

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA INC.

Petitioner,

v.

UNILOC 2017 LLC

Patent Owner.

Cases IPR2017-01797, IPR2017-01798, IPR2017-01799,
IPR2017-01800, IPR2017-01801, IPR2017-01802

Record of Oral Hearing
Held: October 30, 2018

Before MIRIAM QUINN, JENNIFER BISK, and
CHALRES BOUDREAU, *Administrative Patent Judges*.

IPR2017-01797, IPR2017-01798, IPR2017-01799,
IPR2017-01800, IPR2017-01801, IPR2017-01802

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on October 30, 2018,
commencing at 11:00 a.m., at the U.S. Patent and Trademark Office, Dallas
Terminal Annex Federal Building, 207 South Houston Street, Suite 159,
Dallas, Texas, 75202.

IPR2017-01797, IPR2017-01798, IPR2017-01799,
IPR2017-01800, IPR2017-01801, IPR2017-01802

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

2 (Proceedings begin at 11:00 a.m.)

3 JUDGE QUINN: So we're here for the oral argument in
4 a series of cases filed by Samsung Electronics America Inc.
5 against patents owned by Uniloc 2017 LLC.

6 And I'm not going to read all the patent numbers,
7 but I'll read for the record the IPRs. As IPR2017-1797, 2017
8 -- I just realized that this is an audio transcript, so let
9 me redo that.

10 IPR2017-1797, IPR2017-1798, IPR2017-1799,
11 IPR2017-1800, IPR2017-1801, IPR2017-1802.

12 Okay. We have allotted for each side to take one
13 hour total of argument time. Both Petitioner and Patent
14 Owner may reserve time for their respective rebuttals.

15 And before we start with allowing any exchange,
16 let's talk about -- there are four instructions that I want
17 to give to you all today.

18 First, there will be no speaking objections allowed.
19 If you have an objection to subject matter raised by your
20 opponent during argument, that objection can only be made
21 during your own argument time, and also, objections will be
22 held under advisement.

23 While on the topic of objections, the second

1 instruction for you all today has to do with the filed
2 objections -- the joint filing of objections to
3 demonstratives. As we state in our hearing order,
4 demonstratives --

5 Can you mute in Virginia? There. Thank you.

6 As we stated in our hearing order, demonstratives
7 are not evidence but merely visual aids for use during your
8 argument. We have reviewed the objections and have
9 determined that we do not need to resolve any of those at
10 this time. All objections will be held under advisement and
11 will be resolved only to the extent necessary to decide the
12 matter.

13 To the extent that either side deems that its filed
14 objections are worthy of additional discussion, you may
15 address those, but only during your argument time, we will
16 not have additional argument time for objections.

17 Third instruction. Our hearing order at page 3
18 specifically instructs the filing of demonstratives as a
19 separate exhibit. We have noticed that petitioner filed all
20 the demonstratives as a paper, not as an exhibit. After the
21 hearing, we will be expunging all of Petitioner's
22 demonstratives for failure to comply with our hearing order,
23 but with authorization to refile the demonstratives as an

1 exhibit.

2 Fourth and last instruction. The panel issued an
3 order yesterday as a Conduct of the Proceedings Order under
4 Rule 42.5, giving notice of the expectation that we want to hear
5 from the parties regarding claim construction of the term
6 "instant voice message" consistent with previous proceedings
7 regarding the related patents.

8 So my question to everyone today is, did you receive
9 that order and are you aware of our expectation?

10 MR. MODI: Yes, Your Honor, we are, on behalf of
11 Petitioner.

12 JUDGE QUINN: Petitioner.

13 Patent Owner?

14 MR. MANGRUM: Patent Owner has received the
15 communication and is ready to proceed, Your Honor.

16 JUDGE QUINN: All right. Any questions on those
17 instructions?

18 MR. MODI: No, Your Honor.

19 MR. MANGRUM: None from Patent Owner, Your Honor.

20 JUDGE QUINN: Okay. All right. Let's start with
21 Petitioner. How much time would you like for rebuttal?

22 MR. MODI: 20 minutes, Your Honor.

23 JUDGE QUINN: And do you know, Patent Owner, how

1 much time you want, or do you want to tell me that after you
2 hear their argument?

3 MR. MANGRUM: We would prefer to delay based off the
4 case in chief.

5 JUDGE QUINN: Perfect. All right. Have the
6 demonstratives been provided to the court reporter?

7 MR. MODI: May I approach?

8 JUDGE QUINN: Yes, please.

9 MR. MANGRUM: Patent Owner previously provided paper
10 copies to the court reporter.

11 JUDGE QUINN: Thank you. All right. I'm going to
12 be keeping -- I'll be keeping time using my phone. 40
13 minutes for your main argument. You may start when you're
14 ready.

15 MR. MODI: In fact, I was just going to introduce
16 ourselves, Your Honor. Naveen Modi on behalf of Petitioner
17 Samsung. With me is Phillip Citroen and Michael Wolfe.
18 Mr. Citroen will actually be presenting the argument for
19 Samsung today.

20 JUDGE QUINN: Okay.

21 MR. MODI: And I -- we do have a copy of the
22 demonstratives. Would Your Honor like a copy for your
23 convenience?

1 JUDGE QUINN: You -- you can give me a present, if
2 you want.

3 MR. MODI: Okay. Thank you.

4 JUDGE QUINN: Thank you.

5 MR. MODI: With that, I'll turn it over to
6 Mr. Citroen.

7 JUDGE QUINN: All right.

8 MR. CITROEN: Good morning, Your Honor.

9 JUDGE QUINN: Good morning.

10 MR. CITROEN: Good morning, Your Honors.

11 Can you hear me okay? Little bit of feedback. I
12 apologize.

13 Good morning. May it please the Board. My name is
14 Phillip Citroen, and I will be presenting today on behalf of
15 Petitioner.

16 I will be referring to Petitioner's demonstratives
17 as I go forward, and I understand everyone has a copy of
18 those demonstratives.

19 Now, I understand we will not have any additional
20 time to address objections to demonstratives. There are
21 just a few points I'd like to mention regarding those
22 demonstratives before I get to the merits.

23 First, I just want to make sure it's cleared for the

1 record that Petitioner did attempt to meet and confer with
2 Patent Owner regarding objections to demonstratives multiple
3 times. I believe in the last communication, in fact, we
4 even quoted the Board's hearing order that the parties are
5 obligated to meet and confer to try and resolve these
6 disputes.

7 The truth of the matter is that the Patent Owner did
8 not respond to any of our attempts to do so, and we think,
9 if this is something the Board is interesting in seeing,
10 we're happy to provide the emails between the parties
11 indicating that we tried to make a good faith attempt to
12 resolve these disputes so that we were not dealing with
13 those here today.

14 Now, given the amount of time that we have, I don't
15 plan to walk through all the objections today that
16 Petitioner has to Patent Owner's demonstratives, but I would
17 like to just indicate that we believe the objections, which
18 are based on the fact that they've raised new arguments in
19 their demonstratives for the first time, and they've also
20 relied on some evidence for the first time in their
21 demonstratives, are self-evident if you look at the
22 demonstratives and compare them to the responses filed in
23 these proceedings.

1 And one final point on demonstratives before I move
2 forward --

3 JUDGE QUINN: Do you have any particular example
4 that's worth discussing, or is this just reiterating what's
5 already in the paper?

6 MR. CITROEN: We do have some examples. I'm happy
7 to talk about a few of them maybe that are the most
8 egregious, in our mind, but I know that we have a lot of
9 issues to discuss on the merits, and I want to make sure we
10 get to those. But if you think it would be helpful, I'm
11 happy to do that.

12 I don't have a copy of the slides to pull up. We
13 could do that really quickly. Let me maybe just pinpoint a
14 few, if that's helpful.

