 EIGENVALUES AND EIGENVECTORS ARE SUPPORTED BY
14:03:23 13 COLUMN 26 AS IS THE, OF COURSE, THE COVARIANCE
14:03:29 14 MATRIX THAT IS DESCRIBED IN THOSE CLAIMS.

14:03:31 15 THE COURT: WHAT AM I SUPPOSED TO DO WITH
14:03:33 16 COLUMN 26, LINES 18 THROUGH 21 THAT SAY THE ELLIPSE
14:03:37 17 FITTING PROCEDURES REQUIRES A UNITARY
14:03:44 18 TRANSFORMATION OF THE GROUP COVARIANCE MATRIX?

14:03:47 19 MR. JACOBS: I THINK HERE IS THE LEGAL
14:03:49 20 QUESTION IN A NUTSHELL, IS THAT THE ELLIPSE FITTING
14:03:52 21 PROCEDURE OF THE INVENTION OR IS THAT THE ELLIPSE
14:03:54 22 FITTING PROCEDURE OF THIS EMBODIMENT?

14:03:56 23 AND BECAUSE THIS IS AN EMBODIMENT BEING
14:03:59 24 DISCUSSED IN A PORTION OF THE SPECIFICATION THAT IS
14:04:03 25 LABELLED DESCRIPTION OF THE PREFERRED EMBODIMENTS,

14:04:05 1 THE ANSWER TO THE CLAIM CONSTRUCTION ISSUE HERE IS
14:04:10 2 TO US PLAIN. THE PROPER WAY TO READ THAT LANGUAGE
14:04:13 3 IS THE ELLIPSE FITTING PROCEDURE OF THIS COLUMN 26
14:04:19 4 EMBODIMENT REQUIRES A UNITARY TRANSFORMATION, AND,
14:04:24 5 THEREFORE, THIS REQUIRED LANGUAGE IS IN NO WAY TO
14:04:28 6 BE READ AS A LIMITATION ON THE SCOPE OF
14:04:32 7 MATHEMATICALLY FITTING AN ELLIPSE AS CLAIMED IN
14:04:35 8 CLAIM 1.

14:04:48 9 YOUR HONOR, IN ALL LINES, WE'RE DOING A
14:04:51 10 BEST FIT HERE. WE HAVE CLAIM LANGUAGE AND WE
14:04:54 11 UNDERSTAND THE BREADTH OF THE CLAIM LANGUAGE ON ITS
14:04:56 12 OWN.

14:04:57 13 WE'RE NOT SUPPOSED TO BE IN THE BUSINESS
14:04:59 14 OF IMPORTING LIMITATION INTO THE CLAIMS. THE
14:05:01 15 FEDERAL CIRCUIT HAS TOLD US THAT OVER AND OVER
14:05:03 16 AGAIN.

14:05:04 17 AND UNLESS THERE'S REALLY GOOD REASON AND
14:05:06 18 UNLESS THERE IS LANGUAGE LIKE "THE INVENTION
14:05:07 19 COMPRISES" OR A SUMMARY OF THE INVENTION SOMETIMES,
14:05:10 20 THAT'S LANGUAGE -- THAT'S STRONG ENOUGH TO TRUMP A
14:05:15 21 CLAIM LANGUAGE READING. SOMETIMES THAT'S TRUMPED
14:05:22 22 INTO THE CLAIMS.

14:05:22 23 BUT HERE WE HAVE CLAIM LANGUAGE THAT IS
14:05:28 24 CLEAR TO A PERSON OF ORDINARY SKILL IN THE ART; WE
14:05:29 25 HAVE EMBODIMENTS DISCLOSE IN A SECTION CALLED

14:05:29 1 EMBODIMENTS; WE HAVE DEPENDENT CLAIMS THAT MORE
14:05:31 2 NARROWLY CLAIM THE BREADTH OF "MATHEMATICALLY
14:05:37 3 FITTING AN ELLIPSE" THAT ARE SUPPORTED BY THOSE
14:05:39 4 PARTICULAR EMBODIMENTS AND ALL OF THIS EVIDENCE,
14:05:41 5 THEREFORE, IS CONSISTENT WITH OUR PROPOSED
14:05:44 6 CONSTRUCTION.

14:05:47 7 "MATHEMATICALLY FITTING AN ELLIPSE" IS
14:05:48 8 "MATHEMATICALLY FITTING AN ELLIPSE." IT NEEDS NO
14:05:51 9 FURTHER ELABORATION, AND WE SHOULDN'T TINKER AND WE
14:05:56 10 SHOULDN'T READ A PREFERRED EMBODIMENT IN THE CLAIM.

14:05:58 11 THE COURT: OKAY. LET ME ASK SOME
14:05:59 12 QUESTIONS OF MR. VERHOEVEN.

14:06:06 13 OKAY. FIRST OF ALL, DO YOU AGREE THAT
14:06:08 14 CLAIMS 15 THROUGH 18 REPRESENT UNITARY
14:06:12 15 TRANSFORMATION OF THE COVARIANCE MATRIX?

14:06:14 16 MR. VERHOEVEN: YES, YOUR HONOR.

14:06:15 17 THE COURT: OKAY. AND DO YOU THINK
14:06:17 18 THAT'S SUFFICIENT TO FIT AN ELLIPSE?

14:06:19 19 MR. VERHOEVEN: NO. WHAT WE INTENDED TO
14:06:21 20 DO WITH OUR CONSTRUCTION IS TO SAY THAT THAT IS
14:06:23 21 REQUIRED AS PART OF THE CALCULATION AND TO ANSWER
14:06:30 22 YOUR PERHAPS NEXT QUESTION, THE PROPOSED
14:06:32 23 MODIFICATION OF OUR CONSTRUCTION THAT YOU READ TO
14:06:34 24 COUNSEL FOR APPLE WOULD BE ACCEPTABLE TO US.

14:06:37 25 THEIR ARGUMENT IS THAT, WELL, JUST USING

14:06:39 1 THAT ALONE WOULDN'T EVEN FIT AN ELLIPSE. YOU NEED
14:06:42 2 TO DO ADDITIONAL STEPS. THAT WASN'T OUR INTENT.

14:06:46 3 OUR INTENT WAS TO CAPTURE THE STATEMENT
14:06:49 4 AND THE ONLY DISCLOSURES IN THE ENTIRE PATENT FOR
14:06:52 5 "MATHEMATICALLY FITTING AN ELLIPSE" THAT THE
14:06:57 6 ELLIPSE FITTING PROCEDURE REQUIRES A UNITARY
14:07:00 7 TRANSFORMATION OF THE GROUP COVARIANCE MATRIX OF
14:07:03 8 SECOND MOMENTS.

14:07:08 9 AN ARGUMENT WAS MADE, WELL, THAT IF YOU
14:07:10 10 LOOK AT SOME OF THE DEPENDENT CLAIMS THEY TALK
14:07:12 11 ABOUT EIGENVALUES AS CALCULATE OR AS ALSO BEING
14:07:15 12 USED.

14:07:16 13 WE'RE NOT SAYING THAT OUR CONSTRUCTION
14:07:18 14 FOR "MATHEMATICALLY FITTING AN ELLIPSE" IN CLAIM 1
14:07:25 15 REQUIRES THE CALCULATION OF THOSE EIGENVALUES IN
14:07:29 16 THOSE DEPENDENT CLAIMS.

14:07:30 17 WE'RE SAYING THAT IT REQUIRES WHAT THE
14:07:35 18 SPEC SAYS IT REQUIRES, WHICH IS THE "UNITARY
14:07:41 19 TRANSFORMATION OF THE GROUP OF COVARIANCE MATRIX."
14:07:44 20 THAT IS REQUIRED AS PART OF MATHEMATICALLY FITTING
14:07:46 21 AN ELLIPSE. THAT'S WHAT THE PATENT SAYS AND THAT'S
14:07:48 22 WHAT WE INTENDED IN OUR CONSTRUCTION, YOUR HONOR.

14:07:56 23 THE COURT: DO YOU FEEL THAT ALL OF THE
14:07:57 24 EQUATIONS THAT ARE IN COLUMN 26 ARE NECESSARY FOR
14:08:02 25 "MATHEMATICALLY FITTING AN ELLIPSE"?

14:08:04 1 MR. VERHOEVEN: UNDER THE CLAIM TERMS
14:08:05 2 THAT WE'RE CONSTRUING, YOUR HONOR, WE'RE ONLY
14:08:08 3 ASKING YOUR HONOR TO SAY THAT THE "UNITARY
14:08:12 4 TRANSFORMATION OF COVARIANCE MATRIX OF SECOND
14:08:17 5 MOMENTS IS REQUIRED."

14:08:18 6 AND ADDITIONAL VARIATIONS ON THE REST OF
14:08:22 7 THE FORMULAS IS PERMITTED UNDER THE CLAIM.

14:08:24 8 BUT THE ONLY DISCLOSED EMBODIMENT OF
14:08:27 9 "MATHEMATICALLY FITTING AN ELLIPSE" IN THIS PATENT
14:08:30 10 STATES THAT THE ELLIPSE FITTING PROCEDURE REQUIRES
14:08:36 11 THAT STEP.

14:08:37 12 SO IF I COULD JUST --

14:08:39 13 THE COURT: BUT I GUESS -- OKAY. I KNOW
14:08:41 14 YOU'RE SAYING THAT UNITARY TRANSFORMATION OF
14:08:44 15 COVARIANCE MATRIX IS REQUIRED, BUT WHAT YOU'RE
14:08:51 16 SAYING IS THAT THAT ALONE IS NOT MATHEMATICALLY
14:08:53 17 FITTING AN ELLIPSE.

14:08:55 18 MR. VERHOEVEN: THAT IS REQUIRED TO
14:08:58 19 MATHEMATICALLY FIT AN ELLIPSE. THEN YOU WOULD HAVE
14:08:59 20 MORE FLEXIBILITY TO ALTER THE SPECIFIC FORMULAS IN
14:09:03 21 HERE.

14:09:03 22 BUT IF YOU DON'T DO THAT, YOUR HONOR, IF
14:09:05 23 YOU DON'T USE THAT "UNITARY TRANSFORMATION OF
14:09:08 24 COVARIANCE MATRIX," IF YOU GO TO SLIDE 8 HERE,
14:09:14 25 PLEASE. I DON'T KNOW IF YOU HAVE OUR SLIDES.

14:09:18 1 REMEMBER WE TALKED IN THE TUTORIAL ABOUT
14:09:20 2 THE FIVE PARAMETERS GENERALLY? THAT'S ABOUT
14:09:25 3 ACHIEVING THE PARAMETERS AND NOT ABOUT THE
14:09:27 4 CALCULATIONS USED TO GET THEM.

14:09:28 5 AND WE TALKED ABOUT WE USE THIS
14:09:31 6 ILLUSTRATION ON SLIDE 8.

14:09:32 7 NOW, YOUR HONOR, IF WE TOOK THOSE FIVE
14:09:34 8 VALUES AND CALCULATE THEM WITHOUT USING THE
14:09:39 9 "UNITARY TRANSFORMATION OF COVARIANCE MATRIX," IF I
14:09:43 10 COULD APPROACH THE SCREEN?

14:09:44 11 THE COURT: PLEASE.

14:09:46 12 MR. VERHOEVEN: YOU COULD HAVE A
14:09:47 13 RECTANGLE RIGHT HERE USING THOSE SAME PARAMETERS.

14:09:50 14 IT'S THE "UNITARY TRANSFORMATION OF
14:09:53 15 COVARIANCE MATRIX," WHICH IS USED TO MATHEMATICALLY
14:09:56 16 FIT THE ELLIPSE WITHIN THOSE PARAMETERS.

14:09:59 17 AND THAT'S WHY THE SPEC IS SAYING THAT'S
14:10:01 18 REQUIRED.

14:10:05 19 SO WE'RE NOT TRYING TO SAY THAT YOU'RE
14:10:09 20 LIMITED TO EVERY SINGLE FORMULA IN THE
14:10:11 21 SPECIFICATION, BUT WHERE THE SPEC, WITH THE ONLY
14:10:14 22 DISCLOSURE OF THIS ELLIPSE FITTING PROCEDURE,
14:10:17 23 SAYING THAT THIS MATHEMATICALLY FITTING REQUIRES
14:10:18 24 THIS CALCULATION, THEN WE BELIEVE THAT IT'S
14:10:21 25 APPROPRIATE TO AT LEAST SAY "MATHEMATICALLY FITTING

14:10:27 1 AN ELLIPSE" MEANS IT HAS TO AT LEAST HAVE THAT STEP
14:10:33 2 IN IT AND THAT'S WHAT WE'RE PROPOSING.

14:10:35 3 THE COURT: LET ME ASK, DOES THIS PRIOR
14:10:37 4 ARTICLE DISCLOSE "MATHEMATICALLY FITTING AN
14:10:39 5 ELLIPSE"?

14:10:40 6 MR. VERHOEVEN: PRIOR ART GENERALLY, YES,
14:10:42 7 ABSOLUTELY. AND WE SHOWED A BRIEF SLIDE. AND IT'S
14:10:45 8 NOT DISPUTED, AND THEY ALSO HAVE TAKEN THE POSITION
14:10:48 9 THAT THERE'S A NUMBER OF DIFFERENT WAYS TO
14:10:50 10 MATHEMATICALLY FIT AN ELLIPSE.

14:10:51 11 THE ONLY WAY THAT THIS PATENT WILL BE
14:10:55 12 VALID IS, IF IT IS AT ALL, YOUR HONOR, IS IF THIS
14:10:59 13 IS PART OF THE CLAIM, THIS THING THAT THEY'RE
14:11:01 14 SAYING THAT IS REQUIRED.

14:11:02 15 I'LL GIVE YOU AN -- IF WE GO TO THE
14:11:05 16 PROSECUTION HISTORY, I HAVE SOME SLIDES ON THAT,
14:11:07 17 YOUR HONOR.

14:11:07 18 THE COURT: SO THEN WHY CAN'T THE
14:11:10 19 DISCLAIMER BE JUST A DISCLAIMER OF NON-MATHEMATICAL
14:11:13 20 WAYS OF FITTING AN ELLIPSE?

14:11:15 21 MR. VERHOEVEN: BECAUSE THERE'S
14:11:16 22 MATHEMATICAL FITTING OF THE ELLIPSE IN THE PRIOR
14:11:22 23 ART.

14:11:22 24 FOR EXAMPLE, YOUR HONOR, IF I COULD
14:11:23 25 BRIEFLY GO THROUGH THE PROSECUTION HISTORY AT SLIDE

14:11:26 1 14, INITIALLY THE CLAIM JUST SAID "FITTING AN
14:11:28 2 ELLIPSE TO AT LEAST ONE OF THE PIXEL GROUPS."

14:11:32 3 THEN SLIDE 15, PLEASE. THE EXAMINER
14:11:37 4 REJECTED THOSE CLAIMS AS ANTICIPATED BY BISSET AND
14:11:40 5 POINTED TO BISSET AS DISCLOSING "FITTING AN ELLIPSE
14:11:44 6 TO AT LEAST ONE OF THE PIXEL GROUPS."

14:11:48 7 AND BISSET DISCLOSED "FITTING AN ELLIPSE
14:11:51 8 TO AT LEAST ONE OF THE PIXEL GROUPS." THIS IS A
14:11:53 9 PICTURE OF BISSET. NEXT SLIDE.

14:11:55 10 IN RESPONSE TO TRAVERSE ONE OF THESE
14:11:58 11 PIECES OF PRIOR ART, THE APPLICANTS AMENDED THE
14:12:01 12 CLAIMS TO REQUIRE "MATHEMATICALLY FITTING AN
14:12:04 13 ELLIPSE."

14:12:05 14 AND THEN THE NEXT SLIDE. IN THEIR
14:12:07 15 REMARKS, THEY ARGUED THAT THE EXAMINER WAS -- IT
14:12:13 16 WAS INAPPROPRIATE FOR THE EXAMINER TO REJECT THE
14:12:14 17 CLAIMS BECAUSE HE WAS NOT INTERPRETING THE CLAIMS
14:12:17 18 IN LIGHT OF THE SPECIFICATION.

14:12:19 19 AND YOU'LL RECALL THE SPECIFICATION SAID
14:12:21 20 THAT THERE'S A SPECIFIC PROCEDURE THAT IS REQUIRED.

14:12:24 21 AND SO HE SAYS, THE OFFICE ACTION'S
14:12:27 22 INTERPRETATION OF FITTING AN ELLIPSE TO AT LEAST
14:12:29 23 ONE OF THE PIXEL GROUPS IS UNREASONABLE IN LIGHT OF
14:12:31 24 THE PLAIN MEANING OF THE FITTING AN ELLIPSE AND IN
14:12:41 25 PARTICULAR DISREGARDED THE REQUIREMENT TO INTERPRET

14:12:43 1 THE CLAIMS IN LIGHT OF THE SPECIFICATION.

14:12:44 2 AND IN THE REMARK IT SAYS, "WHEN THE
14:12:47 3 CLAIM LANGUAGE IS THEN VIEWED IN LIGHT OF THE
14:12:50 4 SPECIFICATION, AS IT MUST BE VIEWED, IN THIS
14:12:54 5 REGARD, APPLICANT SUBMITS THAT THE OFFICE ACTION
14:12:56 6 FAILS TO CONSIDER THE DISCLOSURE OF THE
14:12:59 7 SPECIFICATION WHEN INTERPRETING AT LEAST THE
14:13:01 8 FEATURE OF FITTING AN ELLIPSE TO AT LEAST ONE OF
14:13:04 9 THE PIXEL GROUPS.

14:13:10 10 WHAT THEY'RE SAYING THERE IS THAT WE
14:13:10 11 DON'T EVEN NEED TO ADD THIS MATHEMATICAL BECAUSE IF
14:13:11 12 YOU LOOK AT THE SPECIFICATION IT REQUIRES THIS
14:13:13 13 PROCEDURE. THE SPECIFICATION HAD THAT LANGUAGE IN
14:13:16 14 THERE.

14:13:16 15 AND SO THAT'S -- THAT'S NOT A DISCLAIMER,
14:13:20 16 SO MUCH, YOUR HONOR, BUT THAT IS A PIECE OF
14:13:23 17 INTRINSIC EVIDENCE THAT SUPPORTS AND CORROBORATES
14:13:27 18 THE PLAIN SENTENCE IN THE SPECIFICATION ITSELF.

14:13:33 19 SLIDE 19, PLEASE.

14:13:34 20 WHEN AS HERE, THE SPECIFICATION ONLY
14:13:37 21 DISCLOSES ONE WAY OF MATHEMATICALLY FITTING AN
14:13:41 22 ELLIPSE. AND IT GOES FURTHER AND IT SAYS A PORTION
14:13:44 23 OF IT IS A REQUIREMENT, THEN IT'S APPROPRIATE TO
14:13:48 24 INTERPRET THE CLAIMS TO INCLUDE THAT REQUIREMENT.

14:13:51 25 HERE, YOUR HONOR, THERE'S ONLY ONE PLACE

14:13:55 1 IN THE ENTIRE SPECIFICATION WHERE THERE'S A
14:13:58 2 DISCUSSION OF "MATHEMATICALLY FITTING AN ELLIPSE"
14:14:00 3 AND IN THAT ONE PLACE, YOU FIND THE SENTENCE THAT
14:14:04 4 IS REQUIRED.

14:14:06 5 THIS IS NOT A SITUATION WHERE YOU HAVE
14:14:09 6 MULTIPLE EMBODIMENTS AND WE'RE TRYING TO IMPORT ONE
14:14:12 7 OF THOSE EMBODIMENTS INTO THE CLAIM.

14:14:14 8 THE ONLY DESCRIPTION SAYS THAT THIS
14:14:17 9 ELLIPSE FITTING PROCEDURE REQUIRES THIS STEP.

14:14:20 10 NOW, IF WE GO TO SLIDE 20, THIS IS THE
14:14:26 11 COLUMN 27 WHERE APPLE SAYS, WELL, THIS IS THE
14:14:31 12 ALTERNATE EMBODIMENT, BUT ON THE FACE OF IT YOU CAN
14:14:34 13 SEE THAT IT'S SAYING IF YOU CAN'T FIT AN ELLIPSE,
14:14:38 14 YOU CAN GO TO DEFAULTS.

14:14:39 15 SO IT SAYS, "ON LOW RESOLUTION ELECTRODE
14:14:42 16 ARRAYS, THE TOTAL GROUP PROXIMITY GZ IS A MORE
14:14:46 17 RELIABLE INDICATOR OF CONTACT SIZE AS WELL AS
14:14:50 18 FINGER PRESSURE," AND HERE'S THE CRITICAL THING,
14:14:53 19 "THAN THE FITTED ELLIPSE PARAMETERS."

14:14:57 20 IT GOES ON. "SO THEREFORE, IF PROXIMITY
14:15:00 21 IMAGES HAVE LOW RESOLUTION, THE ORIENTATION AND
14:15:04 22 ECCENTRICITY OF SMALL CONTACTS ARE SET TO DEFAULT
14:15:06 23 VALUES RATHER THAN THEIR MEASURED VALUES."

14:15:09 24 SO IT'S SAYING IF YOU HAVE A LOW
14:15:12 25 RESOLUTION, YOU CAN'T USE THE MATHEMATICAL ELLIPSE

14:15:14 1
14:15:15 2
14:15:18 3
14:15:22 4
14:15:24 5
14:15:27 6
14:15:31 7
14:15:40 8
14:15:42 9
14:15:46 10
14:15:47 11
14:15:50 12
14:15:53 13
14:15:56 14
14:15:58 15
14:16:03 16
14:16:06 17
14:16:10 18
14:16:14 19
14:16:16 20
14:16:19 21
14:16:22 22
14:16:23 23
14:16:26 24
14:16:28 25

FITTING.

SO YOU'RE BETTER JUST TO USE THE CENTER POINT AND THEN DO THE DEFAULTS AROUND IT THAN IT IS TO TRY AND MATHEMATICALLY FIT IT.

AND SO YOU DON'T USE THE FITTED ELLIPSE PARAMETERS. INSTEAD YOU USE DEFAULT VALUES.

SO, AGAIN, ORIENTATION, ECCENTRICITY, WE WENT THROUGH THOSE. THAT'S THE RELATIONSHIP OF THE X TO Y, HOW LONG -- HOW LONG IS THE OVAL OF THE ELLIPSE?

ORIENTATION. HOW IS IT ORIENTED ON THE X-Y AXIS? THAT'S THE FITTING OF THE ELLIPSE, YOUR HONOR, AND THEY'RE SET TO ZERO AND ONE. THEY'RE NOT FITTING AN ELLIPSE HERE, YOUR HONOR.

AND SO HERE'S AN EXAMPLE OF THEM -- OF THE PATENT FITTING THE ELLIPSE WHEN IT'S GOT ENOUGH DATA TO DO SO AND IT USES THE UNITARY TRANSFORMATION OF COVARIANCE MATRIX AS A REQUIREMENT IN ORDER TO DO THAT.

AND HERE'S AN EXAMPLE OF WHERE THE DATA IS TOO SMALL AND THERE'S NO EFFORT AT ALL MADE TO FIT AN ELLIPSE.

AS YOU HEARD FROM DR. BALAKRISHNAN, THEY SIMPLY CALCULATE THE CENTER POINT OF THE TOUCH AND DO DEFAULT VALUES ON IT.

14:16:30 1 THAT CANNOT BE FAIRLY SAID TO BE A SECOND
14:16:32 2 EMBODIMENT OF "MATHEMATICALLY FITTING AN ELLIPSE."

14:16:35 3 IF I COULD GO TO THE NEXT ARGUMENT THAT
14:16:39 4 COUNSEL HAS MADE. I KNOW WE'RE SHORT ON TIME, YOUR
14:16:41 5 HONOR.

14:16:41 6 THE CLAIM -- THE ARGUMENT WAS MADE, WELL,
14:16:44 7 THESE DEPENDENT CLAIMS TALK ABOUT EIGENVECTORS AND
14:16:48 8 EIGENVALUES, AND, THEREFORE, OUR CONSTRUCTION MUST
14:16:50 9 BE REJECTED.

14:16:51 10 BUT IF YOU LOOK -- IF I MAY APPROACH THE
14:16:54 11 SCREEN, HERE'S THE PHRASE WE'RE TALKING ABOUT
14:16:58 12 "MATHEMATICALLY FITTING AN ELLIPSE TO AT LEAST ONE
14:17:00 13 OF THE PIXEL GROUPS."

14:17:02 14 AND HERE'S WHAT WE'RE SAYING IS REQUIRED
14:17:07 15 OR THAT IS A REQUIREMENT AS PART OF THAT. AND
14:17:10 16 WE'RE SAYING THE ELLIPSE FITTING PROCEDURE REQUIRES
14:17:12 17 A UNITARY TRANSFORMATION OF THE GROUP COVARIANCE
14:17:15 18 MATRIX OF SECOND MOMENTS, 15, 16, 17, AND 18 ARE
14:17:22 19 PART OF THIS.

14:17:22 20 DOWN HERE WHERE THEY'RE TALKING ABOUT
14:17:24 21 EIGENVALUE AND EIGENVECTORS, THEY'RE CLAIMING LATER
14:17:29 22 STEPS IN THE CALCULATION THAT WE ARE NOT TRYING TO
14:17:31 23 IMPORT INTO MATHEMATICALLY FITTING AN ELLIPSE. SO
14:17:31 24 THERE IS NO CLAIM DIFFERENTIATION HERE. OUR
14:17:34 25 PROPOSED CONSTRUCTION DOES NOT TALK ABOUT

14:17:37 1 EIGENVECTORS.

14:17:38 2 IN FACT, WE WERE CHASTISED BY COUNSEL --
14:17:41 3 THE COURT: BUT I GUESS YOU KIND
14:17:43 4 OF STEPPED AWAY FROM THIS -- NOW IT SEEMS LIKE
14:17:44 5 YOU'RE GOING BACK TO YOUR ORIGINAL ARGUMENT WHICH
14:17:47 6 IS THAT THE GROUP COVARIANCE MATRIX IS
14:17:51 7 MATHEMATICALLY FITTING AN ELLIPSE BUT NOW YOU'RE
14:17:53 8 SAYING, NO, IT IS NOT.

14:17:54 9 YOU'RE EQUATING THAT LANGUAGE IN CLAIM 1
14:17:57 10 WITH THE GROUP COVARIANCE MATRIX AND YOU'RE SORT OF
14:18:00 11 BACK TO WHAT --

14:18:03 12 MR. VERHOEVEN: I DON'T BELIVE SO, YOUR
14:18:04 13 HONOR. I THINK ALL I'M SAYING IS THAT THIS IS A
14:18:06 14 REQUIREMENT TO DO THIS, NOT THAT YOU COULDN'T --
14:18:09 15 GET RID OF 5 AND 15 AND YOU'RE JUST LOOKING AT
14:18:11 16 CLAIM 1.

