

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SILICON LABORATORIES, INC.
Petitioner

v.

CRESTA TECHNOLOGY CORPORATION
Patent Owner

CASE IPR2015-00626
Patent 7,265,792

TRANSCRIPT OF FEBRUARY 22, 2016 TELEPHONIC PROCEEDINGS

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Case No. IPR2015-00626
U.S. Patent 7,265,792

Dated: February 23, 2016

Respectfully submitted,

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

SILICON LABORATORIES, INC.

Petitioner

v.

CRESTA TECHNOLOGY CORPORATION

Patent Owner

CASE: IPR2015-00626

Patent No. 7,265,792

Title: Television Receiver for Digital and Analog
Television Signals

TELEPHONE HEARING

February 22, 2016

Before PHILLIP J. KAUFFMAN, GREGG I. ANDERSON, and
PATRICK M. BOUCHER, Administrative Patent Judges

Reported by: SARAH LUCIA BRANN, CSR #3887

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14 ALSO PRESENT:

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1 MONDAY, FEBRUARY 22, 2016 10:00 A.M.

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

3 JUDGE KAUFFMAN: Mr. Haber, the court reporter
4 is for patent owner?

5 MR. HABER: Yes, that's correct.

6 JUDGE KAUFFMAN: Okay. And you requested the
7 call today. I don't know if it's you or Mr. Fleming
8 speaking, but I would like for you to begin.

9 I will tell you that, in general, we are for a
10 complete record, but we are interested in hearing from
11 the parties what portions of the record you think are
12 beyond the scope.

13 MR. HABER: Certainly. And it will be
14 Mr. Fleming arguing.

15 JUDGE KAUFFMAN: Okay. Thank you, Mr. Haber.
16 Mr. Fleming?

17 MR. FLEMING: Yes, thank you, Your Honor.

18 Before we begin, I also want to point out that
19 Mihai Murgulescu is on the line as well for patent
20 owner.

21 JUDGE KAUFFMAN: Thank you, Mr. Fleming.
22 Welcome, Mr. Murgulescu.

23 MR. MURGULESCU: Thank you, Your Honor.

24 MR. FLEMING: To begin, as an intro, we
25 believe that the petitioner's reply in IPR2015-00615 and

1 IPR2015-00626 presents new arguments and supporting
2 evidence that exceeds the scope permitted by 37 CFR
3 42.23(b).

4 In addition, we also believe that petitioner's
5 reply in both IPR 615 and 626 improperly incorporate
6 attorney arguments only found in the Holberg reply
7 declaration and the Holberg supplemental reply
8 declaration, which is not permitted by Rule 37 CFR
9 42.6(a)(3). The issue is the same in both IPRs. I will
10 talk more in detail referencing 615.

11 For 615, ground two, pages 14 through 15 of
12 the reply, the petitioner for the very first time brings
13 forward a new reference, Balaban, US Patent Number
14 7,075,85 -- pardon me -- 7,075,585.

15 On pages 14 and 15 of the reply, petitioner
16 states that the Balaban patent presently teaches that
17 detecting a carrier signal includes detecting at least
18 one of a --

19 (Clarification requested by reporter.)

20 MR. FLEMING: Okay. Have you been able to
21 catch it all so far?

22 THE REPORTER: I think so.

23 MR. FLEMING: Okay. Can you hear me better
24 now?

25 THE REPORTER: Yes, I can. Thanks.

1 MR. FLEMING: Okay. Sorry.

2 Just to repeat, on pages 14 and 15 of the
3 reply petitioner states the Balaban patent expressly
4 teaches that detecting a carrier signal includes
5 detecting at least one of a picture carrier, a sound
6 carrier, and a synchronization signal.

7 Balaban is now relied on by the petitioner for
8 teaching the '585 patent claim when it detects the
9 carrier signal, as shown in claim 20. Balaban was not
10 submitted. Balaban was not included in the grounds on
11 which the Board reached its decision.

12 During the deposition of our expert,
13 Dr. Opris, the petitioner did present Balaban but didn't
14 properly serve it at that time, and no new argument was
15 presented during the deposition.

16 When asked about the reference, Dr. Opris
17 stated that he needed more time to study Balaban and, of
18 course, no time was given. That's on page 61 of the
19 deposition. Also, Dr. Opris disagreed that a
20 synchronization signal is a carrier signal, but was not
21 considering Balaban. He was going on what his
22 understanding of what one of ordinary skill in the art
23 would understand that to mean.

