

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC.,
Petitioner,

v.

REMBRANDT SOCIAL MEDIA, L.P.,
Patent Owner.

Cases IPR2014-00415
Patent 6,415,316

Held: April 6, 2015

BEFORE: PHILLIP J. KAUFFMAN, JENNIFER S. BISK, and
MATTHEW R. CLEMENTS, Administrative Patent Judges.

The above-entitled matter came on for hearing on Monday, April 6, 2015, commencing at 2:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

APPEARANCES:

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P R O C E E D I N G S

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JUDGE CLEMENTS: Please be seated. Good afternoon.

This is a hearing for IPR2014-00415 between Petitioner, Facebook, Inc. and Rembrandt Social Media, L. P., the owner of U.S. Patent 6,415,316.

Just a few administrative matters before we begin. I am Judge Clements, joining you from the Silicon Valley office. With you there in person are Judges Bisk and Kauffman. When referring to the demonstratives, since I'm remote, please describe any slides by slide number so that I can follow along.

1 Per our order, each party is going to have 45 minutes to
2 present its argument. Petitioner has the burden to show
3 unpatentability of the original claims, so Petitioner will proceed first,
4 followed by Patent Owner and Petitioner may reserve time to rebut
5 Patent Owner's opposition.

6 At this time, we would like counsel to introduce yourselves
7 and who you have with you, beginning with Petitioner, please.

8 MS. KEEFE: Thank you very much, Your Honor, good
9 afternoon, my name is Heidi Keefe from the Cooley Law Firm here
10 today representing Petitioner, Facebook. With me at counsel table
11 is -- I'm sorry, I just had an incredible moment that I can't even
12 remember the name of somebody I work with on a daily basis, his
13 name is Andrew Mace, Andrew is an associate who works with me at
14 Cooley, and behind me is Phil Morton, a partner in our firm.

15 MR. GOETZ: Good afternoon, Your Honor, John Goetz
16 from Fish & Richardson on behalf of Patent Owner Rembrandt, I have
17 no one with me at counsel table, but I do have the president of
18 Rembrandt here in the audience. Thank you, Your Honor.

19 JUDGE CLEMENTS: Thank you, Mr. Goetz.

20 Ms. Keefe, would you like to reserve any time for rebuttal?

21 MS. KEEFE: I would, Your Honor, I would like to reserve
22 approximately 25 minutes of my time for rebuttal.

23 JUDGE CLEMENTS: Okay, 25 minutes, so you have 20
24 minutes for your opening, and you may begin when you're ready.

1 MS. KEEFE: Thank you very much, Your Honor. Just so
2 the record is incredibly clear, I actually do remember Mr. Mace's
3 name and I am incredibly embarrassed that I did not remember it a
4 few minutes ago.

5 We are here today to challenge the patentability of the '316
6 patent. The '316 patent, in essence, has a number of large elements.
7 The first of those is a diary program, or in other words, a piece of
8 software that is sent from a server down to a user's computer to assist
9 in creating what is called a cohesive diary page, which essentially is a
10 web page with content information on it.

11 All of those elements are found in the Salas, Tittel and
12 Parker references. The parties uniquely here are really only
13 challenging one of the elements, and that is whether or not privacy
14 level information is sent from the server down to the user's computer,
15 and then there's a little bit of a dispute, also, as to what is done with
16 that information.

17 I realize that it is our burden to show each and every
18 element, but because the Patent Owner does not dispute the existence
19 of a diary program or content information being sent down, or that
20 information being combined to represent a page, I would not go
21 through those necessarily unless the Board would like me to, and if
22 you would like me to go through each element here in oral argument, I
23 can; otherwise I'll just focus on the disputed elements.

24 Claims 1 and 16, and for Judge Clements, I am literally
25 walking directly through my PowerPoint slides, I am right now on

1 PowerPoint slide demonstrative number 2, just claim 1 is one of the
2 independent claims, and the second limitation, "sending diary
3 information," is a limitation we're going to be focusing on from this
4 claim.

5 Claim 17 is the other independent claim, and as I said, this is
6 now slide 4, the element that we'll be focusing on, "sending diary
7 information from the diary server to the user system, the information
8 comprising content data including an associated time, a page design to
9 specify the presentation of the content data, and configuration
10 information for controlling behavior of a cohesive diary page, the
11 configuration information including privacy level information."

12 The dispute centers around whether or not the configuration
13 information that is sent from the server to the user's computer includes
14 privacy level information. The Board has, we believe, properly
15 construed configuration information to be information that determines
16 what information will be displayed to a user, who is viewing the
17 cohesive diary page. The entire claim is about how the page is going
18 to be presented for a given user, a single user of that user's computer.

19 The claim limitation goes on to say that configuration
20 information; in other words, information that determines what
21 information will be displayed to a user, also must include privacy
22 level information. The Board correctly found that to be construed as
23 configuration information that describes or specifies at least one user,
24 or category of users, permitted to view particular content on a
25 cohesive diary page.

1 Patent Owner has tried to argue, again, they argued
2 originally in their first submission and then they've argued
3 subsequently in their opposition, that privacy level information has to
4 specify a universe of permitted users; in other words, that it lists all of
5 the individuals who may view it, not just be related to the particular
6 individual who is actually viewing the page.

7 But that definition makes no sense. If we look at the claim
8 as a whole, the claim is directed at creating a page for viewing by a
9 user. Therefore, the only thing that matters is privacy level
10 information related to that user. If that user may be a part of a group
11 instead of an individual, that would be all right, too, but there is
12 nothing in the plain language of the claims, nor in the specification,
13 that indicates that you have to list out every single person who might
14 see or not see the information.

15 In making this argument, Patent Owner cites to figure 4D of
16 the patent, showing different icon buttons that show one person, two
17 people, best friends, the whole world, but Patent Owner ignores the
18 fact that that figure is about how the privacy level information is set,
19 either before the page is ever displayed, or how privacy level
20 information may be changed after the page already exists.

21 And the patent is very clear about that in the '316 patent,
22 Exhibit 1001, column 10, specifically at the section detailing privacy
23 level of a diary page starting at line 29 and going to line 54, where it
24 details that this is how the privacy level information is set, not that it
25 is the privacy level information that must be passed down, it's simply

1 a way to set that information, but that's not the only way, it could be
2 set any number of ways.

3 As we see in the '316 specification, again, Exhibit 1001,
4 column 5, lines 55 through 67, "If a user does not have sufficient
5 permission to view an object in a diary, the diary may not make the
6 object visible to the user, i.e., the user does not even know that the
7 object exists, or it may present the object using an alternate
8 representation." Alternate representation like an icon that's greyed
9 out, so it can't be clicked on, or some other form of symbol that says,
10 you cannot see this item. Something along those lines.

11 The whole point is for the person observing the page only to
12 view the information that they have permission to view. And this
13 makes sense, because the idea of the patent was that someone could
14 be tooling around on the Internet, gathering bits of information that
15 they thought were interesting, that they wanted to eventually share
16 with other people, and some of that information they might want to
17 only share with a person or a different person.

18 For example, I could envision a time where I gather
19 information while I am searching through the Internet, and some of
20 the information I would want to share with my mother, and some of it
21 I would not. And this allowed you to be able to click the privacy
22 level, mom, or not mom. So, when mom went to access her web page
23 of information that I had been gathering, she wouldn't see the
24 information that I had said not mom for.

1 The key issue, as we were discussing just a minute ago, was
2 whether privacy level information must specify a universe of users
3 permitted to see the content. It absolutely does not. Again, the claim
4 talks about a single individual user and what that user is going to see
5 on that user's computer, not whether or not anyone else needs to see it
6 as well. It didn't have to say, mom can see it, but dad cannot, or my
7 brother cannot either, it's just mom will see what mom has permission
8 to see.

9 JUDGE CLEMENTS: Counsel, on that point, is there
10 anything in the claim that requires the privacy level information that's
11 sent to relate to the user who's actually viewing the diary page?

12 MS. KEEFE: In other words, is there something that where
13 it actually has to show on the page mom can view? Absolutely not.
14 There's nothing in the claim that requires that.

15 JUDGE CLEMENTS: If I'm mom viewing the page, does
16 the privacy level information have to relate to mom or can it relate
17 to -- is the claim broad enough to encompass mom viewing privacy
18 level information about a different user or category of users?

19 JUDGE BISK: Like maybe kids.

20 MS. KEEFE: Oh, look, for example, could mom view all of
21 the information that was allowed for kids to look at as well?