14:18:18 17 IF SOMEBODY FITTED AN ELLIPSE AND USED
14:18:21 18 THIS -- THESE EQUATIONS BUT DIDN'T DO OTHER THINGS
14:18:23 19 AND THEY USED OTHER EQUATIONS IN ADDITION TO IT,
14:18:24 20 THEN THEY WOULD INFRINGE CLAIM 1.

14:18:27 21 IF THEY -- SO IF THEY DIDN'T DO
14:18:30 22 EIGENVECTORS, THEY STILL INFRINGE CLAIM 1 UNDER OUR
14:18:34 23 CLAIM CONSTRUCTION.

14:18:34 24 IF THEY WENT AHEAD AND THEN ALSO AFTER
14:18:39 25 DOING THE UNITARY TRANSFORMATION OF COVARIANCE

14:18:47 1 MATRIX CALCULATION, THEN THEY WENT ON AND
14:18:50 2 CALCULATED EIGENVALUES, THEN THEY WENT AND
14:18:53 3 INFRINGED CLAIM 1 AND CLAIM 5.

14:18:55 4 SO WE'RE NOT SAYING -- AS I ATTEMPTED TO
14:18:59 5 CLARIFY AT THE START, WE'RE NOT SAYING THAT A TO Z
14:19:01 6 TOTALITY OF THE CALCULATIONS YOU DO TO
14:19:03 7 MATHEMATICALLY FIT AN ELLIPSE ARE ONLY UNITARY
14:19:09 8 TRANSFORMATION OF COVARIANCE MATRIX.

14:19:10 9 WE'RE SIMPLY SAYING MATHEMATICALLY
14:19:12 10 FITTING AN ELLIPSE REQUIRES AT LEAST THE USE OF THE
14:19:20 11 UNITARY TRANSFORMATION OF THE COVARIANCE MATRIX,
14:19:24 12 WHICH IS WHAT IT SAYS EXPRESSLY IN THE ONLY
14:19:27 13 DISCLOSURE IN THE SPECIFICATION.

14:19:37 14 I THINK THAT'S ALL I HAVE, YOUR HONOR,
14:19:39 15 UNLESS YOU HAVE ANY FURTHER QUESTIONS FOR ME.

14:19:41 16 THE COURT: NO, NOTHING FURTHER. THANK
14:19:42 17 YOU.

14:19:42 18 ANYTHING FURTHER, MR. JACOBS? VERY
14:19:45 19 SHORT, PLEASE.

14:19:53 20 MR. JACOBS: YOUR HONOR, I THINK YOU HAVE
14:19:55 21 THE EVIDENCE BEFORE YOU. I THINK WE'RE ALL CITING
14:19:57 22 TO THE SAME MATERIAL NOW.

14:19:58 23 I THINK WE'RE ARGUING REALLY A LEGAL
14:20:00 24 POINT, WHICH IS WHEN YOU READ IN A PREFERRED
14:20:04 25 EMBODIMENT OR EMBODIMENT INTO THE CLAIMS, AND WE

14:20:06 1 THINK THE LAW IS CLEAR ON THAT HERE, AND THAT
14:20:08 2 SAMSUNG WOULD LEAD YOU INTO ERROR.

14:20:09 3 I WOULD NOTE AT THE BOTTOM OF COLUMN 59
14:20:14 4 AND THE TOP OF 60, THE TRADITIONAL LANGUAGE OF A
14:20:17 5 PATENT DRAFTSMAN WHO IS WORRIED THAT A COURT MIGHT
14:20:20 6 VIEW AN EMBODIMENT AS A LIMITATION, OTHER
14:20:24 7 EMBODIMENTS OF THE INVENTION WILL BE APPARENT TO
14:20:27 8 THOSE SKILLED IN THE ART FROM CONSIDERATION OF THE
14:20:29 9 SPECIFICATION AND PRACTICE OF THE INVENTION
14:20:30 10 DISCLOSED HEREIN.

14:20:32 11 IT IS INTENDED THAT THE SPECIFICATION AND
14:20:34 12 EXAMPLES BE CONSIDERED AS EXEMPLARY ONLY WITH A
14:20:38 13 TRUE SCOPE AND SPIRIT OF THE INVENTION BEING
14:20:41 14 INDICATED BY THE FOLLOWING CLAIMS.

14:20:45 15 SO WE BOOKENDED THIS DESCRIPTION, YOUR
14:20:47 16 HONOR, WE BOOKENDED IT WITH AN INTRODUCTION WHICH
14:20:50 17 SAYS THAT THIS IS A DESCRIPTION OF THE PREFERRED
14:20:51 18 EMBODIMENT AND WE'VE ENDED IT WITH THAT THIS IS
14:20:54 19 MERELY ILLUSTRATIVE.

14:20:55 20 SAMSUNG CITED A CASE WHICH ACTUALLY HELPS
14:20:59 21 US, THE IMAGE CUBE CASE AND FUNNY ENOUGH IT KIND OF
14:21:04 22 REQUIRED LANGUAGE IN THE CASE. AND THE FEDERAL
14:21:06 23 CIRCUIT AFFIRMED THE LOWER COURT BUT IT HAD "OF THE
14:21:13 24 INVENTION" IN IT AND THAT'S WHAT THE -- BUT THAT'S
14:21:15 25 WHAT TOGGLED THE COURT FROM THIS IS JUST AN

14:21:17 1 EMBODIMENT TO THIS IS A DESCRIPTION OF THE
14:21:19 2 INVENTION.

14:21:20 3 AND SO THAT CASE IS ACTUALLY OUR CASE.
14:21:25 4 AND THE DEPENDENT CLAIMS, THOSE ARE OUR CLAIMS,
14:21:28 5 YOUR HONOR, IN THE SENSE THAT THEY ABSOLUTELY
14:21:30 6 REINFORCE THE POINT WE'RE DRIVING AT.

14:21:32 7 IF YOU GO FURTHER INTO THE CLAIM
14:21:34 8 STRUCTURE, YOU WILL SEE OTHER INSTANCES IN WHICH A
14:21:37 9 BROAD INDEPENDENT CLAIM THAT DOESN'T CLAIM A
14:21:40 10 PARTICULAR METHOD OF MATHEMATICALLY FITTING AN
14:21:42 11 ELLIPSE IS SET FORTH.

14:21:44 12 AND THEN FURTHER DOWN WE SEE THE SPECIFIC
14:21:47 13 PARAMETERS, I'M LOOKING, FOR EXAMPLE, AT CLAIM 19,
14:21:55 14 SPECIFIC PARAMETERS THERE ARE CLAIMED.

14:21:57 15 THEN CLAIM 20, WE HAVE THE EIGENVALUES
14:22:00 16 AND EIGENVECTORS BEING DISCLOSED.

14:22:04 17 WHEN SAMSUNG DISCUSSED CLAIM 5 WITH YOU A
14:22:07 18 MOMENT AGO, THEY LEFT OUT CRITICAL LANGUAGE OF
14:22:10 19 CLAIM 5.

14:22:11 20 IT'S NOT JUST EIGENVALUES AND
14:22:13 21 EIGENVECTORS, IT'S OF THE COVARIANCE MATRIX.
14:22:17 22 THAT'S OF THE COVARIANCE MATRIX. THAT COVARIANCE
14:22:20 23 MATRIX IS ILLUSTRATED IN THE PASSAGE WITH THE
14:22:24 24 REQUIRED FORE LANGUAGE THAT SAMSUNG SO HEAVILY
14:22:28 25 RELIES ON.

14:22:29 1 SO WE'RE GETTING CLOSER TO THE COURT'S
14:22:32 2 ADJUSTED SAMSUNG DEFINITION IN CLAIM 5. IT'S NOT
14:22:35 3 ACTUALLY THE PARTICULAR FORMULA THERE FOR
14:22:37 4 CALCULATING THE COVARIANCE MATRIX. IT CLAIMS A
14:22:40 5 COVARIANCE MATRIX EIGENVALUES EIGENVECTORS BUT AT
14:22:45 6 LEAST WE'RE GETTING IN THE RANGE OF, OKAY, WE'RE
14:22:48 7 TALKING ABOUT A PROCESS IN WHICH CALCULATING A
14:22:51 8 COVARIANCE, IN WHICH DEALING WITH A COVARIANCE
14:22:54 9 MATRIX IS AT ISSUE.

14:22:55 10 AND SO BASIC DOCTRINES OF CLAIMS
14:22:58 11 CONSTRUCTION APPLIED HERE CONFIRM THAT SAMSUNG'S
14:23:00 12 PROPOSED DEFINITION, EVEN AS ADJUSTED BY THE COURT,
14:23:04 13 WOULD VIOLATE ALL OF THE RULES OF CLAIM
14:23:08 14 CONSTRUCTION THAT WE HAVE INHERITED OVER THE PAST
14:23:10 15 YEARS FROM THE FEDERAL CIRCUIT.

14:23:15 16 THE COURT: OKAY. THANK YOU. CAN WE GO
14:23:18 17 TO THE '915, PLEASE. I THINK WE HAVE THREE MORE
14:23:22 18 TERMS LEFT.

14:23:40 19 MR. JACOBS: SO THIS IS A PATENT THAT IS
14:23:43 20 ALSO LIKE THE PATENT WE JUST LOOKED AT. IT'S PART
14:23:46 21 OF THE MAGIC OF THIS, YOUR HONOR.

14:23:48 22 HOW DO WE GET THESE TOUCHSCREENS TO
14:23:50 23 INTERPRET WHAT TO A SCREEN MUST BE THOUGHT OF ROUGH
14:23:55 24 HUMAN GESTURES AND MAKE THEM MEANINGFUL IN THE
14:23:57 25 CONTEXT OF A COMPUTING DEVICE?

14:23:59 1 AND SO THE '915 DISTINGUISHES BETWEEN
14:24:01 2 SCROLLING AND GESTURING. THAT'S WHAT THE CLAIM OR
14:24:04 3 WHAT THE PATENT IS GENERALLY ABOUT.

14:24:06 4 AND THEN WE HAVE THIS CLAIM LANGUAGE,
14:24:08 5 EXCUSE ME, ON SLIDE 27, "SCROLLING A WINDOW HAVING
14:24:11 6 A VIEW ASSOCIATED WITH THE EVENT OBJECT."

14:24:14 7 ONCE AGAIN, WE THINK THAT SAMSUNG IS
14:24:17 8 READING A PARTICULAR LIMITATION INTO THE CLAIM.

14:24:20 9 THE HEART OF THIS, YOUR HONOR, IS THAT
14:24:22 10 THEY READ "SCROLLING A WINDOW," THEY SEE THE WORD
14:24:25 11 "WINDOW" AND THEY IMAGINE A PICTURE FRAME.

14:24:27 12 AND SO WHEN SAMSUNG SEES "SCROLLING A
14:24:30 13 WINDOW" IN THE CLAIM LANGUAGE, THEY IMAGINE THAT
14:24:32 14 YOU'RE PULLING A PICTURE FRAME ACROSS AN OBJECT.

14:24:35 15 AND SO THE WAY THAT THEY EXPLICATE THAT
14:24:39 16 IN THEIR PROPOSED CONSTRUCTION IS THAT THE
14:24:41 17 DIRECTION OF THE USER INPUT, THE WINDOW SLIDES IN A
14:24:45 18 DIRECTION CORRESPONDING TO THE DIRECTION OF THE
14:24:47 19 USER INPUT OVER A VIEW THAT IS STATIONARY RELATIVE
14:24:50 20 TO THE WINDOW.

14:24:51 21 THAT'S A LOT OF WORDS TO DESCRIBE A
14:24:53 22 PARTICULAR MOTION OF SCROLLING ASSOCIATED WITH A
14:24:58 23 FINGER MOVEMENT, AND WE DON'T SEE HOW THE CLAIM CAN
14:25:01 24 BE LIMITED IN THE WAY THAT SAMSUNG PROPOSES FOR
14:25:05 25 SEVERAL REASONS.

14:25:06 1 THE SPECIFICATION TELLS US THAT
14:25:08 2 "SCROLLING IS MERELY THE ACT OF SLIDING A
14:25:11 3 DIRECTIONAL, E.G., HORIZONTAL OR VERTICAL,
14:25:14 4 PRESENTATION OF CONTENT ACROSS A SCREEN OR A
14:25:17 5 WINDOW."

14:25:17 6 IMPORTANTLY, IMPORTANTLY FOR THE HEART OF
14:25:21 7 SAMSUNG'S ARGUMENT, THE SPECIFICATION EXPLAINS THAT
14:25:24 8 "THE WINDOW IS A DISPLAY REGION WHICH MAY NOT HAVE
14:25:27 9 A BORDER AND MAY BE THE ENTIRE DISPLAY REGION OR
14:25:30 10 AREA OF A DISPLAY."

14:25:32 11 I'M ON SLIDE 30, AND WE'RE RECITING FROM
14:25:36 12 COLUMNS 5, LINES 25 TO 28.

14:25:40 13 SO THIS IDEA THAT SAMSUNG IS PROPOSING
14:25:42 14 THAT WHEN YOU HEAR THIS WORD "WINDOW" WE HAVE TO
14:25:46 15 THINK OF PICTURE FRAME OR WINDOW FRAME, IS NOT ONLY
14:25:49 16 NOT SUPPORTED, BY CONTROVERTED BY THE SPECIFICATION
14:25:52 17 DESCRIPTION OF A WINDOW IN THIS PATENT.

14:25:54 18 AGAIN, A WINDOW IS A REGION WHICH MAY OR
14:25:57 19 MAY NOT HAVE A BORDER.

14:26:03 20 IN THE IPHONE AND SAMSUNG DEVICES, WHEN
14:26:06 21 YOU PULL DOWN ON THE CONTENT, IT MOVES WITH YOUR --
14:26:08 22 IN THE DIRECTION OF YOUR FINGER.

14:26:11 23 IN SOME DEVICES, AND, IN FACT, I WAS JUST
14:26:14 24 PLAYING WITH ONE OF MY APPLE DEVICES, NOT AN IPHONE
14:26:18 25 BUT A COMPUTER, YOU CAN ACTUALLY SWITCH WHICH WAY

14:26:20 1 THE CONTENT MOVES DEPENDING ON HOW YOU SCROLL ON
14:26:25 2 THE TRACK PAD.

14:26:27 3 BUT, AGAIN, ON THESE PHONES, WHEN YOU
14:26:30 4 PULL DOWN WITH YOUR FINGER, THE CONTENT MOVES DOWN
14:26:34 5 WITH YOUR FINGER.

14:26:35 6 IN THE SPECIFICATION, THERE'S KIND OF A
14:26:37 7 BUILT-IN ANIMATION OF WHAT SCROLLING IS, WHAT IS
14:26:40 8 MEANT BY OR IS ILLUSTRATED BY SCROLLING IN THE
14:26:44 9 EMBODIMENTS OF THE PATENT.

14:26:45 10 SO WE HAVE TAKEN FIGURE 6A AND B AND
14:26:48 11 ANIMATED THEM, AND YOU'LL SEE IT'S JUST LIKE THE
14:26:52 12 PHONE DEVICE.

14:26:53 13 SO IF YOU LINE UP 6A AND B AND YOU PUT
14:26:56 14 THE FINGER ON THAT LIST, YOU PULL DOWN, THE LIST
14:26:59 15 PULLS DOWN IN THE SAME DIRECTION AS YOUR FINGER.

14:27:03 16 THE COURT: IS THE ONLY DISPUTE WITH
14:27:05 17 REGARD TO THIS TERM WHAT DIRECTION THE SCROLL
14:27:08 18 FUNCTION UNCOVERS?

14:27:10 19 MR. JACOBS: I THINK THAT'S THE HEART OF
14:27:12 20 IT, YOUR HONOR. I THINK ALL OF THIS EXTRA WORDING
14:27:14 21 KIND OF IS UNNECESSARY AIMED AT THE DIRECTIONAL
14:27:19 22 QUESTION.

14:27:19 23 "SLIDING A WINDOW," I MEAN, WE'RE SLIDING
14:27:24 24 A WINDOW -- WE'RE NOT REALLY SLIDING A WINDOW.
14:27:29 25 WE'RE SCROLLING A WINDOW. I DON'T KNOW WHY YOU

14:27:32 1 WANT TO SLIDE THE WINDOW. WHAT IS WRONG WITH
14:27:36 2 SCROLLING THE WINDOW?

14:27:37 3 BUT IF YOU ALREADY HAVE THAT DIRECTIONAL
14:27:39 4 ISSUE, THEN I MAY BE ABLE TO -- LET ME SHOW JUST
14:27:42 5 YOU THIS ANIMATION.

14:27:43 6 WE ANIMATED THEIR BRIEF. THEIR BRIEF
14:27:46 7 SAID THAT THE BEHAVIOR THAT THEY THINK IS REQUIRED
14:27:48 8 BY THE CLAIMS, THAT THE CLAIM IS LIMITED TO, IS
14:27:51 9 WHAT WOULD HAPPEN IF YOU PUT THEIR BRIEF IN ADOBE
14:27:56 10 ACROBAT IN A WINDOWS BASED PC, AND THAT'S WHAT THEY
14:28:00 11 SAID IN THEIR BRIEF.

14:28:01 12 SO THIS SCROLLING BEHAVIOR IS EXACTLY
14:28:03 13 WHAT ONE WOULD EXPERIENCE, FOR EXAMPLE, READING
14:28:06 14 THIS BRIEF ON A WINDOWS BASED PC USING ADOBE
14:28:09 15 ACROBAT.

14:28:10 16 SO WE DID THAT AND WE ANIMATED THAT. AND
14:28:13 17 YOU WILL SEE WHAT IS BEING SHOWN HERE IS THE
14:28:15 18 OPPOSITE DIRECTION FROM WHAT YOU SEE ON AN IPHONE
14:28:18 19 OR ON A SAMSUNG DEVICE AS IT HAPPENS.

14:28:21 20 AND IT'S THE OPPOSITE OF THE SCROLLING
14:28:24 21 DIRECTIONALITY THAT IS DISCLOSED IN THE
14:28:26 22 SPECIFICATION.

14:28:26 23 SO THIS IS REDOING FIGURE 6A AND B TO
14:28:30 24 CORRESPOND TO SAMSUNG'S PROPOSAL, AND NOW WE'RE
14:28:33 25 BACK TO WHAT THE SPECIFICATION DISCLOSES ACTUALLY

14:28:35 1 IN 6A OR 6B. I'M ON SLIDE 36 AND THE ANIMATIONS
14:28:42 2 ASSOCIATED WITH IT.

14:28:43 3 SO IF WE ACTUALLY DO THOSE SIDE BY SIDE
14:28:46 4 NOW.

14:28:50 5 SO THAT'S WHY SAMSUNG REALLY JUST HAS TO
14:28:53 6 BE WRONG. "SCROLLING A WINDOW MEANS SCROLLING A
14:28:55 7 REGION." IT DOES NOT MEAN MOVING A FRAME AROUND
14:28:59 8 OVER CONTENT IN PARTICULAR DIRECTIONALITY. NO
14:29:02 9 PARTICULAR DIRECTIONALITY IS CLAIMED HERE, AND THE
14:29:05 10 CLAIM SHOULD NOT BE LIMITED TO THAT DIRECTIONALITY
14:29:07 11 AND IT CERTAINLY SHOULD NOT BE LIMITED TO THE
14:29:10 12 DIRECTIONALITY THAT SAMSUNG PROPOSES.

14:29:14 13 THE COURT: LET ME ASK MR. JOHNSON, I
14:29:16 14 TEND TO AGREE THAT YOU HAVE READ OUT SEVERAL
14:29:19 15 EMBODIMENTS WITH YOUR CONSTRUCTION.

14:29:21 16 CAN YOU RESPOND TO THAT?

14:29:22 17 MR. JOHNSON: SURE. WITH RESPECT TO
14:29:24 18 FIGURE 5 AND 6, FOR EXAMPLE, THE CLAIM LANGUAGE IS
14:29:28 19 IMPORTANT -- IT'S IMPORTANT TO LOOK AT THE CLAIM
14:29:31 20 LANGUAGE BECAUSE THE CLAIM LANGUAGE OBVIOUSLY
14:29:33 21 COVERS AND TELLS THE PERSON OF ORDINARY SKILL IN
14:29:35 22 THE ART WHAT IS COVERED.

14:29:36 23 AND THE CLAIM LANGUAGE SAYS, "SCROLLING A
14:29:38 24 WINDOW, HAVING A VIEW." IT DOES NOT SAY,
14:29:41 25 "SCROLLING A VIEW." IT DOES NOT SAY, "SCROLLING A

14:29:42 1 VIEW." IT SAYS, "YOU SCROLL THE WINDOW."

14:29:44 2 AND AS WE -- AS MR. JACOBS POINTED OUT,
14:29:47 3 COLUMN 1 OF THE PATENT SAYS "SCROLLING" MEANS
14:29:50 4 SLIDING.

14:29:50 5 THE ISSUE HERE IS THAT THE LANGUAGE THAT
14:29:52 6 WAS INSERTED WITH RESPECT TO EACH OF THE
14:29:55 7 INDEPENDENT CLAIMS FOR SCROLLING A WINDOW HAVING A
14:29:58 8 VIEW, I ACTUALLY -- I CLAIM -- FIGURES 5 AND 6 I
14:30:02 9 DON'T THINK ARE ACTUALLY COVERED BY SCROLLING A
14:30:07 10 WINDOW HAVING A VIEW, AND THEY'RE NOT COVERED FOR
14:30:09 11 TWO REASONS.

14:30:09 12 ONE IS THAT AS WE SAW IN THE ANIMATION
14:30:12 13 THAT I JUST SAW, WHAT WAS HAPPENING WAS THE FINGER
14:30:16 14 WAS TOUCHING THE CONTENT, IT WAS TOUCHING THE VIEW.

14:30:18 15 AND WHEN YOU LOOK AT THE PATENT
14:30:20 16 SPECIFICATION, THE SPECIFICATION DESCRIBES VIEW AS
14:30:24 17 THE CONTENT.

14:30:27 18 AND IF YOU LOOK AT, FOR EXAMPLE, OUR
14:30:29 19 SLIDE 13, "A VIEW IS THE WEB, THE TEXT, OR IMAGE
14:30:35 20 CONTENT."

14:30:37 21 AND WE SEE THREE DIFFERENT CITES FROM THE
14:30:40 22 SPEC, COLUMNS 5, 29 THROUGH 30, "A VIEW IS THE WEB,
14:30:40 23 TEXT OR IMAGE CONTENT."

14:30:48 24 "SCROLLING A WINDOW HAVING A VIEW,"
14:30:51 25 APPEARS AT COLUMN 6, LINE 50. "FOR EXAMPLE, WEB,

14:30:51 1
14:30:51 2
14:30:53 3
14:30:58 4
14:31:05 5
14:31:06 6
14:31:09 7
14:31:12 8
14:31:14 9
14:31:16 10
14:31:18 11
14:31:20 12
14:31:22 13
14:31:24 14
14:31:27 15
14:31:32 16
14:31:33 17
14:31:44 18
14:31:47 19
14:31:55 20
14:31:55 21
14:31:56 22
14:31:59 23
14:32:04 24
14:32:06 25

TEXT OR IMAGE CONTENT."

"THE VIEW, E.G., WEB, TEXT OR IMAGE CONTENT, HAS A FIRST SCALE FACTOR." THAT'S AT COLUMN 13, LINES 43 TO 44.

THE VIEW IS THE CONTENT. SO IT'S THE PICTURE OF THE ROYAL FAMILY. SO WHAT WE SAW IN FIGURE 6, IT WAS A FINGER THAT TOUCHED A LIST AND SCROLLED A LIST DOWN.

IT DID NOT SCROLL A WINDOW. IT SCROLLED A LIST.

SO BY TOUCHING THE VIEW, IT WAS TOUCHING THE CONTENT AND THAT'S DIFFERENT FROM WHAT IS REQUIRED IN THE CLAIM LANGUAGE.

AND IT'S ALSO -- FIGURES 5 AND 6 ARE NOT COVERED BY THE CLAIMS BECAUSE THE CLAIMS ALSO REQUIRE SCALING A VIEW.

IF WE GO BACK TO SLIDE 3, THE LAST LIMITATION REFERS TO "RESPONDING TO AT LEAST ONE GESTURE CALL, IF ISSUED, BY SCALING THE VIEW ASSOCIATED WITH THE EVENT."

WE DIDN'T SEE IN FIGURES 5 AND 6 ANY REFERENCE TO SCALING THE VIEW. WE SAW THE FINGER MOVE DOWN.

I DON'T THINK FIGURES 5 AND 6 ARE COVERED BY THE CLAIMS BECAUSE THE LANGUAGE THAT WAS

14:32:08 1 INSERTED IN THE CLAIMS -- AND APPLE DRAFTED THIS
14:32:11 2 LANGUAGE. AND COULD THEY HAVE BEEN MORE CLEARER?
14:32:13 3 PERHAPS. BUT AT THE END OF THE DAY A PERSON OF
14:32:18 4 ORDINARY SKILL IN THE ART WOULD UNDERSTAND THAT
14:32:20 5 THERE'S A DISTINCTION, A VERY REAL DISTINCTION
14:32:22 6 BETWEEN "SCROLLING A WINDOW WITH A VIEW" AND
14:32:24 7 "SCROLLING A VIEW."

14:32:25 8 AND THE REASON FOR THAT IS WHEN WE LOOKED
14:32:31 9 AT -- LET'S GO BACK TO SOME OF THE IMAGES WE LOOKED
14:32:34 10 AT IN THE TUTORIAL. SLIDE 6, PLEASE.

14:32:39 11 WE START WITH A VIEW, HERE A PHOTOGRAPH.
14:32:40 12 IT COULD BE A WEB PAGE OR WHAT HAVE YOU.

14:32:42 13 WE START WITH A VIEW. SLIDE 7 IS A
14:32:45 14 WINDOW HAVING A VIEW. AND THIS IS A METAPHOR. THE
14:32:49 15 FRAME, AS WE POINTED OUT, DOES NOT NECESSARILY HAVE
14:32:51 16 TO HAVE A WORD, BUT I THINK FOR PURPOSES OF
14:32:54 17 EXPLAINING WHAT IS GOING ON AND WHY THERE'S A
14:32:56 18 DISTINCTION BETWEEN SCROLLING A WINDOW HAVING A
14:32:58 19 VIEW AND SCROLLING A VIEW, IT'S IMPORTANT TO SEE
14:33:01 20 WHAT HAPPENS WHEN WE ACTUALLY SCROLL THE WINDOW
14:33:04 21 THAT HAS A VIEW.