24 Silicon Labs has withheld its arguments in its
25 petition about this exhibit and these arguments until

1 the reply paper. This late presentation of Balaban and
2 the argument is an undue amount of prejudice for the
3 patent owner. By presenting late and disclosing its
4 relevance to obviousness of claims 15 and 20, our
5 expert, Dr. Opris, wasn't given an opportunity to
6 address the technical aspects of the argument.

7 The patent owner has had no opportunity to
8 respond to any of these allegations and contentions and
9 new arguments, and at this late stage has no way to do
10 so. And again, the same arguments were presented for
11 626, ground three, pages 10 through 11, of the reply
12 petition.

13 There's other issues as well with the reply.
14 In the reply at pages four through five, Silicon Labs
15 now presents new claim construction arguments for the
16 term "carrier signal" for the very first time.

17 Silicon Labs' construction of carrier signal
18 wasn't presented in the petition. It is not in response
19 to any claim construction position that was advanced by
20 the patent owner. In fact, Silicon Labs admits that the
21 patent owner does not offer a construction of the term.
22 You see that on page 4 and 5. The new arguments are not
23 advanced through any claim construction arguments that
24 the patent owner has advanced. And moreover, this late
25 claim construction amounts to prejudice to the patent

1 owner.

2 By not disclosing this argument to Silicon
3 Labs' claim construction of carrier signal and its
4 relevance to the obviousness of claims 15 and 20 until
5 the reply, again Dr. Opris was not given an opportunity
6 to address the technical aspects of the argument. The
7 patent owner again has no opportunity to respond to
8 these allegations of inventions and new arguments at
9 this late date.

10 There is also another problem. 37 CFR
11 42.104(b)(3) requires the petitioner to state within the
12 petition how the claim was constructed so as to prevent
13 such late construction arguments as we have here.

14 In addition to these new arguments, there is
15 also an improper incorporation of arguments in the
16 Holberg reply declaration. The reply states that both
17 the intrinsic and extrinsic evidence support
18 petitioner's reading of the term, and then cites to
19 paragraphs 33 through 34 of the Holberg reply
20 declaration.

21 These paragraphs span six pages in the Holberg
22 reply declaration, and these amount to nothing more than
23 attorney arguments.

24 For instance, paragraphs 33 through 36,
25 petitioner is making claim context arguments relying on

1 the claims of the patent. Paragraphs 37 through 38
2 argue that -- the specifications for this new claim
3 construction. And then paragraphs 37, 39 through 40,
4 petitioner argues the claim construction is supported by
5 extrinsic evidence. There are other arguments as well,
6 but I'm just giving those as examples. None of these
7 arguments are in the reply.

8 And then the same arguments also apply to 626.

9 And in addition, there's one more improper
10 incorporation of attorney arguments for the select
11 signal construction on pages 1 through 4 of the reply.
12 The reply states that the plain and ordinary meaning of
13 the phrase is based upon the patent owner's own
14 extrinsic evidence, and then they refer to paragraphs 14
15 through 32.

16 This amounts to incorporation of attorney
17 arguments only found in those paragraphs of 14 through
18 32 of the Holberg reply declaration. These paragraphs
19 span 11 pages of the Holberg reply declaration.

20 Again, just to give you an example, they also
21 have attorney argument in it. They make claim context
22 arguments in paragraphs 14 through 16. They make
23 attorney arguments in 17 through 19 of the claim
24 construction in light of the specification. They make
25 many more arguments. I just give those as examples.

1 Again, these arguments are not found in the
2 reply, and if these were included, they would almost
3 double the page count of the reply.

4 JUDGE KAUFFMAN: Thank you, Mr. Fleming. This
5 is Judge Kauffman.

6 And what remedy are you asking for,
7 specifically?

8 MR. FLEMING: We are asking to strike pages 1
9 through 4 of the reply and pages 14 through 15 of the
10 reply, and also striking the pertinent portions of the
11 Holberg reply declaration and supplemental reply.

12 JUDGE KAUFFMAN: So you would like
13 authorization -- this is Judge Kauffman again --
14 authorization to file a motion to make -- to strike
15 those portions?