22 JUDGE BISK: Um-hmm.

23 MS. KEEFE: There's nothing in the claim that specifies one
24 way or the other how that's displayed, if I'm understanding your
25 question. If you're asking, on the other hand, though, if mom can

1 view what kids can view. In other words, mom can view everything
2 mom can view plus everything kids can view, of course that's
3 possible, because that's just a rule that's written up above in terms of
4 the information that mom can view.

5 Does that answer your question?

6 JUDGE CLEMENTS: I think it does.

7 MS. KEEFE: And that would go to the notion, as Your
8 Honors construed, of a category of user, not necessarily just an
9 individual user. Mom could be a part of a category, which is adults,
10 or adults versus children, something along those lines, but it doesn't
11 have to spell out mom and dad and the aunts and the uncles can all
12 view it, they can be a simple part of a group, or it can be just limited
13 to mom itself, which is why the claim is broad enough to encompass
14 all of that as well. And it's not as narrow as Patent Owner is saying
15 where there has to be a listing of each person in the universe that has
16 similar privacy controls. That is nowhere in the claim, nor is it
17 anywhere in the specification.

18 The second question is whether or not the privacy level
19 information must be used at the user's system to perform the content
20 filtering, and again, that is nowhere in the limitations itself, and yet
21 we see this argument coming up time and time again with Patent
22 Owner that the real difference between Salas and Parker is that Salas
23 and Parker do filtering at the server side and then reuse or use that
24 same information again when building the page itself. Patent Owner

1 argues that that simply can't be because all of the filtering has to
2 happen at the server.

3 Interestingly, that is the exact opposite argument that Patent
4 Owner made in the District Court. In the District Court, Patent Owner
5 specifically said that privacy level information and the filtering
6 thereof could be done anywhere. And, in fact --

7 JUDGE BISK: I have a related question.

8 MS. KEEFE: Yes, Your Honor?

9 JUDGE BISK: Which is is there any type of required order
10 of the steps of this claim? For instance, does the sending have to
11 happen before the assembling? Or could it happen after? Or I guess
12 there's lots of sending, so I'm talking about the sending that the
13 sending limitation that you are discussing right now with the privacy
14 level information. I'm wondering if there's anything in the claim that
15 requires that to happen before assembling.

16 MS. KEEFE: There's nothing in the claim, per se, that
17 requires the order, but logic dictates that the information be sent
18 before the assembling step, because the information is -- the
19 configuration information -- the page that is eventually displayed has
20 to be accordance with the configuration information for that page to
21 be displayed.

22 Now, the true reality is, if we take that at its absolute
23 broadest understanding, in accordance with just means that it looks
24 like the thing that it was supposed to look like. It doesn't necessarily
25 mean based on. Based on would be something that would demand an

1 order, because there you would say, if you had the page being built
2 based on the information combined with other information, they
3 would have to necessarily be sent down first, but simply in accordance
4 with means that it looks like what it's supposed to look like.

5 I do believe, logically, that both Salas and Parker and,
6 frankly, the patent itself we're talking about having the information
7 sent from the server down to the user's computer and then the program
8 on the user's computer takes those bits of information and combines
9 the content with the template and the privacy information and then
10 builds a page that is shown to the user.

11 JUDGE BISK: But it doesn't say in the claim that the user
12 system actually does the assembling.

13 MS. KEEFE: The diary program is what's actually used to
14 do the assembling, and the diary program, according to the claim, is
15 sent from the server down to the user's system. And, so, it's the diary
16 program on the user's system that is doing the assembling, and so in
17 that sense, it does happen -- the assembly happens at the user's system.
18 That doesn't mean that the filtering does. All that means is, take
19 whatever content was sent down, with whatever layout information,
20 templates, page design, and make -- and have the diary program down
21 at the user's computer, combine those two things in order to display a
22 cohesive diary page, or the total page.

23 For instance, the filtering, i.e., determining whether or not
24 mom gets to see something, whether it's a piece of content that I want
25 mom to see, all of that filtering can happen back up at the server.

1 And, in fact, the server can apply those rules and decide, mom is
2 going to see A, B and D, but not C, gather up that content and then
3 send it down to the user's computer, where the diary program takes the
4 template, combines it with that content and renders a page.

5 And this was a very important issue at the District Court as
6 well. At the District Court, Patent Owner specifically argued that the
7 filtering did not have to take place at the client side, that, in fact, the
8 filtering could take place either at the server or at the client. And yet
9 here, before Your Honors, they're trying to argue the opposite in order
10 to try to overcome prior art.

11 They're trying to say now that the filtering all has to happen
12 down at the client side to try to distinguish from Salas and Parker,
13 where the filtering, in other words, choosing which information to
14 send happens at least initially up at the server's computer, but that is
15 nowhere in the claims and is contrary to what Patent Owner has
16 already argued to the District Court and, frankly, won at the District
17 Court. They won the construction that the filtering did not have to
18 happen at the client side and, in fact, could include server-side
19 filtering.

20 If I look, for example, to -- and we know, also, this is not
21 something controversial now, I know this is an argument that they're
22 continuing to make, but Patent Owner's own expert also agreed that
23 privacy level information, the imposition that the user system use the
24 privacy information to determine the content is not in the claim, and
25 I'm looking here, Your Honors, at slide 13 of our demonstratives.

1 Does the language of claim 1 impose any requirement that
2 the user system use the privacy information to determine what
3 content, if any, the user is permitted to see?

4 "The witness: No, I don't believe it does."

5 So, that's simply not a part of the limitations and, in fact, the
6 filtering can happen at the server system. And in both Salas and in
7 Parker, that is the case, that there's filtering going on at the server
8 system to decide which content is going to be sent down. Salas is a
9 method and system for providing a networked collaborative work
10 environment. All that means is that the whole patent is directed to the
11 idea of having eRooms that individual users can see, which include
12 the files that they are permitted to see and that they are permitted to
13 work with.

14 Salas, just like the patent, actually has a page builder
15 software program that is sent down to the user's computer, that then
16 awaits information coming to it, the content, and the template, or the
17 way that the page is going to look, it receives that information,
18 combines it, and creates the diary page, this eRoom page, and that
19 eRoom page only shows the information that the particular user is
20 allowed to see.

21 The page builder application resides on the client
22 workstation, this is in slide 16, Salas Exhibit 1005, column 6, line 57
23 through 63, a page builder application resides on the client's
24 workstation. It goes on to talk about the client -- the page builder
25 building the page.

1 And then the more -- one of the most interesting things here,
2 though, is because people continue to work on their own individual
3 computers, and they may be doing different things with those pages.
4 Some people typing in them and then wanting to share their edits, or
5 preventing people from typing while they're doing their edits. The
6 Salas has to constantly synchronize itself and make sure that the
7 folders that you're working with are the same as the folders as other
8 people are working with.

9 One of the ways that that synchronization is done is with
10 metadata about the files that is sent down from the server to the user's
11 computer. And we see in Salas at Exhibit 1005, column 12, lines 1
12 through 6, once synchronization has been accomplished and local
13 database metadata has been updated, the appropriate data objects and
14 values are inserted into the eRoom. So, make sure you have all the
15 right information, and then display that. So, that's configuration
16 information.

17 We also note from the patent, very specifically, that that
18 metadata, and this is on slide 19, Your Honor, that metadata, again,
19 we're in Exhibit 1005, column 13, lines 52 to 57, includes access
20 information such as which users may open, view, and edit the file.
21 Privacy level information. Metadata is sent down for the purpose of
22 synchronization, metadata includes access information.

23 Patent Owner has argued that for some reason because they
24 found a number of places where the filtering was happening at the
25 server, that must mean that the access metadata was not sent down,

1 but that's absolutely not what the patent teaches. This patent teaches
2 that metadata is sent from the server to the client, metadata is used in
3 comparison to synchronize, and specifically that metadata includes
4 access information. And that makes sense, because, for example, you
5 could envision a time when someone leaves a working group and you
6 can change their access to that information, decide that they can't see
7 it any longer, they're not a part of that working group anymore.

8 We also know that the metadata about access rights is being
9 used at the local computer because of the section of the specification
10 that talks about can edit versus can view access rights. This is on
11 slide 20, column 12, lines 34 through 41. The access rights of the
12 requesting user are checked. "If the user has appropriate access rights,
13 i.e., 'can edit,' if the user has indicated editing will occur, or 'can
14 view,' if the user has indicated only viewing will occur, the user will
15 be allowed to retrieve the file." So, we're using that metadata.

16 I'm not saying that this necessarily is the privacy level
17 information, it could be, but the privacy level information is simply
18 the access and what gets put into that eRoom at all.

19 JUDGE CLEMENTS: Ms. Keefe, just a heads-up, I think
20 we've hit 20 minutes, so going forward, you will eat into your rebuttal
21 time.