14:33:05 22 SLIDE 8, PLEASE, SHOWS WHAT WE'RE DOING
14:33:08 23 HERE.

14:33:09 24 THE COURT: IS YOUR ARGUMENT IT'S SIMILAR
14:33:10 25 TO THE ONE MADE BEFORE THAT THE CLAIMS WERE NOT

14:33:12 1 INTENDED TO GOVERN THESE EMBODIMENTS? IS THAT IT?
14:33:18 2 KIND OF LIKE WHAT THE ARGUMENT THAT MR. VERHOEVEN
14:33:21 3 MADE EARLIER ON?

14:33:26 4 MR. JOHNSON: THAT'S CORRECT, AND THERE
14:33:27 5 WAS A RESTRICTION REQUIREMENT MADE IN THE
14:33:29 6 PROSECUTION AND ULTIMATELY THERE WERE OTHER
14:33:30 7 APPLICATIONS THAT WERE PROSECUTED AND CONTINUE TO
14:33:33 8 BE PROSECUTED, I THINK, BUT NEVERTHELESS, WHAT IS
14:33:36 9 DESCRIBED IN FIGURES 5 AND 6 ARE NOT DESCRIBED BY
14:33:41 10 THE CLAIM LANGUAGE.

14:33:43 11 AND WHEN YOU GO TO -- WHEN YOU SEE --
14:33:46 12 JUST TO RUN THAT THROUGH AGAIN PLEASE, SLIDE 8,
14:33:49 13 SCROLLING AND HAVING A VIEW. WE SEE THE VIEW
14:33:52 14 STAYED THE SAME AND WE'RE MOVING THE WINDOW ACROSS
14:33:55 15 THE VIEW.

14:33:55 16 "SCALING THE VIEW," WHICH IS ALSO
14:33:57 17 DESCRIBED IN THE CLAIMS, SLIDE 9, SHOWS THE VIEW --
14:34:01 18 THE WINDOW REMAINS THE SAME AND NOW WE'RE GOING TO
14:34:06 19 SCALE THE VIEW. THE PHOTOGRAPH IS ENLARGED. SO WE
14:34:11 20 ARE ZOOMING IN ON A PARTICULAR SECTION.

14:34:12 21 THIS IS ALL DIFFERENT FROM "SCROLLING A
14:34:15 22 VIEW."

14:34:16 23 IF WE GO TO SLIDE 10 WE SEE AN EXAMPLE OF
14:34:19 24 "SCROLLING A VIEW."

14:34:20 25 NOW, WHAT IS HAPPENING HERE IS THAT THE

14:34:23 1 VIEW IS GOING TO SCROLL, THE VIEW IS GOING TO MOVE.

14:34:27 2 THE PHOTOGRAPH, THE FRAME, THE WINDOW
14:34:32 3 REMAINS THE SAME. SO LET'S RUN THROUGH THAT AGAIN.
14:34:36 4 IT DOES HAVE A DIFFERENCE IN THE DIRECTIONALITY
14:34:39 5 THAT WE'RE LOOKING AT.

14:34:40 6 "SCROLLING A VIEW," WE LOOK AT BOTH OF
14:34:42 7 THEM TOGETHER, AND IT'S SLIDE 11 AND I THINK IT
14:34:45 8 ACTUALLY SHOWS THE DIFFERENCE.

14:34:46 9 "SCROLLING A VIEW," WHICH IS ON THE
14:34:49 10 LEFT-HAND SIDE, WE'RE GOING TO MOVE ULTIMATELY THE
14:34:51 11 PHOTOGRAPHS ON THE RIGHT-HAND SIDE. "SCROLLING A
14:34:56 12 WINDOW AND HAVING A VIEW," WE'RE GOING TO MOVE THE
14:34:59 13 FRAME.

14:35:00 14 AND WHAT HAPPENS IS THAT ON THE LEFT-HAND
14:35:02 15 SIDE WHEN YOU MOVE THE VIEW FROM THE RIGHT TO LEFT,
14:35:04 16 THE WINDOW HAS THE APPEARANCE OF MOVING FROM LEFT
14:35:07 17 TO RIGHT. IT MOVES IN THE OPPOSITION DIRECTION,
14:35:09 18 WHEREAS ON THE RIGHT-HAND SIDE, WHEN YOU MOVE THE
14:35:12 19 WINDOW, WHEN YOU SCROLL THE WINDOW HAVING A VIEW,
14:35:15 20 WHICH IS WHAT THE CLAIM LANGUAGE IS SAYING, YOU
14:35:19 21 HAVE THE SAME DIRECTION OF MOVEMENT AS BOTH THE
14:35:21 22 FRAME ULTIMATELY AND THE VIEW.

14:35:22 23 IF WE CAN RUN THAT ANIMATION, PLEASE.

14:35:33 24 SO ULTIMATELY MOVING ONE WE END UP ON THE
14:35:36 25 LEFT-HAND SIDE OF THE PHOTOGRAPH, WHICH IS

14:35:37 1 "SCROLLING A WINDOW AND HAVING A VIEW."

14:35:40 2 WHEN WE HAVE JUST SIMPLY "SCROLLING A
14:35:42 3 VIEW" WE END UP ON THE RIGHT-HAND SIDE OF THE
14:35:45 4 PHOTOGRAPH. THERE IS A DIFFERENCE, AND A PERSON OF
14:35:46 5 ORDINARY SKILL IN THE ART WOULD UNDERSTAND THE
14:35:47 6 DIFFERENCE. AND, IN FACT, THE SPECIFICATION TALKS
14:35:50 7 ABOUT THE DIFFERENCES.

14:35:50 8 AND WHEN WE LOOK, FOR EXAMPLE, AT SLIDE
14:35:53 9 14, PLEASE.

14:35:56 10 IN TWO DIFFERENT PLACES THE SPECIFICATION
14:35:59 11 IN COLUMNS 6, LINES 48 TO 53 TALKS ABOUT "SCROLLING
14:36:03 12 A WINDOW HAVING A VIEW, E.G., WEB, TEXT, IMAGE, OR
14:36:08 13 CONTENT ASSOCIATED WITH THE EVENT OBJECT."

14:36:11 14 LATER ON IN THE PATENT ON COLUMN 17 IT
14:36:17 15 DISCUSSES WITH FIGURE 25 "SCROLLING THE VIEW."

14:36:19 16 THEY'RE MEANT TO BE TWO DIFFERENT IDEAS,
14:36:23 17 THE CLAIM LANGUAGE USES "SCROLLING A WINDOW WITH A
14:36:25 18 VIEW."

14:36:26 19 AND JUST TO PROVE THE POINT, I THINK THE
14:36:28 20 ANIMATION THAT MR. JACOBS SHOWED YOU ACTUALLY
14:36:32 21 PROVES THE POINT.

14:36:33 22 AND IF WE CAN PULL UP APPLE'S SLIDE 35
14:36:37 23 THAT WE JUST SAW.

14:36:38 24 DO YOU HAVE THE ABILITY TO DO THAT?
14:36:45 25 CAN YOU GUYS DO THAT? THANKS.

14:36:49 1 SO MR. JACOBS PUT THIS UP AND HE SAID,
14:36:52 2 YOU KNOW, THIS PROVES APPLE'S POINT BECAUSE THIS IS
14:36:56 3 AN EXAMPLE OF SAMSUNG'S BRIEF HERE AND ON THE
14:37:02 4 RIGHT-HAND SIDE WE SEE THE CURSOR AND WHAT HE
14:37:05 5 DIDN'T EXPLAIN WAS THAT THE CURSOR ACTUALLY MOVED
14:37:08 6 OVER TO THE RIGHT-HAND SIDE TO THE SCROLL BAR.

14:37:13 7 THAT'S DIFFERENT FROM -- AND, IN FACT,
14:37:15 8 THIS IS ACTUALLY SCROLLING A WINDOW WITH A VIEW.
14:37:18 9 BY MOVING THE CURSOR AND SCROLLING THE SCROLL BAR
14:37:21 10 ON THE RIGHT-HAND SIDE, WHAT YOU'RE DOING IS YOU'RE
14:37:23 11 MOVING THE PICTURE FRAME. YOU'RE MOVING THE
14:37:26 12 WINDOW.

14:37:26 13 IMAGINE THE BORDERS OF THE SCROLL BAR TO
14:37:29 14 BE ON WHEELS, THE UNDERLYING DOCUMENT, THE
14:37:33 15 UNDERLYING TEXT STAYS THE SAME.

14:37:36 16 WHAT YOU'RE DOING IS THAT YOU'RE MOVING
14:37:38 17 THE WINDOW UP AND YOU'RE MOVING IT DOWN. AND
14:37:40 18 THAT'S DIFFERENT.

14:37:41 19 AND WHAT WAS INTENDED AND WHAT WAS
14:37:42 20 DESCRIBED IN OUR BRIEF WAS SCROLLING A WINDOW --
14:37:45 21 SORRY -- WAS SCROLLING A VIEW, WHICH WAS IN THE
14:37:47 22 CONTEXT OF ADOBE ACROBAT, IF YOU HAVE EXPERIENCE
14:37:51 23 WITH THAT, YOU HAVE THE HAND WHICH YOU CAN PUT IN
14:37:54 24 THE MIDDLE OF THE DOCUMENT AND YOU CAN PHYSICALLY
14:37:57 25 SCROLL DOWN OR USE YOUR THUMBWHEEL OR YOUR FINGER

14:38:01 1 WHEEL TO GRAB SOMETHING IN THE MIDDLE AND CHANGE
14:38:04 2 THE VIEW.

14:38:05 3 SO WHEN YOU PHYSICALLY DO THAT IN ADOBE
14:38:08 4 ACROBAT, THAT IS FUNDAMENTALLY DIFFERENT FROM
14:38:12 5 SCROLLING ON THE SCROLL BAR ON THE RIGHT-HAND SIDE
14:38:14 6 AS WE SEE IN THIS ANIMATION.

14:38:16 7 SO CAN WE GO AHEAD AND JUST RUN THIS SO
14:38:19 8 WE CAN SEE THE WINDOW SWITCHING?

14:38:23 9 YOU SEE ON THE RIGHT-HAND SIDE, THE
14:38:25 10 SCROLL BAR MOVES UP, AND THAT'S MOVING THE WINDOW
14:38:28 11 UP, AND THE DOCUMENT LOOKS LIKE IT'S COMING DOWN.

14:38:31 12 WHAT THEY DON'T SHOW YOU IS THE IDEA OF
14:38:34 13 MOVING THE CURSOR TO THE MIDDLE OF THE DOCUMENT IN
14:38:36 14 ADOBE ACROBAT AND PHYSICALLY PULLING IT DOWN. AND
14:38:40 15 THAT WOULD BE SCROLLING A VIEW.

14:38:42 16 WHAT WE SEE IN THIS ANIMATION IS
14:38:44 17 SCROLLING A WINDOW HAVING A VIEW. AND THEY'RE
14:38:47 18 DIFFERENT AND A PERSON OF ORDINARY SKILL IN THE ART
14:38:49 19 WOULD UNDERSTAND IT.

14:38:49 20 AND AT THE END OF THE DAY, WHAT GOVERNS
14:38:52 21 IS THE CLAIM LANGUAGE, THAT'S WHAT INFORMS A PERSON
14:38:55 22 OF ORDINARY SKILL IN THE ART, APPLE INSERTED THE
14:38:58 23 TERM "WINDOW," AFTER SCROLLING.

14:39:00 24 "SCROLLING," AS WE SAW FROM COLUMN 1
14:39:03 25 REFERS TO SLIDING IN A DIRECTION. AND WHAT WE SEE

14:39:07 1 HERE IS THAT WHEN YOU "SCROLL A WINDOW HAVING A
14:39:09 2 VIEW," IT'S DIFFERENT FROM "SCROLLING A VIEW."

14:39:15 3 UNLESS YOUR HONOR HAS ANY QUESTIONS?

14:39:17 4 THE COURT: NO THANK YOU. ALL RIGHT. I
14:39:25 5 BELIEVE WE HAVE TWO LEFT. DID YOU WANT TO SAY
14:39:30 6 SOMETHING ABOUT THIS?

14:39:31 7 MR. JACOBS: I WAS GOING TO SUM UP. I
14:39:33 8 THINK WE'RE BOTH POINTING TO THE SAME EVIDENCE, AND
14:39:34 9 WE BOTH HAVE THE SAME EVIDENCE IN FRONT OF YOU.

14:39:36 10 I WOULD ECHO MUCH OF WHAT MR. JOHNSON
14:39:39 11 SAID. I THINK THE KEY LIES IN THEIR IMPLICIT
14:39:43 12 DEFINITION OF "WINDOW" AS NECESSARILY A KIND OF A
14:39:45 13 MICROSOFT WINDOWS WINDOW, AND THERE IS A
14:39:48 14 DESCRIPTION OF A "WINDOW" IN THE SPECIFICATION THAT
14:39:50 15 MAKES IT CLEAR IT'S NOT THAT KIND OF A WINDOW AT
14:39:52 16 ALL.

14:39:52 17 SO I'M PERFECTLY HAPPY WITH THE ADOBE
14:39:55 18 EXAMPLE THAT HE GAVE -- THAT HE CALLED "SLIDING A
14:39:58 19 VIEW," BUT I THINK READING THE SPECIFICATION THAT'S
14:40:01 20 "SLIDING A WINDOW HAVING A VIEW." THAT WAS TO GRAB
14:40:04 21 THE TEXT AND MOVE IT DOWN. THAT'S THE WAY THE
14:40:07 22 PHONES WORK.

14:40:07 23 SO THAT'S IT IN A NUTSHELL. "SCROLLING A
14:40:10 24 WINDOW" DOESN'T MEAN SCROLLING A MICROSOFT WINDOW.

14:40:13 25 THE COURT: ALL RIGHT. THANK YOU. LET'S

14:40:15 1 GO THEN TO "THE FIRST WINDOW HAS BEEN DISPLAYED
14:40:15 2 INDEPENDENTLY FROM A POSITION OF A CURSOR ON THE
14:40:44 3 SCREEN."

14:40:44 4 MR. JACOBS: THIS IS THE '891 PATENT.
14:40:47 5 AND SAMSUNG IS ADDING A LOT OF VERBIAGE TO PRETTY
14:40:51 6 FORWARD CLAIM LANGUAGE WITH ITS PROPOSED
14:40:53 7 DEFINITION.

14:40:53 8 THAT SHOULD MAKE ONE SUSPICIOUS TO BEGIN
14:40:56 9 WITH.

14:40:56 10 THE CLAIM LANGUAGE IS PRETTY SIMPLE. THE
14:40:59 11 CLAIM LANGUAGE IS "THE FIRST WINDOW HAS BEEN
14:41:02 12 DISPLAYED INDEPENDENTLY FROM A POSITION OF A CURSOR
14:41:05 13 ON THE SCREEN."

14:41:07 14 AND SAMSUNG IS READING IN A HOST OF
14:41:10 15 ADDITIONAL LIMITATIONS INTO THAT CLAIM LANGUAGE.

14:41:13 16 SO FIRST THEY ARE LIMITING THE ICON TO AN
14:41:18 17 ICON THAT IS CONTROLLED BY A MOUSE, TRACK BALL, OR
14:41:22 18 TOUCH PAD. I THINK THAT'S WHAT THEY'RE CALLING THE
14:41:26 19 CURSOR.

14:41:28 20 AND THEN THEY'RE REQUIRING THAT THE
14:41:30 21 CURSOR BE VISIBLE ON THE SCREEN WHEN THE FIRST
14:41:33 22 WINDOW IS DISPLAYED.

14:41:36 23 AND THEN THEY'RE -- THIS IS JUST KIND OF
14:41:39 24 A FUNNY CHOICE, THEIR USER MOVEMENT OF THE MOUSE
14:41:44 25 POINTER OR SIMILAR ICON DOES NOT AFFECT THE

14:41:47 1 LOCATION OF THE FIRST WINDOW.

14:41:48 2 AND WHAT THE LANGUAGE SAYS IS THAT IT'S
14:41:52 3 JUST INDEPENDENT OF THE POSITION OF A CURSOR. IT'S
14:41:54 4 NOT DIRECTED TO MOVEMENT OF THE POSITION OF A
14:41:56 5 CURSOR.

14:41:57 6 THERE IS NO PARTICULAR --

14:42:01 7 THE COURT: HOW DO YOU DEFINE CURSOR?

14:42:04 8 MR. JACOBS: YES. SO LET ME JUST GO
14:42:06 9 RIGHT TO THAT.

14:42:07 10 THE COURT: OKAY.

14:42:09 11 MR. JACOBS: WE PROTESTED ON TUESDAY THAT
14:42:12 12 SAMSUNG HAD A QUITE ARGUMENTATIVE TUTORIAL, AND ONE
14:42:14 13 OF THE THINGS THAT SAMSUNG ADVANCED AS A TECHNICAL
14:42:17 14 POINT IN THE CONTEXT OF A TUTORIAL WAS THAT A
14:42:20 15 CURSOR IS DIFFERENT FROM A CARET. AND THEY JUST
14:42:23 16 PUT THAT TO YOU AS SOMETHING THAT WAS A FACT.

14:42:27 17 WE WENT TO WIKIPEDIA IN RESPONSE AND AT
14:42:33 18 SLIDE 86 WE'LL SHOW YOU WHAT WIKIPEDIA TELLS US.

14:42:37 19 MR. JOHNSON: YOUR HONOR, WE TRIED TO
14:42:38 20 MEET AND CONFER WITH RESPECT TO THIS SLIDE OVER THE
14:42:41 21 LUNCH BREAK.

14:42:42 22 THIS IS A SLIDE AND A CITE TO A REFERENCE
14:42:44 23 THAT WE HAVE NEVER SEEN BEFORE, NOT IN THE JOINT
14:42:47 24 CLAIM CONSTRUCTION STATEMENT, NOT IN 4-2, NOT IN
14:42:50 25 ANY OF THEIR BRIEFS, WE HAVE NEVER SEEN IT UNTIL WE

14:42:53 1 RECEIVED A COPY OF THEIR SLIDES .

14:42:54 2 THE COURT: THEN WE'RE NOT GOING TO SEE
14:42:56 3 IT.

14:42:56 4 GO AHEAD AND GO TO SOMETHING ELSE,
14:42:58 5 PLEASE.

14:42:59 6 MR. JACOBS: I WOULD NOT LIMIT A CURSOR
14:43:00 7 TO AN OBJECT ON THE SCREEN THAT IS CONTROLLED BY A
14:43:04 8 KEYBOARD -- I'M SORRY -- A MOUSE, A TRACK BALL, OR
14:43:07 9 A TOUCH PAD.

14:43:09 10 IT CAN BE AN INDICATION OF POSITION ON
14:43:12 11 THE SCREEN THAT IS CONTROLLED BY ANY INPUT DEVICE,
14:43:17 12 AND IT IS NOT TO BE DISTINGUISHED FROM A CARET.

14:43:19 13 THE SPECIFICATION IS BROAD WHEN IT
14:43:22 14 DISCUSSES INPUT DEVICES, AND THERE IS NO EXPLICIT
14:43:28 15 LIMITATION OF THE CURSOR TO A PARTICULAR FORM OF
14:43:31 16 POSITIONING SIGNAL ON THE SCREEN.

14:43:33 17 THE COURT: WHAT ABOUT AN INDICATOR TO
14:43:38 18 HELP A USER INTERACT IN THE DISPLAY? SO SIMILAR
14:43:44 19 TO --

14:43:48 20 MR. JACOBS: THAT WOULD BE CONSISTENT
14:43:48 21 WITH WHAT I -- I BELIEVE THAT'S A SATISFACTORY
14:43:49 22 DEFINITION, YOUR HONOR.

14:43:58 23 AN INDICATOR ON THE SCREEN, POSITIONAL
14:43:59 24 INDICATOR ON THE SCREEN BECAUSE THERE ARE A LOT OF
14:44:00 25 INDICATORS ON THE SCREEN THAT HELP USERS INTERACT

14:44:02 1 WITH THE DISPLAY, AND I WOULD THINK THAT WHAT A
14:44:05 2 CURSOR DOES IS TELL YOU WHERE YOU ARE WHEN YOU'RE
14:44:08 3 INPUTTING.

14:44:12 4 THE COURT: WHAT SHOULD I USE AGAIN?

14:44:14 5 MR. JACOBS: A POSITIONAL INDICATOR ON
14:44:16 6 THE SCREEN.

14:44:17 7 AND I THINK AOKI IS SAMSUNG'S ARGUMENT,
14:44:25 8 REALLY, YOUR HONOR, THAT SOMETHING HAPPENED IN THE
14:44:28 9 AOKI BACK AND FORTH THAT LIMITS THE SCOPE OF THIS
14:44:31 10 CLAIM IN THE WAY THAT THEY'RE DESCRIBING.

14:44:33 11 AND WE HAVE SEEN THIS PHENOMENON BEFORE
14:44:36 12 WHERE SAMSUNG TRIES TO INTERPRET WHAT THEY SAID
14:44:39 13 INTO A LIMITATION.

14:44:40 14 WE HAVE THE LAW ON CLEAR DISCLAIMER, AND
14:44:42 15 WE ALSO HAVE THE VERY CAREFULLY CHOSEN WORDS OF THE
14:44:46 16 PATENTEE, AND SO I'LL JUMP RIGHT TO THAT IN SLIDE
14:44:50 17 88.

14:44:51 18 THE COURT: CAN I ASK YOU AGAIN?

14:44:54 19 MR. JACOBS: SURE.

14:44:55 20 THE COURT: SO YOU DON'T LIKE AN
14:44:55 21 INDICATOR TO HELP A USER TO INTERACT WITH A
14:44:56 22 DISPLAY; YOU WANT THE POSITIONAL INDICATOR ON THE
14:44:59 23 SCREEN?

14:44:59 24 MR. JACOBS: FOR A CURSOR?

14:45:00 25 THE COURT: YEAH.

14:45:01 1 MR. JACOBS: LET ME JUST DOUBLE-CHECK
14:45:03 2 BECAUSE WE'RE DOING THIS ON THE FLY.

14:45:22 3 (PAUSE IN PROCEEDINGS.)

14:45:22 4 MR. JACOBS: I THINK THAT'S FINE, YOUR
14:45:23 5 HONOR. IT MAY ACTUALLY HAVE SOME WORDS THAT ARE
14:45:26 6 UNNECESSARY. IT'S REALLY A POSITIONAL INDICATOR
14:45:29 7 AND A SCREEN ASSOCIATED WITH A USER INPUT OR
14:45:34 8 ASSOCIATED WITH A USER INTERACTION.

14:45:36 9 BUT WE'RE GETTING CLOSE. I DON'T MEAN TO
14:45:39 10 QUIBBLE, IT'S JUST THAT AS WE DO CLAIM
14:45:42 11 CONSTRUCTION, THE CONSTRUCTION ITSELF STARTS TO GET
14:45:45 12 ARGUED ABOUT AND I TRY TO AVOID THAT.

14:45:47 13 SO AOKI, THIS IS THE COMPLETE DESCRIPTION
14:45:51 14 AND COMPLETE PASSAGE OF WHAT WAS SAID IN THE -- BY
14:45:58 15 THE APPLICANT.

14:45:59 16 SO FIRST AOKI WAS CHARACTERIZED AND AOKI
14:46:02 17 DISCLOSES DISPLAYING AN IMAGE MAP IN A POP-UP
14:46:07 18 WINDOW THAT PROVIDES TEXTURAL DIRECTIONAL TIPS TO
14:46:10 19 GUIDE A USER TO A DESIRED AREA ON THE IMAGE MAP.

14:46:14 20 IN PARTICULAR, AOKI DISCLOSES THAT WHEN
14:46:16 21 THE USER GESTURE POSITIONS THE STYLUS CONTACT WITH
14:46:19 22 THE DISPLAYED IMAGE MAP, DIRECTIONAL TIPS IN A
14:46:23 23 POP-UP TEXT WINDOW COULD APPEAR.

14:46:26 24 SO WHAT IS BEING DESCRIBED HERE IS THESE
14:46:29 25 BUBBLES THAT APPEARED WHEN THE STYLUS TOUCHED THE

14:46:31 1 SCREEN, BUT THEY APPEARED AT THE LOCATION OF THE
14:46:33 2 STYLUS.

14:46:33 3 IN PARTICULAR, AOKI DISCLOSES THAT THE
14:46:36 4 POP-UP WINDOW INDICATES TO A USER THAT THE ACTIVE
14:46:40 5 AREA IS UP AND TO THE RIGHT OF THE POSITION AT
14:46:43 6 WHICH THE STYLUS WAS PLACED WITHIN THE DISPLAYED
14:46:45 7 IMAGE MAP BY THE USER.

14:46:47 8 AND IN CONTRAST, AND THE POINT IS THAT
14:46:49 9 THIS IS ALL THAT WAS SAID AND SO WE SHOULDN'T GO
14:46:52 10 BEYOND WHAT WAS SAID.

14:46:53 11 IN CONTRAST, AMENDED CLAIM 1 REFERS TO
14:46:56 12 DISPLAYING THE FIRST WINDOW INDEPENDENTLY FROM A
14:46:59 13 POSITION OF A CURSOR ON THE SCREEN.

14:47:01 14 AOKI FAILS TO DISCLOSE CLOSING THE FIRST
14:47:03 15 WINDOW IN RESPONSE TO A DETERMINATION THAT THE
14:47:06 16 TIMER EXPIRED, AND THIS IS THE CLOSING POINT, AND
14:47:09 17 THEN WHEREIN THE FIRST WINDOW HAS BEEN DISPLAYED
14:47:09 18 INDEPENDENTLY FROM A POSITION OF THE CURSOR ON THE
14:47:09 19 SCREEN AS RECITED IN CLAIM 1.

14:47:18 20 THAT IS ALL THE APPLICANT SAID. AND THE
14:47:19 21 EXAMINER ACCEPTED THAT AND THE PATENT ISSUED.

14:47:22 22 NOTHING WAS SAID ABOUT WHAT THAT MEANT IN
14:47:24 23 TERMS OF WHAT WAS REQUIRED AND WHAT WAS LIMITED.

14:47:27 24 AS WE SAID HERE IS THE LANGUAGE AND IT
14:47:29 25 DISTINGUISHES OVER AOKI.

14:47:32 1 SAMSUNG WANTS TO KIND OF REVERSE ENGINEER
14:47:34 2 OF WHAT WAS IN THE THOUGHTS OF THE APPLICANT AND
14:47:37 3 THE EXAMINER AND THAT WOULD BE INAPPROPRIATE IN
14:47:39 4 LIGHT OF THE LAW ON CLEAR DISCLAIMER.

