

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ZTE CORPORATION AND ZTE (USA) INC.,  
Petitioner,

v.

INTERDIGITAL TECHNOLOGY CORPORATION,  
Patent Owner.

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Cases IPR2014-00525 and IPR2015-00074  
Patent 8,380,244

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Held: May 21, 2015

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BEFORE: MIRIAM L. QUINN, SALLY C. MEDLEY and  
BEVERLY M. BUNTING, Administrative Patent Judges.

The above-entitled matter came on for hearing on Thursday, May 21, 2015, commencing at 1:06 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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P R O C E E D I N G S

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1 JUDGE MEDLEY: Good afternoon. This is the  
2 hearing for IPR2014-00525 and IPR2015-00074, which was  
3 joined with the 525 proceeding regarding U.S. Patent Number  
4 8,380,244.

5 Before we proceed, we would like to memorialize on  
6 the record that a conference call was held on May 19th between  
7 counsel for the respective parties and Judges Bunting and  
8 Medley. The purpose of the conference call was to discuss  
9 certain objections the parties had with respect to demonstrative  
10 exhibits filed by the parties.

11 An agreement was reached between the parties to affix  
12 the Patent Owner's Demonstrative Exhibit 2024. As a result, the  
13 Board received later that day a revised Exhibit 2024 from the  
14 Patent Owner. We plan to exclude or expunge, excuse me, the  
15 previously filed Exhibit 2024.

16 Are there any objections for us doing so?

17 MS. HOLLOWAY: No, Your Honor.

18 JUDGE MEDLEY: With respect to Patent Owner's  
19 objections to Petitioner's Demonstrative Exhibit 1026, we rule  
20 that Patent Owner's objections were improper and that Patent  
21 Owner did not explain sufficiently why slides 24 through 30, 61  
22 and 65 of the 1026 should be excluded. In particular, Patent  
23 Owner did not demonstrate sufficiently that the contents of the  
24 objected to slides raised new issues or evidence not already of

1 record. Rather, the objected to slides contain references to  
2 arguments and evidence of record.

3 To the extent the Patent Owner was of the impression  
4 that Petitioner's reply is in violation of 37 C.F.R. 42.23(b), Patent  
5 Owner may make a general statement during its presentation how  
6 the reply violates that rule that Patent Owner may not respond  
7 substantively to the arguments made in the reply. In other words,  
8 we would not want Patent Owner to present a sur-reply during the  
9 hearing because such sur-reply was not permitted in the written  
10 record.

11 Are there any remaining issues regarding  
12 demonstratives?

13 MS. HOLLOWAY: No, Your Honor, not from  
14 Interdigital.

15 MR. McMAHON: No, Your Honor.

16 JUDGE MEDLEY: Okay. Thank you.

17 Per the May 12th order, each party will have 45 minutes  
18 of total time to present arguments.

19 Petitioner, you will proceed first to present your case  
20 with respect to the challenged claims and grounds for which the  
21 Board instituted trial.

22 Thereafter, Patent Owner, you'll have an opportunity to  
23 respond to Petitioner's presentation and, Petitioner, you may  
24 reserve rebuttal time to respond to Patent Owner's presentation.

1           At this time we'd like the parties to please introduce  
2 counsel beginning with the Petitioner.

3           MR. McMAHON: Good afternoon, Your Honors.  
4 Charles McMahon, for the Petitioner ZTE, and with me is Brian  
5 Jones.

6           JUDGE MEDLEY: Okay. Thank you. And for Patent  
7 Owner?

8           MS. HOLLOWAY: Good morning, Your Honor. Julie  
9 Holloway from Latham & Watkins for IPR licensing Interdigital  
10 and with me is my partner, Jonathan Link.

11          JUDGE MEDLEY: Okay.

12          MR. LINK: Good afternoon, Your Honor.

13          JUDGE MEDLEY: Thank you.

14          MS. HOLLOWAY: Oh, Your Honor, we also have a  
15 trial technician, Dave Slater, who will be assisting during our  
16 presentation. He'll be at the table at that time while I'm speaking.

17          JUDGE MEDLEY: Okay. Thank you.

18          All right. Thank you. So, Petitioner, you can go ahead  
19 and get set up and begin, and would you like to reserve rebuttal  
20 time?

21          MR. McMAHON: Yes, please, Your Honor.

22          JUDGE MEDLEY: How much time?

23          MR. McMAHON: I expect my initial argument to be,  
24 you know, brief to the point, so I guess whatever time is left, I  
25 would say 15 to 20 minutes maybe.

1 JUDGE MEDLEY: Okay. Do you want me to give  
2 you a warning when that time -- when you have like 15 minutes  
3 left --

4 MR. McMAHON: Please.

5 JUDGE MEDLEY: -- if you're continuing on? Okay.

6 So just to let everyone know, I go by the clock in the  
7 back of the room generally, so if you want to keep track of the  
8 time that way and the clock there says 12 after 1:00.

9 You may proceed.

10 MR. McMAHON: Good afternoon, Your Honors. I  
11 would like to begin with the instituted ground that provides  
12 context for the proceeding and the reason that we are all here.  
13 The panel has instituted this proceeding based on certain claims  
14 of the '244 patent and with respect to ground 1, which was  
15 Jawanda in combination with GPRS and IEEE 802.11, all of  
16 which are of record, and the evidence has shown at this point that  
17 the claims are unpatentable based on these references for a  
18 number of reasons.

19 First, Jawanda all by itself, as I'll explain here today,  
20 teaches or renders obvious every feature of the claims that are at  
21 issue and -- so Jawanda by itself results in a finding of  
22 obviousness, but the implementation details of the ideas that are  
23 taught by Jawanda are provided in the standards of the GPRS  
24 documents and the 802.11 WiFi documents. I'll talk about each  
25 one of those.

1           Would you go, please, to slide 7 of Exhibit 1026. I'll  
2 just begin with the background of the patent. This is a statement  
3 from the Institution Decision in which the panel characterized  
4 based on the abstract the invention of the '244 patent as a system  
5 and method of short-range, high-speed and long-range,  
6 lower-speed data communications using a dual-mode unit.

7           So it's a dual-mode device that can communicate with  
8 two different networks, one of them being short-range  
9 high-speed. That's the WLAN or 802.11 network and one of  
10 which is longer range and lower speed, and that's the cellular  
11 network. We'll talk about each of those. They're combined in a  
12 dual-mode device.

13           This is illustrated if we turn to slide 8 in Figure 6 from  
14 the '244 patent. This is an embodiment of the invention described  
15 in the patent. And what this figure shows is two different paths  
16 between the subscriber unit 110 on the left of Figure 6 and the  
17 antenna on 150 on the right of Figure 6 representing the two  
18 different paths the data takes within the device for purpose of  
19 communicating with two different networks.

20           The top path -- and these two paths are controlled by  
21 two switches described in the patent, switch 211a on the left and  
22 211b on the right. Those two switches control whether the device  
23 is communicating using cellular protocols or using WLAN  
24 protocols.

1           So the top path of Figure 6, when the switches are up,  
2 goes through the cellular protocol and communicates through the  
3 antenna with a cellular network. The bottom path, when the  
4 switches are down, goes through the WLAN network and  
5 communicates with a W -- excuse me, goes through the WLAN  
6 protocol and communicates through the antenna with the WLAN  
7 network.

8           So that's an embodiment of the invention just provided  
9 for context.

10           Now, fundamentally we should be routed in the claims.  
11 So if we turn to slide 18, we begin with Claim 1. And the  
12 language here is relatively straightforward. There are three  
13 separate limitations of the claim. It begins with a subscriber unit  
14 and that term refers to something like a cell phone. It could be a  
15 different type of subscriber unit, but a cell phone is an example.

16           And that cell phone or subscriber unit must include  
17 three things according to Claim 1. The first is that there must be  
18 a cellular transceiver configured to communicate with a cellular  
19 wireless network via a plurality of assigned physical channels.  
20 So that's the transceiver in the subscriber unit that's  
21 communicating with the cellular network.

22           The second limitation is an IEEE 802.11 transceiver  
23 configured to communicate with an IEEE 802.11 wireless local  
24 area network. That's the second transceiver, communicating with  
25 the second network.



1           The first network is the low-speed, long-range network  
2   and the second network, the WiFi, is the high-speed, short-range  
3   network.

4           The third limitation provides some functionality for  
5   switching between the two and it says, a processor configured to  
6   maintain a communication session with the cellular wireless  
7   network in absence of the plurality of assigned physical channels  
8   while the IEEE 802.11 transceiver communicates packet data  
9   with the IEEE 802.11 wireless local area network. So that's just  
10   describing what the subscribing unit should do when it has  
11   switched over data communication to the WLAN or WiFi  
12   network.

13           JUDGE QUINN: Counsel, I have a question. How  
14   does the '244 patent, the embodiment that you just showed us,  
15   how does it implement the processor configured to maintain a  
16   communication session?

17           MR. McMAHON: Well, that's a good question. Figure  
18   6 I think illustrates part of it and I have to admit that there's some  
19   debate between the parties about the question.

20           But if we go back to Figure 6, there is at least one  
21   example that is provided in the patent is the idea of spoofing and  
22   so there's a spoofing function that maintains, for example, when  
23   the subscriber unit has switched over to transmitting data on the  
24   WiFi network, it maintains a communication session with the  
25   cellular network by spoofing a connection, suggesting that there's

1 still a connection there, even if the physical layer connection is  
2 not, and that's shown in -- go ahead.

3 JUDGE QUINN: But if the system doesn't have access  
4 to the transmitting or the radiating device or the antenna, how is  
5 that implemented actually?

6 MR. McMAHON: So if there's no access, how is that  
7 implemented if there's no -- well, fundamentally, Your Honor,  
8 that's an excellent question and I think that is a flaw in the patent  
9 that is probably beyond the scope of this proceeding, but that's a  
10 good point. Because all of that functionality for maintaining the  
11 communication session would be in the example of Figure 6  
12 would be in box 130.

13 There's a bandwidth management function there.  
14 There's a spoofing function there. That's all -- and there's a  
15 CDMA protocol converter there, and this is described in a couple  
16 of places in the patent.

17 One place is in column 4, and I don't have a slide on  
18 this, but I'll just direct you to it. Column 4, the top half of that  
19 column describes one preferred embodiment in which the second  
20 wireless data communication provides a logical connection and  
21 then you follow that paragraph down, it talks about how the  
22 spoofing would happen. That's one part.

23 And then a more detailed discussion comes up with  
24 reference to Figure 6 in columns 9 and 10. For example, at  
25 column 10, line 28, there's a reference here, continuing to refer to

1 Figure 6 briefly in the long range, lower data rate mode, the  
2 spoofing function 132 involves having the CDMA transceiver  
3 140 loop back synchronous data bits to spoof the terminal  
4 equipment into believing that a sufficiently wide wireless  
5 communication link is continuously available.

6 So that's one description, at least one embodiment of  
7 how the communication session could be maintained. But, Judge  
8 Quinn, to your question, how can that happen? Go ahead.