15 JUDGE QUINN: If that's what you want to do. I
16 mean, you raised the issue.

17 MR. CITROEN: Maybe I'll mention just one or two of
18 those.

19 So if we could --

20 (Pause in the proceedings)

21 MR. CITROEN: So if we could go to Slide 17 of
22 Patent Owner's demonstratives.

23 One of our objections is to basically all the red

1 bulleted portions of the presentation, if you can see those
2 here.

3 Now, the objection is that this is a brand new
4 argument. In the papers --

5 I'm sorry. Can you see that? I know it's small and
6 it's a little blurry.

7 JUDGE QUINN: What page -- what slide is that?

8 MR. CITROEN: This is Slide 17 of Patent Owner's
9 demonstratives.

10 So this -- the bottom half in particular, which is
11 in red, if you look at the responses and what they actually
12 argued with respect to this limitation, they only made
13 arguments with respect to Clark.

14 Here, they have presented a new argument based on
15 Griffin. Griffin is not even mentioned in that entire
16 section with respect to this limitation. That alone shows
17 you why this is a new argument. This is brand new. This has
18 never been mentioned before in their paper. The reference
19 isn't even mentioned with respect to this limitation.

20 If we can go to Slide 57.

21 JUDGE QUINN: So how does that prejudice you? I
22 mean, they've mentioned that you've relied on a combination
23 of Griffin and Clark for the message database. So how does

1 this prejudice you in any way?

2 MR. CITROEN: Well, they're arguing -- it's a brand
3 new argument. It's essentially additional briefing. They're
4 now arguing that Griffin -- it's a new argument. They're
5 arguing that Griffin doesn't have a message database as part
6 of its application that we pointed to in our papers.

7 JUDGE QUINN: But --

8 MR. CITROEN: This is was never argued.

9 JUDGE QUINN: -- do you dispute that? Do you --

10 MR. CITROEN: Absolutely. And we haven't had an
11 opportunity to brief that in any of our papers because this
12 has never been presented before.

13 JUDGE QUINN: But you're saying you're not relying
14 on Griffin to disclose the database.

15 MR. CITROEN: We've always relied on Griffin. This
16 has been our position in the petitions. They could have
17 raised this argument in their preliminary response, the
18 response. At any point before their demonstratives they
19 could have raised this argument and they never did.

20 It was when they filed their demonstratives that
21 they first indicated that this was one of their positions,
22 and it was a brand new argument at that time.

23 JUDGE QUINN: Okay.

1 MR. CITROEN: If we can go to Slide 57 of Patent
2 Owner's demonstratives. And the Slide 58, also. It's
3 essentially the same issue.

4 With respect to the limitations in the '890 patent,
5 and this is proceeding 1802, we relied on a reference from an
6 inventor named Malik.

7 Now, in the Patent Owner's responses, when they
8 argued that we didn't -- that the Malik reference doesn't
9 disclose particular limitations, they actually referred to
10 the wrong Malik. It's a different reference by the same
11 inventor.

12 They didn't even address the reference that we
13 relied on in our petitions with respect to these limitations,
14 but they're now trying do that in their demonstratives today.
15 They have this slide, which is Slide 57, and also Slide 58 in
16 their demonstratives. They cite several portions of the
17 reference that we actually relied on in our papers. These
18 are arguments they never presented because they didn't even
19 discuss whether that reference met the limitations of the
20 claims.

21 So again, these are -- these demonstratives present
22 new arguments with respect to this reference that was not in
23 the papers.

1 So I think, in the interest of time, Your Honor,
2 I'll stop there. Those are kind of the -- some of the more
3 egregious examples where they've raised brand new arguments
4 for the first time. I'd like to move on to the merits.
5 But, of course, if there are any questions, I'm happy to
6 answer those before moving forward.

7 JUDGE QUINN: No questions from me.

8 MR. CITROEN: Okay. One last point I do want to
9 make, actually, with respect to demonstratives. Again, there
10 were a series of objections to some of Petitioner's
11 demonstratives. We did attempt to meet and confer on these,
12 as well. We sent a series of emails trying to understand
13 what the objections were to Petitioner's demonstratives.

14 What we learned was some of the objections to the
15 demonstratives were really an objection to Petitioner's
16 replies. The argument is essentially that we were raising
17 arguments in our replies that were new arguments that are
18 improper reply arguments. So just two quick points on this
19 before moving to the merits is that this is an argument that
20 should have been raised earlier, weeks ago. Our replies were
21 filed a long time ago. This is now being raised indirectly
22 through objections to demonstratives. The -- based on your
23 experience, Boards typically -- or the Board typically has a

1 procedure in place where the parties can file a paper
2 identifying what they believe is the new arguments in the
3 replies. That opportunity hasn't been presented to us
4 because it wasn't raised as an objection until a few day --

5 JUDGE QUINN: We didn't -- we didn't -- we didn't
6 instruct the parties not to raise this issue --

7 MR. CITROEN: That's true, Your Honor.

8 JUDGE QUINN: -- on oral argument. And my practice
9 has been -- and some of my colleagues' practice has been --
10 that they can be raised during oral arguments. So if this is
11 your only objection, we can now move on to the substance of
12 the case.

13 MR. CITROEN: Sure, Your Honor. So if we can go to
14 Slide 2 of Petitioner's demonstratives.

15 So slides 2 through 7 actually just present all the
16 grounds that have been instituted, including the claims that
17 are now part of the proceedings following the Supreme Court's
18 decision in SAS. I'm not going to go through all of those, I
19 just want to indicate that those are there for the Board's
20 convenience.

21 I do want to just state that we believe all the
22 claims that are now involved in these proceedings, including
23 the ones that were added after the initial Institution

1 decisions, should be found unpatentable and canceled based on
2 the record that the Board had before it in Institution, but
3 that has been more further developed in these proceedings.
4 And I plan to get into some of the issues that have come up
5 during the proceedings that further support our positions.

6 If we can going to Slide 8.

7 At this point, there are really just a few primary
8 disputes between the parties. So I understand there's a lot
9 of issues that are shown here; I'm going to focus on the
10 first three: Construction of instant message, the attaching
11 limitations -- and I misspoke -- construction of instant
12 voice message, the attaching limitations, and then the
13 controlling a method of generating limitations.

14 I don't plan to get to too many of the other issues
15 unless there's any questions or if we have some additional
16 time. I will focus on those in particular.

17 So if we can go to --

18 JUDGE QUINN: Are these listed here in order of
19 importance to you? Because if we don't get to the bottom
20 three and those happen to be the most important --

21 MR. CITROEN: That's a good question, Your Honor. I
22 think the attaching limitations and controlling a method of
23 generating limitations are more important in our mind.

1 The construction of instant voice message kind of
2 leads to the attaching limitation, though, because there is a
3 relationship between the arguments with respect to those --
4 those two.

5 So I would like to hopefully limit our discussion of
6 the construction of instant voice message to about 10 to 15
7 minutes, if that's possible, and then move on to the other
8 issues that I would like to discuss.

9 JUDGE QUINN: Okay.

10 MR. CITROEN: So if we can go to Slide 9, the first
11 issue is the construction of instant voice message, or IVM,
12 if I may.

13 And if we go to Slide 10. Here, we just present
14 some exemplary claim language that indicates where this term
15 appears in at least one of the claims, and I'll come back to
16 the claim language.

17 In the Board's Institution decisions, as you're
18 aware, Your Honors indicated that the construction of the IVM
19 term was underdeveloped and invited the parties to brief the
20 construction of this term in its papers.

21 In response to that instruction, Petitioner
22 presented a detailed analysis of what it believed the proper
23 construction of IVM should be.

1 In contrast, the Patent Owner in these particular
2 proceedings didn't really brief this issue at all except for
3 very briefly in the 1801 proceeding.