14:47:47 5 THE COURT: WHAT DO YOU THINK ABOUT "USER
14:47:48 6 INPUT DEVICE" VERSUS "CURSOR CONTROL DEVICE"?

14:47:56 7 ARE THOSE DIFFERENT? ARE THOSE THE SAME
14:47:59 8 THING?

14:48:11 9 MR. JACOBS: THE CLAIM LANGUAGE SAYS,
14:48:13 10 "USER INPUT DEVICE" AND "A CURSOR CONTROL DEVICE."
14:48:18 11 I THINK THE PROBLEM WITH "CURSOR CONTROL DEVICE" IS
14:48:21 12 THAT A USER INPUT DEVICE MAY BE BROADER THAN A
14:48:25 13 "CURSOR CONTROL DEVICE."

14:48:26 14 SO AS I THINK ABOUT HOW YOU CAN CONTROL A
14:48:29 15 CURSOR ON THE SCREEN, YOU CAN USE DEVICES THAT
14:48:31 16 MIGHT NOT BE THOUGHT OF AS CURSOR CONTROL DEVICES
14:48:34 17 BUT HAVE CURSOR CONTROL CAPABILITIES.

14:48:39 18 THE COURT: BUT DOESN'T IT SEEM LIKE THE
14:48:43 19 SPECIFICATION WAS ASSUMING THAT THE CURSOR WOULD BE
14:48:44 20 CONTROLLED BY A CURSOR CONTROLLED DEVICE, A MOUSE,
14:48:48 21 OR TRACK BALL OR TOUCH PAD?

14:48:54 22 MR. JACOBS: THE SPECIFICATION USES THOSE
14:48:55 23 AS EXEMPLARY. SO, OF COURSE, THE CONTROL FOR THE
14:48:59 24 CURSOR HAS TO COME FROM THE DEVICE THAT HAS CURSOR
14:49:02 25 CONTROL CAPABILITIES.

14:49:03 1 WHAT I THINK WE SHOULD SEEK TO AVOID IS A
14:49:06 2 FIGHT ABOUT WHETHER THE PARTICULAR DEVICE AND THE
14:49:08 3 ACCUSED DEVICE IS A -- IS THOUGHT OF AS A CURSOR
14:49:11 4 CONTROLLED DEVICE, EVEN IF IT HAS CURSOR CONTROL
14:49:14 5 CAPABILITIES.

14:49:15 6 THAT'S THE PROBLEM WITH THAT PROPOSED
14:49:17 7 LANGUAGE.

14:49:20 8 IS A FINGER A CURSOR CONTROL DEVICE? IT
14:49:23 9 CAN CONTROL A CURSOR, BUT DO YOU THINK OF A FINGER
14:49:26 10 AS A CURSOR CONTROL DEVICE? DO YOU THINK OF A
14:49:29 11 TOUCHSCREEN AS A CURSOR CONTROL DEVICE? IT CAN
14:49:32 12 CONTROL A CURSOR.

14:49:33 13 THE FIRST THING THAT COMES TO MIND ABOUT
14:49:37 14 THOSE IS NOT IT'S A CURSOR CONTROL DEVICE. THE
14:49:39 15 FIRST THING THAT COMES TO MIND IS A BROAD USER
14:49:44 16 INPUT DEVICE.

14:49:50 17 I HAVE NOTHING FURTHER, YOUR HONOR.

14:49:51 18 THE COURT: OKAY. ALL RIGHT. THANK YOU.

14:49:54 19 LET ME ASK MR. JOHNSON, YOU RELY A LOT ON
14:50:07 20 AOKI BUT THERE WAS NO CURSOR THERE WITH A STYLUS.
14:50:10 21 WHY IS SO MUCH DEPENDING ON?

14:50:12 22 MR. JOHNSON: THAT'S THE POINT, YOUR
14:50:14 23 HONOR, AND I'LL COME BACK TO CURSOR CONTROL IN A
14:50:16 24 SECOND. BUT IF I CAN TURN JUST TO TALK ABOUT AOKI?

14:50:20 25 THE COURT: OKAY.

14:50:21 1 MR. JOHNSON: IF I COULD TURN TO PLEASE
14:50:23 2 SLIDE 10.

14:50:29 3 SO WHAT IS GOING ON HERE REALLY IS THAT
14:50:31 4 APPLE IS TRYING TO DEFINE CURSOR TO INCLUDE A
14:50:35 5 BLINKING CARET. AND THAT'S INCONSISTENT WITH WHAT
14:50:36 6 HAPPENED DURING THE FILE HISTORY AND A PERSON OF
14:50:37 7 ORDINARY SKILL WOULD UNDERSTAND THAT.

14:50:39 8 WHEN THE CLAIMS WERE ORIGINALLY FILED,
14:50:41 9 THEY DID NOT INCLUDE A FIRST WINDOW AS BEING
14:50:44 10 DISPLAYED INDEPENDENTLY FROM A POSITION OF A CURSOR
14:50:47 11 ON THE SCREEN.

14:50:48 12 WHAT WE SEE ON SLIDE 10 IS CLAIM 1 AS IT
14:50:51 13 WAS ORIGINALLY FILED AND THAT LIMITATION DOES NOT
14:50:54 14 APPEAR IN THAT CLAIM.

14:50:58 15 AOKI DESCRIBES USING A STYLUS, NOT A
14:51:02 16 CURSOR, A STYLUS, TO ULTIMATELY SELECT HYPERLINK
14:51:06 17 TARGETS OR ACTIVE AREAS WITHIN A DISPLAYED IMAGE.

14:51:09 18 AND RIGHT UPFRONT IN THE ABSTRACT AS
14:51:10 19 YOUR HONOR POINTS OUT, IT SAYS, "A FEEDBACK
14:51:12 20 MECHANISM USEABLE WITH GRAPHICAL USER INTERFACE
14:51:16 21 SYSTEMS THAT DO NOT HAVE A CURSOR IMPROVES THE
14:51:18 22 USEFULNESS OF SUCH GRAPHICAL USER INTERFACES."

14:51:26 23 WHAT HAPPENED NEXT WERE THE CLAIMS WERE
14:51:27 24 REJECTED IN LIGHT OF AOKI, 102, AND AS ANTICIPATED.

14:51:32 25 AND WHAT THE OFFICE ACTION SAYS IS THAT

14:51:35 1 AOKI TEACHES DISPLAYING A FIRST WINDOW, HERE 115,
14:51:40 2 DOWN HERE IN THE SMALLER BOX, IN RESPONSE TO
14:51:43 3 RECEIVING A FIRST INPUT FROM A USER INPUT DEVICE.
14:51:51 4 AS A RESULT OF THE USER GESTURE OF TOUCHING THE
14:51:54 5 STYLUS 102 TO THE DISPLAYED IMAGE MAP 103 DISPLAYED
14:51:59 6 ON DISPLAY 104 OF THE DIGITAL PROCESSING SYSTEM
14:52:02 7 WHICH IS CAPABLE OF DISPLAYING AT LEAST A PORTION
14:52:04 8 OF A SECOND WINDOW.

14:52:05 9 SO AOKI WAS ANTICIPATED AND THE
14:52:08 10 APPLICANTS HAD NO CHOICE BUT TO AMEND THE CLAIMS TO
14:52:12 11 REQUIRE A CURSOR AS OPPOSED TO AOKI'S STYLUS OR
14:52:16 12 NON-CURSOR SYSTEM.

14:52:16 13 THEY PUT THE LIMITATION IN THAT THESE
14:52:21 14 CLAIMS ARE ONLY GOING TO READ ON DEVICES THAT HAVE
14:52:23 15 CURSORS.

14:52:24 16 AND THAT THE POP-UP WINDOW IS ULTIMATELY
14:52:27 17 DISPLAYED INDEPENDENTLY FROM A POSITION OF THE
14:52:30 18 CURSOR ON THE SCREEN.

14:52:31 19 WHAT WAS GOING ON HERE WAS THAT
14:52:35 20 ULTIMATELY IF THE CURSOR INCLUDED A CARET OR A
14:52:40 21 STYLUS, WHICH IS, I THINK, A USER INPUT DEVICE EVEN
14:52:45 22 UNDER MR. JACOB'S VIEW, THESE CLAIMS WOULD NOT HAVE
14:52:48 23 BEEN ALLOWED. THE EXAMINER WOULD NOT HAVE ALLOWED
14:52:51 24 THESE CLAIMS.

14:52:52 25 THE REASON HE ALLOWED THEM ULTIMATELY WAS

14:52:55 1 BECAUSE APPLE DISTINGUISHED OVER AOKI BY INSERTING
14:52:59 2 THIS NOTION THAT YOU HAD TO HAVE A CURSOR AND THAT
14:53:01 3 THE CURSOR WAS GOING TO BE DISPLAYED INDEPENDENTLY
14:53:04 4 FROM THE POSITION OF THE CURSOR -- SORRY, THAT
14:53:07 5 THE -- LET ME GO BACK TO THE CLAIM LANGUAGE.

14:53:10 6 THE COURT: WHY DOES THE CURSOR HAVE TO
14:53:12 7 BE VISIBLE ON THE SCREEN?

14:53:13 8 MR. JOHNSON: BECAUSE THAT'S WHAT THE
14:53:15 9 CLAIM LANGUAGE SAYS, AND THAT'S WHAT A PERSON OF
14:53:17 10 ORDINARY SKILL WOULD UNDERSTAND PARTICULARLY IN
14:53:20 11 LIGHT OF WHAT WAS DONE WITH RESPECT TO AOKI.

14:53:22 12 WE KNOW FROM AOKI THERE'S NO CURSOR.

14:53:27 13 SO THE WAY THEY GOT AROUND AOKI WAS TO
14:53:30 14 REQUIRE THAT THERE BE A CURSOR AND THAT ULTIMATELY
14:53:36 15 THE WINDOW IS DISPLAYED INDEPENDENTLY FROM THE
14:53:39 16 POSITION OF THE CURSOR ON THE SCREEN.

14:53:41 17 IT SAYS, "OF A CURSOR ON THE SCREEN."

14:53:43 18 THE COURT: HOW DO YOU DEFINE "CURSOR"?

14:53:48 19 MR. JOHNSON: WE LOOKED AND WE FOUND
14:53:49 20 REFERENCES IN THE SPEC TO A MOUSE, POINTER OR A
14:53:53 21 SIMILAR ICON THAT IS CONTROLLED BY A MOUSE, TRACK
14:53:57 22 BALL OR TOUCH PAD.

14:53:58 23 AND I THINK YOUR HONOR REFERRED TO A
14:54:00 24 CURSOR CONTROL DEVICE. LET ME JUST GO BACK TO
14:54:06 25 SLIDE 7.

14:54:06 1 THE COURT: AREN'T THOSE JUST EXEMPLARY?
14:54:10 2 IT DOESN'T SAY THAT IT HAS TO BE A MOUSE POINTER.

14:54:14 3 MR. JOHNSON: BUT WHAT THESE -- YOUR
14:54:16 4 HONOR IS RIGHT IN THE SENSE THAT IT SAYS E.G. BUT
14:54:19 5 WHAT IS IMPORTANT HERE IS THAT A PERSON OF ORDINARY
14:54:21 6 SKILL IN THE ART READING THIS PATENT AND SEEING THE
14:54:25 7 DIFFERENCES BETWEEN INPUT DEVICES AND CURSOR
14:54:29 8 CONTROL DEVICES WOULD UNDERSTAND THAT KEYBOARDS
14:54:33 9 WERE DEFINED AS INPUT DEVICES THAT WERE NOT DEFINED
14:54:36 10 AS CURSOR CONTROL DEVICES.

14:54:38 11 WHEN APPLE WANTED TO USE KEYBOARD, THEY
14:54:41 12 DID SO IN THE CONTEXT OF A USER INPUT DEVICE.

14:54:44 13 AND THAT'S WHAT WE SEE ON THE LEFT-HAND
14:54:47 14 SIDE.

14:54:47 15 COLUMN 1, LINE 28, "USER INPUT DEVICE,
14:54:51 16 E.G., A KEYBOARD AND A MOUSE."

14:54:55 17 COLUMN 2, LINES 45 TO 46, "DISPLAYING A
14:54:58 18 FIRST WINDOW IN RESPONSE TO RECEIVING A FIRST INPUT
14:55:02 19 FROM A USER INPUT DEVICES, E.G. KEYBOARD, MOUSE,"
14:55:05 20 ET CETERA.

14:55:06 21 COLUMN 8, 29 THROUGH 31, "USER INPUT
14:55:11 22 DEVICES, E.G., A KEYBOARD."

14:55:13 23 COMPARE THAT TO WHEN THE PATENT IS
14:55:15 24 TALKING ABOUT CURSOR CONTROL DEVICES AND IN EACH OF
14:55:17 25 THESE INSTANCES LISTED ON SLIDE 7, COLUMN 1, COLUMN

14:55:22 1 9, COLUMN 1, COLUMN 2 AGAIN WE SEE "CURSOR CONTROL
14:55:26 2 DEVICE." KEYPAD -- KEYBOARD DOES NOT APPEAR IN ANY
14:55:29 3 OF THESE.

14:55:29 4 SO A PERSON OF ORDINARY SKILL IN THE ART
14:55:32 5 READING THE CLAIM LANGUAGE, READING THE
14:55:34 6 SPECIFICATION, AND READING WHAT HAPPENED IN THE
14:55:37 7 PROSECUTION HISTORY WOULD UNDERSTAND THAT A CURSOR
14:55:41 8 IS REQUIRED AND THAT IT BE DISPLAYED INDEPENDENTLY.

14:55:47 9 AND THOSE ARE THE TWO ISSUES.

14:55:49 10 AND APPLE CAN POINT TO THE LANGUAGE OF
14:55:54 11 OUR CONSTRUCTION AND MAY HAVE QUIBBLES WITH RESPECT
14:55:56 12 TO SOME OF THE LANGUAGE THAT IS USED BUT ULTIMATELY
14:56:00 13 ON THE TWO ISSUES, DOES A CURSOR INCLUDE A CARET?
14:56:04 14 THE ANSWER IS, NO, IT DOESN'T INCLUDE A CARET.

14:56:06 15 IS THE CURSOR DISPLAYED? YES, IT'S
14:56:09 16 DISPLAYED. THE PROSECUTION HISTORY, THE SPEC, AND
14:56:12 17 MOST IMPORTANTLY THE CLAIM LANGUAGE SAYS THAT IT'S
14:56:14 18 DISPLAYED.

14:56:18 19 THE COURT: WHAT ABOUT YOUR THIRD
14:56:20 20 LIMITATION?

14:56:25 21 MR. JOHNSON: MOVEMENT OF THE MOUSE,
14:56:27 22 POINTER OR SIMILAR ICON DOES NOT AFFECT THE
14:56:31 23 LOCATION OF THE FIRST WINDOW.

14:56:31 24 THE COURT: WHERE DID YOU GET THAT FROM?

14:56:33 25 MR. JOHNSON: WE WERE TRYING TO EXPLAIN

14:56:35 1 WHAT "INDEPENDENTLY" MEANT, BUT AS I MENTIONED, THE
14:56:40 2 TWO REAL ISSUES WITH RESPECT TO THIS PATENT ARE
14:56:41 3 DOES A CURSOR INCLUDE A CARET AND IS THE CURSOR
14:56:45 4 DISPLAYED.

14:56:45 5 THE COURT: SO YOU'RE LESS CONCERNED
14:56:48 6 ABOUT THAT THIRD RESTRICTION?

14:56:49 7 MR. JOHNSON: THAT'S CORRECT. IT'S
14:56:56 8 IMPORTANT IN THE CLAIM LANGUAGE AND INDEPENDENTLY
14:56:59 9 IS OBVIOUSLY A REQUIREMENT OF THE CLAIMS.

14:57:00 10 SO I DON'T WANT TO SAY IT'S NOT
14:57:03 11 IMPORTANT, BUT THE TWO ISSUES WITH RESPECT TO THIS
14:57:06 12 PARTICULAR LIMITATION ARE DOES A CURSOR INCLUDE A
14:57:08 13 CARET AND IS THE CURSOR DISPLAYED.

14:57:12 14 THE COURT: OKAY. ALL RIGHT. ARE WE
14:57:13 15 DONE WITH THIS TERM?

14:57:14 16 MR. JACOBS: BRIEFLY, YOUR HONOR, JUST TO
14:57:16 17 HIGHLIGHT ONE CONTRADICTION IN SAMSUNG'S ARGUMENT.

14:57:19 18 THE CLAIM LANGUAGE, OF COURSE, IS "USER
14:57:21 19 INPUT DEVICE," NOT "CURSOR CONTROL DEVICE."

14:57:25 20 SO IF IT'S "USER INPUT DEVICE," THEN
14:57:27 21 THERE'S KIND OF AN INHERENT CONTRADICTION.

14:57:30 22 SPECIFICALLY IF YOU GO TO CLAIM 19, WHICH
14:57:32 23 IS A DEPENDENT CLAIM, IT CLAIMS "WHEREIN THE USER
14:57:35 24 INPUT DEVICE IS ONE OF A KEYBOARD."

14:57:37 25 SO A KEYBOARD, ACCORDING TO SAMSUNG,

14:57:41 1 CANNOT CONTROL A CURSOR. A CURSOR CAN ONLY BE
14:57:44 2 CONTROLLED BY A CARET -- I'M SORRY -- A KEYBOARD
14:57:47 3 CAN ONLY BE CONTROLLED BY A CARET. A CARET IS
14:57:50 4 DIFFERENT FROM A CURSOR. THROUGH THAT STEP OF
14:57:51 5 LOGIC WE RUN INTO A REAL CONTRADICTION IN THE
14:57:54 6 CLAIM.

14:57:54 7 I THINK THE RIGHT ANSWER IS THAT A CURSOR
14:57:56 8 IS NOT LIMITED, IT'S NOT DISTINGUISHED FROM A
14:57:58 9 CARET, AND A USER INPUT DEVICE IS ANY USER INPUT
14:58:03 10 DEVICE AND THE REST -- AND IN CLAIM 1 AND IN THE
14:58:06 11 SPECIFICATION USER INPUT DEVICES AND THE CURSOR
14:58:10 12 CONTROL DEVICES ARE EXEMPLARY.

14:58:20 13 THE COURT: THANK YOU. LET'S GO TO THE
14:58:22 14 LAST TERM, PLEASE.

14:58:36 15 AND I'LL JUST SAY I THINK THE FOCUS
14:58:38 16 SHOULD BE ON WHETHER IT'S OPERATING SYSTEM
14:58:44 17 INDEPENDENT OR OPERATING SYSTEM DEPENDENT BECAUSE I
14:58:47 18 THINK WITH REGARDS TO WHETHER IT RUNS WITHIN A
14:58:51 19 PROGRAM, I THINK IT RUNS WITHIN AN APPLICATION
14:58:53 20 MODULE.

14:58:55 21 MR. JOHNSON: YOUR HONOR, WE AGREE THAT
14:58:57 22 THAT IS THE ISSUE. IS APPLETT LIMITED TO AN
14:59:00 23 OPERATING SYSTEM INDEPENDENT COMPUTER PROGRAM? THE
14:59:02 24 ANSWER IS NO.

14:59:02 25 THE COURT: WELL, YOU SAID DESIGNED

14:59:06 1 WITHIN ANOTHER PROGRAM, ARE YOU NOW AGREEING THAT
14:59:14 2 WITHIN AN APPLICATION MODULE IS OKAY?

14:59:15 3 MR. JOHNSON: WELL, I THINK OURS TRACKS
14:59:16 4 THE LANGUAGE MORE CLEARLY, BUT I DON'T HAVE A MAJOR
14:59:21 5 DISAGREEMENT WITH RESPECT TO APPLICATION MODULE
14:59:23 6 VERSUS PROGRAM.

14:59:23 7 THE COURT: I THINK THE LANGUAGE ACTUALLY
14:59:25 8 IS WITHIN AN APPLICATION MODULE AND NOT WITHIN
14:59:27 9 ANOTHER PROGRAM. BUT THAT'S FINE.

14:59:30 10 MR. JOHNSON: BUT YOUR HONOR IS CORRECT
14:59:31 11 THAT THE ISSUE HERE IS OPERATING SYSTEM
14:59:34 12 INDEPENDENCE.

14:59:35 13 AND I HEARD COUNSEL FOR APPLE THROUGHOUT
14:59:39 14 THE COURSE OF THE DAY ARGUE THAT THE PREVAILING LAW
14:59:43 15 IS POWERFULLY AGAINST IMPORTING LIMITATIONS INTO
14:59:47 16 CLAIM TERMS.

14:59:48 17 THE CLAIM LANGUAGE HERE SAYS APPLE.
14:59:54 18 THERE'S NOTHING IN THE CLAIM LANGUAGE THAT SAYS
14:59:56 19 OPERATING SYSTEM INDEPENDENT/DEPENDENT. THERE'S NO
15:00:01 20 LIMITATION THAT IS INCLUDED WITHIN APPLE IN THE
15:00:04 21 CLAIM LANGUAGE.

15:00:05 22 AND WHEN WE ASKED APPLE'S EXPERT DURING
15:00:08 23 HIS DEPOSITION, DR. GIVARGIS, WHETHER THE CLAIM
15:00:12 24 LANGUAGE HAD ANY LIMITATION OF OPERATING SYSTEM
15:00:12 25 INDEPENDENCE, HE SAID,

15:00:19 1 "QUESTION: LET'S TAKE A LOOK AT THE
15:00:20 2 CLAIM LANGUAGE. FOR EXAMPLE, CLAIM 1 IN COLUMN 7,
15:00:23 3 DO YOU SEE THAT.

15:00:24 4 "YES.

15:00:25 5 "THE RELEVANT LIMITATION IS GENERATING A
15:00:27 6 MUSIC BACKGROUND PLAY OBJECT, WHEREIN THE MUSIC
15:00:30 7 BACKGROUND PLAY OBJECT INCLUDES AN APPLICATION
15:00:32 8 MODULE INCLUDING AT LEAST ONE APPLETT.

15:00:34 9 "IS THERE ANY MENTION OF OPERATING SYSTEM
15:00:39 10 INDEPENDENCE HERE?

15:00:40 11 "NO."

15:00:40 12 THE COURT: LET ME ASK A QUESTION, WHY
15:00:42 13 DID YOU USE "WITHIN ANOTHER PROGRAM" INSTEAD OF
15:00:42 14 "WITHIN AN APPLICATION MODULE"?

15:00:43 15 DOES THAT HAVE SOME IMPLICATION ON
15:00:47 16 WHETHER IT'S OPERATING DEPENDENT OR INDEPENDENT?

15:00:54 17 MR. JOHNSON: WE UNDERSTOOD IT TO MEAN TO
15:00:57 18 TALK ABOUT TO RUN WITHIN ANOTHER PROGRAM, IT'S
15:00:59 19 BASICALLY SYNONYMOUS WITH APPLICATION MODULE. BUT
15:01:03 20 PROGRAM -- DURING THE MEET AND CONFER PROCESS, WE
15:01:06 21 UNDERSTOOD APPLE TO TRY TO IMPORT ADDITIONAL
15:01:10 22 LIMITATIONS WITH RESPECT TO APPLICATION MODULE.

15:01:12 23 AND I THINK WE'LL HEAR A LITTLE BIT ABOUT
15:01:14 24 THAT ABOUT WHAT THE DISTINCTION IS IN THEIR VIEW.
15:01:16 25 AND FROM OUR VIEW IN THE PLAIN AND ORDINARY MEANING

15:01:19 1 OF PROGRAM VERSUS APPLICATION MODULE, I THINK
15:01:22 2 PEOPLE OF ORDINARY SKILL IN THE ART WOULD
15:01:24 3 UNDERSTAND THE TWO TO BE SYNONYMOUS.

15:01:26 4 THE COURT: AND IT DOESN'T HAVE
15:01:28 5 IMPLICATIONS FOR WHETHER ITS OPERATING SYSTEM
15:01:32 6 INDEPENDENT OR DEPENDENT?

15:01:34 7 MR. JOHNSON: NOT FROM OUR STANDPOINT.
15:01:35 8 WE REALLY BELIEVE FIRMLY THAT APPLLET IN AND OF
15:01:39 9 ITSELF AS CONSTRUED IN BOTH THE CLAIMS AND THE
15:01:41 10 SPECIFICATION AND THE PROSECUTION HISTORY, AGAIN,
15:01:43 11 IS NOT LIMITED TO OPERATING SYSTEM INDEPENDENT,
15:01:45 12 IT'S NOT LIMITED TO OPERATING SYSTEM DEPENDENT.

15:01:49 13 IT WILL COVER, AND I THINK WE'LL SEE AS
15:01:51 14 WE SEE FROM THE INTRINSIC EVIDENCE, AND ALSO FROM
15:01:53 15 APPLE'S OWN EXPERT'S ADMISSIONS, HE ADMITTED THAT
15:01:59 16 THERE ARE APPLETS THAT ARE OPERATING SYSTEM
15:02:01 17 INDEPENDENT AND DEPENDENT.

15:02:02 18 THE COURT: I'M STILL NOT CLEAR HOW THIS
15:02:05 19 APPLLET FUNCTIONS WITH REGARD TO ALLOWING THE MUSIC
15:02:09 20 TO STILL PLAY IN THE BACKGROUND WHILE YOU'RE DOING
15:02:11 21 OTHER THINGS.

15:02:12 22 MR. JOHNSON: JUST AS A REAL WORLD
15:02:14 23 EXAMPLE, IT'S THE IDEA OF BEING TO, FOR EXAMPLE, TO
15:02:18 24 LISTEN TO MUSIC AND YOU WANT TO RECEIVE AN E-MAIL
15:02:20 25 AT THE SAME TIME OR YOU WANT TO SEND AN E-MAIL AT

15:02:22 1 THE SAME TIME.

15:02:23 2 THE APPLETS COULD, FOR EXAMPLE, ON THE
15:02:26 3 MUSIC SIDE, WHILE YOU'RE LISTENING TO MUSIC, THE
15:02:30 4 APPLETS COULD SHOW YOU THE DIFFERENT ALBUM COVERS OR
15:02:34 5 THE LIST OF SONGS OR THE TIME LEFT ON THE SONG, HOW
15:02:37 6 MUCH TIME, HOW MUCH OF THE SONG HAS PLAYED AND HOW
15:02:40 7 MUCH OF THE SONG IS REMAINING.