9 JUDGE QUINN: Well, my question is -- I understand  
10 that. I've read the patent and the question is, the maintenance of  
11 this communication session is from the viewpoint of the  
12 subscriber unit. It doesn't necessarily mean that the actual  
13 cellular system has an actual connection to the subscriber unit.

14 MR. McMAHON: Well, right, and so to your question  
15 of how is that maintained when the switches, 211a and 211b are  
16 in the down position and the WiFi network or WLAN network is  
17 active, how is that maintained? Honestly, I don't know the  
18 answer to that based on review of this patent.

19 Because when those switches are down, the top part of  
20 Figure 6 is off line and so whatever happens in spoofing would  
21 seem to be disconnected from the system, and so that is a concern  
22 that we have had about this patent. Again, I'm not sure it's within  
23 the scope of this proceeding in terms of the prior art invalidity,  
24 but that's the best way I can answer that question.

1 JUDGE QUINN: Well, I mean, to the extent that we  
2 were looking at what does it mean to maintain a communication  
3 session and there is dispute as to whether Jawanda actually has  
4 this logical connection when it's disconnected from the cellular  
5 system, we cannot disregard the embodiments that we're seeing  
6 here as they are explained.

7 MR. McMAHON: I agree with that completely, but, of  
8 course, we're operating under the broadest reasonable  
9 interpretation here in terms of interpreting the claims and  
10 applying them to the prior art. So Jawanda -- and I can -- I'll get  
11 to this in a few minutes or I could go to it right now if it would be  
12 helpful, but Jawanda describes seamlessly switching back and  
13 forth between a cellular network and WLAN network and  
14 optionally maintaining the connection with the WLAN network.

15 Now, Jawanda is very clear that when that happens, the  
16 transfer of what Jawanda calls datagrams are switched from the  
17 cellular connection to the WLAN connection. So the data is now  
18 all being routed through the WLAN connection. It's not being  
19 sent through the cellular connection anymore.

20 So to be clear about that, no data going through the  
21 cellular connection, but nevertheless Jawanda says you can  
22 maintain that connection optionally with the cellular network and  
23 we would submit under the broadest reasonable interpretation of a  
24 communication session that is maintaining a communication  
25 session with the cellular network.

1           And Jawanda explains that you might want to switch  
2 back when the device steps outside of the WiFi network and  
3 needs to go back on the slower long-range connection, it can  
4 switch back seeing mostly again to the cellular network and I  
5 would submit that one of the reasons you can do that is because  
6 you could have maintained that connection, that communication  
7 session with the cellular network so that it's very easy to jump  
8 back to the cellular side when, for example, you step out of  
9 Starbucks and no longer have a WiFi connection.

10           JUDGE QUINN: Before we continue, whoever is  
11 adjusting the -- what I can see over here has zoomed into the  
12 slides to where I can no longer see counsel.

13           There you are.

14           MR. McMAHON: I was hiding, Your Honor.

15           JUDGE QUINN: Good to see you again.

16           And now my follow-up question with that and I  
17 apologize if I change the order in which you were expecting --

18           MR. McMAHON: I'm here to answer your questions,  
19 Your Honor.

20           JUDGE QUINN: -- to discuss these issues. I do  
21 understand Jawanda says that maintaining the session between  
22 applications 90 and 91 so that the two devices can still get the  
23 datagrams from each other. Now, that is not the same as  
24 maintaining the actual communication session with the one  
25 network or the other.

1           So are you saying that inherently there must be some  
2 connection that is maintained or some logical connection that is  
3 maintained in order for Jawanda to guarantee a communication  
4 between these two applications?

5           MR. McMAHON: Very close, Your Honor, but it's not  
6 inherent. It's express, and so I agree with you the communication  
7 session that Jawanda describes is sort of end to end independent  
8 of whether it's on a cellular path or the WiFi path.

9           But separate from that, what Jawanda says is in the  
10 context of maintaining that communication session point to point,  
11 when you switch from the cellular side to the WiFi side, you can  
12 optionally maintain the cellular connection, and that's in Figure 4.

13           If we could go to slide 57. Figure 4 here shows the box  
14 that says seamlessly handoff transfer of datagrams from WiFi  
15 connection to WLAN connection. So the data is now all going  
16 through the WiFi while optionally maintaining that cellular  
17 WWAN connection. And so it's optionally maintaining a  
18 connection.

19           Now, with Jawanda, that's clear. Jawanda is not talking  
20 about sending any data over the cellular connection anymore, but  
21 it says you can still maintain that connection even as you are  
22 sending the datagrams over the WiFi connection, and that's  
23 nothing -- that's precisely what the broadest reasonable  
24 interpretation of Claim 1 requires.

1           JUDGE QUINN: Now, but let me ask you something,  
2 because once you go through that application flow and it sends it  
3 on and transfers the datagrams, it says that if you need to hand off  
4 the datagram transfer in step 126, you have to establish a wireless  
5 data connection with WWAN, which is a cellular connection, so  
6 why would you be establishing it if you were maintaining it?

7           MR. McMAHON: Well, again, the maintenance of that  
8 connection is optionally. So if you didn't maintain it, of course,  
9 you would have to reestablish that connection.

10           Let me take a step back and explain that a little bit  
11 more. When the subscriber unit or the device in Jawanda  
12 switches from cell -- from the cellular connection to the WWAN  
13 connection, it has the option of maintaining that cellular  
14 connection. In some cases you might exercise that option, in  
15 some cases you might not.

16           If you have not maintained that connection, then you no  
17 longer have a cellular connection. And when you want to switch  
18 back from WiFi, you would have to reestablish that cellular  
19 connection. That's the use case of Jawanda that doesn't really  
20 apply here.

21           The use case of Jawanda that does applies here and that  
22 renders this claim obvious under the broadest reasonable  
23 interpretation is the one where you exercise that option to  
24 maintain the cellular connection when switching the datagrams  
25 over to the WiFi connection.

1 JUDGE QUINN: Where is an explanation in Jawanda  
2 of these two options?

3 MR. McMAHON: Well, it's really right there in the  
4 figure, seamlessly handoff. So the first thing it says is you're  
5 handing off the datagrams from the cellular to the WiFi, so that's  
6 the context, and then the last part of box 122 in Figure 4 says,  
7 while optionally maintaining the WWAN connection.

8 So if you put that in the context of what the first part of  
9 that box says, which is that the datagrams are now going over  
10 WiFi, it means you're no longer using the cellular connection to  
11 send data, but still Jawanda says you can still hold onto that  
12 cellular connection, the WWAN connection.

13 JUDGE BUNTING: So I have a question. In terms of  
14 the term cellular connection in Jawanda, are they talking about  
15 the physical connection, logical or what are they talking about  
16 there?

17 MR. McMAHON: That connection in Jawanda? I  
18 think the best read of that is that it is probably maintaining a  
19 physical connection. Well, I think you can interpret that a couple  
20 of different ways. At the very least there has to be some sort of  
21 logical connection.

22 So if you have a physical connection, you definitely  
23 have the logical connection. You could still have the logical  
24 connection without the physical connection. So I think what  
25 Jawanda is saying here is you can maintain enough of a



1 connection to the cellular network so that you can very easily and  
2 seamlessly, as Jawanda puts it, transfer back to the cellular  
3 connection.

4 The implementation details of that, you know, may be  
5 up to the particular user and Jawanda says that the specific details  
6 can be according to conventional techniques and then specifically  
7 references GPRS, CDMA. On the WiFi side, it references, you  
8 know, WLAN and 802.11 was one of the best known at that time.

9 Did that answer your question, Judge Bunting?

10 JUDGE BUNTING: Yes, it did.

11 MR. McMAHON: Okay.

12 JUDGE QUINN: So to follow up on what Judge  
13 Bunting said, let me ask you if -- at first you said it was kind of a  
14 physical, maybe it's also logical, but in order to have the physical  
15 connection you must have the logical connection as well, right?

16 MR. McMAHON: Yes. In order to have the physical  
17 connection --

18 JUDGE QUINN: So --

19 MR. McMAHON: I believe that's correct. You can  
20 have the logical connection without the physical connection, but  
21 you can't have the reverse.

22 JUDGE QUINN: Correct. Okay. So when I see your  
23 petition and your arguments, it seems that you in order to  
24 establish that logical connection and/or physical connection,

1 you're relying on the details of the GPRS protocol to fill in the  
2 gaps on how that would work; is that correct?

3 MR. McMAHON: Well, I don't know that I'd say fill in  
4 the gaps. I think that Jawanda provides enough of a teaching here  
5 certainly to show one of ordinary skill in the art how to  
6 implement exactly what Claim 1 of the '244 patent requires. So,  
7 yes, to some degree Jawanda is not an express disclosure of every  
8 single detail you would need to make a system like this work, but  
9 I would submit that it certainly renders the broadest reasonable  
10 interpretation of Claim 1 obvious.

11 Now, having said that, the standards certainly provide a  
12 lot more detail and they are referenced in the case of a cellular  
13 specifically expressly referenced in Jawanda, in the case of the  
14 WiFi generically referenced as a WLAN standard, and so  
15 Jawanda embraces those details.

16 And as I read Jawanda, Jawanda is basically saying my  
17 invention here is not about those details. Those are conventional.  
18 I'm talking about how you can use that type of cellular system in  
19 combination with that type of WiFi system to accomplish this  
20 seamless handoff idea.

21 So I think Jawanda provides the idea and frankly  
22 provides enough to render Claim 1 obvious. But if you need  
23 details, they're certainly there in the standards.

24 JUDGE QUINN: Well, in order to teach the limitation  
25 we're referring to and maintaining that communication session

1 limitation, we would look to the details to see how he does that,  
2 to see if it does maintain it or if it's logical or physical, whatever  
3 arguments the Patent Owner I'm sure will raise against it.

4           So my question is, at a minimum you don't say that  
5 Jawanda discloses the detail, but it suggests it to one of skill in  
6 the art.

7           MR. McMAHON: Well, I want to be precise. On this  
8 point in particular, what Jawanda says is what's highlighted here  
9 on slide 57, box 122 from Figure 4, which is while optionally  
10 maintaining the WWAN connection. The details of how that  
11 connection is maintained are left up to the implementer and may  
12 be described in some of the standards documents we have here,  
13 but I submit that that disclosure right there by itself is enough to  
14 tell you you're maintaining a communication session with the  
15 cellular network while you're sending your data on WiFi.

16           So to be clear, Judge Quinn, I'm trying to make sure that  
17 I don't suggest that Jawanda is lacking somehow in detail.  
18 Jawanda provides some detail. The standards provide a lot more.  
19 I think Jawanda provides enough. But if you need any more  
20 details about the implementation, they're right there in the  
21 standards that Jawanda points you to.

22           JUDGE QUINN: Thank you.

23           MR. McMAHON: So we've already jumped ahead to  
24 Figure 4. I guess just to provide a little more context on Jawanda,  
25 slide 35 just provides Figure 1 and, again, this is just showing the

1 subscriber unit 14 down at the bottom connecting to these two  
2 networks, WWAN and WLAN, in Figure 1 explaining what those  
3 two acronyms stand for, which I think we all know.