4 JUDGE QUINN: I think the problem with your claim
5 construction, if I may just short circuit that --

6 MR. CITROEN: Yes, ma'am.

7 JUDGE QUINN: -- just FYI -- we've had already two
8 hearings on a lot of these patents so we're very familiar
9 with the claims and the patents.

10 Your claim construction is, "A message containing
11 digitized speech that is capable of being transmitted in
12 realtime to a recipient device." And in the other
13 proceedings, the issue was not so much the timing of the
14 message but what was the message.

15 MR. CITROEN: Right.

16 JUDGE QUINN: And our problem still permeates here
17 because you are using Zydney, which has the same voice
18 container from the other related cases.

19 So in view of that and needing to be consistent, we
20 want to reach a claim construction that applies across cases,
21 not just for your particular argument. So I'm concerned that
22 you used "message" to define what is the message, and that
23 precisely is the problem.

1 MR. CITROEN: Okay.

2 JUDGE QUINN: So in light of the two claim
3 construction proposals that we have from the other case, what
4 are your views?

5 MR. CITROEN: Sure, Your Honor. And if I can make
6 just one point of clarification you brought up, Zydney, that
7 we rely on Zydney, I just want to point out that, unlike the
8 other proceedings where Zydney was relied on as the --
9 disclosing the message, we don't rely on Zydney for the
10 message. We have Griffin, which is a reference that was not
11 at issue in any of those proceedings. That is the message
12 that we point to as the instant voice message for these
13 proceedings. So I just want to make that one clarification.

14 JUDGE QUINN: But correct me if I'm wrong. You are
15 relying on Zydney for teaching of the attaching files, right?

16 MR. CITROEN: We -- I'm sorry. Excuse me?

17 JUDGE QUINN: I said right?

18 MR. CITROEN: We rely on Griffin for attaching, and
19 we have a -- a backup obviousness position that relies on
20 Zydney as a secondary reference. So we have both positions.

21 And, in fact, that raises an issue in these
22 proceedings, as well. The position, based on Griffin, was
23 not addressed by the Patent Owner in their papers, they went

1 directly to Zydney, which was our backup obviousness
2 position, but we present both in our papers.

3 JUDGE QUINN: Okay. So from your perspective then,
4 the arguments about the voice container attaching files to
5 that instead of an audio file, those are irrelevant
6 arguments?

7 MR. CITROEN: I -- to a certain extent, I think
8 that's true because we rely on Griffin. We believe Griffin
9 itself discloses these limitations. But I will say, with
10 respect to Zydney, with our obviousness position, it also
11 discloses these limitations under the proper construction of
12 the IVM term.

13 JUDGE QUINN: So you're not -- so you're maintaining
14 that your backup position was Zydney, right?

15 MR. CITROEN: Yes, Your Honor.

16 JUDGE QUINN: So we still have to reach the issue.

17 MR. CITROEN: Yes, Your Honor.

18 JUDGE QUINN: Okay.

19 MR. CITROEN: Yes.

20 JUDGE QUINN: So what is your view on the claim
21 construction?

22 MR. CITROEN: Sure. So we understand -- and we
23 noticed in the order yesterday -- that there were two

1 separate constructions proposed in those different
2 proceedings. I believe one was presented by the Patent
3 Owner, which was, "Data content, including a representation
4 of an audio message, not precluding the inclusion of fields,"
5 and the other presented by the petitioners in those
6 proceedings is, "A data structure, including a representation
7 of an audible message."

8 In our view, our construction more closely aligns
9 with the construction offered by the petitioners in those
10 proceedings, which is, "A data structure, including a
11 representation of an audible message." We believe that,
12 between those constructions, lines up with the construction
13 we believe is appropriate and that we propose in these
14 proceedings.

15 And there's various reasons why, and I'm happy to go
16 into our explanation of why we believe that construction is
17 more appropriate.

18 JUDGE QUINN: Could you summarize why?

19 MR. CITROEN: Sure. There's a few reasons. And I
20 can -- we can go to Slide 14.

21 To give one example, in the '622 patent, Claim 3, it
22 recites an instant voice message, but it also indicates that,
23 "The instant voice message includes an object field that

1 includes a digitized audio file."

2 Based on claims like this -- and we can look
3 actually at Claim -- I'm sorry -- Slide 15, as well -- these
4 are dependent claims. They indicate that, "The instant voice
5 message also includes a source field and a destination
6 field."

7 Based on these claims, it's clear that what is meant
8 by "instant voice message" is not that it represents the data
9 content alone, it is actually a container or a data structure
10 or a message that includes a digitized audio, or the
11 digitized speech, and it may also include some additional
12 information.

13 If we go to Slide 16. I do want to highlight one of
14 the claims -- or two of the claims in another patent, the
15 '747 patent.

16 And the first claim here, Claim 1, recites,
17 "Generating the instant voice message includes recording the
18 instant voice message in an audio file." And I think this
19 is important because -- I skipped a slide -- but Mr. Easttom,
20 Patent Owner's expert, uses the same language
21 when he quotes this language from the specification to argue
22 in favor of the Patent Owner's construction.

23 But if you look at Claim 13 here for the '747

1 patent, you'll see what is actually meant by this language
2 "recording the instant voice message in an audio file".

3 Claim 13 recites, "Separating the instant voice
4 message into an audio file and one or more files." So
5 again, in other words, in these claims, the IVM includes
6 both an audio file and one or more attached files. So this
7 means the IVM is a message or data structure that contains
8 digitized speech and may also include some additional
9 information.

10 And there's a portion of the specification that
11 corresponds to this, and just in the interest of time I'm
12 not going to pull it up.

13 But in the '622 patent, Column 13, line 33 to 38, it
14 recites that, "The instant voice message also has the
15 attached one or more files." That's consistent with what's
16 actually claimed here in the '747 patent where it's
17 indicating that, "The instant voice message is composed of
18 various different components; one is the digitized speech,
19 the other is the attachment."

20 Now, if we go to Slide 17. I'll just quickly note
21 that this understanding is consistent with what the
22 specification refers to as "a message object". And if you
23 compare what's here and what's in Claims -- the claims of

1 the '622 patent that we just discussed previously, you'll
2 see that the same fields that were actually recited in the
3 claims are here, as well. So there is an indication that
4 the IVM -- what that term means must at least encompass the
5 message object that's also described in the specification.

6 If we go to Slide 18, and I think this is something
7 I'd really like to emphasize for the Board. We asked
8 Mr. Easttom -- this is Patent Owner's expert -- what this term
9 actually means. And this is in context of the specification
10 of these patents, not any particular claim, and I think
11 that's an important point.

12 So here you can see -- and I realize there's a lot
13 on the screen, and I apologize -- this is, just for the
14 record, it's Exhibit 1040 at page 109, line 5 to 22.

15 At the top half of this portion of the excerpt,
16 Mr. Easttom admitted that, "The IVM term includes both an
17 identifier for the sender and an identifier for the
18 recipient." But he didn't stop there. When we -- he went
19 on actually to explain that the IVM, "would have to" include
20 an identifier for the recipient, and again quoting him, he
21 said, "or else it couldn't get to the recipient."

22 And one last point. When -- and excuse me. This is
23 the bottom portion here. To support his understanding that

1 the IVM must include fields like this, he actually took me
2 to the specification where it describes the message object.
3 I didn't ask him if those two things correspond, he,
4 himself, took me there and said, "Actually, if you look at
5 the specification, it describes the message object and shows
6 that the IVM would include these fields."

7 So we have testimony from Mr. Easttom that came in
8 during these proceedings that indicate, even in his opinion,
9 the IVM must be some sort of data structure that includes
10 digitized audio, as well as other fields.