22 MS. KEEFE: I will wrap up really quickly, Your Honor, I
23 am almost at the end of my presentation. Thank you so much.

1 Dr. Jones himself agreed that if a file was on the user's
2 computer, the file system on the user's computer will enforce access
3 privileges, and that's on slide 21 from the Jones deposition.

4 The reason to add Parker in is that Parker adds just -- we
5 believe, honestly, that Salas has all of the limitations. Parker, though,
6 goes one step deeper into defining the different types of access rights
7 that someone could have. For example, the '316 talks about not only
8 sending down the information itself, as privacy level information, but
9 it could show a different representation in order to show different
10 levels of privacy.

11 Column 5 of the 1001 exhibit, "If a user does not have
12 sufficient permission to view an object in a diary, the diary may not
13 make the object visible to the user, the user does not even know it
14 exists, or it may present the object using an alternate representation."

15 What we have in Parker, very clearly, is the use of an
16 alternate representation to show the privacy level information. Here,
17 the user can access test folder one, but cannot access test folder
18 number two, and it's done through an alternate representation, not
19 simply not having it, but instead showing it in an alternate
20 representation.

21 So, we believe that Salas in combination with Parker meets
22 all of the limitations, especially sending privacy level information
23 down. There is privacy level information, who can view it, who can't,
24 and it is sent down in at least the metadata that Salas specifically
25 contemplates.

1 Thank you.

2 MR. GOETZ: Good afternoon, Your Honor, if I may just
3 have one minute to switch the video equipment. Thank you.

4 JUDGE CLEMENTS: Sure, no problem.

5 MR. GOETZ: May it please the Court, John Goetz, again,
6 on behalf of the Patent Owner. I would just like to begin by noting,
7 just to give you an overview of the patent. The '316 patent issued
8 from an application that was filed in September 1998, almost 17 years
9 ago, and it was drawn to a patent on an online personal diary, having a
10 novel privacy level system that allowed regular, everyday, ordinary
11 people to publish content on the Internet and to select for each piece
12 of content a particular class of people that might view that content,
13 and the classifications are set out right in the patent of world, friend,
14 close friend, best friend, and owner. And the Petitioner here
15 effectively concedes the novelty of the claimed invention, and only
16 raises here before the Board an obviousness attack.

17 And, so, the question presented by the petition is whether
18 the Petitioner has carried its burden to show that the claimed
19 invention -- claimed invention would have been obvious at the time,
20 and we submit that they have not met that burden. Really for four
21 reasons. The first is there's a lack of motivation, and we'll talk a little
22 bit more about that, but really, even if you accept everything that the
23 Petitioner has said about the prior art, there's no legitimate motivation
24 for the combination that they have argued should take place, and
25 everyone agrees, their expert, our expert, and even I think the

1 Petitioner itself, that the Salas system is a system where everyone in
2 that system can see, everyone in that eRoom can see the content.
3 Every eRoom member. And as such, it would not have been obvious
4 to add to the eRoom of Salas the user interface technique of Parker,
5 which an item displayed is normally if access is allowed, or if it's
6 greyed out if there's no access allowed.

7 Now, that's a quote from their petition at page 46. That's the
8 argument that they made. That's the combination argument. And
9 when you realize that in Salas, every member of the eRoom can see
10 all of the content, you see that there's really -- there's no motivation to
11 make that combination. And really that lack of a motivation is a
12 signal to the Board about what's really going on here, and that is that
13 this attack is really an improper impermissible hindsight
14 reconstruction, where they are using what the teacher taught, what Joz
15 Van Der Meer taught against the teacher. And so that's the first
16 reason that we think the Petitioner fails.

17 The second reason has to do with the privacy level
18 information. Under any construction, everyone agrees that privacy
19 level information is all about viewability of content. And the access
20 information that Petitioners rely on in Salas doesn't have anything to
21 do with the viewable content on the eRoom page. The access
22 information that they're relying on has to do with the files in the
23 eRoom system, and the Salas eRoom system files, the specification
24 was very clear in Salas, are opened not in the eRoom page, but outside

1 of the eRoom page, and we'll talk a little bit more about that in a few
2 minutes.

3 Third, under a proper construction of privacy level
4 information, which we've submitted to the Board, and which we think
5 should account for the word level, we think that the current
6 construction does not do that, and once you realize that that level is an
7 important part, an important limitation of the claim, you'll see that the
8 Salas and Parker combination does not include privacy level
9 information under proper construction.

10 And, finally, this question of sending. The claims are very
11 clear that the privacy level information must be sent from the server to
12 the client, and there's very good reason for that, the patent makes clear
13 that in one particular example, where it's the owner who is looking at
14 the online diary, the owner can actually use that privacy level
15 information to select and to change the content of his diary.

16 And, so, that information is sent down to the client, and
17 there's no disclosure of that in Salas, and we'll talk about that, and
18 actually that sending aspect gets into this filtering idea, which I don't
19 think has been characterized fairly, and we'll talk about that in a
20 minute.

21 So, if I could start with the motivation, and I haven't referred
22 Your Honor to any slides yet, but I think I'm going to start with slide
23 14, which is just the placeholder for motivation. And actually, I'll
24 start with slide 15, on motivation.

1 In the Salas collaborative work-based system, all users can
2 at least read all of the content. And we know this because if you read
3 Salas, it tells you that. We know this because our expert made that
4 point very clear and there has been no rebuttal testimony from the
5 Petitioner's expert on this point. And as a result, once you're at that
6 point in the Salas reference, you realize there's no good reason to hide
7 anything, and there's a good reason to share everything.

8 Actually, before I go to the next slide, and you can really see
9 that in Salas, starting at the end of column 1, the summary of the
10 invention, through, say, line 11 of column 2, and it's really talking
11 about the system and how it's really the whole purpose is to engage in
12 a work discussion and to collaborate on a common project. And, so,
13 it's really not that surprising that that's what Salas is all about.

14 Now, we actually asked the Petitioner's expert at his
15 deposition, before we put in the Patent Owner response, about this
16 notion of whether the Salas system is a system where all the members
17 can view the files represented by the icons. We asked him that, and
18 this is at slide 16, Your Honor. This is from the October deposition of
19 Mr. Tittel, and he said, you know, I haven't really given that enough
20 thought. I haven't really considered that, and he really, he refused to
21 give an answer. And we said, okay, that's fine.

22 And what happened after that, though, is we put in our
23 Patent Owner's response, and with that we included an expert
24 declaration from Dr. Jones, I'm on slide 17 now, where I've quoted
25 from several of the paragraphs of that declaration. And I won't read

1 these quotes, but what you can see by reading them is that Dr. Jones
2 was unequivocal that in his view, the Salas reference as understood by
3 those of skill in the art made clear that everybody in the eRoom can
4 see all of the content. Very clear, in multiple paragraphs, and on slide
5 18 --

6 JUDGE BISK: Who is the person of ordinary skill in the
7 art?

8 MR. GOETZ: What are their characteristics, Your Honor?

9 JUDGE BISK: Yeah.

10 MR. GOETZ: I don't have the definition in front of me, we
11 can go back and look at that. I think there's basic agreement between
12 the experts. I think it was something like, you could have an
13 advanced degree in computer science, or you could have sufficient, I
14 think maybe five years experience in the industry at the time.

15 JUDGE BISK: Do they have to know about collaboration
16 tools?

17 MR. GOETZ: I don't think that there was an express
18 agreement on that point. I mean, I think that because of skill in the art
19 here, you're going to be dealing with networks, I mean, you definitely
20 would have some knowledge about networking and collaboration is,
21 of course, a part of networking, but I don't think the text of the
22 language that we agreed on included the notion of collaboration, Your
23 Honor.

24 JUDGE BISK: Well, I'm just wondering what a person, you
25 know, a really good programmer may not know anything about how

1 business people are going to use a collaboration tool and whether they
2 want to -- I'm not sure if he's an expert on how -- whether teams want
3 to hide some things from other members of their team or not.

4 MR. GOETZ: Oh, I see your point, Your Honor. No, so,
5 he's an expert, and we think he is an expert, and we offer him as an
6 expert in computer science.

7 JUDGE BISK: Right.

8 MR. GOETZ: His testimony was as a person of computer
9 science understanding how the Salas system works on a technical
10 level. I mean, that's how he was interpreting the reference.

11 JUDGE BISK: Okay.

12 MR. GOETZ: And, so, slide 18, Your Honor, includes
13 another quote from our expert declaration on this point. And what
14 happened after that is that, you know, Petitioner put in a reply, and
15 with the reply, Mr. Tittel put in a second declaration, and did not
16 contradict any of those statements at all. And, so, what you have,
17 really, is effectively an agreement. Now, you might say there's
18 un rebutted expert testimony, and I think that's true, but in a situation
19 where we've asked their expert the precise question at the deposition
20 and he says I haven't considered it, and then we've given him an
21 expert declaration making that same point, for Mr. Tittel's second
22 declaration to be silent on that is, we think, effectively an admission.
23 And I think we think it makes sense, and we think if you read the
24 Salas reference, you'll see that.