4 Slide 36 provides Figure 3. So we've now looked at a  
5 number of the figures from Jawanda. This is another one and  
6 there are some parallels between this and Figure 6 of the '244  
7 patent with the two separate paths shown providing a connection  
8 over a WLAN network versus a cellular network. So, again, this  
9 is just context for the disclosure of what's in Jawanda.

10 The next point is slide 57. I'll just come back to this  
11 briefly. This is the one that we've just spent some time talking  
12 about and just reference that this is discussed in our petition at  
13 page 24 and really more broadly at pages 23 to 24, and also in the  
14 Bims declaration it's discussed at length in paragraphs 193 to 195.  
15 So an explanation of Jawanda and what's taught here are provided  
16 in those locations.

17 Now, with respect to the obviousness, if we could turn  
18 to slide 51. These are just the claim charts that we provided right  
19 in our petition and I'm not going to dwell on these. I'm happy to  
20 answer questions about these, but I just wanted to walk through  
21 them.

22 So the first limitation -- and we're looking here at  
23 Claims 1 and 23 -- the parties have treated Claim 1 as  
24 representative for purposes of this analysis, but we put both of  
25 them in this chart, so the first limitation is the preamble, which

1 basically just said a subscriber unit or a method of using the  
2 subscriber unit. Patent Owner has not disputed that that is  
3 disclosed. There's no dispute there.

4           So if we turn to slide 52, we now have the first  
5 limitation of both of those claims and that refers to a cellular  
6 transceiver configured to communicate with a cellular wireless  
7 network via a plurality of assigned physical channels. Again,  
8 that's disclosed in Jawanda as we've talked about and to the extent  
9 that Jawanda lacks the implementation details, which I don't think  
10 are necessary for obviousness under the broadest reasonable  
11 interpretation, but those implementation details are provided in  
12 GPRS and CDMA, the standards documents.

13           JUDGE QUINN: Counsel, are there any disputes  
14 concerning the construction of assigned or assigned physical  
15 channels from your perspective?

16           MR. McMAHON: Well, we proposed a construction.  
17 Obviously we need to focus on the broadest reasonable  
18 interpretation. I think the parties seem to agree on some words  
19 that should be of use to interpret that and I can talk about what  
20 those words are, but to answer your question I think there may be  
21 a dispute about what those words mean.

22           So it's a question of a dispute over construing a  
23 construction and I can go into that in detail, but basically what we  
24 had proposed was a plurality of physical channels that have been  
25 made available to the subscriber unit to select for use, and so

1 there's a two-step process here and I think there's agreement on  
2 this that the channels are initially assigned and then after they've  
3 been assigned to the subscriber unit, the subscriber unit can use  
4 those channels to select -- to transmit data and there's a process of  
5 allocation to actually use that data.

6 MS. HOLLOWAY: And, excuse me, Your Honor, we  
7 were instructed to object when the new argument came up. This  
8 argument that select for use simply means use came up for the  
9 first time in their reply brief. There was no dispute regarding  
10 claim construction until the reply was filed, so we maintain that  
11 objection.

12 JUDGE MEDLEY: Okay. Well, as I instructed at the  
13 beginning, though, that would go on your time. So you need to --

14 MS. HOLLOWAY: Oh, I'm sorry, Your Honor, I  
15 misunderstood.

16 JUDGE MEDLEY: You need to wait. Thank you.

17 MS. HOLLOWAY: Okay.

18 MR. McMAHON: So, yes, I think and I'm sure we'll  
19 hear more about this from Patent Owner, but, yes, I think that  
20 there's agreement on a construction, but I think there's  
21 disagreement about what that construction means and it really  
22 comes down to the meaning of the word select in that  
23 construction.

24 Slide 53.

1 JUDGE QUINN: I'm sorry, so please go back. What is  
2 your contention as to what does it mean?

3 MR. McMAHON: Well, so our contention is that we're  
4 looking here at just the broadest reasonable interpretation of  
5 assigned physical channels and what that means is that there are  
6 physical channels that have been assigned. It's stated in the claim  
7 in the past tense, assigned. They've been assigned.

8 JUDGE QUINN: Assigned by who? I mean, where is  
9 the assignment made? I mean, is this something that we're  
10 talking protocol-wise where the protocol decides how channels  
11 are -- or the bandwidth is used in a particular cell site?

12 MR. McMAHON: Right, and so I don't make the claim  
13 as specific as to who has assigned those channels, but that  
14 assignment has happened before you get to the scope of the claim  
15 because it talks about them in the past tense.

16 In a typical system, the base station would do the  
17 assignment of those channels and then the subscriber unit would  
18 be, you know, free to use the channels once they've been  
19 assigned. In a typical system, the subscriber unit can't just use  
20 channels until the base station has assigned them to that  
21 subscriber unit.

22 So assigned physical --

23 JUDGE QUINN: Well, typically they listen to a control  
24 channel and when they're ready to transmit, then they switch over

1 or try to use whatever means the control channel is telling them to  
2 go to, right?

3 MR. McMAHON: Exactly. So using those control  
4 channels, for example, a subscriber unit may need to request  
5 physical channels and then the base station would assign them  
6 over that control channel, then the subscriber unit now knows  
7 which channels have been assigned and knows that it can then use  
8 those channels to transmit data.

9 And so my point there is just that those details are not  
10 recited in the claim or required by it. No particular type of details  
11 for assignment are required by the claim. The claim just says  
12 there are some assigned channels. It doesn't care who assigned  
13 them, where they came from, how long they've been assigned,  
14 just assigned physical channels.

15 And so what we propose as a construction -- and we can  
16 turn to slide 19. Actually before we go there -- sorry, I had my  
17 slides out of order.

18 Slide -- yes, slide 19 provides the construction that we  
19 had originally proposed and actually let's go to 20.

20 So a plurality of assigned physical channels means a  
21 plurality of physical channels available for the subscriber unit to  
22 select for use. It means they are now available. They've been  
23 made available. That's the process of assignment. They're now  
24 assigned and they're available for the subscriber unit to select for  
25 use.



1           I don't mean to steal her thunder. I imagine Patent  
2 Owner is going to talk a lot about what the word select means in  
3 this construction and I assure you we intended from the very  
4 beginning that this construction would capture the broadest  
5 reasonable interpretation of a plurality of assigned physical  
6 channels.

7           We didn't mean to limit it in any way and certainly  
8 didn't mean to limit it to require the subscriber unit makes some  
9 specific choice of a subset among a larger group of channels.  
10 That concept is not at all supported by those three simple words  
11 assigned physical channels. So perhaps we didn't capture the best  
12 way to phrase the broadest reasonable interpretation, but this is  
13 what we -- that's what we meant by these words broadest  
14 reasonable -- the broadest reasonable interpretation is what we  
15 meant by these words and that is clear from slide 21.

16           So slide 21 is just an excerpt straight from our petition  
17 at 11. So to the extent there's an argument this is new, this is how  
18 we described it in the petition explaining the concept of  
19 allocation. So the word select is sort of tied to the word allocate  
20 and it goes back to the two-step process that I talked about that  
21 initially the channels have to be assigned to a subscriber unit,  
22 typically by a base station. And then once they've been assigned,  
23 the subscriber unit can use those channels.

24           In the process of using them, you have to allocate those  
25 channels to transmit particular data and so that's the -- all we

1 mean by this is that the channels have been made available to the  
2 subscriber unit to select for use. It doesn't mean anything about  
3 choosing a particular subset. It just means you've got to be able  
4 to select those channels for use.

5           And so that's exactly what we said here in the last line  
6 of this paragraph on page 11 of the petition, a subscriber unit  
7 cannot use (allocate) a resource until it's been made available to  
8 the subscriber unit. That's the gist of our construction and I think  
9 it's even more clear on the next page -- and I apologize, we don't  
10 have a slide for this, but page 12 of the petition about a third of  
11 the way down the page, we wrote, the patent unmistakably uses  
12 "assigned" to mean a channel that has been made available for the  
13 subscriber unit to use.

14           So our position all along has been that the broadest  
15 reasonable interpretation of assigned physical channels is  
16 channels that have been made available to a subscriber unit to  
17 select for use or to use, nothing more specific than that and the  
18 plain meaning of the claim language certainly wouldn't support  
19 certainly the broadest reasonable interpretation of that claim  
20 language. It doesn't require anything more than that.

21           JUDGE BUNTING: Counselor, I'm looking at slide  
22 number 21 that you initially had us refer to and I'm seeing a  
23 citation to your expert testimony, but where in the specification is  
24 there support for this interpretation?

1           MR. McMAHON: Well, there's not a lot of discussion  
2 in the specification, but I think if we turn to slide 23 there's some  
3 discussion there.

4           And all it's saying here is -- there's a highlighted phrase  
5 from the patent in column 10, lines 34 to 43. The highlighted  
6 sentence is, therefore, the network layer need not allocate the  
7 assigned wireless bandwidth for the entirety of the  
8 communication session.

9           So what that means is there have been channels that  
10 have been assigned to the subscriber unit. The subscriber unit  
11 can use those channels, but it need not use them to transmit data  
12 the entire time that they're assigned. When there's data to send, it  
13 selects the channels and uses them, transmits data. When the data  
14 is finished being sent, then it stops using those channels and that's  
15 up to the subscriber unit.

16           JUDGE MEDLEY: You have 15 minutes remaining.

17           MR. McMAHON: Thank you.

18           JUDGE QUINN: One last question on this assigned  
19 physical channels or maybe not the last one, but the next one.

20           MR. McMAHON: Go ahead.

21           JUDGE QUINN: You said that this is the broadest  
22 reasonable interpretation, but we also understand that this is the  
23 same construction that has been agreed to in District Court. Is  
24 that right?

1           MR. McMAHON: Yes. I wish the answer to that  
2 question were simple. It's been construed a number of times in  
3 District Court, so, yes, this was the original construction that was  
4 adopted by the Court and there was -- there remained a dispute  
5 among the parties about what that construction means and so  
6 there was further construction in the District Court and the  
7 District Court eventually adopted a construction, and I apologize  
8 if I can't state it precisely, but the District Court accepted Patent  
9 Owner's view that the claims require selecting a subset of the  
10 channels, and that was over our objection.

11           We disagree with that. We think that's not supported by  
12 the plain language of the claims or the specification, but  
13 nevertheless the District Court did adopt that construction.

14           JUDGE QUINN: So you still believe, though, that this  
15 construction you provided here is sufficient for us to apply in this  
16 case, even though a District Court has fine-tuned it somewhat.

17           MR. McMAHON: Yes, we do. We absolutely believe  
18 that and we maintained our objection to the final construction that  
19 the District Court has adopted. So, again -- and I keep  
20 emphasizing this because I'm not sure I can be clear enough that  
21 we believe that construction captures the broadest reasonable  
22 interpretation of assigned physical channels.