11 Now, looking back at the constructions that were
12 proposed in the other proceedings. We believe that for
13 these reasons, our interpretation is consistent with what
14 the specifications disclose, what various claims disclose,
15 what even Mr. Easttom explained during his deposition. And
16 this is consistent with what's described in the
17 specification.

18 Now, looking at Patent Owner's construction in those
19 other proceedings, they rely heavily on the idea of data
20 content. And the issue with that is that it introduces
21 confusion.

22 If you look at their construction, what we do know
23 is that the data content includes at least a representation

1 of an audio message, but it doesn't preclude fields, but
2 it's not clear what is data content. What exactly does that
3 even mean? Where is the line between the type of data that
4 is data content --

5 JUDGE QUINN: Well, here's a question for you.

6 MR. CITROEN: Yes.

7 JUDGE QUINN: The construction that you are citing
8 to is, "data structure including a representation of an
9 audible message." So then there's a question of what does
10 that mean to have structure?

11 So saying "content" is not descriptive, well
12 "structure" may not be as descriptive, either. So where do
13 you put meat on the meaning of "structure" for us?

14 MR. CITROEN: I think one way that's helpful may be
15 to think about this is the fact that this does correspond to
16 the message object that's described in the specification.

17 If you look at that -- that discussion in the
18 specification, it's described as some sort of data structure,
19 it doesn't provide specificity about what the structure is
20 exactly, but it's something that includes various things. It
21 doesn't call that entire structure data content. It's not
22 clear what that would mean if it did, and it's not clear what
23 Patent Owner means by that, as well.

1 What's clear is it's some sort of structure that
2 includes various pieces of information, including the
3 digitized speech and other types of field.

4 We just want to make sure that whatever the
5 construction is, that it has to be clear, it has to
6 encompass what's disclosed as a whole in these
7 specifications, and we believe these constructions offered
8 by us in these proceedings and the other petitioners more
9 closely aligns with that meaning than using the term "data
10 content" which is fraught with ambiguity.

11 JUDGE QUINN: So if you -- if we were to adopt--
12 apply in this case, whatever we apply in the 1427, 1428
13 cases, which are the Facebook related cases, and we say "it's
14 data structure", you would be okay with that?

15 MR. CITROEN: Yes, Your Honor. I'd have to see
16 exactly what the words are of the construction, but it's the
17 construction that was proposed in the order --

18 JUDGE QUINN: Right. "Data structure including a
19 representation of an audible message." That's what the
20 petitioners in that proceeding proposed.

21 MR. CITROEN: Yes. We would be fine with that
22 construction, Your Honor.

23 JUDGE QUINN: Okay. Now, with regards the "instant"

1 issue, "transmitting" versus "transmitting and receiving" --

2 MR. CITROEN: Yes, Your Honor.

3 JUDGE QUINN: -- you don't really have to go into
4 that that much, but do you have a way of injecting that into
5 this "data structure including the representation of an
6 audible message"?

7 MR. CITROEN: Sure. And I'll leave it to you, Your
8 Honor, if you'd like me to get into this discussion. I was
9 actually not going to discuss that as part of my opening
10 presentation and just focus on the form, but if you do have
11 questions on that issue I'm happy to -- happy to discuss it.

12 JUDGE QUINN: On the "instant" part?

13 MR. CITROEN: Yes, Your Honor.

14 JUDGE QUINN: Is that what you're asking me?

15 MR. CITROEN: Yes, Your Honor.

16 JUDGE QUINN: No, I don't have any questions.

17 MR. CITROEN: Okay. So I do want to make one more
18 quick point before moving on to the next issue.

19 One thing that seems to now be an agreement between
20 parties is that, at a minimum, whatever the IVM is, however
21 you refer to it as "data content" or "structure", it at least
22 must not be limited to the speech data, the digitized speech.
23 We now have the construction from Petitioner that says it

1 doesn't include the preclusion of fields.

2 We still don't understand exactly what their
3 construction means, but there does appear now to be agreement
4 between the parties that whatever that construction is, it
5 must indicate that there is more than just digitized speech
6 there, or that there may be more than just digitized speech
7 there.

8 I just want to indicate that there is some
9 commonality, at least in that respect, but we do not believe
10 that their construction as a whole is proper and consistent
11 with the specification.

12 JUDGE QUINN: So for clarification, you're mapping
13 the instant voice message to Griffin's outbound chat message
14 400?

15 MR. CITROEN: That's correct, Your Honor.

16 JUDGE QUINN: Okay.

17 MR. CITROEN: So I'd like to move on to the next
18 issue. If we can go to Slide 25, please.

19 So this is the attaching limitations. And there are
20 two variations of this limitation.

21 If we can go to Slide 26.

22 The first variation -- this is Claim 27 of the '622
23 patent -- the first variation is you're attaching one or

1 more files to the instant voice message.

2 The other variation, which is in Slide 27 -- and
3 this is Claim 1 of the '747 patent -- is you're attaching
4 one or more files to the audio file.

5 If we can go to Slide 27, please. And that's shown
6 here -- I'm sorry. Was there a question?

7 JUDGE BISK: Yeah, actually, I have a question. Can
8 you hear me?

9 MR. CITROEN: Yes, Your Honor.

10 JUDGE BISK: Okay. In 1802, neither party talks
11 about -- excuse me -- the "attaching" limitation, but it seems
12 to me that a couple of the claims do discuss "attaching." For
13 instance, Claim 9 talks about, "attach one or more files to
14 the instant voice message."

15 MR. CITROEN: I'd have to doublecheck just to make
16 sure, but I don't think Patent Owner raised the argument that
17 that limitation is not met in these proceedings. I'd have to
18 doublecheck just to be 100 percent sure, but I believe that's
19 why that's not in dispute.

20 JUDGE BISK: So, yeah. I think -- I agree with you
21 on that, but my question was, what do we do with those claims
22 in 1802? You know, if -- they still have to be consistent
23 with the other cases.

1 MR. CITROEN: Correct, Your Honor. I understand
2 your point. I believe that our position is that those claims
3 then would actually be satisfied by the prior art for the
4 same reasons that these other claims in these other
5 proceedings would be satisfied by the prior art.

6 JUDGE BISK: Okay. Thank you.

7 MR. CITROEN: You're welcome.

8 So we were referring to Slide 27. This is just the
9 other variation of the attaching limitation which recites
10 that, "The files are attached to the audio file."

11 And I'm sure that Your Honors are aware, at the
12 Institution -- the initial Institution phase, the Board
13 initially did not institute review of the claims that recite
14 "attaching to the audio file." Those claims came in later
15 after the SAS decision.

16 But we believe, after the record has been further
17 developed in these proceeding, that Your Honors will see
18 that the prior art does, in fact, disclose these limitations
19 based on --

20 JUDGE QUINN: If so, let's jump to Griffin, since
21 that's your main argument, right? That Griffin discloses it?

22 MR. CITROEN: Yes, Your Honor.

23 JUDGE QUINN: Where -- where are you relying --

1 what's your best disclosure in Griffin supporting the notion
2 that you can attach files to a speech chat message?

3 MR. CITROEN: So -- so there's two issues here. One
4 is, what does "attaching" actually mean? And I think that's
5 the primary dispute here. And once we figure out what does
6 "attaching" actually mean, we can then see how do these
7 references actually disclose it under that proper
8 interpretation, which is the interpretation --

9 JUDGE QUINN: Okay. Well, you're responding to a
10 question I didn't ask.

11 I asked you: What is your best disclosure that
12 attaching is occurring in Griffin? However that is defined
13 by you.

14 MR. CITROEN: Sure. Sure.

15 JUDGE QUINN: Okay?

16 MR. CITROEN: There are a few places. One is
17 Exhibit 1005, Column 10, line 53 to 55.

18 JUDGE QUINN: Column 10, lines 53 to 55?

19 MR. CITROEN: Yes, Your Honor.

20 JUDGE QUINN: Okay.

21 MR. CITROEN: And here, it's discussing the
22 attachment indicator that shows that the attachment is -- is
23 attached to the message 400.