1 And, really, what happens when you're there in Salas, and
2 you have a situation where in the eRoom everyone sees everything,
3 there's no reason to add the Parker disclosures.

4 And, so, what did Petitioner do in --

5 JUDGE BISK: I'm having a hard time with this jump that
6 you're making from, you can see everything in Salas to there's no
7 reason to want to hide anything, I guess. Why isn't there any reason to
8 want to -- I mean, if you can't access something, why is there no
9 reason to not be able to view it as well? I mean, certain groups of
10 people you might not want them to view it.

11 MR. GOETZ: Right, and I guess our point is in Salas, the
12 disclosures, if you're a member of the eRoom, you can see all of the
13 content. And, so, from there, if you go back to -- and I'm going to
14 turn to slide 10, this is the actual argument that the Petitioner made on
15 this combination. And what they've said is, you know, it would result
16 in an eRoom system where the ActiveX control obtains the file
17 metadata and uses it to generate an eRoom page listing each file with
18 a visual indication consistent with the viewing user's access privileges,
19 i.e., fully visible, ghosted, greyed out, et cetera.

20 And in a system where everyone can see all of the content,
21 there's no motivation to grey out anything. That's our simple point,
22 Your Honor.

23 JUDGE BISK: Okay.

24 JUDGE CLEMENTS: Mr. Goetz, Parker also discloses
25 alternatives to greying out, doesn't it? It also discloses icons or

1 indicating whether things are inaccessible or accessible for read and
2 write, read-only, write-only, via various access indicating icons. So,
3 you know, it seems like you're focusing on the greying out or blanking
4 out aspect of Parker, but that's not the entire disclosure of Parker.

5 MR. GOETZ: Yes, Your Honor, and two responses to that.
6 The first is, that argument was never made in the petition, it was only
7 made in the reply, and so we actually think that you're free to ignore
8 that argument because that wasn't really what the institution was all
9 about. This argument on slide 10 is the argument that they made with
10 respect to Salas and Parker and their combination, but if you decide to
11 address that argument on its substance, and we think the fact that
12 they've changed that argument is a --

13 JUDGE BISK: Well, but wait a minute, it talks about on the
14 last part of the page you have up there is talking about the different
15 types of icons.

16 MR. GOETZ: Well, it talks about icons where you can
17 either access it or you cannot access it, Your Honor, that's what we're
18 saying. And in their new position, their new argument, it's about
19 whether you can edit it, when they talk about eyeglasses and a writing
20 icon of some kind. And, so, they're pointing to different aspects of
21 Parker in the reply than they did in the petition, but if you want to
22 address it on the substance, Your Honor, it doesn't concern the
23 viewability of the privacy level information, which is what everyone
24 agrees must be done in connection with the privacy level information.

1 So, if you're talking about editing, that has nothing to do
2 with viewability, and so it doesn't actually -- it doesn't actually get
3 to -- it's an improper combination for that reason as well.

4 JUDGE KAUFFMAN: Counsel?

5 MR. GOETZ: Yes, Your Honor?

6 JUDGE KAUFFMAN: I need some help with what you're
7 saying about the motivation as well. So, if Salas, if we accept your
8 argument that Salas lets everyone see everything, why does that
9 counsel against making access restricted to some and others, or this
10 you're dividing it up. You're not making a teaching away argument as
11 best I can tell. So, what is it about the way Salas does it that prevents
12 it from being a motivation to modifying it the way Petitioner says?

13 MR. GOETZ: Well, only because the basic crux of the
14 modification they're suggesting is they're going to modify Salas to
15 disclose some information where a particular eRoom user can't see
16 content in Salas. And what we're saying is, Salas doesn't have that
17 situation, and therefore there's no reason to add that aspect of it.

18 JUDGE KAUFFMAN: And isn't that why Salas is being
19 modified, because it doesn't have that? I mean, it kind of sounds like
20 you're making an argument because it doesn't have it, there's no
21 motivation to make it have it, and under that logic, we would never
22 have a 103 rejection, right, it would only be 102 that would work. So,
23 I don't understand yet.

24 MR. GOETZ: No, Your Honor, I would say that in a
25 situation where you have a proper 103, you have a vacant teaching,

1 and you're going to add a modification for some reason, but here, you
2 have a teaching, and the modification is actually contrary to that
3 teaching. And, so, it's -- it's not a situation where there's just a gap
4 that's being filled.

5 JUDGE KAUFFMAN: And now it sounds like you are
6 making a teaching away argument, and so I would ask, well, where
7 does it say in Salas that you should do it any other way than allowing
8 to divide up someone who has access as something you shouldn't do?

9 MR. GOETZ: I don't have that, Your Honor. I just have our
10 understanding of Salas based on our expert declaration, which -- and
11 the view, really the agreement, I think, between the parties now is in
12 Salas that everyone can view everything in a particular eRoom.

13 JUDGE BISK: But I guess it seems to me you're making
14 this link that in collaboration everybody should be able to see
15 everything, and, so, Salas is for eRoom collaboration, and everyone in
16 Salas can see everything, and everyone in collaboration should always
17 be able to see everything, therefore there's no reason to modify it, but
18 I'm not certain about that second step. I'm not sure that everyone
19 should always be able to see everything when you're collaborating.

20 MR. GOETZ: It's a fair point, Your Honor. I guess what
21 we were saying is we're just pointing to the collaboration purpose as
22 expressly disclosed in Salas as evidence that Salas is all about sharing
23 information and not about hiding it. That's really all we're saying.

24 JUDGE BISK: Okay.

1 MR. GOETZ: I would like to turn now to the second reason
2 about privacy level information, if I could, please. Let's start with
3 slide 21. So, with respect to this argument, Your Honor, what we're
4 talking about is privacy level information, and everyone agrees that
5 privacy level information has to relate to who is permitted to view a
6 particular content on a cohesive diary page, and that makes sense,
7 because the '316 patent is all about how to publish personal content on
8 the Internet with a diary owner having the ability to restrict who can
9 view each piece of particular content.

10 And if you take a close look at the petition, on slide 23,
11 content data is an element of the claim, and that's actually in the claim
12 what's combined with the page design to create the final cohesive
13 diary page. And the Petitioner pointed to two things, the entries under
14 the announcements in the Salas system, and in the icons for the
15 content items. That's what they said in the petition.

16 And, so, what they're not saying is the content is the files
17 themselves, and it's -- it makes sense that they didn't say that, I have
18 now flipped to slide 24, Your Honor, they're not relying on the files
19 themselves of Salas to be the content data because the files aren't
20 combined with the Salas page design to create the cohesive diary
21 page. Salas is very clear that what's going on there is to open the file,
22 the separate application is launched at the client system and that's
23 what's used to view the content of the particular file.

24 And we have here an excerpt from Mr. Tittel's deposition
25 where he agreed with that point.

1 And, so, what does that mean? Why does that matter?

2 Well, this shows that the Salas file metadata cannot be the claimed
3 privacy level information, because it pertains to the Salas files, but not
4 to the content data that's assembled to create the cohesive diary page.

5 So, that access information in Salas relates to the Salas files.

6 And then the other file metadata that they point to, which is like the
7 file name, the creation date and the modification date, while it's true --

8 JUDGE BISK: Can you explain one a little bit more? Why
9 doesn't the access information also apply to the icons that are shown?

10 MR. GOETZ: It's the file metadata, Your Honor, that Salas
11 says that it's -- it's about the files. I think that's the argument that
12 they're making.

13 JUDGE BISK: But when they show the icons, sometimes it
14 has slashes through it. So, and that's because of the access
15 information, right? So, it must --

16 MR. GOETZ: You're talking about in Parker?

17 JUDGE BISK: Oh, is that -- okay.

18 MR. GOETZ: I think you're talking about Parker, Your
19 Honor, and I'm going to talk about Parker in a minute, but in Salas, I
20 don't think it has that disclosure. So, the Salas information relates to
21 the files, and the file metadata like the file name and creation date and
22 modification date, which actually does show up on the cohesive diary
23 page, unlike the content of the file, has nothing to do with users
24 permitted to view particular content, and it doesn't describe or specify
25 such users.

1 JUDGE BISK: I think maybe what they're saying is that
2 access information may not show all of the privacy -- may not be all
3 of privacy level information, but when you're combining it with
4 Parker, then it does. Right?