23           We don't think there's anything complicated or any  
24 special requirements hanging on those three words in the claims,  
25 certainly not a requirement that the subscriber unit somehow be

1 able to select a subset of the channels and so the construction we  
2 proposed, again, maybe isn't the best way to articulate the  
3 broadest reasonable interpretation, but we think it is a good way  
4 and we think that it is a sufficient way and does capture the  
5 broadest reasonable interpretation without any requirement that  
6 the claims somehow say you have to select a subset of the  
7 channels.

8 JUDGE QUINN: Thank you.

9 MR. McMAHON: So I just -- before I sit down, I'll just  
10 briefly talk about motivation to combine, because there has also  
11 been some debate about that and we have two slides on the  
12 combination with IEEE, slide 48.

13 And, here, Jawanda specifically refers to the WLAN, so  
14 it's referring persons of ordinary skill in the art that you can go  
15 out and use a WLAN and it kind of leaves the details of  
16 implementation to the reader or the implementer.

17 Slide 49 provides a hook to connect that to 802.11. And  
18 for those of us who are used to WLAN today, those two are  
19 almost synonymous, right? The only WLAN most of us ever use  
20 is IEEE 802.11. But even back in -- before the patent application  
21 was filed, this was the emerging standard. It was the leading  
22 standard. This book is referred to in the '244 patent and it  
23 acknowledges right here the first official standard now available  
24 and that this was the first internationally recognized wireless

1 LAN standard, so certainly a motivation provided by Jawanda to  
2 look to IEEE 802.11.

3 And the final slide I'll talk about now is slide 42,  
4 motivation to combine with GPRS. And, here, Jawanda is  
5 saying, you know, I'm providing my idea, but the details for  
6 implementing it are according to conventional technique and then  
7 it refers to according to any currently available or future wireless  
8 data protocol, such as code division multiple access, CDMA,  
9 CDPD or GPRS.

10 So Jawanda is expressly telling the reader, one of  
11 ordinary skill in the art, if you want to implement the system, go  
12 to one of these standards for your cellular connection. It's hard to  
13 find a motivation to combine that is more express than that.

14 And with that, I'll reserve the remainder of my time,  
15 Judge Medley, for rebuttal.

16 JUDGE MEDLEY: Okay. Thank you.

17 We'll give you a few minutes, Patent Owner, and just let  
18 us know when you're ready.

19 MS. HOLLOWAY: I'm ready, Your Honor. Thank  
20 you. And I think you said I should make my objections at the  
21 outset.

22 JUDGE MEDLEY: Yes. That's fine. Thank you.

23 MS. HOLLOWAY: Well, these are to the reply brief  
24 because they were only briefly touched upon in the argument, but  
25 basically the new claim construction that Petitioner is trying to

1 present that the physical channels are available for the subscriber  
2 unit to use was not in their opening papers and was not how they  
3 used the construction in their opening papers, so we object to that.

4 The reference to using a timer to maintain PDP context  
5 was not discussed in their petition, was not a theory that was  
6 presented in their expert testimony anywhere and is simply  
7 attorney argument that's based on speculation with absolutely no  
8 specifics.

9 And then, finally, with respect to Dependent Claim 8,  
10 Claim 8 depends from Claim 1 and recites the same cellular  
11 wireless network. They relied in their petition on GPRS, which is  
12 a TDMA system for the cellular wireless network of Claim 1.

13 And then with respect to Claim 8, they switched to  
14 CDMA and obviously those are two different networks and the  
15 network in Claim 8 has to be the same one as in Claim 1. So we  
16 pointed this out in our responsive papers that they had failed to  
17 prove the elements were present in a proper combination and then  
18 in their reply they said for the first time, well, you could combine  
19 various features of GPRS with CDMA and that, you know, years  
20 later this was done.

21 They have no expert support on this. It's just attorney  
22 argument and more importantly if they were going to make that  
23 combination, it should have been presented in their papers. So  
24 we object to those points.

1 I'd like to start with the topic that was being discussed  
2 before, which is the assigned physical channels. If we could turn  
3 to slide 12.

4 Okay. Petitioners relied on the District Court opinion to  
5 support the claim construction and in the District Court the  
6 Defendants, including ZTE, argued for the same construction.  
7 They argued that the channels are made available for use and then  
8 a subset of those available channels are selected for use.

9 So they use select in the normal way choosing from a  
10 larger group. They weren't using any unusual meaning of select  
11 that is essentially meaningless. So that was what they argued for  
12 in District Court and that was the basis for the District Court's  
13 decision.

14 And then turning to slide 66. Their expert also when  
15 supporting their claim construction explained that the  
16 specification describes what to do with the assigned channels,  
17 that is the channels that are made available, and points out that  
18 the patent says a subset of available channels is selected. So our  
19 point is, this was how they were using select in their claim  
20 construction and in their petition.

21 And if we could go to page 22 of ZTE's petition. Okay.

22 JUDGE QUINN: I'm sorry, counsel, where are you  
23 now?



1 MS. HOLLOWAY: I'm going to slide 22. And, I'm  
2 sorry, I'm moving around a little bit. This is -- oh, I'm not. I'm  
3 sorry, Your Honor, it's not slide 22. It is page 22 of the petition.

4 And, here, Petitioner argued the GPRS standards also  
5 teach that a user device, a subscriber unit, may allocate available  
6 physical channels to transmit data by selecting one or more  
7 channels for use. So this is, again, when applying their  
8 construction of the prior art, they used the ordinary meaning of  
9 select out of a larger group.

10 The reason they are changing in their reply brief is we  
11 demonstrated overwhelmingly in our response that the statement  
12 you see on page 22 here is not true. The GPRS standards do not  
13 teach that the subscriber unit can select one or more channels for  
14 use. It is very clear that the base station selects the channels in  
15 response to a request from the subscriber unit and the subscriber  
16 unit then merely uses those channels.

17 So this statement is untrue. We established that this  
18 statement is untrue and, therefore, they're changing direction on  
19 claim construction and trying to say that mere use is sufficient.

20 So with that said, I would like to turn briefly to the  
21 intrinsic evidence. If we could have slide 14, please.

22 Okay. Our expert explained this in his declaration. Of  
23 course, we laid it out in our papers why this is the correct  
24 construction that you select for use of the channels.

1           The specification talks about Figure 6, the embodiment  
2 we looked at earlier, a subscriber unit, which is described in  
3 column 4 of the present invention, and then similar language is  
4 shown in column 10 and quoted here.

5           This subscriber unit invention -- this subscriber unit of  
6 the present invention includes something called a bandwidth  
7 management function, block 134 in Figure 6. It is responsible for  
8 allocating, which is we agree is selecting, the radio channels as  
9 required. So it's the subscriber unit that selects the channels for  
10 use in the subscriber unit of the present invention.

11          Slide 15, please. And here are the specific descriptions  
12 in the specification that we think are most useful in understanding  
13 this. In column 4 it says, Figure 6 is a block diagram, a  
14 high-level block diagram, so not all the details, of a subscriber  
15 unit of the present invention and the bandwidth management is  
16 responsible for allocating and deallocating the selecting and not  
17 selecting for use the radio channels as required.

18          And an important point is that in this description of the  
19 preferred embodiment, which extends from -- you know, through  
20 column 9 and across column 10, the wireless bandwidth is  
21 allocated only when there is actual data present. The subscriber  
22 unit knows when it has data to send. And instead having to  
23 request channels from the base station and receive an allocation  
24 in response, it can simply select and use the channels all in one  
25 step, and that's what the patent is describing here.

1           The next slide, please. And this is simply a picture of  
2   Figure 4 and these same citations just showing the bandwidth  
3   management function, block 134.

4           And slide 17, our expert, Dr. Stark, explained this  
5   passage about bandwidth that is channels being allocated or  
6   selected only when there's actual data present and he says, well,  
7   this is because only the subscriber unit knows when it has data to  
8   transmit, and that's why reading this passage in the context of the  
9   patent the person would understand that the subscriber unit must  
10   select the radio or physical channels as needed.

11           And could we return to the previous slide?

12           Now, Your Honor, you had a couple of questions about  
13   Figure 6. I would like to respond to those with respect to the  
14   spoofing function that counsel was talking about.

15           JUDGE QUINN: Yeah, before you go there, when you  
16   were talking about the subscriber knowing when it has data to  
17   transmit and then it itself making the determination that it needs  
18   to select a channel to start transmitting, that is occurring, though,  
19   after it has obtained from the system some information as to what  
20   channels are actually there for the subscriber to communicate,  
21   too.

22           MS. HOLLOWAY: Yes. The base station generally  
23   makes channels available and that's how it worked in the prior art.  
24   In the prior art, the base station would receive a request, I need

1 channels now, and would then assign or allocate those channels  
2 and they would then be used.

3 And I would like to point out this use was not optional,  
4 it was required, because otherwise you would be wasting  
5 bandwidth by letting a subscriber unit hold onto channels and not  
6 use them. So that's how it worked in the prior art. But in the  
7 patent, the channels are selected by the subscriber unit.

8 Well, clearly they have to be made available in some  
9 way first, and that's -- I mean, that's how modern phones work is  
10 the subscriber unit makes a pool of channels generally available  
11 to the subscriber units and then the subscriber units have the  
12 power to select as needed, and these channels are available to all  
13 the subscriber units. The bandwidth is available to all the  
14 subscriber units and that's how this works.

15 Because obviously the base station has to have some  
16 control over what is used. It has limited bandwidth that's  
17 assigned to it and that -- I mean, that it's allowed to use, you  
18 know, according to the FCC. So that's how this system works.

19 JUDGE QUINN: Well, I mean, I'm sorry, but maybe  
20 that's oversimplifying it a little bit. Because if you have the same  
21 group of channels available for your entire fleet of subscribers,  
22 you're doing some preselection for the subscriber units or all the  
23 subscriber units are trying to latch onto whatever channel they  
24 want. There has to be some algorithm and none of that is  
25 disclosed in this patent.

1 MS. HOLLOWAY: Well, the preferred embodiment  
2 here is CDMA. I believe this would only work with CDMA.  
3 And the CDMA, you're right, each phone will have its own codes,  
4 the scrambling code and the channelization code, and so that  
5 distinguishes so they're not literally using the same channels.  
6 What they're using is the same resources, the same bandwidth.

7 So we're turning to Figure 6. I wanted to briefly talk  
8 about this issue of spoofing. You were asking about how the  
9 spoofing would work since these switches go back and forth and  
10 there's no connection to the device.

11 Well, this is only a high-level block diagram and what  
12 has to happen is if the bits are going to fed back from the CDMA  
13 protocol converter while the device is using the WLAN.  
14 Obviously there has to be some separate connection for that  
15 feedback and that's not discussed here, because the point of this is  
16 what is the data path, not the details of how the logical connection  
17 is -- how the spoofing is done.

18 Now, counsel talked about in column 4 of the patent.  
19 Could we go to that?

20 And this is actually a different embodiment of the  
21 logical connection, what's shown in column 4.

22 JUDGE QUINN: Excuse me, counselor, what slide are  
23 you pointing to?

1 MS. HOLLOWAY: This slide at the moment is slide  
2 16, I'm sorry. It's the one that shows Figure 6, so that was why I  
3 was talking about it, but we're going to go to the patent here.