1 JUDGE QUINN: Thank you.

2 MR. CITROEN: It's presented here on the screen as
3 well. Each entry compiles an attachment that indicates if
4 there is any attached content or transmitted speech
5 available."

6 JUDGE QUINN: Are you saying that this passage
7 teaches the attached -- attaching content to the speech
8 message, or generally teaches attachments, but it would be
9 obvious to attach a document to a speech message? Which one
10 is it?

11 MR. CITROEN: I'm sorry. Can you repeat that
12 question, Your Honor?

13 JUDGE QUINN: Are you saying that this passage
14 discloses attaching a file to a speech message, or it
15 it discloses attaching files to messages, and it
16 would be obvious to do so to speech messages?

17 MR. CITROEN: We believe it's disclose -- and I'm
18 not sure if you're making a distinction between the message
19 400 and the speech content that's in the message, but we
20 believe it would disclose both of those, and part of that
21 goes back to what "attaching" means. But we believe it
22 discloses both of those. And that it would be obvious, as
23 well.

1 To the extent that it's argued that the specific
2 examples in Griffin show the attachment indicator next to a
3 text message, Griffin talks about its messages being either
4 text or speech that you can attach to those messages.

5 So the only point of there in Griffin where we argue
6 that obviousness comes into play, I should say, is that it
7 would have been obvious to attach to a speech message just
8 like you would attach to the text message that's disclosed in
9 Griffin.

10 I do want to point to another portion of Griffin,
11 Column 12, lines 61 to 67. And it's also shown here on the
12 screen.

13 Here, it explains that the right soft key label is
14 "send". "Singing clicking the right soft key causes the
15 software to build and send an outbound text message." It
16 also explains, "Click holding the right soft key provides the
17 user a set of options such as attachment of other contents,
18 spell checking, and so forth."

19 I believe there are other portions as well, but this
20 is another example where it discloses attaching to the
21 message that's being transmitted, which is -- it's message
22 400 in Griffin.

23 JUDGE QUINN: Can you use that same soft key when

1 you're recording a speech message?

2 MR. CITROEN: It goes through detail -- and I'd have
3 to look exactly where it is -- but Griffin does go into
4 detail to explain which soft keys can be used and how they're
5 used to record speech chat messages.

6 There's also something called a -- a -- the name is
7 failing me now -- but it's a touch-to-speech button. I can't
8 remember what it's called precisely, but it's another user
9 interface that the user can press to actually record the
10 audible speech into the message.

11 So, yes, that disclosure is there, and it goes
12 through a detailed explanation about the different soft keys
13 and how they operate to do those different functions.

14 JUDGE QUINN: So your position is that the message
15 400 would be the same message 400 whether it's a speech
16 message or a text message.

17 MR. CITROEN: It's -- the difference would be that
18 the message includes, of course, digitized audio in the
19 context where it's speech. And we go through and explain in
20 detail why that's supported.

21 If it's text, then the difference would be, for that
22 message 400, then the content is actual text. There is
23 disclosure, as well, where you can take the speech, and it

1 says, "If you don't want to send the speech by default,"
2 which is what Griffin discloses, "you can use a
3 speech-to-text converter, and you can change it into text."
4 That's also disclosed in Griffin as another possibility. So
5 that's the difference between the two.

6 It shows the structure of message 400 in Figure 4 of
7 Griffin, and that's -- I believe it's Figure 4. Let me just
8 doublecheck.

9 JUDGE QUINN: Yes. Figure 4.

10 MR. CITROEN: Yes. Thank you, Your Honor.

11 So Figure 400 (sic) shows the message, and that
12 message is described with respect to both text messages and
13 speech chat messages.

14 JUDGE BOUDREAU: In each of those examples, Griffin
15 is disclosing attaching to the message, but some of the
16 claims, such as in the '747 patent, require attaching to the
17 audio file. How does Griffin teach that?

18 MR. CITROEN: Thank you, Your Honor. Yes.
19 That's -- so this goes back to what does "attaching" actually
20 mean? That's the big dispute here between the parties. And
21 if we can go back to Slide 30.

22 JUDGE BOUDREAU: But is it your position that there
23 isn't any difference between the claims that say "attaching

1 one or more files to the instant voice message," and those
2 that saying "attaching one or more files to the audio file?"
3 Should we be interpreting those limitations the same, or is
4 there some difference?

5 MR. CITROEN: I think there's no difference in the
6 fact that they're disclosed in the same way in the
7 references.

8 So Griffin discloses attaching to the message
9 itself, but by attaching to that message, the file that is
10 attached is also necessarily attached to the content within
11 that message. That's our position.

12 We're not saying that the claims should be
13 interpreted differently necessarily, it's more -- more of
14 whether or not the reference, by disclosing it's attaching
15 something to a message, also discloses attaching it to what's
16 inside of that message. And that's -- that's, again, coming
17 back to dispute, so what does "attaching" actually mean?

18 And in that -- that -- the interpretation of
19 "attaching" should be the same in these -- in these different
20 claims.

21 JUDGE BOUDREAU: All right. Thank you. Yeah. I'm
22 trying to understand what it means to attach to an audio
23 file, and I think that's where you're about to go.

1 MR. CITROEN: Yes, Your Honor. Thank you.

2 So just very quickly in Slide 30, I just want to
3 emphasize, from the beginning, in Petitioner's papers, and as
4 explained by Dr. Haas, Petitioner's expert, he
5 explained that because speech-to-chat message includes an
6 audio file, by attaching -- attaching a file to the message
7 discloses attaching a file to the audio file included in the
8 message.

9 Now, if we go to Patent Owner's expert, Mr. Easttom,
10 this is Slide 31, we asked him specific questions about
11 attaching and what it actually means.

12 As in his declaration, I'll just indicate that he
13 took the position that the Patent Owner has taken, which is
14 attaching to a message does not disclose attaching to an
15 audio file in the message. But when we asked him questions
16 about what "attaching" means, in the context of these
17 patents, he took a different position.

18 You can see one example here in Slide 31. When
19 discussing the meaning of this term, in the context of the
20 patents, he admitted, without condition, that if a recipient
21 knows that the two documents are associated, those documents
22 are considered attached.

23 And this wasn't an isolated statement. It wasn't

1 out of context. We actually asked him more specific
2 questions that used the language of the claims, if we go to
3 Slide 32.

4 Here, we actually asked him, "Mr. Easttom, how would
5 one attach a document to an audio file?" In response he
6 explained that, "The system only needs to be aware that the
7 two files are meant to go together" -- and I'm quoting from
8 his testimony -- "and that you would not even need to modify
9 the files themselves in any way for this to be possible."

10 And the two portions, just for the record, that I
11 cited to are Exhibit 1040, page 137, line 10 to 13, and 1040,
12 page 139, line 10 to 19.

13 Now, with this understanding of "attaching", we
14 see -- which is in direct conflict with his opinion in his
15 declaration and direct conflict with what Patent Owner's
16 counsel has argued in their briefing -- we see a very
17 different understanding of what "attaching" means.

18 So -- and this point is key here, because now we
19 have testimony in this proceeding that wasn't before the
20 Board in its -- at the Institution stage. I'm sure, when
21 Patent Owner provides its presentation to Your Honors,
22 they're going to explain you've already decided this issue.
23 You've decided it at Institution here, you decided it in

1 numerous other proceedings, as well.

2 But each record must stand on its own. In this
3 proceeding, we have testimony from Patent Owner's expert
4 that's consistent with the testimony from Petitioner's
5 expert that explains that this attaching limitation is
6 broader than the very narrow construction that the Patent
7 Owner has been proposing. With this testimony, we believe
8 that the Board will see that the references do disclose
9 these attaching limitations, even to the audio file.