16 MR. FLEMING: That's correct.

17 JUDGE KAUFFMAN: Okay. Mr. Fleming, why
18 wouldn't --

19 And, Mr. Ayers, I will hear from you.

20 But, Mr. Fleming, why wouldn't your interests
21 be served by telling the Board the accusations that you
22 have just laid out here so that we can consider that
23 when we make the final decision, knowing that we do
24 prohibit incorporation by reference and the petitioner's
25 reply does have to be within the scope of the patent

1 owner's response? How come that couldn't serve your
2 purposes? And I am interested in that because I like
3 the record to be as complete as possible.

4 MR. FLEMING: Are you suggesting that we would
5 have an opportunity to file a third reply?

6 JUDGE KAUFFMAN: Sort of. I am suggesting
7 that we would permit you to file a number of pages --
8 and we will have to talk about that. But say it's five
9 pages, and in those pages you outlay what you just said
10 here; you say it's beyond the scope for these reasons,
11 it's incorporating improperly by these reasons.

12 It would not entail any arguing on the merits.
13 So, for example, what you mentioned about 104(b)(3) I
14 would consider an argument on the merits.

15 It would simply be to say, "We think these
16 parts are beyond the scope and these parts improperly
17 incorporate," and then we would let petitioner have
18 their say, to say why they think that's not so, because
19 I am certain Mr. Ayers will say he thinks that's not so.

20 MR. FLEMING: But then there would be no
21 remedy, if we were correct.

22 JUDGE KAUFFMAN: Oh, no. The remedy would be
23 those -- and, in fact, the portions that you don't
24 identify, that the panel considers to be beyond the
25 scope, will not be considered in the final decision, and

1 improper incorporation won't be considered in the final
2 decision.

3 And I don't mind telling you, I think things
4 have to be explained in the petition. You can't just
5 have evidence in the file. It's got to be explained in
6 a paper -- right? -- either the petition or the
7 petitioner's reply. So if there's something in an
8 exhibit but not explained in a paper, it's not going to
9 be considered, even if you don't submit anything.

10 MR. FLEMING: I understand.

11 I do believe that that would provide a proper
12 remedy for the IPR. But it does then present the issue
13 of -- that this improper argument is then a part of the
14 record for appeal, which I feel would still prejudice
15 the patent owner.

16 JUDGE KAUFFMAN: Even if our decision doesn't
17 rely upon any of those portions that you have identified
18 as improperly incorporating or beyond the scope?

19 MR. FLEMING: I appreciate if you would do so,
20 and I understand that would be a proper way to handle
21 the decision on the IPR. But that still then holds out
22 that they could then argue those arguments as far as on
23 appeal.

24 JUDGE KAUFFMAN: I see. And we won't
25 necessarily agree with all the things that you identify.

1 So, okay.

2 Well, Mr. Ayers, I would like to hear what you
3 think of what patent owner is asking for. And please
4 comment both on authorization to file a motion to strike
5 and on the opportunity instead to file a paper that
6 identifies things that are beyond the scope and
7 improperly incorporated, where you get to file a
8 response to that.

9 MR. AYERS: Certainly, Your Honor.

10 While we vigorously disagree with the patent
11 owner that this evidence and argument is not proper
12 reply, because it responds directly to their allegation
13 that the art does not show that detecting a sync signal
14 is detecting a carrier signal, in the petition we had
15 argued that the prior art discloses detecting a sync
16 signal, in particular the Zenith reference, which is a
17 carrier signal.

18 And we had argued that the carrier signal
19 should be given its plain ordinary meaning to one of
20 ordinary skill in the art, didn't really believe that
21 that was going to be disputed.

22 In their patent owner opposition they took
23 issue and said that a sync signal is not a carrier
24 signal, and they made some argument around that. But
25 interestingly, they didn't propose a construction for a

1 carrier signal. They just argued that Zenith's
2 detecting a sync signal was not detecting a carrier
3 signal.

4 And in response to that, we came forward with
5 an IEEE dictionary that provided a definition for
6 carrier signal, and we pointed to the Balaban patent
7 which is of record in the file history in this case. In
8 fact, it was actually submitted by the patent owner and
9 appears on the face of the patent.

10 And in one of the claims of the Balaban patent
11 it says, you know, wherein detecting a carrier signal
12 includes, among other things, detecting a sync signal.
13 So it responds directly to the argument that the patent
14 owner made that this -- that detecting a sync signal is
15 not detecting a carrier signal. So we think it's
16 clearly a proper reply, the testimony in evidence.