15:02:41 8 THERE ARE DIFFERENT APPLETS, DIFFERENT
15:02:44 9 SMALL PROGRAMS THAT RUN WITHIN OTHER PROGRAMS AND
15:02:48 10 BY "SMALL" IT'S MEANT IN A RELATIVE SENSE, YOU
15:02:51 11 KNOW, COMPARATIVELY SPEAKING.

15:02:54 12 I KNOW APPLE TAKES ISSUE WITH RESPECT TO
15:02:56 13 THE DEFINITION OF "SMALL." THE REAL ISSUE HERE IS
15:02:59 14 OPERATING SYSTEM INDEPENDENT VERSUS DEPENDENT. AND
15:03:01 15 "SMALL" IS INTENDED IN A RELATIVE SENSE AND THAT'S
15:03:04 16 WHERE THE WORD "APPLET" ULTIMATELY CAME FROM.

15:03:06 17 THE COURT: LET ME ASK YOU, WITH A LOT OF
15:03:08 18 THE DEFINITIONS, THE DICTIONARY DEFINITIONS THAT
15:03:12 19 WERE SUBMITTED WITH MR. COLE'S DECLARATION, THEY
15:03:18 20 SAID THAT A LIMITATION THAT THE PROGRAM PERFORM ONE
15:03:23 21 OR MORE SIMPLE TASKS, WHICH SEEMS CONSISTENT WITH
15:03:27 22 WHAT MR. COLE SAID AT THE TUTORIAL, THAT THE APPLETS
15:03:30 23 FUNCTION CAN BE AN INCREMENTAL ADDITIONAL ACTIVITY.

15:03:36 24 SO WHY DIDN'T YOU USE THAT LANGUAGE
15:03:38 25 INSTEAD OF SMALL?

15:03:40 1 MR. JOHNSON: WELL, FRANKLY, WHEN WE
15:03:42 2 STARTED DOWN THIS PROCESS, RIGHT, WHEN WE DID OUR
15:03:45 3 ORIGINAL DISCLOSURES BACK IN OCTOBER, WE THOUGHT
15:03:49 4 "SMALL" WAS PRETTY STRAIGHTFORWARD, AND IT
15:03:51 5 COMPORTED WITH THE ULTIMATE DEFINITION OF APPLLET
15:03:54 6 THAT WE'LL SEE IN THE WILEY DICTIONARY, FOR
15:03:58 7 EXAMPLE, IF YOU TURN TO SLIDE 16, "A SMALL
15:04:04 8 APPLICATION DESIGNER TO RUN WITHIN ANOTHER
15:04:09 9 PROGRAM."

15:04:09 10 THE COURT: MR. COLE GAVE TWO DIFFERENT
15:04:13 11 DEFINITIONS FOR "SMALL" IN THE TUTORIAL. ONE WAS
15:04:15 12 AN INCREMENTAL DEFINITION, AND I FORGET WHAT THE
15:04:19 13 OTHER ONE WAS.

15:04:20 14 SMALL IS PRETTY --

15:04:22 15 MR. JOHNSON: I THINK OF SMALL IN TERMS
15:04:24 16 OF FEATURES.

15:04:25 17 THE COURT: SO WHAT DOES THAT MEAN "A
15:04:27 18 SMALL FEATURE"?

15:04:29 19 MR. JOHNSON: SO I WANT TO PLAY MUSIC.
15:04:30 20 THE OVERALL FEATURE IS PLAYING MUSIC.

15:04:32 21 IF I THEN WANT TO BE ABLE TO DO THINGS
15:04:34 22 ASSOCIATED WITH THE MUSIC, LOOK AT THE ALBUM AND
15:04:37 23 LOOK AT THE LIST OF SONGS IN A PARTICULAR ALBUM.

15:04:41 24 IF I WANT TO SEE A PICTURE OF THE ALBUM
15:04:43 25 OR IF I WANT TO DO OTHER SMALL APPLICATIONS

15:04:48 1 ASSOCIATED WITH THAT. AND IT DOESN'T ALWAYS HAVE
15:04:50 2 TO NECESSARILY BE TIED SPECIFICALLY TO THE MUSIC,
15:04:56 3 BUT SMALL MEANS IN A RELATIVE SENSE COMPARED TO,
15:04:59 4 AND I THINK WE'RE TALKING ABOUT THE FEATURES, THE
15:05:03 5 NUMBER OF FEATURES.

15:05:04 6 THE COURT: WELL, MR. COLE SAID THAT
15:05:09 7 "APPLET" MEANT PERFORMING ONE OR A SIMPLE FEW
15:05:12 8 TASKS, WHICH IS THE DEFINITIONS THAT WERE ATTACHED
15:05:14 9 TO HIS DECLARATION SAY.

15:05:16 10 SO WOULD YOU BE OPPOSED TO THAT?

15:05:21 11 MR. JOHNSON: I DON'T THINK WE'RE OPPOSED
15:05:23 12 TO THAT.

15:05:23 13 THE COURT: AS OPPOSED TO THE WORD
15:05:25 14 "SMALL"?

15:05:26 15 MR. JOHNSON: I DON'T THINK WE'RE OPPOSED
15:05:28 16 TO THAT.

15:05:28 17 THE COURT: OKAY. OKAY.

15:05:37 18 MR. JOHNSON: BUT JUST GOING BACK TO
15:05:41 19 SLIDE 1 -- ACTUALLY LET ME GO TO SLIDE 8. THE
15:05:50 20 SPECIFICATION ALSO CLOSELY TRACKS SAMSUNG'S
15:05:56 21 CONSTRUCTION.

15:05:56 22 THE SPEC ONLY DISCUSSES APPLETT ONCE AND
15:06:01 23 IT DOESN'T SUGGEST ANYWHERE THAT IT'S OPERATING
15:06:04 24 SYSTEM INDEPENDENT OR DEPENDENT.

15:06:06 25 AND WE SEE AT COLUMN 3, LINES 8 TO 14,

15:06:07 1 "AT LEAST ONE APPLLET IN EACH OF THE APPLICATION
15:06:11 2 MODULES." AND THERE'S NO MENTION OF OPERATING
15:06:15 3 SYSTEM INDEPENDENCE.

15:06:15 4 AND WHEN WE ASKED DR. GIVARGIS ABOUT IT
15:06:18 5 IN HIS DEPOSITION, HE ALSO CONFIRMED THAT THERE WAS
15:06:20 6 NO REFERENCE TO IT DURING THE SPECIFICATION.

15:06:23 7 WE THEN ASKED DR. GIVARGIS ABOUT THE
15:06:28 8 PROSECUTION HISTORY, DOES THE PROSECUTION HISTORY
15:06:31 9 MENTION OPERATING SYSTEM INDEPENDENT? QUOTE,
15:06:34 10 HERE'S THE QUESTION, "WAS THERE ANY REFERENCE TO
15:06:37 11 APPLLET BEING OPERATING SYSTEMS INDEPENDENT?

15:06:39 12 "ANSWER: I DO NOT RECALL ANY REFERENCE
15:06:42 13 TO OPERATING SYSTEM INDEPENDENT APPLETS IN THE FILE
15:06:46 14 HISTORY THAT I REVIEWED."

15:06:47 15 SO A PERSON OF ORDINARY SKILL IN THE ART
15:06:50 16 READING THE CLAIMS THAT SAY APPLLET, READING THE
15:06:53 17 SPECIFICATION THAT REFERS TO APPLLET, LOOKING AT THE
15:06:56 18 FILE HISTORY WHICH REFERS TO APPLLET BUT DOESN'T
15:06:59 19 MENTION OPERATING SYSTEM INDEPENDENCE OR DEPENDENCE
15:07:03 20 AND THERE'S NO REASON TO IMPORT THESE ADDITIONAL
15:07:06 21 LIMITATIONS INTO THE CLAIM.

15:07:07 22 DURING AN INTERVIEW SUMMARY WITH THE
15:07:10 23 EXAMINER, THE EXAMINER -- THERE WAS A REFERENCE
15:07:14 24 CALLED KOBUKO THAT HAD BEEN CITED. AND DURING THAT
15:07:18 25 INTERVIEW THE EXAMINATION SUGGESTED THAT THE CLAIMS

15:07:21 1 SHOULD INCLUDE THE LIMITATION, QUOTE, "WHEREIN THE
15:07:24 2 MUSIC BACKGROUND PLAY OBJECT INCLUDED AN
15:07:27 3 APPLICATION MODULE INCLUDING AT LEAST ONE APPLETT TO
15:07:30 4 DISTINGUISH OVER THE KOBUKO PRIOR ART."

15:07:35 5 NOW, THE KOKUBO PRIOR ART DOES NOT
15:07:38 6 DISCUSS OPERATING SYSTEM DEPENDENCE OR
15:07:43 7 INDEPENDENCE. AND THE EXAMINER DIDN'T DISCUSS
15:07:46 8 OPERATING SYSTEM DEPENDENCE OR INDEPENDENCE.

15:07:49 9 WHEN THE INVENTOR CONCEIVED OF THE
15:07:53 10 INVENTION, HE TESTIFIED THAT HE WAS WORKING ON
15:07:55 11 OPERATING SYSTEM DEPENDENT APPLETS AT THE TIME.

15:07:57 12 MR. JEONG WAS ASKED, AND HE'S THE
15:08:01 13 INVENTOR ON THE '711 PATENT, "WAS THAT TRUE IN
15:08:04 14 2005?

15:08:05 15 "YOU MEAN AS TO THE WORD -- THE FACT THAT
15:08:07 16 APPLETT CAN BE USED WITH RESPECT TO AN OS DEPENDENT
15:08:11 17 INSTANCE?

15:08:11 18 "QUESTION: CORRECT.

15:08:12 19 "ANSWER: YES, IT WAS SO USED.

15:08:14 20 "QUESTION: BY WHOM?

15:08:16 21 "FOR INSTANCE, AROUND THE 2005 TIMEFRAME,
15:08:20 22 AS AN ENGINEER, AT THAT TIME QUALCOMM PLATFORM WAS
15:08:23 23 USED AND IT COMES TO QUALCOMM PLATFORM, THEY USED
15:08:27 24 QUALCOMM CHIP SETS AND IN THAT CHIP SET
15:08:30 25 APPLICATIONS WERE DEVELOPED AND THE WORD APPLETT

15:08:33 1 WERE USED IN THAT INSTANCE.

15:08:34 2 "QUESTION: AND WHEN THE WORD APPLLET WAS
15:08:37 3 USED IN THAT INSTANCE, IT WAS YOUR UNDERSTANDING
15:08:39 4 THAT IT WAS REFERRING TO SOMETHING THAT WAS
15:08:41 5 OPERATING SYSTEM DEPENDENT?

15:08:43 6 "ANSWER: YES, FROM AN ENGINEER'S
15:08:45 7 PERSPECTIVE SEEING HOW THE -- IN THE CASE OF THE
15:08:48 8 QUALCOMM ENVIRONMENT, THE USE OF THE TERM APPLLET IN
15:08:52 9 THAT CASE WAS SOMETHING THAT APPLIED WITH RESPECT
15:08:54 10 TO QUALCOMM PLATFORM ONLY, SO FROM THAT PERSPECTIVE
15:08:58 11 THE USE OF SAID WORD CAN BE USED ALSO IN AN OS
15:09:04 12 DEPENDENT SENSE."

15:09:04 13 SO EVEN THE INVENTOR, WHEN HE CONCEIVED
15:09:05 14 IT, THE INVENTION WAS USING OPERATING SYSTEM
15:09:06 15 DEPENDENT APPLETS.

15:09:07 16 NOW, WHEN DR. GIVARGIS WAS ASKED ABOUT
15:09:10 17 MR. JEONG'S TESTIMONY HE ADMITTED, QUOTE, "I
15:09:14 18 RECOGNIZE THAT THE INVENTOR WAS WORKING WITH A
15:09:16 19 SYSTEM THAT WAS OS DEPENDENT, SPECIFICALLY THE
15:09:18 20 QUALCOMM CHIP SET." AND THIS WAS AT LINE -- PAGE
15:09:22 21 41, LINE 17 TO 19 OF HIS TRANSCRIPT.

15:09:28 22 THE COURT: ON THIS OPERATING SYSTEM, I'M
15:09:30 23 LEANING YOUR WAY ON THIS SO LET ME JUST ASK A
15:09:32 24 QUESTION. ON THE PERSON OF ORDINARY SKILL IN THE
15:09:37 25 ART, IT SEEMS THAT SOMEONE WITH LESS SPECIFIC

15:09:42 1 KNOWLEDGE MIGHT ACTUALLY THINK THAT IT'S OS --
15:09:50 2 WELL, THEY MAY BE MORE THINKING OF APPLETS AS JAVA
15:09:53 3 APPLETS BUT SOMEONE WITH MORE SKILL AND EXPERIENCE
15:09:56 4 WOULD NOT.

15:09:58 5 DO YOU AGREE WITH THAT OR NOT? OR DO YOU
15:10:01 6 THINK IT'S THE REVERSE?

15:10:02 7 MR. JOHNSON: NO. I THINK THAT PEOPLE OF
15:10:04 8 ORDINARY SKILL IN THE ART, WHETHER THEY'RE PEOPLE
15:10:07 9 WHO ARE -- HAVE THE BACKGROUND OF AS WE, YOU KNOW,
15:10:11 10 DESCRIBED JUST PEOPLE WITH EXPERIENCE AND IN
15:10:14 11 PROGRAMMING AND COMPUTER SCIENCE WITH MULTITASKING,
15:10:17 12 THEY'RE GOING TO KNOW THE DIFFERENCE. THEY'RE
15:10:19 13 GOING TO KNOW THAT AN APplet COULD INCLUDE BOTH OS
15:10:22 14 INDEPENDENT AND OS DEPENDENT.

15:10:25 15 I THINK ON APPLE'S SIDE WITH RESPECT TO
15:10:28 16 TRYING TO INSERT THE ADDITIONAL LIMITATION OF
15:10:31 17 IMBEDDED SYSTEMS AND THE ADDITIONAL LIMITATION THAT
15:10:33 18 INCLUDES HANDHELD DEVICES, THEY'RE ALSO GOING TO
15:10:37 19 RECOGNIZE THAT APPLETS CAN INCLUDE OS INDEPENDENT
15:10:41 20 AND DEPENDENT AND THAT'S ULTIMATELY WHAT APPLE'S
15:10:44 21 OWN EXPERT RECOGNIZED WHEN HE WAS ASKED ABOUT IT
15:10:48 22 DURING HIS DEPOSITION.

15:10:49 23 HE ADMITTED, AND THIS IS SLIDE 17, "IN
15:10:52 24 THE CONTEXT OF THE HOST APPLICATION, CAN AN APplet
15:10:55 25 BE STILL SYSTEM DEPENDENT OR ARE YOU SAYING IT IS

15:10:59 1 ALWAYS SYSTEM INDEPENDENT?

15:11:00 2 "ANSWER: SYSTEM INDEPENDENCE IS NOT
15:11:03 3 UNIVERSALLY THE CASE BUT COMMON."

15:11:06 4 THE COURT: YEAH, I READ HIS DECLARATION.
15:11:07 5 THERE'S DEFINITELY ENOUGH GENERAL LIES AND USUAL LIES
15:11:11 6 IN THERE THAT I AGREE WITH YOU THAT HE HAS CONCEDED
15:11:15 7 THAT IT'S NOT ALWAYS OPERATING SYSTEM INDEPENDENT.

15:11:22 8 BUT I'M JUST WONDERING FOR SOMEONE,
15:11:25 9 MR. COLE WAS SAYING JAVA APPLET IS LIKE SAYING
15:11:30 10 KLEENEX TISSUE. AND IT SEEMS LIKE PEOPLE WHO ARE
15:11:33 11 LESS FAMILIAR WITH THE FIELD MIGHT BE MORE LIKELY
15:11:39 12 OR MORE APT TO ASSOCIATE THE SORT OF MOST COMMON
15:11:45 13 BRAND NAME WITH APPLET THAN SOMEONE WHO REALLY
15:11:47 14 KNOWS, YOU KNOW, THE VARIATIONS OF APPLETS.

15:11:50 15 MR. JOHNSON: AND WHAT I'M SAYING IS THAT
15:11:52 16 FIRST WE START FROM THE STANDPOINT THAT THE PATENT
15:11:54 17 IS WRITTEN TOWARDS A PERSON OF ORDINARY SKILL IN
15:11:56 18 THE ART.

15:11:57 19 AND UNDER EITHER ONE OF THESE
15:12:01 20 DEFINITIONS, THESE COMPETING DEFINITIONS OF A
15:12:04 21 PERSON OF ORDINARY SKILL, THEY'RE GOING TO
15:12:05 22 RECOGNIZE THE DIFFERENCE, THAT IT IS INCLUDED.

15:12:07 23 NOW, IF, YOU KNOW, AND GOING BACK AND I
15:12:11 24 THOUGHT ABOUT THIS OVER THE LUNCH TIME THE
15:12:14 25 DISTINCTION BETWEEN THE TWO COMPETING VERSIONS OF A

15:12:17 1 PERSON OF ORDINARY SKILL.

15:12:18 2 I COULD BE -- I THINK IF YOU INCLUDED
15:12:22 3 IMBEDDED SYSTEMS IN OUR DEFINITION AND CHANGE
15:12:26 4 HANDHELD DEVICE, I THINK HANDHELD DEVICE IS TOO
15:12:30 5 SPECIFIC.

15:12:31 6 I THINK IF YOU CHANGED IT TO PORTABLE
15:12:33 7 DEVICE, WHICH IS WHAT THE TITLE OF THE PATENT TALKS
15:12:36 8 ABOUT, AND IF YOU LOOK AT THE CITED ART, WHICH I
15:12:39 9 SPENT SOME TIME DOING OVER THE LUNCH BREAK, THE
15:12:41 10 LUNCH BREAK REFERS TO -- THE CITED ART REFERS TO
15:12:48 11 LAPTOPS, COMPUTER SYSTEMS, CHIP DESIGNS, THINGS
15:12:52 12 LIKE THAT, ULTIMATELY A PERSON OF ORDINARY SKILL IN
15:12:55 13 THE ART, YOU COULD HAVE ON OUR SIDE A DEFINITION
15:12:59 14 THAT INCLUDED IMBEDDED SYSTEMS, AND IT COULD ALSO
15:13:02 15 INCLUDE, INSTEAD OF HANDHELD DEVICES, PORTABLE
15:13:05 16 DEVICES BUT I THINK THAT THAT'S BROADER.

15:13:07 17 THE COURT: AND IS THAT BECAUSE SOMEONE
15:13:10 18 WITH EXPERIENCE IN HANDHELD DEVICE PROGRAMMING
15:13:13 19 WOULD COME OUT DIFFERENTLY ON THIS QUESTION?

15:13:15 20 WHY DOES IT MATTER? WOULD SOMEONE COME
15:13:19 21 OUT DIFFERENTLY DEPENDING ON WHAT EXPERIENCE THEY
15:13:21 22 HAD?

15:13:22 23 MR. JOHNSON: NO. THAT'S WHY I
15:13:23 24 STARTED -- THAT'S THE WAY I STARTED BY ANSWERING
15:13:25 25 YOUR QUESTION, I DON'T THINK IT MATTERS FROM OUR

15:13:28 1 STANDPOINT.

15:13:29 2 AND ULTIMATELY JUST GOING BACK TO
15:13:30 3 MR. COLE'S DESCRIPTION OF KLEENEX, ANYBODY IN THIS
15:13:33 4 ROOM UNDERSTANDS THAT THERE ARE DIFFERENT VERSIONS
15:13:36 5 AND DIFFERENT BRANDS OF KLEENEX OUT THERE.

15:13:39 6 SO, SURE, IF SOMEBODY ASKED FOR A BOX OF
15:13:41 7 TISSUE, I MEAN, IT'S NOT JUST A PERSON OF ORDINARY
15:13:47 8 SKILL IN THE ART WOULD UNDERSTAND THAT JAVA APPLETS
15:13:50 9 ARE SURE ONE KIND OF APPLET, BUT AS WE LOOK THE
15:13:54 10 TERM APPLET CAME TO BE MUCH EARLIER THAN THE JAVA
15:13:58 11 DID.

15:13:58 12 SO APPLET HAS EXISTED BEFOREHAND AND
15:14:01 13 PEOPLE OF ORDINARY SKILL IN THE ART WOULD
15:14:03 14 UNDERSTAND THAT IT'S NOT LIMITED TO JAVA, IT'S NOT
15:14:06 15 LIMITED TO INDEPENDENT. JUST LIKE TISSUE IS NOT
15:14:09 16 LIMITED TO KLEENEX.

15:14:10 17 THE COURT: OKAY. LET ME HEAR FROM
15:14:14 18 APPLE. I DON'T THINK THERE'S ANY INTRINSIC
15:14:16 19 EVIDENCE SUPPORTING THIS OPERATING SYSTEM
15:14:19 20 INDEPENDENT. IT LOOKS KIND OF LIKE YOU PUT IT IN
15:14:22 21 THERE FOR A NON-INFRINGEMENT ARGUMENT.

15:14:26 22 MR. LEE: CAN I BUG YOU WITH SLIDES?

15:14:31 23 THE COURT: YES. AND HAVE YOU GIVEN THEM
15:14:33 24 TO THEM?

15:14:35 25 MR. LEE: YES, THEY GOT THEM THIS

15:14:37 1 MORNING, AND THERE'S NO OBJECTION AS I UNDERSTAND
15:14:39 2 IT.

15:14:43 3 YOUR HONOR, TO ANSWER YOUR QUESTION,
15:14:43 4 THERE ACTUALLY IS INTRINSIC EVIDENCE TO ANSWER THAT
15:14:45 5 QUESTION. BUT COULD I MOVE INTO IT IN ORDER?

15:14:48 6 THE COURT: SURE.

15:14:50 7 MR. LEE: BECAUSE TO ANSWER YOUR HONOR'S
15:14:52 8 FIRST QUESTION TO MR. JOHNSON, AND THERE ARE THREE
15:14:54 9 ISSUES AND YOU DISCUSSED ALL OF THEM WITH
15:14:57 10 MR. JOHNSON.

15:14:58 11 THERE'S SMALL; AND THERE'S PROGRAM VERSUS
15:15:00 12 APPLICATION MODULE; AND THEN THERE'S OPERATING
15:15:04 13 SYSTEM INDEPENDENT AND DEPENDENT.

15:15:05 14 AND I'D LIKE TO ADDRESS ALL THREE BECAUSE
15:15:07 15 EACH GIVES RISE TO AN INDEPENDENT INFRINGEMENT
15:15:11 16 ISSUE. WITHOUT SAYING WHAT IT IS, EACH
15:15:12 17 INDEPENDENTLY GIVE RISE TO AN INFRINGEMENT ISSUE,
15:15:15 18 AND THAT'S WHY I'D LIKE TO ADDRESS EACH.

15:15:29 19 IF I COULD GO TO SLIDE 11 ON OURS --
15:15:29 20 ACTUALLY I'D LIKE TO GO TO M12. AND THIS IS
15:15:31 21 MR. COLE'S DEPOSITION TESTIMONY. AND THIS IS AFTER
15:15:34 22 THEY HAD PROPOSED "SMALL" IN THE JOINT CLAIM
15:15:37 23 CONSTRUCTION STATEMENT.

15:15:38 24 "QUESTION: HOW WOULD YOU DEFINE SMALL IN
15:15:40 25 THE CONTEXT OF AN APPLETT?

15:15:42 1 "ANSWER: I DIDN'T.

15:15:43 2 "QUESTION: DO YOU HAVE IN MIND ANY
15:15:46 3 DEFINITION OF WHAT SMALL WOULD MEAN IN THE CONTEXT
15:15:48 4 OF AN APPLLET?

15:15:49 5 "ANSWER: NO.

15:15:51 6 "QUESTION: WHAT DO YOU THINK WOULD BE
15:15:54 7 THE UNDERSTANDING OF SOMEONE OF ORDINARY SKILL IN
15:15:57 8 THE ART IN 2005 AS TO THE TERM SMALL IN THE CONTEXT
15:16:04 9 OF AN APPLLET?

15:16:05 10 "ANSWER: I DON'T KNOW."

15:16:07 11 SO --

15:16:08 12 THE COURT: YOU HAVE ME ON "SMALL."

15:16:10 13 MR. LEE: AND ACTUALLY, YOUR HONOR, THE
15:16:12 14 PROPOSAL YOU MADE, I THINK IT WAS ONE OR MORE
15:16:15 15 SIMPLE --

15:16:21 16 THE COURT: ONE OR FEW SIMPLE TASKS. I'M
15:16:24 17 NOT PROPOSING IT. I'M SAYING IT WAS IN SEVERAL
15:16:26 18 DEFINITIONS IN MR. COLE'S DECLARATION.

15:16:27 19 MR. LEE: IF IT HELPS, THAT'S ACCEPTABLE
15:16:29 20 TO US.

15:16:29 21 THE COURT: OH, OKAY. ALL RIGHT.

15:16:34 22 MR. LEE: WE WOULD AGREE. SO LET ME NOW
15:16:35 23 GO TO THE APPLICATION MODULE VERSUS THE PROGRAM.

15:16:39 24 AND AGAIN, I'M GOING TO GO TO MR. COLE'S
15:16:41 25 TESTIMONY BECAUSE HE ACTUALLY ANSWERED THE QUESTION

15:16:45 1 THAT YOU ASKED MR. JOHNSON BUT HE ANSWERED IT IN
15:16:48 2 THE OPPOSITE WAY.

15:16:49 3 SO IF I GO TO SLIDE 13.

15:16:55 4 "QUESTION: NOW, THE PATENT SAYS AN
15:16:58 5 APPLICATION MODULE INCLUDES AN APPLLET, CORRECT?

15:17:02 6 "ANSWER: YES.

15:17:03 7 "QUESTION: SO DO YOU THINK IT WOULD BE
15:17:05 8 MORE PRECISE TO SAY THAT AN APPLLET RUNS WITHIN AN
15:17:08 9 APPLICATION MODULE RATHER THAN WITHIN A PROGRAM?

15:17:12 10 "ANSWER: WOULD IT BE MORE PRECISE TO SAY
15:17:15 11 THAT? IT CERTAINLY TRACKS THE LANGUAGE OF THE
15:17:18 12 PATENT MORE CLOSELY, YES."

15:17:20 13 WE AGREE WITH MR. COLE ON THIS. AND,
15:17:23 14 YOUR HONOR, HERE'S THE ANSWER WHY. ON THE
15:17:26 15 LEFT-HAND SIDE OF OUR SLIDE, YOU SEE SAMSUNG'S
15:17:29 16 DEFINITION. THAT COULD COVER AN APPLICATION
15:17:35 17 PROGRAM RUNNING ON AN OPERATING SYSTEM.