4 Okay. So this is an excerpt from column 4 of the patent  
5 and it talks about something quite different from spoofing  
6 actually. This talks about a network layer logical connection,  
7 which is a connection between two layers in a protocol stack  
8 that's up above the physical layer.

9 So the base station and the subscriber unit each have a  
10 protocol stack or, rather the network has a protocol stack and  
11 there is a connection that is logical, which is basically shared  
12 information that describes the communication path. So that's  
13 what this passage in column 4 is talking about and this is -- let me  
14 take a look at the patent and get the exact numbers.

15 This is column 4, starting at line 5 and going through  
16 line 28.

17 So you see that the -- first of all, the communication  
18 path is provided by establishing a logical connection using a  
19 higher-layer protocol, such as a network layer protocol, from a  
20 subscriber unit to an intended peer node, such as another  
21 computer, and it's made through a wireless channel, which  
22 provides a physical layer connection.

23 So this is something you asked before, can you have a  
24 logical connection without a physical connection? Well, you can  
25 have a logical connection without a physical connection. But

1 when you establish an end-to-end connection that includes  
2 physical channels, you will have a logical connection as well.

3 But what the claim talks about is the physical channels  
4 being absent and the logical connection being maintained, and  
5 that's really this embodiment discussed in column 4 that's being  
6 talked about. The spoofing --

7 JUDGE BUNTING: Can you distinguish between a  
8 logical channel and a physical channel?

9 MS. HOLLOWAY: Sure. A physical channel or a  
10 physical connection is one over which data can actually travel.  
11 So the radio channels would be physical channels. Information  
12 actually travels over them.

13 A logical channel is not a physical channel. It is simply  
14 shared information about the communication path so that when a  
15 physical channel is to be used again, the connection can be  
16 re-established more quickly and that's the difference.

17 So a logical connection you can't carry data along it.  
18 It's in a higher layer in a protocol stack. It's above the physical  
19 layer.

20 JUDGE BUNTING: Okay. So -- and I may be jumping  
21 ahead, so like a PDP context, that's a higher level?

22 MS. HOLLOWAY: That's correct. It's stored in the  
23 protocol stack and I believe the session layer.

24 Okay. So -- and counsel referred to this as spoofing,  
25 but this is not described as spoofing. There's a description just

1 below this passage which talks about spoofing, but it's referring to  
2 stripping off the protocols and repackaging the data and that's  
3 actually described in column 7. It's not talking about this being  
4 spoofing.

5 Okay. So let's see, could we have --

6 JUDGE QUINN: I'm sorry, I just thought of something.  
7 I mean, whether it's spoofing or stripping or repackaging or  
8 whatnot, I mean, the question still remains that if you're not  
9 connected to the transmitting antenna, how exactly is it that the  
10 cellular network believes that you still have a connection?

11 MS. HOLLOWAY: Well, I think that would have to be  
12 the kind of logical connection we've talked about in column 4.  
13 Because what happens is to maintain this logical connection, both  
14 the subscriber unit and the network save this information about  
15 the communication path.

16 The way it works is when the two devices -- when the  
17 network and the cell phone are first starting to communicate, they  
18 negotiate a number of parameters and those parameters relate to  
19 different protocol layers within the protocol stack. And if that  
20 information is saved, it doesn't need to be renegotiated.

21 If you look here at column 4, the second paragraph up  
22 on the screen, it says this, meaning keeping a logical connection  
23 while releasing the physical channels. This has two  
24 consequences.



1           First, it frees wireless channel bandwidth for use by  
2 other subscriber units without the overhead associated with  
3 having to set up an end-to-end connection each time that data  
4 needs to be transferred. So because you have saved this  
5 information, you have this logical connection at both ends. That's  
6 why it's called a connection is because it's at both ends, the  
7 network and the cell phone.

8           You can avoid a lot of the negotiation that's involved in  
9 initially setting up the connection. So that's what this is  
10 describing.

11           JUDGE QUINN: But then what that means is that  
12 anytime that a cell phone is registered with a particular cell site,  
13 then it has a logical connection because then all it has to do is to  
14 request to start using a channel and it's got immediate access to  
15 that cell site.

16           MS. HOLLOWAY: Well, I think there's a negotiation  
17 process that goes on during cell phone registration, but I'm not  
18 particularly familiar with that. But, again, we're talking about --

19           JUDGE QUINN: No, I'm talking about after  
20 registration. So I've registered into the site and I may use my  
21 phone to do the data part, which may or may not require that  
22 connection, maybe using the WiFi. But if I want to start using a  
23 cellular site at that point, it doesn't need to be registered. It keeps  
24 that information. So if that is the case compared to what you just  
25 said, then that would be a logical connection.

1 MS. HOLLOWAY: I don't think that's really quite the  
2 way it works, because each time the phone wants to communicate  
3 it does need to request channels and that request in the older  
4 phones included both the logical connection and the physical  
5 connection. It really did have to start over there.

6 If you look at the cellular standards at the draft GPRS  
7 documents, they don't talk about maintaining PDP context while  
8 they're using the WLAN. They don't talk about maintaining PDP  
9 context with the physical channels being absent. They simply  
10 wait a short period of time and then tear down the PDP context so  
11 they don't preserve that information. They would have to start  
12 over.

13 At some point, which was some years after this patent  
14 was filed, people started realizing that it would be a good idea to  
15 save this information and, therefore, be able to speed up the  
16 connection with the cellular network, but that information was  
17 not saved at the time of the patent.

18 JUDGE QUINN: But it seems logical, though, that if  
19 Jawanda discloses expressly that there is an option to maintain  
20 that connection and that would be a logical connection, that it is  
21 itself executing a registration, a preregistration, and maintaining  
22 that information in order to maintain that connection.

23 MS. HOLLOWAY: Well, let's jump ahead to Jawanda.  
24 Could we go to slide 25? Or 29, excuse me.

1           Okay. First of all, Jawanda doesn't say anything about  
2 physical channels and does not distinguish between physical  
3 channels and logical channels because this concept really was  
4 not, you know, out there in the industry yet. The cellular  
5 standards didn't have that at the time. They simply would  
6 connect and disconnect and they did not separate a logical  
7 connection from a physical connection and maintain logical  
8 connections. That just wasn't being done. So there's no --  
9 nothing in Jawanda about either physical channels or logical  
10 channels.

11           Slide 30. Okay. So what they're relying on, what  
12 Petitioner is relying on is the mention of GPRS because Jawanda  
13 really doesn't say anything about this.

14           So let's turn to slide 31. Oh, no, we don't want --

15           JUDGE QUINN: So, I'm sorry, so let me ask you then,  
16 because you say that it doesn't say anything about physical  
17 connection, but what does it mean when Jawanda says, maintain  
18 WWAN connection?

19           MS. HOLLOWAY: It means maintain the entire  
20 connection.

21           Could we skip ahead to the slide that shows -- oh, I see,  
22 it is slide 78, I'm sorry. This is the physical channel section,  
23 which we don't need right now. Really no dispute that Jawanda  
24 doesn't disclose selection of physical channels.

1           Okay. Slide 79, 80. Okay. Here we go. So this is the  
2 figure you're talking about, Your Honor. What you have to focus  
3 on, and you were getting at it when you spoke with counsel for  
4 Petitioner, but in block 122 you have this handoff from the  
5 cellular to the WLAN while optionally maintaining the WWAN  
6 connection.

7           And what that means is actually keeping the entire  
8 connection, the logical and the physical connections together.  
9 They're not being separated and there's no notion of separating  
10 them, the option to maintain it and continue to use it, and you can  
11 see that from -- for one thing, it's simply what maintain means.  
12 Maintain means keep. It doesn't mean keep part of.

13           But also if you look at block 130, it says, establish  
14 wireless connection with WWAN by the mobile phone. So if you  
15 haven't maintained it, you must re-establish it. And then it says,  
16 if data connection is not already active. So if it is maintained in  
17 block 122, then it will be already active in block 130, and this is  
18 shown here in slide 88.

19           As we explained in our response, WWAN connection  
20 will only be active in block 130 if it was maintained in block 122.

21           And if we could go --

22           JUDGE QUINN: I'm sorry, let me stop you because I  
23 think you missed my question. I asked you, what does it mean to  
24 have a WWAN connection in Jawanda and you just said that it  
25 was both, logical and physical, right?

1 MS. HOLLOWAY: Correct, yes.

2 JUDGE QUINN: Now, the proposed construction for  
3 this phrase is to maintain a logical connection, right?

4 MS. HOLLOWAY: Yes, Your Honor, but it is in the  
5 absence of physical channels, that is when the physical channels  
6 are not being used. So you have to look at the entire phrase. It's  
7 not just that you have a logical connection, but that you do not  
8 have the physical connection in use. That is the entire phrase.

9 JUDGE QUINN: And you're saying that the same  
10 physical channel that is not available anymore, you still have a  
11 logical connection. I mean, I'm not understanding. Your  
12 distinction here is based on the fact that you could potentially  
13 have both a cellular connection and a wireless or WiFi connection  
14 both at the same time with Jawanda.

15 MS. HOLLOWAY: Yes, and what --

16 JUDGE QUINN: You have that option.

17 MS. HOLLOWAY: Right. That is what you -- well,  
18 that is what it is saying. When it's talking about optional  
19 maintaining, it's talking about maintaining the entire end-to-end  
20 connection, including the logical connection and the physical  
21 connection, and that's clear because it says that the connection  
22 would be already active.

23 And if we look at slide 81, please. I'm looking for Dr.  
24 McLaughlin's testimony. Okay. Here we go. So our expert  
25 explained and their litigation expert agreed that, first of all, if that

1 box is already active in box 130, if the cellular connection is  
2 already active in box 130, that's because it was maintained and,  
3 therefore, remained active in box 122.

4 So he agreed to that and he also said if the cellular  
5 connection is maintained, it is active. Okay. So the one in box  
6 122 that is maintained, if it is maintained, that it is active. And  
7 active means exactly what you would expect.

8 If we look at slide 82, this same expert admitted that an  
9 active connection is a connection that's being used. So this is the  
10 opposite of what the claim requires under the agreed-upon  
11 construction, a logical connection with the cellular wireless  
12 network when none of the assigned physical channels are in use.  
13 So you have to have a logical connection, but you're not using the  
14 physical connection.

15 And what Jawanda is teaching is the opposite, an active  
16 connection meaning a connection that is being used.

17 JUDGE BUNTING: Excuse me, so you're saying an  
18 active connection is one that involves a physical channel.

19 MS. HOLLOWAY: Correct. The connection is  
20 actually being used and, therefore, you have to have physical  
21 channels, otherwise you could not send data.

22 Okay. So why don't we -- if we could move briefly -- I  
23 just want to make sure I cover this topic -- to slide 54, unless  
24 Your Honors have additional questions about this point.

1           JUDGE QUINN: I have a brief question here. The  
2 limitation that says the processor configured to maintain a  
3 communication session, it would maintain in the absence of the  
4 plurality of assigned physical channels: are you taking the  
5 position that there cannot be any assigned -- any physical  
6 channels available for the subscriber station to use in this cellular  
7 network?