5 MR. GOETZ: Okay. We don't think that's right, Your
6 Honor, we think that what they're saying is that the file metadata
7 access information in Salas is the privacy level information, and that
8 what Parker is adding is a visual indication of that, and that's --

9 JUDGE BISK: Right. Right, which is number one there,
10 right?

11 MR. GOETZ: Right, but each --

12 JUDGE BISK: That's the viewability part, that you're
13 adding from Parker?

14 MR. GOETZ: Right, but even in Parker, see, Parker is also
15 only about the files and the folders.

16 JUDGE BISK: Right.

17 MR. GOETZ: We're talking about access information of the
18 files and folders. So, when you combine Parker and Salas, you still
19 have a situation where the access information, which is what they're
20 pointing to, relates not to the content data that's combined with the
21 page design to create the cohesive diary page, but it relates to content
22 that's off the cohesive diary page and that's not the content data of the
23 claim. That's our point.

1 JUDGE BISK: But the icon is still changing, so I don't
2 think that second level of indirection matters, does it? Why does that
3 matter?

4 MR. GOETZ: Well, the changing of the icon is actually not
5 privacy level information because it's still there. There's not a
6 situation except for the blackout in Parker where the access
7 information would actually remove content.

8 JUDGE BISK: But what about column 5, though, where it
9 says that you can show an alternate version, it doesn't say that you
10 have to blank it out.

11 MR. GOETZ: You're talking about in the patent now, the
12 '316 patent?

13 JUDGE BISK: Right, um-hmm.

14 MR. GOETZ: It does say, Your Honor, in our patent that
15 there's an alternate representation that could be presented based on the
16 privacy level of the user and how it matches with the privacy level of
17 a particular piece of content, but that has got to mean that that
18 particular alternate representation decreases the information that's
19 sent. Otherwise the notion of privacy is totally gone. I mean, it has to
20 be that there has to be something about that information that is kept
21 private. And that really means not shown.

22 JUDGE CLEMENTS: Mr. Goetz, I have a question.

23 MR. GOETZ: Yes, Your Honor?

24 JUDGE CLEMENTS: In Salas, we have files that are not
25 the content data, let's assume that. We have file metadata that

1 describes who can view and access those files. If the file metadata
2 specifies that the user viewing the diary page can't view or access the
3 file, then the user won't be able to see an icon for that file. Isn't that
4 right?

5 MR. GOETZ: I don't think that is right, in Salas, Your
6 Honor. I think that in our view, as we've said, in Salas, every member
7 of the eRoom can view all of the content, so we don't think that that is
8 right. In Salas.

9 JUDGE CLEMENTS: Okay. So, in Salas, I guess the user
10 would see an icon for that file, but upon clicking on it, nothing would
11 happen, it wouldn't be able to open it or view it or edit it?

12 MR. GOETZ: I don't think so, Your Honor, I think in Salas,
13 the member of the eRoom can click on and view the files.

14 JUDGE BISK: But not edit? Is that --

15 MR. GOETZ: Well, potentially not edit, we agree with that,
16 Your Honor, that's correct.

17 JUDGE BISK: Because there has to be some difference.

18 MR. GOETZ: I agree, and that really is the primary
19 difference in the Salas system, is the difference between viewability
20 and editing.

21 JUDGE BISK: Okay.

22 MR. GOETZ: So, just to continue with this discussion, I
23 have now turned Your Honors to slide 2, and we're still talking about
24 the privacy level information, as everyone understands it to be related
25 to the viewability or not of the content data of the claim. And, again,

1 the Parker icons and their modifications don't relate to the viewability
2 of the content, because the icons are themselves the content and
3 everyone can see the icons, even if they're greyed out. And, so,
4 modifying the icons and the file names does not describe or specify
5 who can view them.

6 And with respect to the blank-out scenario that Parker has
7 where Parker says, well, in certain situations, you could just make the
8 icon disappear, everyone agrees that in that situation, the Parker icon
9 information is not sent.

10 JUDGE CLEMENTS: Counsel, I've got a question on
11 figure 7 of Parker.

12 MR. GOETZ: Yes, Your Honor.

13 JUDGE CLEMENTS: This OpenAdmin application, it has
14 test folder one and test folder two, and test folder two is displayed
15 hashed out. What do the hashes indicate there?

16 MR. GOETZ: I think the hashes indicate that the
17 administrator who's viewing that particular user's profile can see the
18 restrictions on that folder placed by the system. And, so, if it's hashed
19 out, that particular user is not going to be able to access that folder.

20 JUDGE CLEMENTS: And, so, I guess my question is, why
21 isn't the -- why aren't the hashes there information describing whether
22 user C can see that content or not?

23 MR. GOETZ: Well, and I think that's an argument that
24 Petitioner is making, Your Honor, and I think what they're actually --
25 what they're saying is, in Parker, and I'm on slide 28, quoting from

1 their brief, their reply brief, in Salas and Parker, "the access
2 information specifies that the viewing user is permitted to view the
3 content items such as the file names and other information."

4 And, so, what they're basically saying here, it seems to me,
5 is that if you can -- if you can see it, on the screen, then you must have
6 access information. And, so, really that collapses to anything that is
7 seen on a particular user's screen qualifies as privacy level
8 information. And that just, that seems nonsensical to us, Your Honor.
9 It just, it eliminates the limitation entirely. And it really is not a
10 reasonable argument to try to invalidate the patent.

11 JUDGE CLEMENTS: I guess --

12 MR. GOETZ: Yes, Your Honor?

13 JUDGE CLEMENTS: Pardon me.

14 MR. GOETZ: Yes, sir.

15 JUDGE CLEMENTS: My confusion is that figure 7 appears
16 to depict what the administrator can see, and the administrator has
17 selected to view as user C, but if user C were viewing this, they
18 wouldn't actually see test folder two hashed out, they just wouldn't see
19 test folder two. Am I understanding that correctly in Parker?

20 MR. GOETZ: I think that Parker -- in figure -- I think it's
21 figure 7, Your Honor, it might be another one of the figures, where it
22 talks about the administrator viewing it as if he was the user. And, so,
23 in that circumstance, the viewing user would see the hashed out
24 folder, indicating that he couldn't have access to it. And, again, our
25 point is that doesn't relate to the content, that's relevant to the claims,

1 because that's content that's in a folder off the cohesive diary page
2 itself.

3 JUDGE CLEMENTS: Well, why wouldn't the icon
4 representing test folder two be content data? I mean, that would be
5 something that would normally be presented to user C, but in this
6 case, because user C doesn't have access permission, it won't be
7 viewable by user C?

8 MR. GOETZ: Well, it actually would be, Your Honor, the
9 parties agree that what's going on there is he would see it greyed out.
10 I mean, that's the argument that Petitioner made from Parker. And in
11 that case, there's no -- that greying out has nothing to do with whether
12 the user can see the folder, because he can see it. It's just either
13 greyed out or not. The information is the same.

14 So, the other argument that Petitioner makes along these
15 lines is that we're assuming that there's a limitation not recited in the
16 claims, it's an argument they made in their brief that somehow we're
17 trying to argue that the claims require a listing of who is not permitted
18 to view the particular content, but that's just not true. We're not
19 saying that, and it's also nonsensical, because, for example, the piece
20 of content that was indicated only for your mother, you would have to
21 somehow identify the rest of the world that was not permitted to view
22 it. And so that's -- that's just not an argument that we're making.

23 JUDGE BISK: So, how would you have us change the
24 claim construction of privacy level information?

1 MR. GOETZ: Thank you, Your Honor. That's a great segue
2 into my next point, and so I've got it here on slide 31, and our
3 proposal is that configuration information that describes or specifies
4 the universe of one or more users or categories of users permitted to
5 view particular content on a cohesive diary page. And really, what
6 we're asking the Board to do is to put in this notion of the universe,
7 because that's really what the '316 patent is all about. It's all about
8 giving a diary owner the ability to, for particular pieces of content,
9 designate what the patent says classes of persons, different classes of
10 persons. And those classes are world, friend, best friend, as disclosed
11 in the specification.

12 So, that's our proposal, Your Honor.

13 JUDGE CLEMENTS: So, what --

14 JUDGE BISK: I don't really see how that's different than
15 category of users. What's -- what are you adding by saying universe?

16 MR. GOETZ: We're adding this notion of a class. And, so,
17 for example, if you had a class of people that is your friends, that
18 would be -- that could be --

19 JUDGE BISK: Is that not the same as a category?

20 MR. GOETZ: Well --

21 JUDGE BISK: How is a class different than a category?

22 MR. GOETZ: The institution decision construction, Your
23 Honor, is the same -- is the same as the Petitioner's construction, in
24 that it allows privacy level information to be simply one particular

1 user's access to one particular content, without having this notion of
2 gradation or level in the claim construction.