17 As far as the, you know, incorporation by
18 reference and things of that nature, I mean, as the
19 Board knows from the last series of IPRs, there's
20 substantial overlap between these two patents. And, in
21 fact, the patent owner's arguments are virtually
22 verbatim across both patents where there's common
23 references.

24 And so, in an effort to sort of streamline
25 this case, you know, both from our perspective and the

1 work that goes into, you know, preparing a reply, as
2 well as to streamline the Board's consideration of these
3 issues, we submitted one main declaration in both cases
4 from Dr. Holberg that responds to the technical issues
5 that are common across both IPRs and then submitted a
6 supplemental declaration in the 626 that addressed those
7 issues that were unique to the 626 and the '762 patent,
8 and then tried to streamline the reply brief to --
9 rather than belabor these points. Particularly one of
10 the references is very dense, and they made numerous
11 technical arguments relating to that. And so we sort of
12 streamlined the presentation of those issues because
13 they had been so thoroughly vetted in the original -- in
14 the 615 case.

15 And, in fact, in the previous phase one we had
16 asked for kind of a common briefing, and the Board
17 essentially encouraged us to just address the issues
18 sort of in this way. So that's just to give you some
19 context for why we presented it the way we did.

20 So as a result, we don't think there's any
21 improper incorporation or anything of that nature. It
22 was just an effort to sort of streamline the
23 presentation.

24 JUDGE KAUFFMAN: And, Mr. Ayers, I realize you
25 haven't had a full say on the merits of what patent

1 owner is saying, but I'm really -- I find it very
2 difficult to solve on the phone. It's beyond -- we are
3 not going to do that today.

4 MR. AYERS: Sure.

5 JUDGE KAUFFMAN: So I really would like to
6 hear what you think of a motion to strike versus each
7 side -- patent owner saying, "Here is why it's beyond
8 the scope," and you saying why it's not.

9 MR. AYERS: Well, I mean, certainly, as
10 between those two, I would say just a letter brief,
11 essentially. They could make their points about it's
12 outside the scope. I think a motion to strike would
13 much accomplish the same thing but wouldn't have this,
14 you know, draconian consequence if it were stricken,
15 which I don't think it will.

16 But, you know, I don't think it's necessary to
17 do in this case, because I think the Board will see,
18 once it reads the patent owner response and our reply,
19 that it's well within that.

20 And as the Board -- as you point out, you can
21 consider it or not consider it, as you will.

22 But, you know, as long as we have an
23 opportunity to respond to the -- you know, the arguments
24 that they make, we don't have a, you know -- I don't --
25 I mean, I do oppose, but -- the filing that letter

1 brief, but as long as we are given an opportunity to
2 respond, I think it will be much to do [sic] about
3 nothing.

4 JUDGE KAUFFMAN: Okay. Thank you, Mr. Ayers.
5 This is Judge Kauffman again.

6 Mr. Fleming, it looks to me -- and tell me if
7 you disagree. It looks to me like panels have handled
8 this differently, some permitting authorization for a
9 motion to strike and others not. But I am unaware of
10 any motion to strike being granted for something beyond
11 the scope. Are you aware of anything along those lines?

12 MR. FLEMING: Yes, I am.

13 JUDGE KAUFFMAN: And could you give me a
14 citation for that?

15 MR. FLEMING: Sure.

16 JUDGE KAUFFMAN: Please.

17 MR. FLEMING: I believe, if you look at paper
18 39 in IPR2015-00372, and also in 374 and 378. And then
19 there's another one as well.

20 JUDGE KAUFFMAN: And that was IPR --

21 MR. FLEMING: That was the -- sorry?

22 JUDGE KAUFFMAN: That was IPR2015-00372?

23 MR. FLEMING: Correct.

24 JUDGE KAUFFMAN: 4 and 8 also? Okay.

25 MR. FLEMING: Right.

1 JUDGE KAUFFMAN: And the other citation,
2 please?

3 MR. FLEMING: And another citation is
4 CBM2015-00037, paper 21.

5 JUDGE KAUFFMAN: If we were going to authorize
6 a motion to strike, how many pages would you be
7 requesting? This sounds about like five pages to me.