8           MS. HOLLOWAY: No, Your Honor, and I'll just say  
9 this is an agreed-upon construction. So there's three points to it.  
10 You have a communication session that's maintained. It's with  
11 the cellular wireless network and it's in the absence of assigned  
12 physical channels, and the assigned physical channels are those  
13 mentioned earlier in the claim, which are channels that the  
14 subscriber unit has selected to use.

15           So those basically will be channels that you use to send  
16 data. So it says, hey, I have data, I need some channels, I shall  
17 use these, and then it uses them. And then later say the wire LAN  
18 comes along and it says, oh, I'd rather use the wire LAN, so it will  
19 stop using the cellular channels, it will keep a logical connection  
20 so that it can reconnect more quickly and it will use the WLAN.

21           And so when it stops using the WLAN, the presence of  
22 a logical connection allows to more quickly reselect physical  
23 channels and use those to communicate with the cellular wireless  
24 network. So that's really how this works.

1           And with respect to the -- I lost my train of thought  
2   there, I'm sorry.

3           JUDGE QUINN: So you're saying -- I mean, you're  
4   parsing this out, now you're breaking out the physical channel but  
5   maintaining the logical connection.

6           MS. HOLLOWAY: Yes.

7           JUDGE QUINN: And so what you're saying is you  
8   could still have some channels available. You're just not directly  
9   using them for transmitting data at that time.

10          MS. HOLLOWAY: You have reminded me, Your  
11   Honor, thank you of where I was going. So, yes, first of all, the  
12   channels are still available. The cellular channels are out there  
13   and could be selected by the subscriber unit.

14          Furthermore, there are going to be other channels, such  
15   as control channels, that will remain in use because the channels  
16   we're talking about is when the subscriber unit is sending data in  
17   each data channel and it selects those, but obviously, you know,  
18   the control channel that provides information from the base  
19   station, all those sorts of channels, there's going to be other  
20   control channels, those will remain in use.

21          This really has to do with just which network you use to  
22   send data and the cellular channels that you would use to send  
23   data. That's really the point here. So it's those channels that are  
24   not in use when the logical connection is maintained and the  
25   WLAN is being used, and this is because --



1 JUDGE QUINN: So if the mobile device is still  
2 receiving communication from the cellular system saying, you  
3 know, this is your network and should you want to use me, these  
4 are the channels that I have. That's -- as long as you're not using  
5 any of those channels to send data, you're still maintaining,  
6 according to your claim, a communication session with the  
7 cellular network.

8 MS. HOLLOWAY: Well, the communication session  
9 does require this stored information at both ends about the  
10 communication path. You don't have a communication session or  
11 a logical connection as described in column 4 if all you do is  
12 receive control information from the base station. That's not  
13 sufficient.

14 What you have specifically is you've negotiated a path  
15 once between the cell phone and the base station. Having done  
16 that, you save parameters that describe the communications path  
17 within the protocol stacks of both the network and the cell phone.  
18 And then when you stop using the cellular network, you save that  
19 information. And then when you're going to use the network  
20 again, you don't have to renegotiate those parameters.

21 So these are things like quality of service, that sort of  
22 thing. They're specifically negotiated between the network and  
23 the subscriber unit for communication purposes.

24 JUDGE QUINN: Now, I understand now, but you're  
25 making a distinction that it will need a logical connection if

1 somehow the PDP stack doesn't have that information or it's not  
2 stored anywhere.

3 MS. HOLLOWAY: If it does not stay stored, yes, that's  
4 correct.

5 JUDGE QUINN: For how long does it have to stay  
6 stored in order for it to be a logical connection?

7 MS. HOLLOWAY: Well, the claim says that it's while  
8 you're using the WLAN, so that's -- the purpose of the invention  
9 is to allow you to reconnect more quickly, so it would be the  
10 entire time. It can't be just, you know, a matter of seconds or  
11 something.

12 JUDGE QUINN: Unless it only takes a matter of  
13 seconds to transmit data through the LAN, right?

14 MS. HOLLOWAY: Well, because if you were using  
15 the WLAN and you were going to later switch back to the cell,  
16 you'd want to have the logical connection information saved.  
17 Otherwise, when you lose the WLAN, you walk out of range,  
18 maybe you've been using the WLAN for say half an hour and  
19 then you walk out of range of the WLAN and now you have to  
20 return to cellular, you need to have saved the logical connection  
21 information in order to reconnect quickly.

22 JUDGE QUINN: Do you describe these time periods in  
23 your patent?

24 MS. HOLLOWAY: No. It's just the language of while.  
25 And the purpose of it being that you can reconnect more quickly

1 whatever the circumstances when you need to reconnect to the  
2 cellular network.

3 JUDGE QUINN: Right. So reading the language of  
4 your claim, it says, while the transceiver communicates packet  
5 data with the local area network --

6 MS. HOLLOWAY: Right, and that could be --

7 JUDGE QUINN: Again, these are data packets, so, I  
8 mean, that could be milliseconds.

9 MS. HOLLOWAY: But if you have moved from --  
10 what happens in the patent is you connect to the WLAN when  
11 you come into its range and so you could stay there for as long as  
12 half an hour or something or an hour. You could stay there for  
13 hours if you're in your office and you're connected to the WLAN,  
14 but you still want to be able when you leave the office or your  
15 home and are out of range of the WLAN, you still want to be able  
16 to quickly reconnect to the cellular network.

17 JUDGE QUINN: But your patent -- well, your claim  
18 doesn't say any of that. Your claim just says while I'm  
19 transmitting data packets through the LAN I maintain the logical  
20 connection. It doesn't say for how long. It doesn't say to  
21 maintain some kind of geographical correspondence with the  
22 cellular network or until I'm done with all my transmissions. It  
23 could be just one transmission, right?

24 MS. HOLLOWAY: It could, but the purpose of the  
25 invention is to allow more rapid reconnection and that's explained

1 in column 4 of the patent. And the patent also describes I believe  
2 at the bottom of column 2 and the top of column 3 this idea of  
3 you might go to your office or your home, be connected to the  
4 WLAN for hours and then leave and use the cellular. So the  
5 patent is contemplating both that you will use WLAN for a long  
6 time and that the benefit of saving the logical connection is to  
7 reconnect more quickly.

8 And you don't get that benefit if you only use the  
9 WLAN for a few seconds and there's no scenario in which you  
10 would be likely to be using a WLAN for just a few seconds. I  
11 mean, if you're connected to WLAN, you're connected whether  
12 you're using it or not.

13 JUDGE QUINN: Well, if you can connect for a few  
14 seconds, you can devise a system that can connect for more than  
15 that. The question is that your claims are open-ended when it  
16 comes to that and you're trying to bring in some of the intended  
17 use or the benefits of the specification that are described and I'm  
18 trying to focus on the language itself under the broadest  
19 reasonable interpretation.

20 MS. HOLLOWAY: The language that I would point to,  
21 then, is the while language, Your Honor. I think given the  
22 purpose, it's unreasonable to interpret that to cover just a matter  
23 of seconds, because you derive no benefit whatsoever from doing  
24 it.

1           If we could go to slide 55, please. Okay. What I'd like  
2 to point out here is that regardless of claim construction and  
3 regardless of logical connection, Claim 8 simply is not disclosed  
4 by the combination of Jawanda with GPRS, and this is because  
5 for Claim 1 they relied -- Petitioner relied on GPRS as being the  
6 cellular wireless network. They point to that for the assigned  
7 physical channels and they point to GPRS for the logical  
8 connection.

9           The cellular wireless network in Claim 8 is necessarily  
10 the same cellular wireless network in Claim 1 and this cellular  
11 wireless network in Claim 8 has to be a code division multiple  
12 access network, but there's no dispute that GPRS is time division  
13 multiple access. So this is a completely different type of network  
14 and it uses different modulation techniques and you can't just  
15 point to a TDMA network and say this is a CDMA network.

16           So slide 56. So what they point to, then, in Jawanda is  
17 that Jawanda mentions CDMA, which is true. It does mention  
18 CDMA. But if you rely on Jawanda's mention of CDMA for  
19 Claim 8, then the cellular wireless network in Claim 8 is no  
20 longer the same cellular wireless network in Claim 1. And since  
21 Claim 8 depends on Claim 1, it has to be. They can't point to two  
22 different networks for the same purpose.

23           Okay. So I'd like to talk now about the issue of  
24 motivation to combine.

1           Could we go to slide 125? Okay. What Jawanda  
2 teaches and our expert explained this in his declaration is a person  
3 of ordinary skill in the art looking at this passage from Jawanda,  
4 column 3, lines 6 through 9, that mentions GPRS would  
5 understand this reference to any current or available future  
6 wireless data protocol as being a reference to an actual standard  
7 as opposed to a draft. That person would understand that you if  
8 want to build devices that are interoperable, then you would have  
9 to actually rely on a actual final approved standard, not on a draft.

10           Slide 126. And Petitioner's litigation expert agreed. He  
11 says, Jawanda describes conforming to a standard. A standard is  
12 a standard, not a draft standard but an actual standard.

13           Slide 127. And actually their own expert said the same  
14 thing in his declaration. Dr. Bims said, in order to implement the  
15 GPRS protocol suggested by Jawanda, a person of ordinary skill  
16 in the art would use the GPRS standards available at the time of  
17 the Jawanda patent.

18           Slide 128. Okay. And Defendants -- I mean,  
19 Petitioners rely on a couple of different documents that are  
20 specifically marked draft. They're marked draft, so they're clearly  
21 not part of a final approved standard. The document they rely on  
22 for PDP context was not part of Release 97 and it's marked draft.

23           It was revised I believe 10 times before it became part  
24 of the final standard and that was I think a couple of years later.

1 I'm not certain about the time frame, but it wasn't close to the  
2 time of the invention.

3 Slide 129. Yes, specifically at least 10 revisions of this  
4 document, GSM 3.60 Version 6.1.1, and I'd like to point out that  
5 Dr. Stark discussed it in his declaration, but we didn't go into it in  
6 our slides, but actually all 10 of the documents they rely on are --  
7 could we back up to that slide? That's fine. 130.

8 Two of them are specifically -- 130. Oh, 108, I'm sorry.  
9 Two of them are specifically marked draft. This one and I think  
10 4.64 perhaps, I'm not certain, but two of them are marked draft,  
11 but the other eight as Dr. Stark explained, none of them are part  
12 of Release 97. None of them are actually final.

13 The standards process requires repeated drafts, repeated  
14 approvals by the group before the document is ultimately issued  
15 as a standard and so they're relying on documents which were not  
16 part of the standard. And, again, as Dr. Stark explained, what  
17 Jawanda is teaching is use a standard cellular connection.

18 Counsel for Petitioner said something interesting, which  
19 I agree with, during his presentation which he said Jawanda  
20 doesn't teach anything special about a cellular network. Jawanda  
21 teaches using the standard features that were available at the time.