3 JUDGE BISK: So, what if instead it was the privacy level
4 information is -- it has to be a category and a category can be one or
5 more users? So, there is as many categories is necessary, but each one
6 of those is one or more users?

7 MR. GOETZ: Yeah, I think that would be okay, Your
8 Honor, because it sounds like what you're saying is that the privacy
9 level information is a category of users, and those categories could be
10 in and of themselves one or more users.

11 JUDGE BISK: Right. That's fine.

12 MR. GOETZ: I think that would be okay, because that gets
13 this notion of the level, which is an important part of the --

14 JUDGE BISK: I think that's what we were kind of trying to
15 get at in our construction in the first place

16 MR. GOETZ: Let me just say, Your Honor, that the
17 language -- most of the language that is up here is the result of
18 discussion between the parties from the litigation and discussion --
19 and so I think a lot of the language that's up there resulted from that.

20 JUDGE BISK: Yeah.

21 MR. GOETZ: And, so, I -- my hope is just so that we can
22 get this notion of level into the claim, because we just don't think it's
23 in there right now.

24 JUDGE BISK: Okay.

1 MR. GOETZ: And I think that you've done it with your
2 proposal.

3 JUDGE BISK: Okay.

4 MR. GOETZ: Okay, and, you know, we cited this *Aspex*
5 case, really for the black letter notion that you're not supposed to read
6 terms out of the claim with the construction. And we think that the
7 construction that includes the notion of this level is supported by the
8 specification as we set forth in our brief, and it's actually supported by
9 testimony from both experts, with the Petitioner's expert admitting,
10 frankly, at his deposition, that level implies gradation, which is what
11 it's all about.

12 Now, an interesting thing happened in the reply, you know,
13 we put in the Patent Owner's argument this notion of gradation, and
14 this admission from the Patent Owner's expert, and they tried to
15 explain it away by saying, oh, he was just talking about figure 4d, and
16 they actually said in the footnote, "As explained in this text, the
17 process is irrelevant to the privacy level information sent to the user."
18 And we just don't think that's right. I mean, if you look at the patent
19 when it's talking about 4d, it actually is exactly on point as to what
20 privacy level information means in the context of the '316 patent.
21 And, in fact, it's a little subsection in column 107 of the '316 patent
22 that is entitled Privacy Level of the Diary Page. And, so, we actually
23 didn't agree with that, and --

24 JUDGE KAUFFMAN: And counsel is referring to slide 36
25 there?

1 MR. GOETZ: Slide 36 there, thank you, Your Honor, slide
2 36. I'm just going to skip over 37, because that's just where he said
3 that. Well, I'll just deal with it. Slide 37 is Mr. Tittel's second
4 declaration, this is the Petitioner's expert, and he, again, you know,
5 reiterated the point, one of skill in the art would have found these
6 disclosures irrelevant, and at his deposition, which I have the
7 irrelevant excerpt on slide 38, he eventually agreed that it is, in fact --

8 JUDGE BISK: And just to be clear, you're not saying that
9 the only privacy levels are the ones that are listed on that figure, and
10 you're also not saying that each of the different categories has to have
11 a different level of privacy, are you? So, maybe, I can't remember,
12 best friend and friend, maybe they have the same level of privacy?

13 MR. GOETZ: So the answer is we're not trying to limit it
14 just to those.

15 JUDGE BISK: Okay.

16 MR. GOETZ: No, Your Honor, and I think that you could
17 imagine the situation where best friend, you know, some poor sap
18 who doesn't have very many friends, maybe the best friend is the only
19 friend and so they have an overlap there. I think that's right.

20 JUDGE BISK: Okay.

21 MR. GOETZ: Okay, so what does -- what does Petitioner
22 say in addition to sort of attempting to get their expert to sign onto this
23 notion that 4d is irrelevant, when it's not. So, there's really three
24 arguments. I'm on slide 39, Your Honor. And I've got four boxes

1 there. The top box is the figure 4d bit that we just dealt with, which is
2 relevant to the understanding of privacy level information.

3 The next point they make is that the specification does not
4 use the word universe --

5 JUDGE BISK: Can we -- can I move on, because I think a
6 lot of this was a little bit of a misunderstanding of what this universe
7 thing was.

8 MR. GOETZ: I see, yes, Your Honor.

9 JUDGE BISK: Can we go on to what if -- say we go with
10 the categories, getting rid of a single user, and going with the
11 categories, then what does that do to the obviousness grounds?

12 MR. GOETZ: Well, I think what happens then, Your
13 Honor, is we have a situation where the combined Salas and Parker
14 disclosures don't teach the category of privacy level information in the
15 claims, and if you look at Parker, Parker is really only reflecting the
16 access rights of a particular individual.

17 JUDGE BISK: But what about administrator? They seem
18 to have a couple of individuals, so that looks like a group, a group of
19 administrators.

20 MR. GOETZ: In Parker?

21 JUDGE BISK: Yeah. So, look at figure 5, for instance.

22 MR. GOETZ: Do you have Parker handy? I have Parker,
23 Your Honor, just one second.

24 JUDGE BISK: And I might be looking at this wrong, but
25 we were having this discussion, maybe the list of users under

1 administrator there are just who they have access to look at, or are
2 those people who are part of the user group administrator?

3 MR. GOETZ: And I'm just, I have figure 5 up, Your Honor,
4 I'm just trying to -- can you point me to the disclosure you're
5 discussing?

6 JUDGE BISK: So, under -- on the right, I'm looking at it
7 sideways, but on the right part here under User Groups.

8 MR. GOETZ: Okay.

9 JUDGE BISK: There's user B and Robert Parker.

10 MR. GOETZ: Right.

11 JUDGE BISK: Are those people both part of the group
12 administrator, or are you saying administrator is just one guy?

13 MR. GOETZ: I think it's one guy, Your Honor.

14 JUDGE BISK: Okay.

15 MR. GOETZ: I think the administrator is one guy, he's
16 doing the administration of the file system and he's able to select the
17 particular users for which he can see the access rights in the system.

18 JUDGE BISK: I see.

19 JUDGE KAUFFMAN: And how is that inconsistent with
20 your construction of the claim? Why can't a single person be a
21 category?

22 MR. GOETZ: Well, the information -- the access -- the
23 privacy level information that gets sent from the system, I mean from
24 the server to the client, has to be that category of particular users.

1 JUDGE BISK: And there won't be a category of
2 administrator?

3 MR. GOETZ: I don't think so, Your Honor. I think the
4 administrator in this situation is not one of the users. I'm not -- maybe
5 I'm misunderstanding the question.

6 JUDGE BISK: No, I think that's my question.

7 MR. GOETZ: Try it this way. Our view is that the
8 Salas/Parker combination is all about -- assuming that everything else
9 is right, is all about a particular user's access to a file and not about
10 sending the actual entire category information -- of information, the
11 privacy level information, down to the system. That's what's not
12 disclosed. That's our point.

13 JUDGE CLEMENTS: Counsel, I want to just draw your
14 attention to column -- the bottom of column 7, the top of column 8 in
15 Parker.

16 MR. GOETZ: Yes, Your Honor, one second.

17 JUDGE CLEMENTS: It says there -- sure.

18 MR. GOETZ: Yes, Your Honor.

19 JUDGE CLEMENTS: So, I'm at the paragraph beginning
20 although, not shown in figure 4, the network administrator may also
21 enter a particular user's or group's name into the view as pop-up,
22 review the same volumes, folders and files, that are from that user's or
23 group's perspective, i.e., according to that user's or group's access
24 privilege.

1 So, is that disclosure in Parker of describing a group of users
2 who can view and not view specific content?

3 MR. GOETZ: One second, Your Honor. I mean, Your
4 Honor, it clearly says group's access privilege there, so I mean, it is a
5 disclosure of a group having a particular access privilege. I would say
6 a couple of things. Number one, in Salas itself, you know, the eRoom
7 members all have access to the particular eRoom, and what this is not
8 talking about is having privacy level information as construed on a
9 content-by-content basis as required by the claims. That's number
10 one. And I don't think I've seen this argument from the Petitioner, but
11 it does say there group's access privileges, Your Honor.

12 So, finally, I'm not sure where I am on time, Your Honor, I
13 fear I may be over, but I have one more bit to go through.