10 Now, we already talked about Griffin a little bit,
11 but I just want to go to Slide 33 to kind of illustrate the
12 point.

13 Here, you have what's referred to as a chat history
14 display. This displays various messages that are received
15 by one of the clients. You can see an attachment indicator,
16 1104, next to one of the messages. So clearly, the system
17 must know that that attachment is associated with that
18 message or is meant to go with that message, to borrow the
19 language that Mr. Easttom used in his testimony during the
20 deposition.

21 There's another Figure 13 -- I'm not going to bring
22 it up -- but if you click that message, it takes you to a
23 view of the actual message itself. And again, there's an

1 attachment indicator 1302 there that shows that the system
2 knows that the attachment goes with the message or is
3 associated with the message; again, using Mr. Easttom's own
4 words. And, of course, in the specification related to
5 Figure 13 is Column 12, line 24 to 26.

6 So with that, I know I'm running low on time, I want
7 to go to the next issue, unless there's any other questions
8 on the attaching limitation, You Honors.

9 JUDGE QUINN: None from me.

10 JUDGE BOUDREAU: None from me. Thanks.

11 MR. CITROEN: Okay. Thank you.

12 So if we can go to Slide 35, please.

13 So I want to talk about the controlling a method of
14 generating limitation. In Slide 36, you'll see the two
15 claims where this limitation appears. One is in Claim 3 of
16 the '747, the other is in Claim 3 of the '723. The Board
17 initially instituted -- instituted review of the '723
18 patent --

19 JUDGE QUINN: So here's the question we have on that
20 limitation.

21 MR. CITROEN: Yes, Your Honor.

22 JUDGE QUINN: It seems to us that you're relying on
23 Zydney's two modes -- pack-and-send and intercom mode -- for

1 supporting your contention that there's -- this is taught in
2 the art.

3 What we want to know is, how is the instant voice
4 message of Zydney generated any differently, depending on
5 the mode, since it appears that Zydney uses voice containers
6 for both modes, so it wouldn't really change any -- in any
7 way-- the generation of the instant voice message. Do you
8 have an explanation about that?

9 MR. CITROEN: Sure, Your Honor. The way that
10 Griffin -- or I'm sorry -- Zydney actually generates their
11 instant voice messages is almost identical to what's actually
12 described in these patents themselves.

13 It describes an intercom mode. That's actually the
14 exact same term that's used in the patent specification and
15 the claims and is explicitly identified in the claims as a
16 method of generating an instant voice message. It's
17 identical. You take portions of the message and send those
18 one at a time instead of recording the entire message first
19 and then sending it. That's what's claimed as the intercom
20 mode in the patents. That's what Griffin describes with
21 respect to its message and its disclosure.

22 The other instant -- or the other method of
23 generating that's explicitly recited in the claims of the

1 patents, again, is the record mode. In Zydney, it refers to
2 the exact same type of method as the pack-and-send mode.

3 With that specific method of generating -- which
4 is -- the claims refer to those two as the methods of
5 generating -- you record the entire message first, and then
6 you send it.

7 So we know that those are two different methods of
8 generating because it's exactly what the claims explicitly
9 state are methods of generating.

10 And I think it's helpful to look at some of those
11 claims to see that. If you look at Slide 37, for an
12 example --

13 JUDGE BOUDREAU: Merely because they use the same
14 term, does that mean that they are generating them in the same
15 way? And so in the -- in the challenged patents, there might
16 be a difference in the way that the intercom mode and the --
17 what I'm going to call pack-and-send mode -- I don't recall
18 exactly what the term was that was used there --

19 MR. CITROEN: That's right.

20 JUDGE BOUDREAU: -- there may be a difference
21 between the way those are generated in the context of the
22 patents, but perhaps not in Zydney.

23 And as we wrote the decisions on Institution, and as

1 Judge Quinn just mentioned, it appears that Zydney is using
2 the same voice containers -- the same method of generating
3 those voice containers in both the intercom mode and the
4 pack-and-send mode. So can you address that issue?

5 MR. CITROEN: Sure. I don't think the fact that a
6 voice container is used as the transfer mechanism means that
7 the actual generation of the message itself is any different,
8 as we explain it. We can go to Slide 43 that might be
9 helpful.

10 Here, we have the two portions that explain how
11 pack-and-send works and how intercom mode works.

12 Regardless of the fact that both now use a
13 container, in the pack-and-send mode, within that container,
14 you have the entire voice message. It's generated in a
15 different way because you have the entire voice message.

16 If you look at the intercom mode, you may have the
17 voice container and the mechanism that's used to transfer the
18 data, but within that voice container, you have only a small
19 portion of the digitized audio within that message, so it's
20 generated in a different way than the pack-and-send mode.

21 And that's the same difference -- if you look at the
22 patents in the claims in these patents -- it's the same
23 difference between the intercom mode and record mode. One,

1 you're just transferring the entire thing, the other, you're
2 just taking portions of it and sending it. And that's -- you
3 can see that in --

4 JUDGE BISK: I have a question. On these portions
5 of Zydney, it seems to me these are talking about the methods
6 of storing the message, not methods of generating.

7 MR. CITROEN: So --

8 JUDGE BOUDREAU: Storing and delivering it.

9 MR. CITROEN: So as part of the generation method,
10 you are taking the speech and storing it in the medium;
11 that's part of the patents, as well. You have -- there isn't
12 necessarily a storing step as part of the generation.

13 That's -- that's -- that is true but that doesn't mean that
14 the generation isn't different.

15 Again, the generation is different because you are
16 recording either the whole message in the pack-and-send mode
17 or portions of the message in intercom mode. And I think --

18 Let's -- let's take a look at -- let's take a look
19 at Slide 38. This is one of the dependent claims -- or two
20 of the dependent claims from the Claim 3 in both patents.
21 They have their similar claims in the '723.

22 This defines what the methods of generating are in
23 the Claim 3. One here is just the record mode. You record

1 the instant voice message, generate a stop indicator, and
2 then you transmit the whole thing. That's exactly what the
3 pack-and-send mode is. You take the entire message, wait
4 'til it's done, and then you transmit the whole thing. The
5 claims itself indicate that that is a method of generating.

6 Now, if you look at Claim 8, this is the intercom
7 mode in the patents. It explicitly states what that means.
8 Here, you can see it takes successive portions of the
9 message, transmits each successive portion, and then delivers
10 each successive portion to the recipient, each successive
11 portion being played. That is the method of generating
12 that's referred to the intercom mode, and that is essentially
13 identical to the intercom mode that's disclosed in Zydney.
14 It takes pieces of the message where the voice -- the
15 digitized voice and sends it one at a time. It's the exact
16 same idea.

17 So I think it's helpful to remember what exactly is
18 the method of generating? Well, it's exactly what's claimed
19 here in the claims. And there is really no difference
20 between what is in these claims and what is in Zydney. The
21 fact that the voice container is used doesn't make a
22 difference, that's just what includes the actual generated
23 instant voice message. That's the only difference.

1 JUDGE BOUDREAU: Is the voice container itself any
2 different in the intercom mode than it is in the
3 pack-and-send mode of Zydney?

4 MR. CITROEN: It's different in that its contents
5 are different. Absolutely.

6 The voice container is just used for transmitting
7 the contents from one place to another.

8 The actual contents of that voice container are
9 different because, in one, you have an entire digitized
10 speech that will then be sent to the recipient. The voice
11 container for the intercom mode is only taking a small
12 portion of the digitized speech. And that's a substantial
13 difference, because the whole purpose of Zydney is to
14 transmit speech. So that's going to be the main difference
15 between those two is the actual what -- what is the speech in
16 those voice containers. Given the fact that they're
17 generated differently they are different within those two
18 containers.