8 MR. FLEMING: Five pages would be fine.

9 JUDGE KAUFFMAN: And if instead we were going
10 to authorize a motion to identify those portions of the
11 record, I think that probably also would take close to
12 five pages. That's agreeable?

13 MR. FLEMING: It would be the same.

14 JUDGE KAUFFMAN: That's agreeable,
15 Mr. Fleming? Okay.

16 And I think if we do a motion we will do the
17 standard motion, opposition, and response. But if we do
18 a paper, we will do the paper and then we will give the
19 same number of pages to petitioner, but there won't be
20 an additional response.

21 I'm going to talk to --

22 MR. FLEMING: Judge Kauffman?

23 JUDGE KAUFFMAN: Yes?

24 MR. FLEMING: Why wouldn't we have a chance to
25 respond, if we have an argument? I think we would need

1 the opportunity to respond, even though it's not a
2 motion.

3 JUDGE KAUFFMAN: I feel like what would be
4 happening is you are identifying the parts that are and
5 he is identifying the parts that aren't, and there is
6 not really a decision that's going to exclude or not
7 exclude. But I suppose you are right, in the sense that
8 we are going to consider or not consider based on that,
9 and we are still considering that action.

10 So I think maybe that's a fair point.

11 MR. AYERS: And, Your Honor -- this is Peter
12 Ayers. Since we are citing cases, I would just point
13 the Board to the TD Ameritrade versus Trading Technology,
14 CBM2014-131, where the Board denied such a request for a
15 motion to strike. And it does seem that the prevailing
16 view of the Board is to not permit these arguments to be
17 made in motions for -- motions to exclude.

18 JUDGE KAUFFMAN: All right.

19 And, Mr. Fleming, because you requested the
20 call, is there anything you would like to add, based on
21 what Mr. Ayers just said?

22 MR. FLEMING: I would like to disagree with
23 Mr. Ayers, respectfully, that these are facts,
24 specifically that I believe the ones that I cited are
25 very closely related to the same facts, and when

1 appropriate, the Board does rule on motions to strike,
2 is not prejudiced one way or the other.

3 JUDGE KAUFFMAN: All right. I am going to,
4 before I make a decision on the call, have a side call
5 with the rest of the panel.

6 But before I do that, I want to ask one other
7 question. And I know that this is out of the blue; you
8 are not expecting this, and so maybe you won't be able
9 to answer.

10 But it looks to me like the hearing on 592,
11 594, and I think 626 are on April 11th, and then 615 is
12 on the 12th. But I may have 26 and 15 reversed.

13 We are entertaining the possibility of the
14 parties attending the hearing in Denver rather than in
15 DC. And I wonder if that has any appeal to you,
16 Mr. Fleming.

17 MR. FLEMING: It's interesting you brought
18 that up. I hadn't had a chance to discuss this with
19 Peter, but I was wondering if we might be able to
20 consolidate those two hearings on one day, which would
21 be the 11th, I would be -- what I would propose.
22 Because we have another IPR for the same patent with
23 another party on the 12th as well, so --

24 JUDGE KAUFFMAN: You would like to have all
25 four on the 11th?

1 MR. FLEMING: No, I would like to have these
2 on the 11th and then keep the others as they are
3 scheduled, not change them, because they are scheduled
4 for the 12th. My memory, anyway.

5 Ben Haber, is that correct? I want to make
6 sure.

7 MR. HABER: From what I remember, I think the
8 Silicon Labs one is scheduled for the 12th, so it might
9 make --

10 MR. FLEMING: The Silicon Labs is the 11th and
11 the 12th, for sure.

12 MR. HABER: Yeah. So it might make the most
13 sense to put the MaxLinear ones on the 11th and then the
14 Silicon Labs ones on the 12th, so that we don't just
15 split the parties across multiple days.

16 MR. FLEMING: Oh, okay. So we would like to
17 have the Silicon Labs, then, on the 12th.

18 JUDGE KAUFFMAN: That's 594 and 592, I
19 think -- no, that's 626.

20 MR. FLEMING: Yeah, that's -- no, you are
21 right, 592, I believe, and 594.

22 MR. HABER: 592 and 594 are the MaxLinear
23 ones, which would be on the 11th, and the Silicon Labs,
24 615 and 626, which would then be on the 12th.

25 JUDGE KAUFFMAN: Okay. I think I understand

1 what you are asking. And it would be a single hearing
2 for the two, a combined hearing for the two.