15:17:37 18 AND THAT IS SPECIFICALLY WHAT THEY
15:17:40 19 DISTINGUISHED DURING THE COURSE OF THE FILE
15:17:43 20 HISTORY.

15:17:43 21 AND THAT'S WHY WITHIN ANOTHER PROGRAM,
15:17:46 22 WHICH COULD INCLUDE AN OPERATING SYSTEM, IS
15:17:50 23 INCORRECT IN LIGHT OF THE SPECIFICATION, THE FILE
15:17:54 24 HISTORY, AND THE CLAIM TERM ITSELF BECAUSE IT SAYS
15:17:57 25 THAT APPLICATION MODULE. AND THAT'S WHY THEIRS IS

15:18:01 1 TOO BROAD.

15:18:01 2 NOW, IF I COULD MOVE INTO THE INTRINSIC
15:18:04 3 EVIDENCE, I THINK IT WILL DEMONSTRATE BOTH, YOUR
15:18:07 4 HONOR, WHY IT HAS TO BE AN APPLICATION MODULE AND
15:18:10 5 ALSO ANSWER YOUR HONOR'S QUESTION ABOUT THE
15:18:15 6 OPERATING SYSTEM DEPENDENT AND INDEPENDENT.

15:18:18 7 AND THERE ARE A COUPLE OF PARTS OF THE
15:18:20 8 FILE HISTORY IN KOBUKO WHICH I THINK I WOULD LIKE
15:18:26 9 TO DRAW YOUR ATTENTION TO.

15:18:27 10 THE COURT: I'M SORRY. I MIGHT NOT HAVE
15:18:28 11 CAUGHT IT. DID YOU SAY THERE IS A CONNECTION
15:18:30 12 BETWEEN OPERATING SYSTEM INDEPENDENT AND DEPENDENCE
15:18:33 13 IF YOU USED APPLICATION MODULE?

15:18:36 14 MR. LEE: NO. THE PORTIONS OF THE FILE
15:18:38 15 HISTORY THAT ARE RELEVANT TO BOTH ISSUES, ARE
15:18:43 16 RELEVANT TO BOTH ISSUES BUT THEY'RE SEPARATE
15:18:45 17 ISSUES, AND, IN FACT, THEY WILL GIVE SEPARATE
15:18:47 18 INFRINGEMENT DISPUTES BETWEEN US IS MY BET.

15:18:52 19 THE COURT: OKAY.

15:18:53 20 MR. LEE: BUT WHAT I'M GOING TO TAKE YOUR
15:18:57 21 HONOR THROUGH NOW WILL BE RELEVANT TO BOTH, BUT
15:19:00 22 INDEPENDENTLY RELEVANT TO BOTH. DOES THAT ANSWER
15:19:05 23 YOUR QUESTION?

15:19:05 24 THE COURT: THAT IS FINE.

15:19:07 25 MR. LEE: OKAY. LET ME ANSWER THE LAST

15:19:07 1 QUESTION YOU ASKED ABOUT THE LEVEL OR ORDINARY
15:19:08 2 SKILL IN THE ART. I THINK YOUR HONOR'S INTUITIVE
15:19:09 3 REACTION TO HIGHER VERSUS LOWER IS CORRECT.

15:19:13 4 THE REASON YOU HAVE THE OPPOSITE
15:19:14 5 POSITIONS TAKEN BY THE PARTIES IS BECAUSE OF WHAT
15:19:17 6 I'M ABOUT TO TAKE YOU THROUGH BECAUSE IF SOMEONE
15:19:19 7 HAD A HIGHER LEVEL OF SKILL IN THE ART AND LOOKS AT
15:19:26 8 WHAT I'M GOING TO SHOW YOUR HONOR ABOUT KOBUKO AND
15:19:32 9 THEN WHAT THEY SAID ABOUT KOBUKO, YOU'LL KNOW IT'S
15:19:34 10 AN OPERATING SYSTEM INDEPENDENT.

15:19:36 11 NOW, LET ME SAY ONE MORE THING ABOUT THE
15:19:39 12 LEVEL OF SKILL IN THE ART. THE QUESTION OF WHAT
15:19:41 13 THE PATENT COVERS, THE ASSERTED CLAIMS ARE 1, 2, 7
15:19:44 14 TO 10 AND 15 TO 18.

15:19:47 15 EVERY SINGLE ONE OF THEM INCLUDES A
15:19:49 16 LIMITATION, THAT IS, QUOTE, "A POCKET SIZED MOBILE
15:19:53 17 COMMUNICATION DEVICE."

15:20:01 18 SO THE DISCUSSION WE HAD WITH YOUR HONOR
15:20:03 19 ABOUT WHETHER OR NOT SOMEONE OF ORDINARY SKILL IN
15:20:05 20 THE ART SHOULD HAVE EXPERIENCE IN THIS FIELD, THE
15:20:09 21 CLAIMS, AND I MAY HAVE MISHEARD MR. JOHNSON, THE
15:20:12 22 CLAIMS ARE NOT LIMITED AND THAT'S WHAT THE CLAIMS
15:20:15 23 SAY "A POCKET SIZED MOBILE COMMUNICATION DEVICE."

15:20:19 24 SO, YOUR HONOR, IF I GO TO SLIDE 14, AND
15:20:22 25 I'LL GO THROUGH THIS QUICKLY IN LIGHT OF THE HOUR,

15:20:24 1 BUT I'M GOING TO LOOK VERY QUICKLY AT WHAT THE
15:20:26 2 PATENT CLAIM SAYS AND THE SPEC SAYS BECAUSE IT'S
15:20:29 3 ONLY TWO SENTENCES.

15:20:30 4 BUT THEN WE HAVE TO GO TO THE FILE
15:20:34 5 HISTORY BECAUSE SAMSUNG ACTUALLY SAID A LOT.

15:20:37 6 SO SLIDE NUMBER 14 IS THE LIMITATION THAT
15:20:41 7 INCLUDES APPLETT BUT IT'S THE BROADER LIMITATION OR
15:20:45 8 THE ENTIRE LIMITATION WAS ADDED TO GET ALLOWANCE.

15:20:51 9 IF I TURN, YOUR HONOR, TO SLIDE NUMBER
15:20:54 10 15, YOU HAVE THE ENTIRETY OF WHAT THIS
15:20:57 11 SPECIFICATION SAYS ABOUT AN APPLETT.

15:20:59 12 IT'S AT COLUMN 3, LINE 8 TO 14.

15:21:03 13 AND ALL IT SAYS IS "APPLICATION MODULES
15:21:06 14 OF THE PORTABLE TERMINAL INCLUDES AT LEAST ONE
15:21:09 15 APPLETT AND EACH OF THE APPLICATION MODULES THAT IS
15:21:13 16 EACH MENU OF THE PORTABLE TERMINAL INDEPENDENTLY
15:21:16 17 PERFORMS MULTITASKING." THAT'S IT.

15:21:18 18 NOW, HERE'S WHAT HAPPEN IF WE GO TO SLIDE
15:21:24 19 NUMBER 16.

15:21:26 20 DURING THE PROSECUTION THE CLAIMS WERE
15:21:29 21 REJECTED BEFORE THIS LIMITATION WAS ADDED IN LIGHT
15:21:34 22 OF KOKUBO.

15:21:36 23 AND RATHER THAN MAKE THE ARGUMENT, I'LL
15:21:39 24 JUST TAKE WHAT MR. JOHNSON SAID ABOUT AOKI IN THE
15:21:42 25 LAST ARGUMENT ON A CLAIM TERM.

15:21:44 1 IF YOU TAKE, YOUR HONOR, SLIDE 16 TO 23,
15:21:48 2 WHICH I'M NOT GOING TO GO THROUGH NOW BUT WE'LL
15:21:50 3 LEAVE WITH THE COURT, 16 THROUGH 23 IDENTIFIES FOR
15:21:54 4 THE COURT WHERE THE PATENT EXAMINER FOUND EVERY
15:21:59 5 SINGLE ASPECT OF THE PENDING CLAIMS IN KOKUBO.
15:22:06 6 EVERY SINGLE LIMITATION.

15:22:07 7 IF I TURN, YOUR HONOR, TO SLIDE NUMBER
15:22:10 8 24, YOU WILL SEE WHAT KOKUBO SAID ABOUT OPERATING
15:22:19 9 SYSTEM APPLICATIONS PROGRAMS.

15:22:21 10 THIS IS NOW, THROUGHOUT KOKUBO, YOUR
15:22:25 11 HONOR, KOKUBO REFERS TO APPLICATIONS SOFTWARE AND
15:22:29 12 IT DOES IT PARENTHETICALLY A NUMBER OF TIMES, IT
15:22:33 13 DOES IT DIRECTLY A NUMBER OF TIMES.

15:22:35 14 THE PARAGRAPH THAT I CITE, YOUR HONOR,
15:22:38 15 COLUMN 6 ON 52 TO COLUMN 7, LINE 2 WHICH IS AT
15:22:45 16 SLIDE 24, SPECIFICALLY ADDRESSES THE ISSUE THAT IS
15:22:47 17 BEFORE US.

15:22:48 18 AND WHAT YOU WILL SEE IS THAT IT REFERS
15:22:50 19 TO A CONVENTIONAL OPERATING SYSTEM FOR CONTROLLING
15:22:55 20 THE APPARATUS. IT REFERS TO APPLICATION SOFTWARE
15:23:01 21 TASKS THAT ARE UNDER THE CONTROL OF THE OPERATING
15:23:05 22 SYSTEM.

15:23:05 23 AND IT EXPLICITLY TELLS YOU, YOUR HONOR,
15:23:11 24 IT TELLS THE PUBLIC, THAT YOU HAVE THIS OPERATING
15:23:14 25 SYSTEM, YOU HAVE THIS APPLICATION SOFTWARE, WHICH

15:23:17 1 IS CONTROLLED BY THE OPERATING SYSTEM.

15:23:21 2 AND WHAT DOES IT DO? IF YOUR HONOR LOOKS
15:23:24 3 AT THE BOTTOM OF THE PAGE OR THE BOTTOM OF THE
15:23:26 4 COLUMN, IT'S RUNNING TASKS LIKE E-MAIL, WEB
15:23:29 5 BROWSERS, AND THE LIKE.

15:23:30 6 SO THERE IS A CLASSIC APPLICATIONS
15:23:33 7 PROGRAM RUNNING AN OPERATING SYSTEM.

15:23:38 8 AND IF I TURN, YOUR HONOR, TO THE NEXT
15:23:40 9 SLIDE, WHICH IS COLUMN 10 FROM KOKUBO, LINE 54 TO
15:23:44 10 62, IT TELLS YOU EXACTLY WHAT TASKS ARE BEING RUN
15:23:51 11 ON THIS OPERATING SYSTEM BY THESE APPLICATION
15:23:56 12 PACKAGES, AND IT'S E-MAIL, BROWSING, GAMING, AND
15:24:00 13 MOST IMPORTANTLY, MUSIC.

15:24:02 14 SO WITH THIS SPECIFIC DISCLOSURE OF
15:24:09 15 KOKUBO, WHICH THE EXAMINER FOUND IN SLIDE 16 TO 24,
15:24:09 16 HAS EVERYTHING INCLUDING AN APPLICATION SOFTWARE
15:24:23 17 PERFORMING TASKS, WHICH IS ONE OF THE THINGS THAT
15:24:24 18 YOUR HONOR DISCUSSED WITH MR. JOHNSON, AND THE
15:24:26 19 TASKS OF BROWSING, E-MAILING, AND MUSIC, WHAT
15:24:30 20 HAPPENED.

15:24:31 21 AND IF YOU TURN TO SLIDE 26, YOUR HONOR,
15:24:33 22 THIS IS WHEN THE EXAMINER HAVING MADE THE REJECTION
15:24:41 23 IN LIGHT OF WHAT KOKUBO SAID, SAYS LET'S ADD THIS
15:24:45 24 LIMITATION.

15:24:46 25 SO WE NOW HAVE THE LIMITATION THAT WAS

15:24:48 1 ADDED TO SPECIFICALLY DISTINGUISH THE VERY
15:24:50 2 TWO PAGES THAT I HAVE JUST SHOWN YOU.

15:24:51 3 WHAT WOULD ONE OF ORDINARY SKILL IN THE
15:24:54 4 ART UNDERSTAND THAT THEY WERE SAYING?

15:24:56 5 WELL, I'M NOT ONE OF ORDINARY SKILL IN
15:24:58 6 THE ART, YOUR HONOR, BUT EVEN I UNDERSTAND THAT
15:25:01 7 THEY ARE SAYING THAT THIS IS DIFFERENT THAN THE
15:25:03 8 APPLICATION SOFTWARE SITTING ON AN OPERATING
15:25:07 9 SYSTEM, CONTROLLED BY THE OPERATING SYSTEM,
15:25:09 10 EXPRESSLY DISCLOSED IN KOKUBO.

15:25:11 11 SO THE EXAMINER SUGGESTED. AND WHAT DID
15:25:23 12 SAMSUNG DO?

15:25:24 13 THEY SAY, THAT'S RIGHT, WE'LL ADD THIS
15:25:26 14 LIMITATION AND THIS IS THE LIMITATION THAT
15:25:30 15 DISTINGUISHES KOKUBO, BUT THEY SAY MORE. IF YOU
15:25:35 16 TURN TO SLIDE 28.

15:25:36 17 THEY SAY, QUOTE, "KOKUBO MERELY DISCLOSES
15:25:40 18 THE GENERATING OF AN ICON CORRESPONDING TO A TASK
15:25:47 19 (APPLICATION SOFTWARE)" AND THEN IT REFERS TO
15:25:52 20 COLUMN 2, LINES 34 AND COLUMN 13, LINES 8 TO 10.

15:25:57 21 THIS IS EXACTLY THE APPLICATION SOFTWARE
15:25:59 22 PERFORMING THE TASKS ON TOP OF AN OPERATING SYSTEM.

15:26:03 23 AND THEN WHAT DO THEY SAY? AND, YOUR
15:26:05 24 HONOR, THIS IS WHERE THEY HAD THE POWER OF THE PEN.
15:26:08 25 THEY SHOULD BE HELD TO THEIR WORD.

15:26:10 1 "THE GENERATING OF THE ICON BY KOKUBO IS
15:26:14 2 NOT THE DISCLOSURE OF GENERATING A MUSIC BACKGROUND
15:26:17 3 PLAY OBJECT, WHEREIN THE MUSIC BACKGROUND PLAY
15:26:19 4 OBJECT INCLUDES AN APPLICATION MODULE INCLUDING AT
15:26:22 5 LEAST ONE APPLETT."

15:26:24 6 SO THEY HAVE SPECIFICALLY DISTINGUISHED
15:26:27 7 EXACTLY THE TWO QUOTATIONS AND EXCERPTS THAT I HAVE
15:26:33 8 SHOWN YOUR HONOR FROM KOKUBO, AND THAT'S WHAT
15:26:35 9 RESULTS IN ALLOWANCE OF THE CLAIMS.

15:26:39 10 NOW, WHAT DOES THIS MEAN, YOUR HONOR?
15:26:41 11 THIS IS, AS DR. GIVARGIS SAID, THIS IS THE FILE
15:26:45 12 HISTORY THAT WOULD LEAD ONE OF ORDINARY SKILL IN
15:26:48 13 THE ART TO UNDERSTAND THAT IN ADDITION TO THE
15:26:51 14 APPLETT HAVING TO BE A PROGRAM RUNNING WITHIN AN
15:26:53 15 APPLICATION MODULE AS OPPOSED TO SOME PROGRAM
15:26:57 16 GENERALLY INCLUDING AN OPERATING SYSTEM, THERE'S A
15:27:00 17 SECOND REQUIREMENT AND IT NEEDS TO BE OPERATING
15:27:03 18 SYSTEM INDEPENDENT.

15:27:05 19 THE COURT: WELL, THAT'S WHAT I DON'T
15:27:06 20 SEE.

15:27:07 21 MR. LEE: WELL, YOUR HONOR, THAT'S -- I
15:27:09 22 WON'T GO THROUGH IT AGAIN, BUT IF YOUR HONOR
15:27:12 23 LOOKS -- ALL WE CAN ASK YOUR HONOR TO DO IS IF YOU
15:27:15 24 LOOK AT KOKUBO AND YOU LOOK AT THOSE TWO PAGES AND
15:27:17 25 THE QUOTATIONS, THAT IS AN OPERATING SYSTEM

15:27:20 1 DEPENDENT/INDEPENDENT PROGRAM AND THE QUESTION IS
15:27:28 2 THIS, YOUR HONOR, WHAT IS IT ABOUT APPLLET THAT
15:27:30 3 DISTINGUISHES THAT COLUMN?

15:27:40 4 THE COURT: LET'S GO BACK TO SLIDE 24
15:27:42 5 WHERE YOU SAID THIS SAYS -- YOU SEE IT SAYS
15:27:46 6 OPERATING SYSTEM AS I GUESS A DEFINITION OF CONTROL
15:27:49 7 PROGRAM.

15:27:50 8 MR. LEE: RIGHT.

15:27:51 9 THE COURT: BUT TELL ME HOW THIS SAYS
15:27:53 10 THAT TO DISTINGUISH FROM KOKUBO YOU HAVE TO ASSUME
15:28:01 11 OPERATING SYSTEM?

15:28:02 12 MR. LEE: THE READ ONLY MEMORY IS
15:28:04 13 CONNECTED TO THE CONTROL UNIT 115 AND STORES A
15:28:09 14 CONTROL PROGRAM AND OPERATING SYSTEM.

15:28:14 15 SO THE READ ONLY MEMORY IS CONNECTED TO
15:28:16 16 THE CONTROL UNIT 115, AND THE READ ONLY MEMORY HAS
15:28:20 17 THE OPERATING SYSTEM.

15:28:21 18 THE NEXT PARAGRAPH. THE OPERATION UNIT
15:28:28 19 160 IS CONNECTED TO THE CONTROL UNIT 115, THE SAME
15:28:32 20 ONE WE JUST TALKED ABOUT, AND BY THE CONTROL UNIT
15:28:36 21 115, THAT IS THAT WHICH HAS THE OPERATING SYSTEM,
15:28:39 22 GIVES OPERATING INSTRUCTIONS SUCH AS.

15:28:44 23 AND THEN IT GOES DOWN AND TALKS ABOUT HOW
15:28:46 24 HAVING GIVEN THOSE INSTRUCTIONS, YOU EXECUTE THE
15:28:49 25 APPLICATIONS SOFTWARE TASK.

15:28:51 1 AND, YOUR HONOR, THIS IS A PLACE WHERE
15:28:58 2 YOUR HONOR ASKED TODAY ABOUT SOMETHING ABOUT AN
15:29:00 3 INTERMEDIATE REMEDY BEYOND STRIKING THE REFERENCES.

15:29:04 4 THIS IS A PLACE WHERE I CAN REPRESENT TO
15:29:06 5 THE COURT IF DR. GIVARGIS COULD SUBMIT A
15:29:10 6 SUPPLEMENTAL DECLARATION, HE WOULD TAKE THAT
15:29:12 7 LAUNDRY LIST OF DICTIONARY DEFINITIONS AND SAY YOU
15:29:17 8 COULDN'T GIVE THOSE DEFINITIONS IN LIGHT OF WHAT
15:29:19 9 THEY SAID ABOUT KOKUBO.

15:29:25 10 AND YOU'RE GOING TO GET DIFFERENT
15:29:27 11 INTERPRETATIONS FROM MR. JOHNSON AND FROM ME ABOUT
15:29:29 12 THIS PROVISION, BUT THIS IS THE PROVISION THAT FOR
15:29:32 13 LACK OF A LESS PEJORATIVE WORD PUTS A LIE TO THE
15:29:37 14 DEFINITIONS THAT WERE SUBMITTED LATE.

15:29:38 15 AND THE QUESTION IS THIS, YOUR HONOR --
15:29:41 16 WE DON'T -- THERE ARE TWO SEPARATE QUESTIONS HERE.

15:29:44 17 ONE IS WHAT IS THE DIFFERENCE BETWEEN
15:29:48 18 KOKUBO AND THIS APPLETT LIMITATION?

15:29:51 19 WE KNOW THAT'S THE KEY. THAT'S THE ONLY
15:29:53 20 THING THAT GOT THESE PATENTS ALLOWED.

15:29:55 21 SO WE HAVE TO GO BACK TO KOKUBO AND SAY
15:29:59 22 HOW DO THEY RUN THEIR APPLICATIONS SOFTWARE? HOW
15:30:03 23 DO THEY RUN THEIR MUSIC PROGRAM BECAUSE YOU KNOW IT
15:30:06 24 HAS TO BE DIFFERENT.

15:30:09 25 IF THEY'RE NOT DIFFERENT, THEN KOKUBO

15:30:11 1 ANTICIPATES AND THE PATENT IS INVALID.

15:30:13 2 BUT WE KNOW THAT THE PROGRESSION IS THAT
15:30:15 3 EVERY -- CLAIMS ARE PENDING WITHOUT THIS LIMITATION
15:30:17 4 AND REJECTED IN THEIR ENTIRETY.

15:30:20 5 THE EXAMINER PROPOSED THIS LIMITATION AND
15:30:22 6 SAMSUNG SAYS, YES, AND THEN SAMSUNG SAYS THIS IS BY
15:30:27 7 ITSELF THE DISTINCTION. THAT'S THE FIRST QUESTION.
15:30:31 8 IS THIS A DISTINCTION THAT MATTERS? I THINK THE
15:30:34 9 ANSWER IS UNEQUIVOCALLY YES.

15:30:36 10 AND THEN THE HARDER QUESTION BECOMES,
15:30:38 11 WHAT IS THE DISTINCTION, WHICH IS WHAT I THINK YOUR
15:30:40 12 HONOR IS ASKING ME NOW.

15:30:41 13 WE SAY THAT THE DISTINCTION IS THIS
15:30:45 14 COLUMN AGAINST WHAT THEY SAY ABOUT APPLE.

15:30:50 15 SAMSUNG HAS NOT OFFERED YOU ANY
15:30:55 16 EXPLANATION FOR WHAT THE DIFFERENCE IS BETWEEN
15:31:00 17 APPLE IN THAT LIMITATION AND KOKUBO.

15:31:03 18 AND, IN FACT, WHAT THEY DID IS THAT THEY
15:31:05 19 OFFERED YOU A DEFINITION, A SMALL WITHIN A PROGRAM,
15:31:09 20 AND, YOUR HONOR, THAT COVERS EXACTLY WHAT IS ON
15:31:12 21 THIS PAGE M24.

15:31:15 22 THEY HAVE OFFERED YOU A DEFINITION THAT
15:31:20 23 WITHOUT A DOUBT EXPLICITLY COVERS WHAT IS DISCLOSED
15:31:23 24 IN KOKUBO. WE KNOW THAT'S NOT RIGHT.

15:31:25 25 SO I THINK THE QUESTION YOUR HONOR MAY

15:31:28 1 WANT TO POSE TO BOTH OF US IS SO WHAT IS THE
15:31:31 2 DIFFERENCE? WE KNOW THERE'S A DIFFERENCE. WE KNOW
15:31:35 3 IT'S THE ONLY DIFFERENCE THAT COUNTED AND WHAT IS
15:31:37 4 THE DIFFERENCE?

15:31:38 5 AND THAT YOUR HONOR HAS ANSWERED I GUESS
15:31:43 6 BY THE EXPERTS AND BY YOUR HONOR'S READING OF THE
15:31:46 7 CLAIMS.

15:31:46 8 LET ME SAY JUST THREE OTHER THINGS ABOUT
15:31:48 9 THIS. ONE IS THAT, FIRST, THE INVENTOR'S
15:31:52 10 TESTIMONY.

15:31:53 11 THIS INVENTOR'S TESTIMONY ABOUT WHAT HE
15:31:55 12 WAS DOING AND WHAT THE OPERATING SYSTEM WAS NOT
15:32:00 13 DISCLOSED ANYWHERE IN THE SPECIFICATION OR THE FILE
15:32:02 14 HISTORY, RIGHT.

15:32:03 15 IF THAT WERE THE DIFFERENCE, THEN IF
15:32:08 16 THAT'S WHAT HE WAS DOING AND THE PUBLIC WAS TO KNOW
15:32:10 17 THAT IT INCLUDED A QUALCOMM CHIP THAT WAS OPERATING
15:32:15 18 SYSTEM INDEPENDENT, THEY SHOULD HAVE SAID SO.

15:32:17 19 IF THAT WAS THE DISTINCTION FROM KOKUBO,
15:32:21 20 HE SHOULD HAVE SAID SO. NO ONE WOULD HAVE HAD A
15:32:23 21 CLUE THAT THAT WAS TRUE AND, IN FACT, THE BEST
15:32:26 22 EVIDENCE OF THAT IS THAT MR. COLE DID NOT HAVE A
15:32:29 23 CLUE THAT WAS TRUE.

15:32:30 24 THE SECOND THING IS THAT ALL OF THE
15:32:32 25 DEFINITIONS THAT THEY HAVE GIVEN LATE, IF WE HAD

15:32:36 1 GOTTEN IT ON TIME, WHAT DR. GIVARGIS WOULD HAVE
15:32:41 2 SAID IS THAT, YES, THERE'S THESE DEFINITIONS OUT
15:32:44 3 THERE, BUT TO ONE OF ORDINARY SKILL IN THE ART, BY
15:32:47 4 MY DEFINITION, READING KOKUBO AND READING WHAT THEY
15:32:50 5 SAID AS THE DISTINCTION, THOSE DEFINITIONS WON'T
15:32:55 6 WORK BECAUSE UNDER THOSE DISTINCTIONS THEY WOULD
15:32:58 7 ANTICIPATE.

15:32:59 8 THE COURT: SO WAIT. ARE YOU SAYING THAT
15:33:01 9 IF THE PATENT EXAMINER KNEW THAT WHAT THE INVENTOR
15:33:12 10 -- THAT THE INVENTOR WAS ALSO REFERRING TO A SYSTEM
15:33:17 11 DEPENDENT APPLETT, THAT THEN IT COULD NOT HAVE
15:33:22 12 OVERCOME KOKUBO?

15:33:26 13 MR. LEE: NO. IF THAT'S WHAT I SAID, I
15:33:29 14 MISSPOKE. I MAY HAVE COLLAPSED TWO THOUGHTS. LET
15:33:30 15 ME BREAK THEM DOWN AND ANSWER YOUR HONOR'S QUESTION
15:33:32 16 PRECISELY FIRST.