19 JUDGE BOUDREAU: But even two different messages
20 that are sent by the pack-and-send message would have
21 different content in them, and so I'm still trying to
22 understand what the difference is.

23 Is there any structural difference between the voice

1 containers between the two (inaudible), or is the difference
2 really only in the content?

3 MR. CITROEN: I -- the difference is certainly in
4 the content, but I think the -- I'd have to go back and look
5 to see if there's any other differences. I can't recall
6 offhand whether there are any other differences.

7 But I think, in our view, the key point is just
8 there's a difference in how the message is being transmitted.
9 You're either doing the whole thing at once because the
10 recipient is available -- or is not available, or you're
11 transmitting pieces of it in succession because the recipient
12 is not available. That's the key difference.

13 There may be others, and I have to go back and just
14 look at Zydney to see, but I don't think that impacts whether
15 or not these particular claim limitations are met.

16 As you can see, the methods of generating here, each
17 of these limitations are the exact same thing that's being
18 performed in Zydney with respect to these -- these two
19 intercom and pack-and-send modes.

20 So if it satisfies these limitations, then those
21 would be methods of generating, and I think that's shown
22 here.

23 JUDGE QUINN: You --

1 JUDGE BOUDREAU: So your argument, then, really comes
2 down to that we need to look at the method of -- we need to
3 understand the meaning of "method of generating" based on
4 what's in the patents, that we can't decide this independent
5 of what's in the specification.

6 MR. CITROEN: Well --

7 JUDGE BOUDREAU: (Inaudible).

8 MR. CITROEN: -- I think the point I'm trying to
9 make is that the -- you first need to understand what -- if
10 we go back to Slide 36, we first need to understand what
11 does -- what is a method of generating before we can look to
12 the prior art to figure out if it discloses it.

13 We know from the dependent claims that we just
14 looked at, if we go to Slide 37, in Claim 4, it says -- it
15 explicitly states, "What are the methods of generating?"
16 Well, they're at least record mode and intercom mode."

17 And then we went to Claim 8, and we saw Claim 8 in
18 -- Claims 7 and 8, we saw that it actually defines what those
19 methods of generating are.

20 So my only point is that you need to look at the
21 specification as a whole first, see what these terms mean
22 before you go to the prior art. There's a lot of arguments
23 and attempted distinctions, but they ignore what these terms

1 actually mean. We need to understand what these terms
2 actually mean, and the claims here are extremely helpful for
3 doing that.

4 JUDGE QUINN: You -- you're six minutes into your
5 rebuttal time, but I did have a question before moving on.
6 It has nothing to do with this, so pardon me for changing the
7 subject.

8 On the '723 patent, the term "associating the subset
9 of the nodes for the client" limitation, are you continuing
10 to rely on Zydney as disclosing that limitation?

11 MR. CITROEN: This was -- I'm sorry. There's two --
12 two proceedings that have the nodes limitation. You're
13 referring to the 1800 proceeding, correct? The associating a
14 subset of the nodes with the client?

15 JUDGE QUINN: Yes. The '723 patent.

16 MR. CITROEN: So for this limitation, we actually
17 rely on Griffin. Griffin performs the associating of a
18 subset of nodes with the client, and it's buddy list update
19 message 600.

20 JUDGE QUINN: Right. But in your petition, you also
21 relied, in the alternative on Zydney. And my question is
22 whether you have given up the Zydney fight or are you
23 continuing to assert Zydney?

1 MR. CITROEN: We have it as a backup argument. Our
2 primary position -- we're not giving it up, our primary
3 position is based on Griffin, that it discloses this
4 limitation.

5 JUDGE QUINN: Even though we've already told you we
6 don't like that argument?

7 MR. CITROEN: We understand that, Your Honor, and
8 that's why we believe Griffin is actually our main argument
9 and what we rely on as our primary position.

10 JUDGE QUINN: Okay.

11 MR. CITROEN: If I may make one more point -- and I
12 know I'm in my rebuttal time, if that's okay. Going back to
13 the controlling method of generating.

14 There's been some arguments -- I believe, if I
15 understand the positions correctly -- that what the claims
16 are actually requiring is that you take one of the methods of
17 generating, either record or intercom mode, and you alter how
18 that specific method of generating works, depending on
19 whether the recipient is available or unavailable.

20 I just want to make a quick point, and I'm happy to
21 get into more details. But that cannot be the case because
22 in intercom mode, the recipient has to be available. And one
23 way -- there's a lot of different places in the specification

1 that indicate that, but the claims are probably one of the
2 better places to look.

3 Claim 8 on Slide 38 actually explicitly at the end,
4 unlike the record mode which just transmits, delivers it to
5 the recipient and plays each successive portion by the
6 recipient.

7 I'll also indicate, Mr. Easttom, during his deposition,
8 at Exhibit 1042, page 63, lines 6 to 9, indicated, "I think
9 in intercom mode you have to first determine if they're
10 available." So that position that you would have to alter
11 the intercom mode, depending on whether the recipient is
12 available or unavailable, simply doesn't make sense when you
13 look at the context of the patent and the dependent claims,
14 because you cannot use intercom mode if the recipient is
15 unavailable, you can only use intercom mode if they're
16 available. If they're unavailable, you have to use record
17 mode.

18 So that just shows that that type of interpretation
19 of these claims would be entirely inconsistent and in direct
20 conflict with the claims in the specification for these
21 patents.

22 JUDGE BOUDREAU: Does that factor into the method of
23 generating?

1 MR. CITROEN: I think that helps indicate that what
2 method of generating actually means is just that -- or what
3 these claims actually mean is just that you're either using
4 the intercom mode method of generating if the recipient is
5 available -- and I think claim -- if we can go back one slide
6 to Slide 37 -- Claim 5 and 6 help illustrate this point.

7 If they're available, you use intercom mode. You're
8 controlling the intercom mode if they're available. If
9 they're -- and that's the method of generating is the
10 intercom mode.

11 If they're unavailable, the method of generating
12 that you're controlling is the record mode.

13 So the point is, that's what the claims are actually
14 claiming here.

15 And just the point about it wouldn't make sense to
16 interpret these claims in the other way that we just
17 discussed, it just wouldn't make sense, so we were just
18 trying to illustrate that point. This is the only way these
19 claims can actually be read.

20 And when you look at Zydney in our arguments, that
21 specific disclosure about choosing between intercom and
22 pack-and-send, or record mode as it's described in the
23 specification, is precisely what's disclosed in Zydney. You

1 choose between those two, depending on whether the recipient
2 is available or unavailable.

3 Does that answer your question?

4 JUDGE BOUDREAU: Yeah, I think so.

5 I asked you a question a few minutes ago about
6 whether we need to look at the specification. That may not
7 have been clear. I think my real question is whether this is
8 really just an issue of claim construction.

9 MR. CITROEN: I think that's -- I think that's a
10 fair way to view this. I think -- as I mentioned, I think we
11 need to understand what these terms mean, and that is a claim
12 construction issue.

13 And then once we've figured out what that proper
14 construction is, we can then go to the prior art and see if
15 it actually discloses these limitations. And, you know, as I
16 indicated, I think looking at the claims, and also the -- the
17 only portion of the specification that seems to even address
18 this issue, which is the '747 patent, Column 11, line 55 to
19 59 -- it's shown in Slide 39 -- it's -- it's -- it
20 corresponds to the dependent claims that depend from Claim 3.
21 That, again, is another place where it actually supports our
22 interpretation of these claims, and we think, yes, this maybe
23 is a claim construction issue, and based on these disclosures

1 in the claims, we believe our interpretation is the right
2 one, and with that interpretation, Zydney discloses this
3 limitation.