3 MR. FLEMING: Right.

4 JUDGE KAUFFMAN: Each pair.

5 And what about Denver, Mr. Fleming?

6 And I am not pressuring you to do that. I am
7 asking if you are interested.

8 MR. FLEMING: I guess that would be probably
9 fine. I am the only one that would have to travel.

10 JUDGE KAUFFMAN: Okay. And, Mr. Ayers, both
11 questions. Do you like the idea of 592 and 594 on the
12 11th and 626 and 615 on the 12th?

13 And what about Denver?

14 MR. AYERS: I do like both those ideas.
15 Certainly our hearings, the 615 and 626, for the same
16 reasons that we structured the replies the way we did,
17 should be heard on the same day, because there are --
18 many of the issues are common across both, so it doesn't
19 make sense to split those across days, certainly.

20 And we are more than happy to come to Denver.
21 It's actually closer and easier to get to from Austin
22 than Washington, DC, so we would prefer Denver.

23 JUDGE KAUFFMAN: All right. Does the court
24 reporter have any questions to this point?

25 THE REPORTER: I don't at the moment. I have

1 a couple of spelling questions I can ask the parties
2 later.

3 JUDGE KAUFFMAN: Okay. I am also going to
4 have a side call with the panel, and you can remain on
5 the line and talk to the parties during that time if you
6 like.

7 THE REPORTER: Thank you.

8 JUDGE KAUFFMAN: And if the parties would
9 please hold, I think it will just take me a couple of
10 minutes to talk to the panel, and then I will be back on
11 the line. Thank you both.

12 (Pause in proceedings from 10:31 to 10:37.)

13 JUDGE KAUFFMAN: Hello. This is
14 Judge Kauffman. Are the parties still there?

15 MR. AYERS: Yes, Your Honor.

16 MR. FLEMING: We are still here.

17 JUDGE KAUFFMAN: Okay. Mr. Ayers, you spoke
18 first?

19 MR. AYERS: Yes, I did.

20 JUDGE KAUFFMAN: Okay, great. I just wanted
21 to make sure you were both there.

22 And the court reporter is still with us?

23 THE REPORTER: I am, yes.

24 JUDGE KAUFFMAN: Okay. Having discussed this
25 with the panel regarding the first issue about beyond

1 the scope and incorporation by reference, we are going
2 to debate that a little further and look at the
3 citations that you have given us, and then we will issue
4 our order in the next day or two so that you can go on
5 from there.

6 For the hearings, we think that that will
7 probably work, to do 592/594 on the 11th from Denver and
8 the other pair on the 12th from Denver.

9 But, of course, we have got another party we
10 need to check with, and I have got to make sure that
11 works with the hearing folks. So you will hear about
12 that as well fairly soon, so that you can make your
13 travel plans as you need.

14 Mr. Fleming, any questions?

15 MR. FLEMING: No questions, Your Honor. I
16 just want to -- I am glad to hear that what we are
17 talking about is all four of the IPRs will be in Denver.

18 JUDGE KAUFFMAN: Well, don't take that as a
19 solid yet, but that's what we are going to work for, and
20 I think most likely.

21 MR. FLEMING: If it should not work out that
22 way, maybe I would like to discuss whether -- I am still
23 willing to travel for these two to Denver. It's just
24 that, you know, maybe we could talk about whether the
25 preference is the afternoon versus the morning --

1 JUDGE KAUFFMAN: Do you want to tell me your
2 preference right now?

3 MR. FLEMING: -- because I have to travel.

4 So my understanding, we are moving this one to
5 April 12, both of them; correct?

6 JUDGE KAUFFMAN: The 626/615, yes.

7 MR. FLEMING: And so -- and then the -- so it
8 would be helpful if that was in the afternoon, just
9 so that -- you know, I don't know what my travel
10 arrangements are going to be, but so I make sure I get
11 there. I have to travel overnight.

12 JUDGE KAUFFMAN: Okay. For both days?

13 MR. FLEMING: It would be better if it was in
14 the morning.

15 MR. AYERS: Well, Your Honor, this is Peter
16 Ayers. We were discussing this off line. I think
17 Mr. Fleming believes that there is the possibility that
18 one set of hearings could be in Denver and one could be
19 in Washington, DC. I don't know that the Board is
20 proposing that. Are they, or is it an all-or-nothing
21 proposition?