15:33:33 17 IF THE FACT THAT HE WAS WORKING ON AN
15:33:36 18 OPERATING SYSTEM DEPENDENT PROGRAM ON THE QUALCOMM
15:33:44 19 CHIP, AND THAT MADE IT DIFFERENT THAN KOKUBO, I
15:33:47 20 DON'T THINK IT DOES, BUT --

15:33:49 21 THE COURT: BUT DID THE EXAMINER KNOW HE
15:33:51 22 WAS WORKING, THE INVENTOR WAS WORKING ON AN
15:33:54 23 OPERATING SYSTEM DEPENDENT APPLETT?

15:33:56 24 MR. LEE: NO, THE EXAMINER DIDN'T KNOW.
15:33:58 25 THE DAY THE PATENT PUBLISHED THE PUBLIC DIDN'T

15:34:00 1 KNOW. THE DAY WE WERE SUED WE DIDN'T KNOW.

15:34:03 2 DR. COLE DIDN'T KNOW.

15:34:04 3 THE FIRST TIME THAT ANYBODY KNEW THAT
15:34:06 4 THIS WAS A BASIS TO INTERPRET A CLAIM WAS ON
15:34:10 5 NOVEMBER THE 17TH, 2011, WHEN HE WAS DEPOSED.

15:34:14 6 THAT CAN'T SATISFY THE PUBLIC NOTICE
15:34:19 7 FUNCTION OF SECTION 112, THAT AN INVENTOR 10 YEARS
15:34:23 8 LATER SAYS, MORE THAN 10 YEARS LATER, 16 YEARS
15:34:26 9 LATER SAYS, OH, BY THE WAY, THIS IS WHAT I'M DOING.

15:34:29 10 THE COURT: MAYBE THAT JUST MEANS IT'S
15:34:31 11 IRRELEVANT.

15:34:33 12 MR. LEE: YEAH, I THINK HIS TESTIMONY IS
15:34:35 13 IRRELEVANT. IT'S -- IF YOU TAKE THE BASIC
15:34:42 14 PROPOSITION THAT INVENTOR TESTIMONY IS NOT TO GUIDE
15:34:45 15 THE COURT'S CONSTRUCTION, AND THEN YOU ADD IT IN TO
15:34:48 16 THIS SPECIFIC SITUATION THAT IT'S NOT DISCLOSED
15:34:50 17 ANYWHERE EITHER IN THE SPECIFICATION OR THE FILE
15:34:55 18 HISTORY, WAS NOT DISCLOSED TO MR. COLE AND THE
15:34:58 19 BASIS OF HIS CLAIM INTERPRETATION, CANNOT FOR THE
15:35:00 20 FIRST TIME 16 YEARS AFTER THE FILING DATE, AND IT'S
15:35:04 21 OTHERWISE NOT PUBLIC, I DON'T THINK IT SHOULD GUIDE
15:35:06 22 THE CLAIM INTERPRETATION DECISION AS A MATTER OF
15:35:09 23 SECTION 112.

15:35:10 24 THE COURT: I ACTUALLY WAS COMING OUT
15:35:13 25 WITH A DIFFERENT CONCLUSION. MAYBE THE PATENT

15:35:16 1 EXAMINER THOUGHT THE DISTINCTION OF OPERATING
15:35:18 2 SYSTEM INDEPENDENT OR DEPENDENT WAS IRRELEVANT AND
15:35:21 3 THAT IT WASN'T NECESSARY TO LOOK AT THAT OR
15:35:23 4 CONSIDER THAT IN DECIDING WHETHER APPLICATION
15:35:27 5 MODULE THAT INCLUDES AT LEAST ONE APPLLET OVERCAME
15:35:31 6 KOKUBO OR NOT.

15:35:32 7 MR. LEE: THAT'S POSSIBLE, BUT HERE'S THE
15:35:34 8 QUESTION THEN: WHAT DID THE EXAMINER THINK WAS
15:35:36 9 DIFFERENT?

15:35:37 10 AND THAT'S -- AND I'VE OFFERED YOU ONE
15:35:39 11 EXPLANATION THAT I THINK LEGITIMATELY READS WHAT IS
15:35:44 12 IN KOKUBO, LEGITIMATELY READS WHAT SAMSUNG SAYS IS
15:35:49 13 THE DISTINCTION AND IS ACTUALLY CONFIRMED BY WHAT
15:35:52 14 MOST FOLKS WOULD THINK AN APPLLET WAS IN 2005.

15:35:57 15 WHAT IS THE OTHER EXPLANATION THAT YOUR
15:36:01 16 HONOR HAS FOR HOW THIS LIMITATION OVERCAME KOKUBO?
15:36:08 17 AND I THINK THE ANSWER IS THAT THERE IS NONE.

15:36:10 18 AND WHEN I PRESSED A LITTLE -- USUALLY,
15:36:13 19 YOUR HONOR, THE DIFFERENCE BETWEEN PEOPLE OF
15:36:14 20 ORDINARY SKILL IN THE ART DOESN'T MATTER.

15:36:16 21 THIS TIME IT DOES MATTER BECAUSE THERE IS
15:36:18 22 A VERY SPECIFIC DISTINCTION BEING MADE BETWEEN ONE
15:36:21 23 SYSTEM AND ANOTHER.

15:36:23 24 AND THE SLIGHTLY ELEVATED EXPERIENCE THAT
15:36:27 25 YOU ARE SUGGESTING WOULD HELP THEM ANSWER THE

15:36:30 1 QUESTION. AND AGAIN, AS I SAID, YOUR HONOR, THERE
15:36:32 2 ARE TWO QUESTIONS. MUST THERE BE A DIFFERENCE
15:36:34 3 BETWEEN KOKUBO AND APPLICATIONS AND MODULES WITH AN
15:36:40 4 APPLET?

15:36:40 5 AND THE ANSWER IS, YES, AS A LEGAL
15:36:43 6 MATTER. AND THE QUESTION BECOMES WHAT IS IT? AND
15:36:45 7 WE HAVE OFFERED ONE EXPLANATION, AND I DON'T THINK
15:36:47 8 THERE IS ANOTHER.

15:36:48 9 THE COURT: LET ME ASK, WITH REGARD TO
15:36:53 10 DR. GIVARGIS'S DECLARATION, HE DOES HAVE A LOT OF
15:36:56 11 QUALIFYING WORDS, YOU KNOW, THAT GENERALLY AN
15:36:59 12 APPLET WOULD BE CONSIDERED A JAVA APPLET.

15:37:05 13 HE NEVER EXPLICITLY SAYS THAT ALL APPLETS
15:37:07 14 HAVE TO BE JAVA APPLETS. SO THAT SORT OF I THINK
15:37:14 15 BOLSTERS WHAT SAMSUNG IS SAYING.

15:37:17 16 MR. LEE: YOUR HONOR, FIRST I THINK HE
15:37:19 17 HAS ANSWERED THE GENERALLIES AND THE USUALLIES AND
15:37:23 18 THAT'S AN HONEST ANSWER AND HE'S GIVING
15:37:26 19 STRAIGHTFORWARDLY.

15:37:27 20 AND IF YOUR HONOR IS LOOKING AT IS IT
15:37:32 21 POSSIBLE THAT THERE ARE OPERATING SYSTEM DEPENDENT,
15:37:34 22 THINGS THAT PEOPLE HAVE CALLED APPLETS, THE ANSWER
15:37:37 23 FOR ME IS YES.

15:37:38 24 BUT HERE'S THE ISSUE WITH IT: YOU HAVE
15:37:40 25 THE MICROSOFT APPLET THAT IS CALLED AN APPLET BUT

15:37:46 1 IT'S NOT AN APPLLET EVEN BY THEIR DEFINITION AND
15:37:48 2 IT'S NOT WITHIN ANOTHER PROGRAM.

15:37:50 3 AND, YOUR HONOR, I WOULD SAY THIS, AND
15:37:52 4 I'LL DO IT QUICKLY IN THE INTEREST OF TIME.

15:37:55 5 IF THERE HAD NOT BEEN KOKUBO AND KOKUBO'S
15:38:00 6 DISCLOSURE OF AN OPERATING SYSTEM AND AN
15:38:01 7 APPLICATION SOFTWARE HAD NOT BEEN WHAT LED TO
15:38:05 8 REJECTION AND THIS LIMITATION, THEN THIS GENERAL
15:38:10 9 QUESTION OF WERE THERE APPLETS OUT THERE THAT WERE
15:38:13 10 OPERATING SYSTEM DEPENDENT AND INDEPENDENT WOULD
15:38:16 11 PROBABLY BE ENOUGH TO DEFINE THE TERM UNDER THE
15:38:23 12 PRINCIPLES OF PHILLIPS.

15:38:24 13 BUT HERE WE HAVE MORE. THIS IS A CASE
15:38:26 14 WHERE YOU HAVE ONE CLAIM TERM, ONE SENTENCE IN THE
15:38:29 15 SPECIFICATION, AND -- BUT A LOT IN THE FILE
15:38:32 16 HISTORY.

15:38:32 17 AND THE QUESTION BECOMES, I THINK AGAIN
15:38:34 18 AS WE SAID, SO WHAT IS THE DIFFERENCE, WHAT IS THE
15:38:37 19 DIFFERENCE BETWEEN KOKUBO AND THIS LIMITATION IF
15:38:43 20 NOT THIS?

15:38:47 21 AND WHAT DR. GIVARGIS WOULD TELL YOU AND
15:38:50 22 WE WOULD OFFER AS THE INTERMEDIATE RELIEF TO HAVE
15:38:53 23 THE DECLARATION WITHIN A WEEK, IF YOU WERE TO USE
15:38:55 24 THE DEFINITIONS THAT SAMSUNG HAS PROPOSED, YOU
15:38:58 25 WOULD HAVE NEVER HAVE MADE THIS DISTINCTION.

15:39:00 1 AND THAT'S THE -- I REALLY THINK AT THE
15:39:03 2 END, I'M NOT SURE THERE'S A BIG FIGHT ABOUT
15:39:05 3 "SMALL." THERE SHOULD NOT BE A FIGHT ABOUT WHETHER
15:39:08 4 THE APPLICATION MODULE AS OPPOSED TO ANY PROGRAMS
15:39:11 5 REQUIRED.

15:39:13 6 ON THIS THIRD ISSUE IT REALLY COMES DOWN
15:39:16 7 TO HERE'S WHAT KOKUBO SAYS, AND THEY SAY IT'S
15:39:18 8 DIFFERENT AND HOW IS IT DIFFERENT?

15:39:20 9 THE COURT: WELL, I GUESS I COULD AGREE
15:39:22 10 WITH YOU THAT MAYBE THAT MAY HAVE BEEN A DIFFERENCE
15:39:28 11 WITH KOKUBO, BUT IT APPEARS THAT THAT WASN'T A
15:39:34 12 DIFFERENCE THAT WAS OF IMPORTANCE TO THE EXAMINER.
15:39:36 13 IT DIDN'T SEEM LIKE THAT WAS WHY THE EXAMINER
15:39:40 14 ALLOWED THE '711 OVER KOKUBO.

15:39:44 15 MR. LEE: COULD I GO TO M26, M26 OR M27?
15:39:48 16 AND MAYBE -- SO, YOUR HONOR, IF I GO TO M26, THE
15:39:52 17 EXAMINER PROPOSES THE SUGGESTION AND THEN HE SAYS
15:39:56 18 I'M PROPOSING IT BECAUSE THIS IS WHAT WAS ARGUED BY
15:40:03 19 SAMSUNG TO DISTINGUISH THE ICON AS TAUGHT BY
15:40:06 20 KOKUBO. THAT'S THE MUSIC ICON.

15:40:09 21 SO THERE'S AN INTERVIEW, YOUR HONOR.
15:40:11 22 THERE'S THIS PROPOSAL, AND IT'S THE SPECIFIC
15:40:14 23 DISTINCTION.

15:40:14 24 NOW, LET'S GO TWO SLIDES FORWARD, M28.

15:40:25 25 AND I GOT DIVERTED, AND I APOLOGIZE. THE

15:40:28 1 LAST SENTENCE IS THE KEY, "THE GENERATING OF THE
15:40:32 2 ICON IN KOKUBO," I'M SORRY, THE TWO SENTENCES,
15:40:35 3 "KOKUBO MERELY DISCLOSES THE GENERATING OF AN ICON
15:40:39 4 CORRESPONDING TO A TASK (APPLICATION SOFTWARE)."

15:40:45 5 SO HE'S SAYING -- I'M SORRY. SAMSUNG IS
15:40:49 6 ARGUING HERE'S WHAT KOKUBO MERELY DISCLOSES AND,
15:40:51 7 YOUR HONOR, IT IS REFERRING SPECIFICALLY TO
15:40:53 8 APPLICATION SOFTWARE, WHICH IS EXACTLY WHAT I WAS
15:40:58 9 DESCRIBING TO YOUR HONOR IN THAT ONE COLUMN.

15:40:59 10 SO THIS IS KOKUBO'S MERE DISCLOSURE.

15:41:04 11 HOW THEN IS THIS '711 PATENT IN THIS
15:41:08 12 LIMITATION DIFFERENT?

15:41:09 13 "THE GENERATING OF THE ICON BY KOKUBO IS
15:41:12 14 NOT A DISCLOSURE OF GENERATING A MUSIC BACKGROUND
15:41:15 15 PLAY OBJECT, WHEREIN THE MUSIC BACKGROUND PLAY
15:41:18 16 OBJECT INCLUDES AN APPLICATION MODULE INCLUDING AT
15:41:21 17 LEAST ONE APPLETT."

15:41:23 18 SO, YOUR HONOR, WHAT YOU DO KNOW IS
15:41:25 19 SAMSUNG TOLD THE EXAMINER, AND THE PATENT WAS THEN
15:41:29 20 ALLOWED, THAT A MUSIC BACKGROUND PLAY OBJECT THAT
15:41:36 21 INCLUDES AN APPLICATION MODULE, INCLUDING AT LEAST
15:41:41 22 ONE APPLETT, IS DIFFERENT FROM THE MERE DISCLOSURE
15:41:43 23 OF AN ICON CORRESPONDING TO A TASK (APPLICATION
15:41:49 24 SOFTWARE).

15:41:50 25 AND YOU KNOW WHEN YOU GO TO KOKUBO THE

15:41:52 1 APPLICATION SOFTWARE WAS SITTING IN AN APPLICATION
15:41:56 2 CONTROLLED BY CONTROLLER 160.

15:42:10 3 THE COURT: LET ME ASK, AT THE TUTORIAL
15:42:19 4 APPLE WAS GIVING SOME REASONS WHY YOU WOULD USE AN
15:42:21 5 APPLETT, AND I DON'T KNOW IF IT HAS ANY RELEVANCE
15:42:24 6 HERE ABOUT ACCESSIBILITY AND PORTABILITY. IS THAT
15:42:28 7 WHERE THIS SORT OF OPERATING SYSTEM FOR SECURITY?
15:42:31 8 I GUESS HOW WOULD SECURITY AFFECT OPERATING SYSTEM?

15:42:33 9 MR. LEE: ONE OF THE REASONS FOR AN
15:42:38 10 APPLETT BACK IN 1995, OR FRANKLY TODAY, IS THIS, YOU
15:42:41 11 HAVE YOUR OPERATING SYSTEM AND THEN YOU HAVE
15:42:45 12 PROGRAMS THAT SIT ON TOP OF IT AND OPERATE.

15:42:48 13 AND I THINK EVERYBODY AGREES THAT'S NOT
15:42:50 14 WHAT THEIR -- SHOULD NOT BE WHAT THIS PATENT IS
15:42:53 15 TALKING ABOUT.

15:42:54 16 ONE OF THEM CAN BE YOUR WEB BROWSER, YOUR
15:42:59 17 WEB BROWSER YOU USE WHEN YOU GO OUT AND YOU
15:43:01 18 DOWNLOAD A PROGRAM OFF OF THE INTERNET.

15:43:05 19 WHEN YOU DOWNLOAD A PROGRAM LIKE THAT YOU
15:43:07 20 DON'T WANT IT TO SIT DIRECTLY ON TOP OF YOUR
15:43:09 21 OPERATING SYSTEM BECAUSE IF THERE'S A VIRUS OR YOU
15:43:12 22 HAVE A PROBLEM, YOU RUN THE RISK THAT IT WILL CAUSE
15:43:15 23 SECURITY PROBLEMS FOR YOUR ENTIRE COMPUTER.

15:43:17 24 SO YOU DOWNLOAD IT SEPARATELY. IT SITS
15:43:20 25 ON THIS HOST APPLICATION WHICH THEN RUNS -- EITHER

15:43:25 1 INTERPRETS OR RUNS THE PROGRAM AND PROVIDES
15:43:28 2 SECURITY FOR YOUR OPERATING SYSTEM.

15:43:29 3 IT ALSO ALLOWS THAT APPLICATION PROGRAM
15:43:36 4 TO RUN ON ANY OPERATING SYSTEM THAT HAS A HOST
15:43:38 5 APPLICATION THAT CAN INTERPRET FOR THE OPERATING
15:43:41 6 SYSTEM.

15:43:41 7 SO IT'S TWO THINGS: IT'S SECURITY AND
15:43:43 8 ACCESSIBILITY.

15:43:44 9 AND THE IMPORTANT THING FOR OUR PURPOSES,
15:43:47 10 YOUR HONOR, IS WHEN YOU LOOK AT THIS AMENDMENT,
15:43:51 11 JAVA APPLETS WERE WELL-KNOWN IN 1995. THE FACT
15:43:55 12 THAT THEY PROVIDED SECURED ACCESSIBILITY WAS
15:43:58 13 WELL-KNOWN IN 1995. AND IT WAS WELL-KNOWN -- THERE
15:44:01 14 WAS A REASON FOR THEM. YOU DIDN'T HAVE THREE
15:44:03 15 LEVELS INSTEAD OF TWO JUST FOR NO PURPOSE AT ALL.

15:44:09 16 AND WHEN IT CAME TIME TO DISTINGUISH
15:44:12 17 KOKUBO, WHICH HAD AN APPLICATION SOFTWARE INCLUDING
15:44:16 18 MUSIC PLAY, INCLUDING BROWSING, INCLUDING E-MAIL,
15:44:20 19 SITTING ON AN OPERATING SYSTEM CONTROLLED BY A
15:44:23 20 CONTROLLER, SAMSUNG TOOK ONE SENTENCE FROM THE
15:44:27 21 PATENT, WENT TO AN INTERVIEW, CONVINCED THE
15:44:30 22 EXAMINER IT WAS DIFFERENT, TOLD THE EXAMINER IT WAS
15:44:32 23 DIFFERENT FROM THE MERE DISCLOSURE.

15:44:34 24 AND THIS IS I THINK THE INTERESTING
15:44:37 25 QUESTION OF, WE KNOW THEY'RE DIFFERENT, THEY HAVE

15:44:39 1
15:44:43 2
15:44:44 3
15:44:50 4
15:44:54 5
15:44:56 6
15:45:00 7
15:45:03 8
15:45:06 9
15:45:16 10
15:45:22 11
15:45:25 12
15:45:28 13
15:45:32 14
15:45:33 15
15:45:35 16
15:45:37 17
15:45:41 18
15:45:45 19
15:45:46 20
15:45:48 21
15:45:53 22
15:46:02 23
15:46:04 24
15:46:07 25

TO BE. WHY? HERE'S THE ANSWER.

THE COURT: IS THERE ANYTHING IN THE
INTRINSIC EVIDENCE THAT WOULD SAY PORTABILITY AND
THE SECURITY WERE BENEFITS OF THIS INVENTION OR
WHAT WAS TRYING TO BE ACHIEVED?

MR. LEE: YOUR HONOR, YOUR HONOR, NO.
BUT LET'S GO BACK TO THE ONE SENTENCE ON APPLET.

CAN I FLIP BACK TO MAYBE M17, MAYBE,
DENNIS. BACK ONE MORE. AND EVEN ONE MORE.

THIS IS THE ONLY SENTENCE. AND I THINK
THE HONEST ANSWER, YOUR HONOR, THIS SENTENCE
DOESN'T ANSWER HOW KOKUBO IS DIFFERENT EITHER IN
APPLE'S FAVOR NOR DOES IT ANSWER IT IN SAMSUNG'S
FAVOR.

I THINK THE DIRECT ANSWER TO YOUR HONOR'S
QUESTION IS IN TERMS OF TELLING US WHY THIS
SENTENCE IS THERE AND WHY THE APPLICATION MODULE
INCLUDED AT LEAST ONE APPLET, THE PATENT DOESN'T
SAY SO AT ALL.

NOW, PEOPLE OF ORDINARY SKILL IN THE ART
HAD SOME IDEA WHY YOU USED APPLETS IN 2005 AND THAT
HAS BEEN THE SUBJECT OF THE DEBATE BETWEEN US.

IF YOUR HONOR HAS NO FURTHER QUESTIONS --
THE ONLY THOUGHT I WOULD LEAVE YOUR HONOR WITH IS
THERE -- I THINK, AS I SAID, I THINK SMALL

15:46:10 1 APPLICATIONS MODULE, WHICH ARE INDEPENDENT ISSUES,
15:46:13 2 I HAVE NOTHING FURTHER TO SAY ON.

15:46:14 3 AS YOUR HONOR REFLECTS ON THIS, I WOULD
15:46:16 4 JUST ASK THE COURT TO ASK THIS QUESTION, WHAT IS
15:46:18 5 THE DIFFERENCE BETWEEN KOKUBO AND THIS LIMITATION?

15:46:26 6 MR. JOHNSON: YOUR HONOR, BRIEFLY.
15:46:28 7 MR. LEE SAID IN REFERENCING THAT SEGMENT FROM THE
15:46:33 8 KOKUBO REFERENCE, SAID THAT HE AND I ARE GOING TO
15:46:36 9 HAVE DIFFERENT VIEWS ON WHAT THAT PARTICULAR
15:46:38 10 SECTION OF THE SPECIFICATION DISCLOSES.

15:46:42 11 WELL, WHAT I WOULD LIKE TO ASK YOUR HONOR
15:46:44 12 TO DO IS DON'T TAKE OUR WORD FOR IT. LET'S LOOK AT
15:46:47 13 WHAT APPLE'S EXPERT SAID ABOUT IT.

15:46:50 14 HE WAS ASKED DURING HIS DEPOSITION,
15:46:52 15 QUOTE, HE WAS ASKED BY MS. MAROULIS, QUOTE, "DO YOU
15:46:57 16 AGREE WITH MR. COLE'S INTERPRETATION OF THE KOKUBO
15:47:00 17 REFERENCE?"

15:47:00 18 "ANSWER: YES, I AGREE WITH THE BRIEF
15:47:03 19 SUMMARY OF THE KOKUBO PATENT AND I ALSO AGREE WITH
15:47:07 20 THE FACT THAT THE KOKUBO PATENT DOES NOT DEFINE OR
15:47:10 21 REFER TO APPLETS, OPERATING SYSTEM INDEPENDENCE."

15:47:16 22 HE WAS ASKED AGAIN AND HE TESTIFIED
15:47:19 23 SIMILARLY, PAGE 50, LINE 15.

15:47:24 24 "GOING BACK TO THE FILE HISTORY THAT WE
15:47:33 25 WERE DISCUSSING, THE EXAMINER MENTIONED THE KOKUBO

15:47:35 1 REFERENCE. DID YOU REVIEW THAT ONE?

15:47:37 2 "ANSWER: YES, I READ THROUGH THE KOKUBO
15:47:39 3 PATENT.

15:47:40 4 "QUESTION: IS THERE ANYTHING IN THE
15:47:41 5 KOKUBO PATENT THAT SUPPORTS YOUR OPINION REGARDING
15:47:44 6 THE MEANING OF THE TERM APPLLET?

15:47:46 7 "ANSWER: I BELIEVE THAT THE KOKUBO
15:47:49 8 PATENT DOES NOT SPEAK OF APPLETS, JAVA, OR THE
15:47:53 9 NOTION OF OPERATING SYSTEM DEPENDENT OR
15:47:58 10 INDEPENDENT.

15:47:58 11 "QUESTION: SO THE ANSWER IS NO?

15:48:01 12 "ANSWER: YES. NO."

15:48:05 13 APPLE'S OWN EXPERT ADMITS THAT THE KOKUBO
15:48:09 14 REFERENCE DOES NOT DISCLOSE OPERATING SYSTEM
15:48:11 15 INDEPENDENCE OR DEPENDENCE.

15:48:13 16 WHAT I HEARD FROM MR. LEE FOR THE LAST
15:48:16 17 SEVERAL MINUTES WAS KOKUBO DISCLOSES OPERATING
15:48:21 18 SYSTEM DEPENDENCE.

15:48:25 19 WE SAW THAT AT SLIDE 28, AND HE ACTUALLY
15:48:29 20 ASKED AS A REMEDY THE OPPORTUNITY TO PROVIDE
15:48:31 21 ANOTHER DECLARATION ON BEHALF OF MR. GIVARGIS.

15:48:32 22 NOW, THE KOKUBO REFERENCE WAS DISCLOSED,
15:48:38 23 DISCUSSED IN THE 4-2 AND 4-3 STATEMENTS, CONSIDERED
15:48:44 24 BY DR. GIVARGIS AS WE JUST SAW.

15:48:46 25 HE HAD EVERY OPPORTUNITY TO TALK ABOUT IT

15:48:48 1 AND REVIEW IT AND YET IN HIS DEPOSITION TESTIMONY
15:48:50 2 WHEN HE WAS ASKED THE SPECIFIC QUESTION ABOUT
15:48:52 3 WHETHER IT SAYS ANYTHING ABOUT OPERATING SYSTEM
15:48:56 4 INDEPENDENCE/DEPENDENCE, THE ANSWER WAS NO.

15:49:00 5 RIGHT? THE KOKUBO REFERENCE DOES NOT
15:49:03 6 DISCLOSE ANYTHING ABOUT OPERATING SYSTEM
15:49:06 7 INDEPENDENCE OR DEPENDENCE.

15:49:07 8 GENERATING AN ICON WHICH IS, WHICH IS
15:49:11 9 DISCUSSED IN KOKUBO HAS NOTHING TO DO WITH
15:49:15 10 OPERATING SYSTEM DEPENDENCE OR OPERATING SYSTEM
15:49:19 11 INDEPENDENCE. IT'S A NON SEQUITUR.

15:49:21 12 THE COURT: BUT WHAT IS THE DIFFERENCE
15:49:23 13 BETWEEN AN ICON CORRESPONDING TO AN APPLICATION
15:49:27 14 SOFTWARE AND GENERATING A MUSIC BACKGROUND PLAY
15:49:30 15 OBJECT, WHICH I ASSUME IS AN ICON.

15:49:32 16 WHERE IN THE ICON INCLUDES AN APPLICATION
15:49:36 17 MODULE INCLUDING AT LEAST ONE APPLETT?