14 JUDGE CLEMENTS: You have six minutes left.

15 MR. GOETZ: Great. Our final point, Your Honor, is about
16 the sending business. So, I'm on slide 41, Your Honor. And, so, it's
17 important for this particular issue to step back and to sort of look at
18 how this issue progressed in this particular IPR. The first slide we're
19 looking at, slide 42, is in Facebook's petition, they rely on the file
20 synchronization technique for sending of the access rights and they
21 did that both in the petition and in the declaration. And I have here
22 the petition on slide 42 and then in the declaration, Mr. Tittel's
23 declaration, on slide 43, and we talked with them about those
24 disclosures in the deposition, at some length, and he agreed that really
25 what that synchronization disclosure is talking about is talking about

1 using the access information, the Salas access information at the
2 server and not at the client. And this gets into the filtering point that
3 counsel for the Petitioner raised, and it's a little bit of confusion there,
4 I would like to try to clear that up if I can.

5 We're not saying that the claims of the patent that's at issue,
6 that is the subject of this petition, require filtering at one location or
7 another. We don't think they do require it at one location or not.
8 Counsel's right, we made that argument in the District Court and we
9 won it, but what I think she might be getting a little bit confused about
10 is what we're saying is that in Salas, if you look at the disclosures in
11 Salas and if you look at a technical level how Salas works, it does a
12 lot of what I think counsel is referring to as filtering activity at the
13 server, and what we're pointing that to, the reason we're pointing to
14 that disclosure, and those disclosures, is to show that the access
15 information in Salas is being used at the server, and is being housed
16 there, and that it stays there and that there's no reason for it to go
17 down to the client.

18 And, so, that was the point that we made at the deposition,
19 and I think Mr. Tittel agreed with that, and I have some testimony on
20 slide 45 as well, and it really was not just the synchronization
21 technique. I mean, we really sort of stepped through the Salas
22 disclosure, I'm on slide 46, and showed that the access information in
23 Salas is used only at the server, and not sent to the client workstation,
24 and that was apparent by looking at the Salas synchronization

1 technique, the Salas edit lock technique and the Salas creation and
2 modification technique.

3 And in our reply brief, or in our Patent Owner response, we
4 sort of went through that and showed you the testimony and those
5 disclosures that we walked Mr. Tittel through. And, so, we think that
6 there's really an agreement on that point from the parties, and when
7 you look at the evidence.

8 And, so, what happened after that, we got the Petitioner's
9 reply, and Mr. Tittel's second declaration, and in it, there was, it's a
10 new argument, and that argument is that the local computer inherently
11 has the ability to enforce certain access privileges, like can view and
12 can edit, for a downloaded file. And the argument is that this was a
13 standard feature of any modern operating system, including Windows.
14 And, so, that was the argument that was made, in the declaration, it
15 was also -- I'm sorry, that's slide 47, that is Mr. Tittel's second
16 declaration where he's taking that argument.

17 And then in the reply brief, you have on slide 48, where
18 they're citing to that and they're making that argument. And also on
19 slide 49 where they're also relying on this sort of inherency argument.

20 And there's several problems with this, you know, as we
21 raised this issue, and we had some short briefs on it. I don't want to
22 spend a lot of time on it, but it's a new argument, and it appears
23 nowhere in the petition or in the instituted grounds. It's a fairly radical
24 new view of Salas, in the sense that when I asked Mr. Tittel whether
25 the Salas system in his expert opinion would work without this

1 inherent disclosure of the file system checking these rights, he said,
2 no, it wouldn't. And I think that's a little bit surprising, because here
3 is a situation where that's not mentioned in the first declaration at all,
4 and now he's saying, oh, it's there, it's inherent, and the system
5 wouldn't work without it.

6 He also said that part of the reason that he had that opinion
7 was based on some documents in evidence that he never disclosed to
8 us, and it's factually wrong and, you know, we're not going to have a
9 debate about the facts, but as I said in our objection to this new
10 argument, if permitted, we could prove that he's wrong about
11 Windows at the time.

12 And, so, what do you do? Well, I mean, it's you have fairly
13 strict rules, I think, here at the Board, and what the Federal Register
14 said is that if there's a new issue presented in the reply, it will not be
15 considered. It may be returned. And the reason is so that you don't
16 have to sort out a proper reply from an improper reply. And, so, it
17 seems that not just that particular argument, but the reply brief for
18 Petitioners could be ignored in this situation. And we think that
19 would be appropriate. And that's on slide 51, Your Honor. And then
20 on 52, I just quoted from your order.

21 JUDGE CLEMENTS: Counsel, I think we are out of time
22 now.

23 JUDGE BISK: Can I ask one administrative question before
24 we finish here? So, I have one question about your brief, the -- I
25 guess it's the Patent Owner response.

1 MR. GOETZ: Yes, Your Honor.

2 JUDGE BISK: I'm now looking at it and I'm a little
3 confused because I think in the internal docket number it says
4 preliminary response, but I'm pretty sure this is the Patent Owner
5 response. On page 1 it has a footnote that says that you incorporate
6 by reference all of the arguments from the preliminary response.

7 MR. GOETZ: Right.

8 JUDGE BISK: And we also have a rule against doing that.
9 And for the exact purpose of we don't really know what to do with
10 that now and I'm just wondering if you had any thoughts on that. Are
11 you still trying to maintain all of your other arguments, besides the
12 ones that you've made today and in this brief?

13 MR. GOETZ: No, Your Honor.

14 JUDGE: Okay, thank you.

15 MR. GOETZ: To that end, the slides that we sent to the
16 Board had some advertising claim arguments that were incorporated,
17 and we've withdrawn those slides.

18 JUDGE BISK: Okay, thank you.

19 MR. GOETZ: Thank you, Your Honor.

20 MS. KEEFE: Thank you, Your Honors. The first thing that
21 I would like to clear up is what exactly does happen in Salas? There
22 seems to be this argument that, well, if you can see the title of the
23 folder, that can't possibly be enough because everybody can see it.
24 But the reality is, not everybody can necessarily see all of the
25 information that's in that eRoom.

1 If we look to Salas, Exhibit 1005, at column 14, starting at
2 line 30, regarding access control, "As noted above, the eRoom
3 skeleton is the set of database records that contain the basic properties
4 needed to display an eRoom. The concept of skeleton information
5 provides a first level of access control, because only data objects
6 stored in containers for which a particular user has open privileges are
7 synchronized to that client's workstation."

8 Since every file and eRoom item is represented as an object
9 in the database, access of users to each item can be controlled by
10 entries in the database schema.

11 And what this is basically telling us is that when you see, for
12 example, in figure 4 of Salas, and this is on slide 15, the icons that are
13 here in this eRoom are only here in this eRoom because the person
14 who is a member of this working group has permission to view those
15 folders, those files. It's not the sense that every single document, ever,
16 anywhere, in Salas, is available to be seen by anyone.

17 JUDGE BISK: But I think what your opposing counsel was
18 saying was that everyone in this working group will see all of these
19 same icons.

20 MS. KEEFE: He's also saying that the permissions have to
21 be to a category of users. And, so, this category of users who are
22 seeing these icons is the category of people in eRoom number one.
23 ERoom number one has permission to view these icons, and that's
24 exactly what privacy level information says. Privacy level

1 information is information that describes or specifies at least one user
2 or category of users permitted to view particular content on the page.

3 Here, if you are a member of this working group, you will
4 see these icons. If you are not a member of this working group, you
5 will not see those icons. Those objects will not be downloaded to
6 your system, and that's specifically what's discussed in Salas at
7 column 14, from lines 31 to 39. So, right away, we know that the
8 access metadata, access information, such as which users may open,
9 view, and edit the file, is necessary because it comes down to make
10 sure that you are the right member who can access those files, and
11 therefore can see those icons on your eRoom, on your cohesive diary
12 page.

13 And that's different from the members of another group.
14 And you would want to then combine Salas with Parker, because
15 maybe it would be helpful to also know the information that you
16 weren't able to access. You could put up the icons for the things that
17 you can't see, and there may be a very good reason to do that, because
18 then a user can understand, I can see brainstorm, but I can't see, for
19 example, something else, and if they wanted to see that, they would
20 have a reason to call up the administrator and say, please unlock that
21 for me.

22 So, there is a motivation to combine those two things and
23 use that possible teaching.

1 JUDGE BISK: But I was under the impression that the
2 content that you're saying gets the privacy level is the icons
3 themselves, not the -- not whatever is behind there.

4 MS. KEEFE: That's correct.

5 JUDGE BISK: Okay.

6 MS. KEEFE: And I'm just saying that you would
7 potentially combine the teachings of Parker with Salas because Parker
8 gives multiple different ways of indicating what someone has
9 permission to view. Parker itself specifically talks about not just the
10 idea of greying out, but in Parker, Exhibit 1011, at column 11,
11 specifically in -- this is at line 45, in another embodiment, test folder 2
12 may be greyed out, shaded, or hidden all together, the indication of no
13 access to folder 2 is consistent with the administrator's use of none.