22 JUDGE KAUFFMAN: It's not an all-or-nothing
23 proposition. It could be that -- you know, we have got
24 another party we want to check with. If they -- we
25 don't want to make somebody go to Denver unless both

1 parties are comfortable going to Denver.

2 MR. FLEMING: Well, let's just see what the
3 other parties have to say. If both parties are
4 willing to go -- if all parties are willing to go to
5 Denver, then it's really solved.

6 JUDGE KAUFFMAN: Well, you know,
7 Mr. Fleming -- and it sounds like you have got some
8 schedule concerns as well. What do you think of the
9 possibility of you discussing with them, with the other
10 petitioner, the when and the where?

11 MR. FLEMING: Right. So then -- just for the
12 record, then, we are -- Peter and I are agreeable to
13 moving it to Denver, with both 615 and 626 on the 12th.

14 Correct, Peter?

15 MR. AYERS: Yes.

16 MR. FLEMING: And then I will contact
17 MaxLinear and see if they would be willing to have their
18 already scheduled hearing, which is on the 11th, just
19 simply moved from Washington, DC, to Denver.

20 JUDGE KAUFFMAN: Okay. And an email from both
21 sides would be a sufficient answer on that.

22 MR. FLEMING: Okay. Okay, excellent.

23 JUDGE KAUFFMAN: Okay. Mr. Ayers, anything
24 further?

25 MR. AYERS: Well, I would just say, Your

1 Honor, I did during the break have the opportunity to
2 pull up the case citation that Mr. Fleming had given to
3 the IPR2015-372.

4 I think that case is distinguishable because
5 it appears that the petitioner in that case raised a new
6 theory of unpatentability. That is not what is going on
7 in this case. We are responding directly to an argument
8 raised by the patent owner. It's not a new theory of
9 patentability or unpatentability.

10 JUDGE KAUFFMAN: And, Mr. Fleming, I will give
11 you the last word on that point.

12 MR. FLEMING: We respectfully disagree.

13 In fact, now they are reliant on Balaban for
14 the teaching that Balaban teaches synchronization by
15 itself with the carrier signal. And that could be that
16 they have their specialized carrier signals, but their
17 primary reference did not have that kind of -- it had
18 the normal one of ordinary skill in the art would
19 understand what a carrier signal would be, but it would
20 not be simply that one signal. I am not sure if that's
21 true or not. We just never had a chance to have our
22 expert look at it.

23 JUDGE KAUFFMAN: Understood.

24 And, Mr. Fleming, do you have a guess when the
25 transcript will be filed? And I am not pressuring you.

1 I just would like to know.

2 MR. FLEMING: Maybe we should ask.

3 Ben, can you handle that? Can you tell me
4 when?

5 MR. HABER: Yeah, I can handle that. We can
6 get it filed within a couple days. We can put an
7 expedite on it.

8 JUDGE KAUFFMAN: I think I am likely to wait
9 for the transcript to make the decision about which way
10 we are going to go.

11 MR. HABER: Okay. So we will definitely get
12 that expedited and filed.

13 JUDGE KAUFFMAN: All right. So we will look
14 for that, and we will also be looking for news from
15 MaxLinear and the possibility of having that in Denver
16 as well.

17 And, you know, I haven't talked to the
18 hearings people. I don't know if they are going to
19 allow us to do one in DC, one in Denver. If it is --
20 possibly it is all or nothing. I don't know. But I
21 will try with whatever you submit. We will see if that
22 will work.

23 MR. FLEMING: Very good. Thank you.

24 JUDGE KAUFFMAN: Okay. And any questions from
25 the court reporter?

1 THE REPORTER: No, not at the moment.

2 JUDGE KAUFFMAN: Any questions from the Panel?

3 I don't see any, so I think that ends our call
4 today. Thank you to the court reporter and both sides.

5 MR. AYERS: Thank you, Your Honor.

6 (Whereupon, the proceedings were
7 concluded at 10:44 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, SARAH LUCIA BRANN, duly authorized
3 shorthand reporter, do hereby certify:

4 That the foregoing transcript constitutes a
5 true, full and correct transcript of my shorthand notes
6 taken as such reporter of the proceedings herein and
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on February 23, 2016, a copy of the foregoing documents was served by electronic mail, as agreed to by the parties, upon the following:

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