15:49:39 18 THEY BOTH ARE MUSIC BACKGROUND PLAY ICONS
15:49:45 19 CORRESPONDING TO THE APPLICATIONS TO PLAY THE MUSIC
15:49:46 20 IN THE BACKGROUND.

15:49:48 21 MR. JOHNSON: WHAT KOKUBO WAS ABOUT WAS
15:49:49 22 THE OPPORTUNITY TO SWITCH BETWEEN PROGRAMS, RIGHT?

15:49:52 23 YOU'RE ON MUSIC AND YOU WANT TO SWITCH TO
15:49:54 24 E-MAIL AND IT WOULD GENERATE AN ICON. IT DID NOT
15:49:59 25 DISCUSS ANYTHING ABOUT AN APPLETT. IT DID NOT

15:50:03 1 DISCLOSE GENERATING AN APPLETS WHEN YOU WERE PLAYING
15:50:05 2 MUSIC OR WHEN YOU'RE IN ONE PROGRAM VERSUS THE
15:50:08 3 OTHER.

15:50:09 4 IT DID NOT DISCLOSE ANYTHING ABOUT AN
15:50:10 5 OPERATING INDEPENDENT OR DEPENDENT AND THAT'S WHY
15:50:13 6 THE EXAMINER CAME BACK AND SAID WHAT I SUGGEST YOU
15:50:15 7 DO IS PUT IN A LIMITATION ABOUT APPLETS AND THAT
15:50:20 8 WILL GET BEYOND WHAT IS IN KOKUBO.

15:50:23 9 KOKUBO SAYS NOTHING ABOUT APPLETS AND SAYS
15:50:25 10 NOTHING ABOUT OPERATING SYSTEM INDEPENDENCE OR
15:50:29 11 DEPENDENCE.

15:50:30 12 AND SO YOUR HONOR ASKED MR. LEE THE
15:50:32 13 QUESTION, IS THIS -- I DON'T SEE ANY EVIDENCE THAT
15:50:34 14 THIS IS RELEVANT TO THE EXAMINER, AND YOUR HONOR IS
15:50:37 15 EXACTLY RIGHT.

15:50:38 16 WE ALL KNOW FROM SITTING HERE TODAY AND
15:50:42 17 FROM STUDYING THE BLACK LETTER LAW, ANY CLAIM TERM
15:50:47 18 DISAVOWAL, ANY DISAVOWAL IN THE PROSECUTION HISTORY
15:50:51 19 HAS TO BE CLEAR AND UNMISTAKABLE.

15:50:53 20 AND WE HEARD APPLE SAY THAT ALL DAY
15:50:56 21 TODAY, AND WE HEARD IT SAY IT IN THE PAST.

15:50:58 22 THIS IS NOT CLEAR AND UNMISTAKABLE IN ANY
15:51:02 23 SENSE AND THIS DOES NOT TELL A PERSON OF ORDINARY
15:51:04 24 SKILL IN THE ART THAT SAMSUNG WAS LIMITING THE TERM
15:51:07 25 "APPLETS" TO OPERATING SYSTEM INDEPENDENT PROGRAMS

15:51:09 1 OR APPLETS. IT HAS NOTHING TO DO WITH THAT.

15:51:12 2 THEY'RE TRYING TO READ A LIMITATION INTO
15:51:14 3 THE CLAIMS.

15:51:18 4 LET ME GO BACK AGAIN TO DR. GIVARGIS
15:51:20 5 BECAUSE HE HAD EVERY OPPORTUNITY TO REVIEW THE
15:51:22 6 PROSECUTION HISTORY AND HE DID.

15:51:24 7 AND HE WAS ASKED AT SLIDE 10.

15:51:26 8 "WAS THERE ANY REFERENCE TO APPLETS BEING
15:51:33 9 OPERATING SYSTEM INDEPENDENT?

15:51:35 10 "ANSWER: I DO NOT RECALL ANY REFERENCE
15:51:37 11 TO OPERATING SYSTEM INDEPENDENT APPLETS IN THE FILE
15:51:40 12 HISTORY THAT I REVIEWED."

15:51:41 13 IT'S NOT IN HIS DECLARATION. FRANKLY,
15:51:44 14 THIS ARGUMENT ABOUT KOKUBO NOW DISCLOSING OPERATING
15:51:47 15 SYSTEM DEPENDENCE, THAT'S NOT IN THEIR BRIEFS. I
15:51:51 16 LOOKED WHEN MR. LEE WAS TALKING ABOUT IT, AND I
15:51:53 17 LOOKED AT THE SLIDES THAT THEY POSTED AND THERE'S
15:51:57 18 NO REFERENCE TO OR CITE TO DR. GIVARGIS IN SUPPORT
15:52:00 19 OF THIS. THERE'S NO REFERENCE TO MR. COLE IN
15:52:02 20 SUPPORT OF THIS.

15:52:02 21 AND THIS IS PURE ARGUMENT THAT WE HAVE
15:52:05 22 SEEN FOR THE FIRST TIME TODAY. I DIDN'T SEE IT IN
15:52:08 23 THEIR BRIEFS.

15:52:08 24 GOING BACK TO OUR SLIDE 13.

15:52:16 25 THERE ARE APPLETS THAT ARE BOTH CAN BE

15:52:19 1 OPERATING SYSTEM DEPENDENT LIKE APPLESCRIPT,
15:52:24 2 PYTHON, RUBY; AND INDEPENDENT, JAVA. THE PATENT
15:52:28 3 SAYS APPLESCRIPT. THE CLAIMS SAY APPLESCRIPT.

15:52:31 4 THE ONE SENTENCE IN THE SPEC SAYS APPLESCRIPT.
15:52:36 5 THERE'S NO LIMITATIONS IN THE CLAIMS, IN THE SPEC
15:52:39 6 OR IN THE PROSECUTION HISTORY THAT LIMITS APPLESCRIPT TO
15:52:41 7 OPERATING SYSTEM INDEPENDENCE. IT'S JUST NOT
15:52:45 8 THERE.

15:52:50 9 AND I THINK OPERATING SYSTEM INDEPENDENT
15:52:53 10 ACTUALLY ADDS A MEASURE OF AMBIGUITY THAT WOULD NOT
15:52:57 11 INFORM THE JURY IN THIS CASE OR ANYWHERE ELSE.

15:53:00 12 AND WHEN DR. GIVARGIS WAS ASKED ABOUT
15:53:04 13 OPERATING SYSTEM INDEPENDENT HE TESTIFIED, SLIDE 7,
15:53:07 14 PLEASE, "WOULD YOU BE ABLE TO RUN AN APPLESCRIPT
15:53:12 15 APPLESCRIPTS ON A WINDOWS COMPUTER?

15:53:13 16 THIS, BY APPLE'S ADMISSION, YOU HEARD IN
15:53:14 17 THE TUTORIAL APPLESCRIPT IS AN OS DEPENDENT APPLESCRIPT.

15:53:20 18 "WOULD YOU BE ABLE TO RUN AN APPLESCRIPT
15:53:23 19 APPLESCRIPT ON A WINDOWS COMPUTER?

15:53:25 20 "ANSWER: IF I COULD OBTAIN THE
15:53:27 21 SPECIFICATION FOR THE APPLESCRIPT PROGRAMMING
15:53:29 22 LANGUAGE AND THIS SCRIPTING LANGUAGE, AND IF I WERE
15:53:31 23 TO BUILD AN INTERPRETER THAT RAN NATIVELY ON
15:53:34 24 WINDOWS, THEN I COULD TAKE AN APPLESCRIPT APPLESCRIPT
15:53:37 25 AND WITHOUT MODIFICATION RUN IT AND INTERPRET IT ON

15:53:40 1 THE WINDOWS ENVIRONMENT."

15:53:42 2 THIS JUST GOES TO SHOW THE AMBIGUITY THAT
15:53:45 3 APPLLET IS TRYING TO INTERJECT INTO THIS SIMPLE
15:53:47 4 CLAIM TERM "APPLET" SHOULD BE REJECTED.

15:53:54 5 AND JUST ADDRESSING THIS ONE FINAL POINT
15:53:57 6 THAT MR. LEE RAISED WITH RESPECT TO INTERNET
15:54:00 7 EXPLORER AND THE ISSUE OF SECURITY. INTERNET
15:54:03 8 EXPLORER IS NOT AN APPLET. THAT'S A PROGRAM.
15:54:06 9 THAT'S AN APPLICATION PROGRAM. THAT'S NOT AN
15:54:09 10 APPLET.

15:54:10 11 SO THE DISCUSSION WITH RESPECT TO WEB
15:54:14 12 BROWSING USE INTERNET EXPLORER WAS JUST IRRELEVANT
15:54:17 13 IN OUR VIEW. AND UNLESS YOUR HONOR HAS ANY OTHER
15:54:20 14 QUESTIONS?

15:54:21 15 THE COURT: NO, THAT'S IT.

15:54:23 16 I WAS INITIALLY OPEN TO HAVING SOME SMALL
15:54:34 17 RELIEF AS TO THE 4-2 EXTRINSIC EVIDENCE DISCLOSURE,
15:54:39 18 BUT IF THE REQUEST IS TO ADDRESS KOKUBO, WHICH HAS
15:54:42 19 REALLY NOT ANY RELEVANCE TO WHAT WAS UNTIMELY
15:54:47 20 DISCLOSED, THAT REQUEST FOR RELIEF IS DENIED.

15:54:53 21 OKAY. LET'S SET UP A FOLLOW-UP CMC.

15:54:58 22 WE HAVE FACT DISCOVERY CUT-OFF OF MARCH
15:55:05 23 8TH. SO SHOULD WE HAVE A CMC ON MARCH 11TH? THE
15:55:14 24 OTHER OPTION WOULD BE APRIL 11TH, BUT THAT'S IN THE
15:55:18 25 MIDST OF EXPERT DISCOVERY.

15:55:21 1 THE CLERK: DID YOU MEAN MARCH 21? THE
15:55:23 2 11TH IS A SUNDAY.

15:55:58 3 THE COURT: WHAT ABOUT THE 27TH?

15:56:01 4 THE CLERK: THAT'S THE LEE TRIAL. THE
15:56:03 5 7TH, WE HAVE BROCADE.

15:56:07 6 THE COURT: WHAT ABOUT APRIL 11TH UNLESS
15:56:11 7 YOU NEED SOMETHING SOONER?

15:56:13 8 WE HAVE YOU SCHEDULED THROUGH TRIAL SO I
15:56:17 9 DON'T ANTICIPATE.

15:56:18 10 THE CLERK: THE 11TH LOOKS REALLY GOOD.

15:56:20 11 THE COURT: IS APRIL 11TH OKAY FOR
15:56:22 12 FURTHER CMC?

15:56:24 13 MR. JACOBS: YES. YES, YOUR HONOR.

15:56:27 14 MR. VERHOEVEN: YES, YOUR HONOR.

15:56:29 15 THE COURT: OKAY. NOW, OBVIOUSLY YOUR
15:56:33 16 DISPOSITIVE MOTIONS MAY DEPEND ON CLAIM
15:56:36 17 CONSTRUCTION, BUT I WOULD LIKE TO LIMIT THE NUMBER
15:56:38 18 OF DISPOSITIVE MOTIONS, AND WE NEED TO TALK ABOUT
15:56:44 19 THAT.

15:56:45 20 WE ACTUALLY COULD TALK ABOUT IT ON
15:56:47 21 APRIL 11TH. WOULD YOU LIKE TO DO THAT THEN? IF
15:56:49 22 THE LAST DATE TO FILE DISPOSITIVE MOTIONS IS MAY
15:56:52 23 17TH. SO THAT WOULD GIVE YOU ABOUT A MONTH.

15:57:02 24 MR. LEE: YOUR HONOR, THAT'S FINE. WE
15:57:04 25 ACTUALLY PLANNED TO FILE ONE EARLY NEXT WEEK THAT

15:57:07 1 GO TO ISSUES OF LICENSE AND CLAIM DISCLOSURE AND
15:57:12 2 IT'S PARTIAL SUMMARY JUDGMENT. IT WOULDN'T DEAL
15:57:14 3 WITH THE CASE ENTIRELY BUT ON THE DEFENSIVE SIDE.

15:57:19 4 THE COURT: AND WHAT IS IT AGAIN?

15:57:21 5 MR. LEE: IT'S GOING TO DEAL WITH ISSUES
15:57:23 6 OF LICENSE, ENFORCEABILITY OF THE STANDARD
15:57:27 7 ESSENTIAL PATENTS UNDER THE FEDERAL CIRCUIT'S
15:57:30 8 BROADCOM DECISION, AND THE QUESTION OF WHETHER
15:57:33 9 INJUNCTIVE RELIEF IS AVAILABLE AS A REMEDY IN LIGHT
15:57:40 10 OF DECLARATIONS.

15:57:42 11 AND I THINK THAT WILL BE IN BY NEXT
15:57:44 12 TUESDAY OR WEDNESDAY.

15:57:45 13 AND SINCE YOUR HONOR WAS SETTING UP A
15:57:47 14 SCHEDULE, I DIDN'T WANT TO WAIT TO SET THE SCHEDULE
15:57:50 15 AND THEN HAVE THAT DROP IN FROM OUTER SPACE.

15:58:02 16 THE COURT: LET ME ASK MS. PARKER-BROWN
15:58:04 17 WHEN ARE WE SETTING MOTIONS?

15:58:06 18 THE CLERK: THE EARLY PART OF MAY.

15:58:08 19 THE COURT: WELL, I GUESS WHEN YOU HAVE
15:58:10 20 THOSE ON FILE YOU WILL HAVE TO CALL HER TO GET THE
15:58:13 21 NEXT AVAILABLE DATE, BUT IT MAY NOT BE UNTIL EARLY
15:58:16 22 MAY.

15:58:30 23 WHAT WOULD THIS DISPOSE OF? OBVIOUSLY
15:58:33 24 INJUNCTIVE RELIEF. ONE OF THE PATENTS? ALL OF THE
15:58:38 25 PATENTS.

15:58:39 1 MR. LEE: IT COULD BE ALL OF THE ASSERTED
15:58:41 2 PATENTS THAT ARE ASSERTED BY SAMSUNG AGAINST APPLE.
15:58:46 3 IT'S PARTIAL, YOUR HONOR, SINCE YOU HAVE
15:58:48 4 BOTH CASES BEFORE YOU. IT WOULD -- THE LICENSE
15:58:51 5 DEFENSES WOULD DISPENSE WITH THOSE STANDARD
15:58:54 6 CENTRAL -- THE PLAINTIFFS ASSERTED AGAINST CERTAIN
15:58:58 7 PRODUCTS AS A RESULT OF OUR PURCHASE FROM INTEL AND
15:59:02 8 IT WOULD ALSO ADDRESS THE ISSUE OF INJUNCTIVE
15:59:05 9 RELIEF ENTIRELY AS TO APPLE.

15:59:20 10 THE COURT: ALL RIGHT. IS THERE GOING TO
15:59:22 11 BE A LOT OF EXPERTS ON WHAT IS ESSENTIALLY AND WHAT
15:59:25 12 IS NOT?

15:59:26 13 MR. LEE: THE ANSWER IS, NO, YOUR HONOR.
15:59:28 14 ACTUALLY MOST OF THE SUPPORTING MATERIALS COMES
15:59:31 15 DIRECTLY FROM SAMSUNG'S FILES.

15:59:33 16 THERE WILL BE A DECLARATION OF A FRENCH
15:59:36 17 LAW EXPERT. YOU HAVE ONE OF THOSE ON THE MOTION TO
15:59:39 18 DISMISS THE ANTITRUST CLAIMS AND THE RELATED CLAIMS
15:59:44 19 IN ANY EVENT.

15:59:45 20 THE ONLY DECLARATION THAT WE INTEND TO
15:59:48 21 FILE IS THE FRENCH LAW EXPERT. MAYBE I SHOULD
15:59:51 22 DOUBLE-CHECK.

15:59:58 23 THERE ARE TWO. THERE'S AN ETSI,
16:00:07 24 DECLARATION, AND YOU'RE NOT GOING TO HAVE 10 OR 15
16:00:10 25 DECLARATIONS. THE MOTION IS BASED ON A DISCRETE

16:00:12 1 SET OF FACTS.

16:00:13 2 THE COURT: ALL RIGHT. DID YOU WANT TO
16:00:14 3 BE HEARD?

16:00:16 4 MR. VERHOEVEN: IF YOUR HONOR WANTS, THIS
16:00:18 5 IS THE FIRST I'M HEARING OF THIS. IT SOUNDS LIKE
16:00:20 6 AT LEAST PART OF THEIR MOTION IS A MOTION SIMILAR
16:00:23 7 TO MOTIONS THAT HAVE BEEN FILED MANY TIMES IN
16:00:26 8 STANDARD PATENT CASES WHEN THE ACCUSED INFRINGER
16:00:33 9 HAS SOUGHT TO OBTAIN A REMEDY OR GET AN ADVISORY
16:00:40 10 OPINION FROM THE COURT AS TO WHAT REMEDIES ARE
16:00:43 11 AVAILABLE BEFORE THERE'S ANY DETERMINATION AS TO
16:00:45 12 INFRINGEMENT IN THE FIRST PLACE.

16:00:47 13 THOSE, AS FAR AS I'M AWARE, HAVE ALWAYS
16:00:51 14 BEEN DENIED, BUT I CAN'T STOP THEM FROM FILING THE
16:00:55 15 MOTION.

16:00:56 16 THE SECOND POINT, THOUGH, I WOULDN'T
16:01:00 17 MENTION IS THAT MY UNDERSTANDING IS THAT WE'RE
16:01:02 18 SMACK DAB IN THE MIDDLE OF DISCOVERY ON THESE
16:01:06 19 ISSUES. MS. MAROULIS IS MORE FAMILIAR THAN ME ON
16:01:10 20 THAT.

16:01:10 21 BUT THE QUESTION AND THE LOGIC OF FILING
16:01:13 22 ONE AT THIS POINT, WHETHER IT'S PROBABLY GOING TO
16:01:15 23 BE A 56(F) MOTION ON IT BECAUSE DISCOVERY HAS NOT
16:01:19 24 BEEN COMPLETED.

16:01:20 25 THE COURT: BUT ISN'T THIS YOUR

16:01:22 1 DISCOVERY, THESE ARE YOUR PATENTS, YOU'RE THE
16:01:25 2 MEMBER OF THE STANDARD SETTING BODY. WHAT 56(F)
16:01:29 3 WOULD YOU NEED?

16:01:30 4 MR. VERHOEVEN: WELL, I HAVEN'T SEEN THE
16:01:31 5 MOTION YET.

16:01:33 6 MS. MAROULIS: YOUR HONOR, IF I MAY
16:01:34 7 ADDRESS BRIEFLY. FIRST OF ALL, WE HAVE A MOTION TO
16:01:36 8 BE DISMISS THAT IS SCHEDULED TO BE HEARD ON
16:01:39 9 APRIL 4TH, AND THAT MOTION MAY DISPOSE OF SOME OF
16:01:41 10 THESE CLAIMS WITH RESPECT TO ANTITRUST.

16:01:44 11 BESIDES THAT THERE'S DISCOVERY
16:01:47 12 OUTSTANDING. FOR EXAMPLE, I HEARD MR. LEE MENTION
16:01:49 13 THE QUESTION OF INTEL AND THE EXHAUSTION DEFENSE,
16:01:51 14 AND WE HAVE DISCOVERY OUTSTANDING AS TO BOTH APPLE
16:01:54 15 AND INTEL AS TO VARIOUS ISSUES AND THAT'S NOT
16:01:59 16 SQUARELY IN SAMSUNG'S FILES. AND THERE MAY BE
16:02:01 17 ADDITIONAL POINTS THAT THEY WANT TO READ THE MOTION
16:02:04 18 AND AS SOON AS THEY GIVE IT TO US WE CAN ADVISE THE
16:02:07 19 COURT ON THE STATE OF DISCOVERY.

16:02:09 20 THE COURT: LET ME HEAR MR. LEE. WOULD
16:02:11 21 IT MAKE SENSE TO JUST HAVE -- I DON'T WANT TO SPEND
16:02:18 22 A LOT OF EFFORT TO JUST SAY THAT THERE'S, A, YOU
16:02:21 23 KNOW, ONGOING DISCOVERY THAT NEEDS TO HAPPEN.

16:02:25 24 MR. LEE: YOUR HONOR, I HAVE TWO
16:02:27 25 RESPONSES. IF IT'S NOT GOING TO BE HEARD UNTIL MAY

16:02:29 1 THE 5TH -- I ACTUALLY THINK THESE ISSUES ARE
16:02:33 2 DISCRETE ISSUES.

16:02:35 3 I DON'T -- TO THE EXTENT THAT
16:02:38 4 MR. VERHOEVEN IS CHARACTERIZING WHAT OTHER COURTS
16:02:42 5 HAVE DONE, I DON'T THINK YOU CAN DESCRIBE THAT WITH
16:02:44 6 UNANIMITY.

16:02:45 7 FIRST, YOUR HONOR, THIS IS NOT GOING TO
16:02:48 8 BE AFFECTED BY THE MOTION TO DISMISS. THIS IS THE
16:02:50 9 QUESTION OF WHETHER THEY CAN PURSUE THE CLAIMS
16:02:52 10 UNDER THE PATENTS THEY HAVE ASSERTED AGAINST US,
16:02:55 11 AGAINST US.

16:02:56 12 THIS IS A DEFENSE OF UNENFORCEABILITY.

16:02:59 13 THIS IS A DEFENSE THAT -- THIS IS PARTIAL
16:03:02 14 SUMMARY JUDGMENT AND INJUNCTIVE RELIEF IS NOT
16:03:05 15 AVAILABLE AND IT'S PARTIAL SUMMARY JUDGMENT THAT
16:03:07 16 WE'RE LICENSED UNDER THE INTEL LICENSE.

16:03:16 17 SO, YOUR HONOR, I WOULD LIKE TO ASK YOUR
16:03:19 18 HONOR'S PERMISSION, WE'LL FILE NEXT WEEK. I THINK
16:03:21 19 IT'S IMPORTANT TO GET IT BEFORE THE COURT AND
16:03:23 20 DECIDED.

16:03:23 21 I WILL ALSO REPRESENT TO THE COURT THAT
16:03:25 22 IF IT'S HEARD IN MAY, GIVEN WHEN THE TRIAL IS
16:03:28 23 SCHEDULED FOR, THIS WOULD SUBSTANTIALLY NARROW THE
16:03:31 24 ISSUES FOR TRIAL. IT WOULD TAKE UP ALL OF THE
16:03:34 25 ESSENTIAL PATENTS.

16:03:35 1 THE COURT: LET ME ASK YOU ANOTHER
16:03:37 2 QUESTION THOUGH, TO AVOID THEM MAKING A 56(D)
16:03:40 3 MOTION THAT THEY NEED MORE EVIDENCE, WOULD YOU ALL
16:03:43 4 AGREE TO SOME BRIEFING SCHEDULE IF IT'S NOT GOING
16:03:46 5 TO BE HEARD UNTIL MAY?

16:03:48 6 MR. LEE: YES.

16:03:48 7 THE COURT: I THINK THAT WOULD TAKE CARE
16:03:50 8 OF IT.

16:03:51 9 I MEAN, I DO WANT THIS TO BE HEARD BEFORE
16:03:59 10 OUR -- I MEAN OUR PRETRIAL CONFERENCE IS JULY 14TH,
16:04:02 11 AND I UNDERSTAND IN ORDER TO GET SOMETHING FILED
16:04:04 12 YOU NEED TO FILE IT NOW JUST BECAUSE THE WAY OUR
16:04:07 13 DOCKET IS SO CONGESTED.

16:04:08 14 BUT IF YOU CAN WORK WITH SAMSUNG ON A
16:04:11 15 BRIEFING SCHEDULE, THEN TO TRY TO OBVIATE THE NEED
16:04:13 16 FOR A 56(D) MOTION THEN I APPRECIATE THAT.

16:04:17 17 MR. LEE: WE'LL DO THAT.

16:04:19 18 THE COURT: OKAY. ALL RIGHT. WELL, IT
16:04:21 19 COULD BE THAT WE END UP -- WELL, WE HAVE A HEARING
16:04:24 20 YOU SAID ON THE MOTION TO DISMISS ON APRIL 4TH?

16:04:27 21 THE CLERK: APRIL 5TH.

16:04:30 22 THE COURT: AND WHY DON'T WE SCRATCH THIS
16:04:31 23 CMC ON APRIL 11TH AND LET'S DO IT ON THAT DAY,
16:04:37 24 APRIL 5TH OF 2012 AT 1:30.

16:04:40 25 OKAY. NOW, LET ME ASK ONE LAST QUESTION,

16:04:48 1 AND THIS MIGHT BE A WASTE OF BREATH, WILL THERE BE
16:04:51 2 ANY POINT WHERE YOU THINK THAT ADR MIGHT BE USEFUL
16:04:55 3 OR NOT? WOULD IT BE AFTER A CLAIM CONSTRUCTION
16:05:00 4 RULING? OR NO? OR IS THIS JUST MARCHING TO TRIAL?

16:05:07 5 MR. JACOBS: I DON'T THINK THE COURT
16:05:08 6 ORDERED ADR IS NECESSARY OR HELPFUL IN THIS
16:05:11 7 PARTICULAR CASE.

16:05:12 8 THE COURT: OKAY.

16:05:19 9 MR. VERHOEVEN: WE'RE IN AGREEMENT WITH
16:05:20 10 THAT, NOT BECAUSE I DON'T WANT TO GIVE YOU THE
16:05:23 11 IMPRESSION IT'S NOT BECAUSE WE'RE NOT TALKING. WE
16:05:25 12 ARE TALKING.

16:05:26 13 THE COURT: OKAY. ALL RIGHT. WELL,
16:05:28 14 THANK YOU.

16:05:29 15 THEN I DON'T THINK THAT THERE IS ANYTHING
16:05:32 16 ELSE UNLESS YOU THINK WE NEED TO COVER ANYTHING
16:05:35 17 ELSE.

16:05:36 18 MR. VERHOEVEN: I THINK THAT'S IT FOR
16:05:38 19 TODAY.

16:05:38 20 THE COURT: OKAY. THANK YOU VERY MUCH.

16:05:41 21 MR. MCELHINNY: WE APPRECIATE YOUR TIME,
16:05:45 22 YOUR HONOR.

16:05:46 23 MR. VERHOEVEN: THANK YOU.

16:05:49 24 (WHEREUPON, THE EVENING RECESS WAS
16:05:49 25 TAKEN.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: JANUARY 26, 2012