22 Other than the mention that we've seen of actual -- of  
23 wireless data protocols -- I'm referring to GPRS and CDMA --  
24 there is no discussion whatsoever of how the cellular connection  
25 in Jawanda would work. There's no description of anything

1 special. There's no description of anything like a logical  
2 connection or a physical connection, nothing about the network  
3 layer features, such as PDP context.

4           It simply says use a standard, use a standard, that's  
5 what's going to work because his invention is not focused on  
6 cellular features, but the invention of the '244 patent is, in fact,  
7 focused on cellular features, maintaining this logical connection  
8 in an absence of physical channels while using the WLAN for a  
9 faster reconnection and allowing the subscriber unit rather than  
10 the base station to select channels when it's time to send data.

11           So none of this is disclosed in Jawanda and all Jawanda  
12 discloses is using a standard cellular network and the standard  
13 cellular networks did not disclose either of these features. They  
14 showed routine selection of channels by the base station when  
15 data is to be sent and they showed that when the physical  
16 connection is torn down, the logical connection is torn down.  
17 That's how cellular standards worked at the time, and that's why  
18 they're relying on drafts because they're hoping to find some  
19 features that are not actually in a standard.

20           Could we go to slide 109?

21           JUDGE QUINN: I'm sorry, I have a question for you.  
22 How exactly is it that the '244 patent changes the standard cellular  
23 communications?



1 MS. HOLLOWAY: Two features. They talk about the  
2 subscriber unit being responsible for selecting the channels and  
3 that was not --

4 JUDGE QUINN: According to your definition of  
5 selection, yes, I understand that.

6 MS. HOLLOWAY: Yes, and it talks about maintaining  
7 a logical connection in the absence of physical channels, and this  
8 is in column 4 and that's not discussed in the cellular standards  
9 either and it talks about --

10 JUDGE QUINN: And this is by this feature of the  
11 spoofing or the bandwidth management that is being done by the  
12 transceiver in the subscriber unit?

13 MS. HOLLOWAY: No. It's a network layer  
14 connection, column 4. The spoofing is described in Figure 6,  
15 which is this sort of feedback at the physical level. But what's  
16 described in column 4 is maintaining a connection of the network  
17 layer, and this network layer connection is maintained when the  
18 physical channels are released and that the patent explains allows  
19 for a more rapid reconnection.

20 JUDGE QUINN: The cellular standard itself is not  
21 changed. It's just how the subscriber unit is managing its  
22 communications with a standard cellular network.

23 MS. HOLLOWAY: What do you mean? I'm sorry, I  
24 don't understand the question, the cellular standard --

1 JUDGE QUINN: The cellular network is working  
2 exactly the same way as it did before you changed the subscriber  
3 unit to do certain things within the standard cellular network.

4 MS. HOLLOWAY: No, no, not at all, Your Honor.  
5 The '244 patent does not teach to use a standard. It is describing a  
6 different way of using the cellular network and it would  
7 necessitate absolutely a change to that standard and that standard  
8 -- that change to the standard came some years later in around  
9 2004. So it is describing features of a cell phone that did not exist  
10 in the current standards and those features had to be adopted and  
11 eventually were adopted in cellular standards.

12 JUDGE QUINN: Thank you.

13 MS. HOLLOWAY: Okay. So slide 113. Now, Dr.  
14 Bims in his deposition argued for the first time -- he didn't  
15 explain these drafts at all in this declaration and the fact that these  
16 documents, a draft is not addressed at all in the petition, but at his  
17 deposition Dr. Bims said, well, you would look to drafts because  
18 that will give you -- a developer would look to drafts because that  
19 will give you insight into, you know, future features that are  
20 going to eventually be in the standards and, therefore, it makes  
21 sense to look to drafts, even though Jawanda says look to  
22 standards.

23 But he admitted that he didn't participate in the ETSI  
24 standards development at that time. He didn't have any personal  
25 knowledge of how drafts were used by people that were within

1 ETSI and that the rules didn't say anything about vendors using  
2 drafts to design products. He admitted all that.

3 So slide 114.

4 JUDGE MEDLEY: And you have approximately five  
5 minutes left.

6 MS. HOLLOWAY: Yes, thank you, Your Honor.

7 So Dr. Stark explained that this is simply incorrect. A  
8 person of ordinary skill in the art would not look to drafts,  
9 because you have to rely on specifications that are final to build  
10 devices that are actually going to be interoperable. And,  
11 furthermore, the person implementing the draft standard, they  
12 would end up normally with a noncompliant product, but  
13 probably a product that wouldn't work.

14 So, A, Jawanda teaches looking to standards and, B,  
15 there's no motivation to look to draft standards if you are going to  
16 design a phone that's going to work. So that's why they're  
17 incorrect about this issue of relying on drafts.

18 Okay. Let's turn to slide 97. So with respect to  
19 Jawanda, Jawanda does mention GPRS. However, it mentions  
20 using GPRS for data connections. It doesn't talk about features  
21 that are at the network layer, such as PDP context and mobility  
22 management. So Jawanda is simply saying use this sort of data  
23 connection. It's not talking about network management type  
24 features.

1           Slide 98. Okay. Now, in their opening papers,  
2   Petitioner talked about -- Petitioner's expert talked about PDP  
3   context, but none of the features that he pointed to in his petition  
4   -- in his declaration and none of the features discussed in the  
5   petition say anything about PDP context being maintained in an  
6   absence of physical channels. This first excerpt that Dr. Bims  
7   relied on doesn't discuss PDP context at all.

8           Slide 100. The next excerpt doesn't say anything about  
9   physical channels. It mentions a PDP context and that you could  
10   activate or deactivate it, but it doesn't talk about what would  
11   happen to the physical channels. It certainly doesn't say that they  
12   could be released or not in use and this PDP context maintained.

13          The next slide. And slide 101, again, this excerpt that  
14   Dr. Bims relied on says nothing about the physical channels. So  
15   there's no discussion in Dr. Bims' declaration of how in GPRS a  
16   PDP context would be maintained when the physical channels are  
17   not in use. That simply isn't disclosed.

18          Slide -- could we turn to slide 88? Oh, I'm sorry, this  
19   isn't what I wanted.

20          Okay. Slide 116, please. Okay. Slide 117. Okay. So  
21   this is what Petitioners talk about in their reply and this was for  
22   the first time, and all they point to is that some unspecified timer  
23   will run for some period of time and the PDP context can  
24   maintain -- can retain -- remain in the active state.

1           This has nothing to do with what happens while the  
2 transceiver is being used. It's not even talking about switching to  
3 a WLAN. It's simply saying that there's some unspecified timer  
4 with some unspecified purpose that will expire eventually and  
5 this is not sufficient to show maintaining a PDP context. It just  
6 says it continues to exist for some period of time and that time  
7 could be a matter of seconds.

8           And if we could have slide 31. Okay. Finally, I don't  
9 believe there's any dispute about this now. There certainly was in  
10 the petition, but Petitioner has walked away from this contention.  
11 There's just no question in the prior art, including GPRS, the  
12 standard approach was used to select physical channels. The  
13 subscriber unit would make a request for channels. The base  
14 station would then select the channels and the subscriber unit  
15 would then use the channels selected by the base station in order  
16 to send data.

17           And I'd like to make the point -- could we jump to the  
18 slides about selecting for use? Yes. Slide 46 or 47. So one  
19 theory that Dr. Bims floated, although I don't know how  
20 adequately it was briefed, was that simply using or not using the  
21 channels is selecting for use.

22           Now, the point I want to make is in GPRS, regardless of  
23 whether selecting to use is selecting for use, in GPRS the  
24 subscriber unit has no choice but to use the channels that the base  
25 station selects and this is very clear from the standard.

1           Slide 48. The standard says, the channels are to be  
2   used. They're not simply available. They will be used.

3           Slide 49. So what GPRS describes -- and we went into  
4   this in a great deal of detail in our petition -- is three modes for  
5   allocating channels and in each mode the base station uses a  
6   message to tell the mobile station which channels to use. And  
7   once the mobile station detects that information -- and this mode  
8   is an assigned USF value it's called -- the mobile station shall  
9   transmit on the PDCH, which is the physical data channel.

10          So it's not optional as though channels are made  
11   available in the prior art and then the subscriber unit may use or  
12   not use them kind of depending, that's absolutely untrue. The  
13   subscriber unit is required to use them. The language shall is  
14   used throughout the description of this in the standards and, as  
15   their own expert agrees, shall describes a mandatory feature.

16          So it's not true that in the prior art the channels were  
17   made available by the base station and the subscriber unit would  
18   either use them or not. In response to the request, they would be  
19   selected, the subscriber unit would be informed that they've been  
20   selected and it would then have to use those channels, have to use  
21   those channels to send data.

22          JUDGE MEDLEY: Okay. Thank you. You're out of  
23   time.

24          MS. HOLLOWAY: Thank you, Your Honor.

1 JUDGE MEDLEY: Judges, do you have any other  
2 questions?

3 JUDGE QUINN: Not from me. Thank you.

4 JUDGE BUNTING: Not from me. Thank you.

5 MS. HOLLOWAY: Thank you, Your Honor.

6 JUDGE MEDLEY: Petitioner, you have 12 minutes.

7 MR. McMAHON: Thank you, Your Honors. I'm  
8 happy to answer questions, but I would spend most of my rebuttal  
9 time addressing the two points that Ms. Holloway identified as  
10 allegedly distinguishing the cellular features of the '244 patent  
11 from the prior art.

12 And those two, as I heard them, were first that the  
13 subscriber unit allegedly can select a subset and, second, that the  
14 subscriber unit can maintain a communication session while  
15 sending data over WiFi, and the evidence shows that neither one  
16 of those actually distinguishes the patent claims from the prior  
17 art.

18 So I'll start with the first one, the subset question, and to  
19 some degree I addressed this when I was up before. There's no  
20 new issue here. I talked about how the petition, the first paper we  
21 filed at pages 11 to 12 explained our position. Our position has  
22 remained the same throughout the reply and throughout the  
23 argument on that point.

24 And if we go to slide 24, we'll see here what Patent  
25 Owner here is doing is trying to take the word select out of

1 context and you see they resort here to extrinsic evidence and  
2 they're not even using extrinsic evidence to interpret the claim.  
3 They're using extrinsic evidence to interpret the construction of  
4 the claim.

5           So this is a construing the construction issue and taking  
6 it far afield from the original claim language, which is just a  
7 plurality of assigned physical channels. Going to selecting a  
8 subset is way beyond any broadest reasonable interpretation of  
9 the plain claim language.

10           Slide 27 shows here what the Patent Owner is doing is  
11 trying to pluck this word subset from the specification. There's a  
12 big difference here between the specification describing  
13 embodiments and the claims, which define the invention. The  
14 claims don't describe any of that. The claims don't use the word  
15 subset or any word that would suggest that you're supposed to  
16 invoke the word subset. They're just not there in the claims.

17           So specification is one thing, but there's no disclaimer in  
18 the specification to suggest that the claim should be limited.

19           Slide 28. Now, really what Patent Owner argues in its  
20 paper is that there should be a disclaimer, that somehow either the  
21 specification or what they've said in their papers in this  
22 proceeding should be used to narrow the claims and import this  
23 subset limitation. There's nothing in the specification.