14 So, one of the embodiments isn't that it's hashtagged out, as
15 Your Honor pointed out earlier, the actual embodiment could be that it
16 is gone, it is simply not viewable at all. And that's consistent with the
17 way Salas eRoom is demonstrated as well. Those folders that you
18 have access to, the icon appears, and that is the content that is
19 controlled by the privacy level information, whether or not that icon
20 even appears on this page.

21 JUDGE BISK: But would those -- is there a problem since
22 those icons are not sent? Or are they -- is something sent?

23 MS. KEEFE: Those icons clearly are sent, that is the
24 information that is sent down to be combined with the template so that
25 it's viewed.

1 JUDGE BISK: The ones that are not shown as such?

2 MS. KEEFE: I think opposing counsel was simply saying
3 that you don't have to send down the icon that's not shown.

4 JUDGE BISK: Right.

5 MS. KEEFE: That doesn't matter, because what is viewed is
6 subject to the privacy level information, and so the privacy level
7 information sends down "can view" the ones that are actually on the
8 screen, and so can view brainstorm. The fact that brainstorm appears
9 here is because privacy level information, configuration information
10 that describes at least one user or category of users permitted to view
11 a particular content on a cohesive diary page. That goes down to the
12 system, the system says, oh, for brainstorm, do I show that or do I
13 not? Yes, I do show brainstorm, I have that content, and I'm going to
14 show it.

15 The fact that if the permission says you didn't show
16 brainstorm, the fact that the icon didn't come down is irrelevant,
17 because it's not being shown per the privacy level information. Same
18 don't show it. So, it doesn't matter that it doesn't come down.

19 Instead, what we have are all of the limitations and all of the
20 elements, because privacy level information is the file metadata.
21 Going back to Salas, 1005 --

22 JUDGE BISK: Can I interrupt here for a minute, I'm sorry?

23 MS. KEEFE: Please.

1 JUDGE BISK: Can you just speak for a minute about the
2 claim construction of privacy level information, and what you think it
3 should be?

4 MS. KEEFE: We think the Board got it right the first time.

5 JUDGE BISK: And do you think that it would be wrong to
6 take out the individual -- right now I can't remember exactly what the
7 words were, but if we take out the part about the individual user and
8 say basically it's category and the category can be one or more users?

9 MS. KEEFE: I absolutely disagree. There's nothing that
10 says that it must be a category. Instead, one of the things could be a
11 single individual user, and there's nothing in the specification that
12 mandates that it not be an individual user or a category of users.

13 I don't understand still, to this day, why category implies
14 level. I was -- the level can be as simple as show or don't show the
15 privacy level information is on or off.

16 JUDGE BISK: And does it make a difference to the
17 outcome?

18 MS. KEEFE: Well, I think they would then try and argue if
19 it couldn't be to individual users, that would somehow take Salas and
20 Parker off the board. I don't think that's true, because honestly, Salas
21 discloses groups, i.e. members of a particular working room, and as
22 Judge Clements pointed out, Parker also discloses groups in column 7,
23 at the bottom of column 7, into column 8, specifically talking about
24 entering a particular group's name.

1 So, I don't think that it would change the outcome, but that
2 doesn't mean you should change it for the expediency of giving Patent
3 Owner what it says it wants. I don't think there's anything in the
4 specification that says that it has to be a category instead of individual
5 information. It's just privacy level information about what a user may
6 view, and how the page is going to be set up for a given user. It
7 makes no sense, therefore, to then start talking about, well, instead of
8 the user, we have to look at the category and see if the user is a part of
9 the category, but it could be that the category is just for that user.
10 Because they could be coextensive.

11 JUDGE KAUFFMAN: If I understood Patent Owner
12 correctly, I don't think they're necessarily arguing that there has to be
13 a category. I understood the argument to be that you can't have
14 privacy level information unless there's more than one level, right, or
15 you're reading the word level out of it, but you're saying that it could
16 be met by a yes or no, because you effectively have two categories
17 there, right, the yes and the no?

18 MS. KEEFE: That's absolutely correct. View, not view.
19 You have access, you don't have access. Both the disclosures talk
20 about further gradations of access, you can't edit, print, things of that
21 nature, but I think the only one that matters is can you see it or not. Is
22 the icon displayed, or is it not? And the Salas patent talks specifically
23 about open, view, and edit, for files, and that's in 1005 at column 13,
24 lines 52 through 56. And Parker, as well, talks specifically about
25 viewing versus editing versus writing versus administrator who can do

1 other things, and this is in column 11, in its description of figure 7,
2 from 39 all the way down to 64.

3 And the truth is, level can be one. Your Honors are up a
4 level from me right now. You are one step. That is a level that is
5 higher than the level that I am standing on. It doesn't have to be
6 gradations of level 1, 2, 3, 4, 5, there can simply be two levels and two
7 levels can be something as simple as on versus off, and that is
8 disclosed absolutely in Salas and in Parker.

9 And I'm not sure, Your Honors, that there was anything else
10 that I wanted to address, but I wanted to make sure that I answered all
11 of your questions. We feel quite strongly that Salas and Parker
12 disclose sending privacy level information, and to that, I would simply
13 reiterate that the file metadata in Salas, that is sent down, includes
14 access information such as which users may open, view and edit the
15 file, and that's in column 13 of Exhibit 1005, at lines 52 through 57,
16 and we know that that metadata is sent down, because it continues to
17 be accessed through the synchronization process, and specifically is
18 accessed in order to determine whether or not someone's rights have
19 changed and they can now read instead of write.

20 You could even envision a scenario in which, for example, a
21 member of a working group left, and so their access was changed to
22 no longer be in the group, no longer a member, and therefore no
23 longer have access to these things. And you would need that access
24 information to be down on the user's computer in order to determine
25 that.

1 JUDGE CLEMENTS: Counsel, how do you square that
2 with the disclosure in column 14 that you pointed to a second ago that
3 talks about only data objects for which a particular user has open
4 privileges as being synchronized to the client workstation?

5 MS. KEEFE: I think it --

6 JUDGE CLEMENTS: In other words, what's the -- if only
7 the objects to which they had open privileges are being sent to the
8 client workstation, then what's the privacy level information that's
9 being sent?

10 MS. KEEFE: The privacy level information that is sent with
11 it are the access information in which they may open, view and edit
12 the file. So, it also includes whether they may view or edit the file
13 and the fact that at that time they had open privileges, and they had
14 open access, but this is a living system that talks specifically about the
15 fact that as the users are working together in the system, it may turn
16 out that all of the sudden it's not editable anymore. A user may leave
17 the work group, in which case they would not even have open access,
18 that first level of access would be out and then they couldn't see the
19 icons any longer.

20 So, that access information needs to be sent down so that the
21 user's computer knows all of the rules, open, view, and edit, and
22 continues to synchronize those to make sure that all of the persons
23 who have the requisite level of permission can open, view or edit
24 those icons.

25 Thank you, Your Honors.

1 JUDGE KAUFFMAN: Ms. Keefe, do you have a copy of
2 Patent Owner's slides?

3 MS. KEEFE: Yes, I do.

4 JUDGE KAUFFMAN: Could you look at slide 47, please.
5 I think the argument runs through like 46 through 49, actually, but I
6 wanted your comments on that argument about the sending limitation.

7 MS. KEEFE: So, with respect to what, Your Honor? I
8 mean, I believe that these -- that the fact that can view and can edit
9 have to be checked is proof that the access information, part of the
10 metadata, is sent down to the user's computer. The reason we raised
11 this point was because Patent Owner went so far in their arguments as
12 to say that there is absolutely no reason to send access information
13 down along with the other metadata that was grouped together in
14 Salas, and it's always listed as a grouping. The metadata in Salas is
15 listed as including the name of the file, the size of the file, date the file
16 was created, date it was modified, and access information.

17 It seems that Patent Owner is trying to say, but I don't see
18 any reason why you would have ever sent access information down.
19 What we said is that there is absolutely a reason to send access
20 information down, because you need to be able to change between can
21 view and can edit, and that is access information. That is privacy
22 level information that is continuing to be sent down.

23 Their argument that because the first filtering was done at
24 the server, there's now no reason to send that down belies the actual
25 disclosure of Salas, which says that file metadata is sent to the user's

1 computer, and includes the name of the file, the size, the date and the
2 access information.

3 JUDGE KAUFFMAN: Thank you.

4 MS. KEEFE: Thank you very much. Thank you, Your
5 Honors, for your time.

6 JUDGE CLEMENTS: We thank the parties very much, the
7 case is submitted, and we are adjourned.

8 **(Whereupon, at 3:27 p.m., the hearing was adjourned.)**