24           They point to Figure 6 and some vague references to a  
25 present invention that describe all of Figure 6, but they're



1 cherry-picking this subset limitation and saying that one should  
2 somehow be imported. There's nothing in the specification that  
3 suggests that should be the case.

4           So then what you're left with here is the statements that  
5 they've made in the papers in this proceeding suggesting that  
6 they're now trying to take a step back and narrow the claims.  
7 Well, they can't do that. They had an opportunity to move to  
8 amend the claims. They could have done that if they felt that that  
9 was an important feature.

10           They didn't do that. They didn't follow the rules and  
11 you can't -- the law is clear, as shown here in slide 28, you can't  
12 apply same proceeding disavowal where in lieu of amending the  
13 claims, which is the correct procedure, the Patent Owner suggests  
14 somehow that they're just disclaiming a whole part of the claim  
15 scope.

16           That's not the way it works. That's improper. It's not  
17 the way the rules work and, frankly, that would leave us in an  
18 impossible position on intervening rights, even if they were  
19 allowed to do that. So we can't go down that path.

20           Now, slide 29 tells us what the specification does say  
21 about the embodiments and they included language here that  
22 many Patent Owners include to protect themselves from being  
23 limited to the specific embodiments of the invention and they said  
24 here -- they said that the disclosure of the embodiments is not  
25 designed in any way to change the scope of the claims. So there's

1 no reason -- that's just reaffirming that there's no specification  
2 disclaimer here.

3 So in light of all that, there's just no reason to import the  
4 word subset or import that concept into the claims. The broadest  
5 reasonable interpretation simply does not support that first  
6 distinguishing feature that Ms. Holloway identified between the  
7 patent --

8 JUDGE QUINN: Counsel.

9 MR. McMAHON: Yes, go ahead.

10 JUDGE QUINN: In light of all of the difficulties of the  
11 parties having one claim construction that apparently is agreed to  
12 but is being applied different, do we, as the panel deciding claim  
13 construction in this and following the broadest reasonable  
14 interpretation, disregard your proposal and come up with our  
15 own?

16 MR. McMAHON: Well, I think your mandate is to  
17 apply the broadest reasonable interpretation and we tried to  
18 capture that with the construction that we proposed. We think  
19 that reasonably applied that construction does capture it, but  
20 obviously I think you're free to disagree with that and choose  
21 different words. I think the important point is that we have to  
22 apply the broadest reasonable interpretation and I guess at base  
23 my argument would be broadest reasonable interpretation does  
24 not include subset, whatever words you choose to capture that  
25 interpretation.

1           JUDGE QUINN: Right. But if -- I mean, looking at  
2 just the plain and ordinary meaning of what's an assigned  
3 physical channel, that's not helpful obviously because that's why  
4 we have this dispute. So we're seeing a lot of arguing the  
5 specification of how the assignment gets made and how the  
6 selection from the allocation gets made, so a lot of this -- it's  
7 turning into details of the specification that are not really called  
8 for by the plain and ordinary meaning of assigned physical  
9 channels.

10           So looking at how you frame the arguments here,  
11 whether it's a subset or not a subset, maybe it's broader than that.

12           MR. McMAHON: Well, I think we would -- that's  
13 exactly our argument, Your Honor, is that the claim should be  
14 interpreted in the broadest reasonable way and we have tried to  
15 propose that and perhaps use of the word select wasn't the wisest  
16 approach. We did not intend any special subset meaning with  
17 that word and so I'm here to say that the broadest reasonable  
18 interpretation should apply and the language we're talking about  
19 is very simple, assigned physical channels.

20           We think our construction is a good one, but obviously  
21 if the panel goes a different direction in terms of applying BRI,  
22 that's your right, that's your mandate. It can't possibly include  
23 subset or any other detail from the specification. So that's the  
24 first point --

25           JUDGE BUNTING: Counselor.

1           MR. McMAHON: Go ahead, I'm sorry.

2           JUDGE BUNTING: Counselor, going back to the  
3 slides you'd shown, there was a reference to -- let me see, it was  
4 column 7, line 26, where they talk about a subset of available  
5 channels is selected.

6           MR. McMAHON: Yes, and that's an embodiment that's  
7 -- that's an embodiment that's described. So, in other words, if  
8 multiple -- a plurality of physical channels are made available to a  
9 subscriber unit, then one embodiment is that the subscriber unit  
10 could use fewer than all of those channels in a particular instance,  
11 but that is not a requirement of the claims.

12           The claims are broad enough to encompass that  
13 embodiment as well as the embodiment where the subscriber unit  
14 uses all of the channels or none of the channels. The point is that  
15 they're channels -- they're assigned physical channels that have  
16 been made available to the subscriber unit. They've been  
17 assigned to the subscriber unit. That's all the claim requires in its  
18 broadest reasonable interpretation. Nothing about subset there.

19           So a brief detour before I get to Ms. Holloway's second  
20 point and that is Claim 8, slide 65. One of Ms. Holloway's other  
21 points was that you can't possibly take GPRS and CDMA and put  
22 them together and that's not the right framework here.

23           The obviousness is not about combining two  
24 commercial systems and forcing them together. Obviousness is  
25 about what one of ordinary skill in the art can derive from what's

1 disclosed in the prior art, and what's disclosed here in Jawanda is,  
2 you know, the general system that points to other systems for  
3 implementation details.

4 GPRS is one of those and GPRS includes a TDMA air  
5 interface, but includes these specific network protocol features,  
6 including the PDP context, and there's nothing that would stop  
7 one of ordinary skill in the art from recognizing the value of that  
8 and combining it with a different air interface such as CDMA,  
9 and Dr. Stark acknowledged that those two concepts are perfectly  
10 compatible in his deposition.

11 So the idea that one is a CDMA and one is GPRS  
12 doesn't mean they can't be merged under an obviousness analysis  
13 and, you know, if you think about what the Supreme Court told  
14 us during -- in the KSR case -- we don't need to go to it, but slide  
15 45 captures the quote there that you can't use rigid rules and  
16 common sense to avoid what would otherwise be an obvious  
17 conclusion.

18 So now turning back to Ms. Holloway's second point  
19 about the alleged difference between the patent and the prior art  
20 of maintaining a communication session, that doesn't hold up  
21 either and there's a few reasons for that.

22 The first one is that as we talked about Jawanda, it  
23 specifically talks about maintaining the cellular connection while  
24 transmitting data over WiFi. So, first of all, there's nothing in the  
25 patent, the '244 patent, that talks about shared information. So

1 there's nothing in the claim, nothing -- not only is it not in the  
2 specification, it's not in the claims.

3 So the idea of shared information is really separate here.  
4 What we're looking for is a logical connection or communication  
5 session with the cellular wireless network and Jawanda clearly  
6 provides that in Figure 4, box 122.

7 Now, Ms. Holloway said, no, no, no, that's an active  
8 connection as distinguished from a logical connection somehow.  
9 Well, what we know about that is that at that point when you're  
10 optionally maintaining, all of the datagrams are going over the  
11 WiFi connection, not over the cellular connection.

12 So clearly the data is being used over the WiFi  
13 connection and the cellular connection is not being used to send  
14 data, yet that connection is maintained. That's all that the claim  
15 requires. But if you go into the implementation of GPRS, it's  
16 described in even more detail.

17 So if we go to slide 47 and just briefly the question of  
18 drafts, the drafts issue is a red herring here.

19 JUDGE QUINN: But, counsel, if I can ask you,  
20 because what I heard from Patent Owner's argument is that the  
21 reason this dual communication mode in Jawanda doesn't do the  
22 maintenance of the communication session is that in this option  
23 of maintaining this communication or connection rather with the  
24 WWAN is that that communication is ongoing while you also use  
25 the WiFi.

1           So they're both potentially could be used at any time to  
2   transmit data or information, whereas the claim requires that  
3   there's an absence of the physical channel from the cellular  
4   network, so --

5           MR. McMAHON: But that's not what Jawanda --

6           JUDGE QUINN: -- that --

7           MR. McMAHON: I'm sorry, I didn't mean to interrupt.  
8   Go ahead.

9           JUDGE QUINN: I'm sorry, the connection in Jawanda  
10   is still there available, is still being used. In fact, you can  
11   transmit -- you could potentially transmit to both at the same time  
12   for situations in which you don't know if it went through or not.

13          MR. McMAHON: But that's not what Jawanda tells us.  
14   What Jawanda tells us is that all of the datagrams are seamlessly  
15   transferred to be sent on the WiFi connection. So once you've  
16   done that, you're no longer sending datagrams on the cellular  
17   connection. The cellular connection is not being used to transmit  
18   data. That's precisely the circumstance where the claim requires  
19   maintaining a communication session and Jawanda tells you  
20   optionally you can maintain that connection of the cellular  
21   network. You're not using it to send data anymore.

22          JUDGE QUINN: Well, how is that an absence of the  
23   physical channel? The channel's not absent. You're just not  
24   using it.

1           MR. McMAHON: Well, so the parties have agreed on  
2 a construction here for this maintaining a communication session  
3 where we say that you're maintaining it when the channels are not  
4 in use, and that's exactly what Jawanda describes. The channels  
5 may be there, but they're not being used. They're freely allocable  
6 to other devices.

7           The -- I think my time may be up, Your Honor. The  
8 data is all being transmitted over the WiFi network at that point.  
9 So the cellular network is not being used.

10          JUDGE QUINN: And is that consistent with the '244  
11 patent itself?

12          MR. McMAHON: I'm sorry, I didn't -- could you  
13 repeat the question?

14          JUDGE QUINN: Is that consistent with the '244 patent  
15 itself?

16          MR. McMAHON: It's perfectly consistent, because the  
17 '244 patent says when you can use WiFi, take advantage of that  
18 higher speed, do that, but maintain a connection with the cellular  
19 network. And as Ms. Holloway said, the objective for that is that  
20 you can very quickly go back on the cellular network when you  
21 need to, when WiFi is no longer available. That's the same thing  
22 Jawanda says.

23          Jawanda says use the WiFi network when you can, but  
24 seamlessly hand off between the two and it describes that when  
25 you're using WiFi you can maintain the cellular connection.



1 JUDGE QUINN: Do you have any contention as to  
2 how long this transition between one connection to the other has  
3 to be?

4 MR. McMAHON: The claim doesn't say anything  
5 about that. I mean, there's certainly lots of possibilities you could  
6 discuss hypothetically, but we're talking about the claims and the  
7 claims don't address that limitation.

8 JUDGE QUINN: Thank you.

9 MR. McMAHON: Thank you.

10 JUDGE MEDLEY: Okay. Thank you.

11 Do you have any other questions, Judges?

12 JUDGE QUINN: I don't have any -- no other questions.

13 JUDGE BUNTING: No other questions.

14 JUDGE MEDLEY: Okay. We are adjourned. Thank  
15 you very much.

16 MR. McMAHON: Thank you, Your Honors.

17 (Concluded at 2:46 p.m.)