4 JUDGE BOUDREAU: And so what would that construction
5 be?

6 MR. CITROEN: I haven't thought on the fly what
7 exactly the construction would be, but whatever the
8 construction is, it would -- it would be -- if we can go back
9 to the claim language, Claim 3 in both patents, Slide 36,
10 please -- it would have to encompass choosing between the
11 intercom mode or the record mode, depending on the
12 availability of the recipient. That's what the dependent
13 claims are describing, that's what is also described in the
14 specification.

15 And actually, one more last point. I apologize, but
16 I want to make sure.

17 Slide 40. And this is referring to Mr. Easttom's
18 deposition testimony, Exhibit 1042, page 68, line 10 to 18.

19 We discussed these dependent claims in the portion
20 of the specification in detail, and we at one point asked
21 him, "So does this concept of choosing between the record
22 mode and the intercom mode, depending on the availability of
23 the recipient, fall within the scope of these claims?" His

1 answer was, "It certainly appears so."

2 So again, here we have -- we have testimony from
3 Patent Owner's expert -- we have testimony from Patent
4 Owner's expert indicating that even he believes that Claim 3
5 in both of these patents would encompass this concept that we
6 just described of choosing between those two methods of
7 generating, depending on availability.

8 This is testimony the Board didn't have before it at
9 Institution, and it wasn't before the Board in the other
10 proceedings, as well, so we think that additional evidence
11 shows why we think the claim should be interpreted this way,
12 and why the prior art meets this limitation.

13 JUDGE BOUDREAU: All right. Thank you.

14 MR. CITROEN: Thank you, Your Honor.

15 So if there are no more questions, I realize that I
16 have gone well into my rebuttal time.

17 JUDGE QUINN: Yes.

18 MR. CITROEN: May I ask how much time I have left?

19 JUDGE QUINN: You have -- I've got to do some math
20 here. You have 7 minutes left of your 20 minutes. You went
21 over by 13 minutes.

22 MR. CITROEN: Thank you, Your Honors.

23 JUDGE QUINN: Patent Owner, are you ready?

1 MR. MANGRUM: Yes, Your Honor.

2 JUDGE QUINN: How much time would you like for -- to
3 reserve for rebuttal?

4 MR. MANGRUM: For rebuttal, at this point, I think
5 we would reserve 10 minutes, recognizing that we might have
6 to eat into that, as well. There are just a number of
7 issues, a lot of material to cover.

8 JUDGE QUINN: Yes. So you have 50 minutes for your
9 case in chief and 10 minutes for rebuttal.

10 MR. MANGRUM: Yes, Your Honor.

11 JUDGE QUINN: You can begin when you are ready.

12 MR. MANGRUM: I had not intended to address the
13 objections. We're willing to stand on our objections.
14 However, I do want to correct the record for some statements
15 that were made regarding the process leading up to the
16 objections.

17 After the parties had filed their respective
18 objections, we reached out to Petitioner when they indicated
19 they wanted to have a prehearing trial conference, and we
20 quoted the trial practice guide and indicated that it
21 wouldn't make sense to have a meet and confer to narrow the
22 issues if we were going to have a pretrial call.

23 So we did not say that we did not -- we were not

1 willing to meet and confer, we pointed out that the
2 propriety of having the meet and confer to narrow the issues
3 for the Board. I just wanted to correct that point.

4 With respect to -- there were a number of examples
5 that Petitioner gave concerning their objections to Patent
6 Owner's slides. We probably will (inaudible) present some
7 of those slides.

8 I want to just point out, the Petitioner emphasized
9 Slide 17 as somehow not being commensurate with the papers
10 because Patent Owner did not raise an argument concerning
11 Griffin and the message database limitation.

12 I just want to quote from the record in matter 1798,
13 in the Patent Owner response at page 26, "Petitioner admits
14 Zydney lacks the "message database" limitations." There's a
15 citation to the petition that's at page 46. Right after
16 that, the next statement is, "However, Clark does not cure
17 this deficiency." And then, of course, the papers go on to
18 explain why.

19 So we just submit that what we've done here in our
20 presentation is provide a visualization of the arguments in
21 the papers, and we feel that everything that we've put in
22 the presentation is commensurate with the scope of what was
23 argued for -- on behalf of Patent Owner.

1 I want to start actually the -- in view of the
2 Board's questions, in the middle of the presentation at
3 Slide 19. So if the Board can turn with me to Slide 19.

4 In Slide 19, and the following sequence of slides,
5 we address a number of issues that were largely resolved at
6 the preliminary stage. And here, in Slide 19, you'll see
7 that we're going to be talking about the 1799 matter
8 addressing the '747 patent.

9 And moving to Slide 20. I've copied a paragraph
10 from the Board's original Institution decision. And in this
11 paragraph, the Board explains part of its reasoning for
12 concluding that the proposed combination of Griffin and
13 Zydney does not establish prima facie obviousness for the
14 recitation, recording the instant voice message in an audio
15 file, and attaching one or more files to the audio file.
16 And that's recited in Challenged Claims 1 and 13.

17 And so I think it's important to point out here, you
18 have some definitive statements specific to this claim
19 language concerning what is the instant voice message.
20 Here, you know that it must be recorded in an audio file,
21 and then one or more files must be attached to that audio
22 file.

23 And so these are somewhat definitive statements.

1 This calls out specific aspects of the specification, but
2 not every aspect of an instant voice message disclosed in
3 the specific. And for this reason, I just highlight the
4 fact that we have to be careful when we try to have a claim
5 construction for instant voice message that's all
6 encompassing, that somehow encompasses every embodiment,
7 because here what you have is a specific description of
8 instant voice message that calls out specific embodiments,
9 and in particular, the audio file.

10 JUDGE QUINN: Well, let's start with that. Because
11 I think you know from the other proceedings that we have been
12 trying to stay consistent, not just across patents, but
13 across filings. And we proposed, I think, to you the data
14 content definition of the instant voice message. Do you
15 think that that proposal still applies here?

16 MR. MANGRUM: It does insofar as if you consider how
17 the patent describes the audio files used, for example, in
18 the context of the message object. I'm going to get into
19 that, as well.

20 But to answer Your Honor's question, there is a
21 discussion of what's called a message object in the patent,
22 and in describing the message object, there's -- the instant
23 voice message is not considered synonymous with the message

1 object. The instant voice message is described as "the
2 content", and that's in our briefing. It's described as "the
3 content of the message object."

4 So in the patent, there's a specific distinction
5 between what is described as message object and what the
6 patent considers to be the instant voice message.

7 JUDGE QUINN: You're correct. But in the claims of
8 the patent,--the '622 patent, specifically, equates the instant
9 voice message with something more than just the content of
10 the message object.

11 MR. MANGRUM: Right. And so I would refer, again,
12 to our briefing. I could summarize that.

13 But our position on that is that in instances
14 where -- and another example of that is in '747 where the
15 instant voice message is further defined. There's additional
16 limitations in the claim language -- even in the independent
17 claim language itself -- that provides a context and
18 definitive statements for what is the instant voice message.

19 And so we would say that as -- as is the case with
20 the '747 patent and the '622 patent, it would be
21 inappropriate to take defining statements for the instant
22 voice message specific to that claim and dependent claims, if
23 there are any, and somehow try to propagate that or -- and

1 view other claims with those same limitations.

2 JUDGE QUINN: Are you saying that the '622 patent
3 claims defined instant voice message differently?

4 MR. MANGRUM: Yes, Your Honor. We think that there
5 is a --

6 JUDGE QUINN: Where is the support in the
7 specification for the scope of those claims such that the
8 instant voice message is defined to include, not just the
9 content, but also everything else?

10 MR. MANGRUM: Well, we're not prepared today to
11 discuss what would really be a 112 issue. All we can say is
12 it's clear, and it's explicit in the claim language, that
13 there's definitive statements in certain claims concerning
14 what is the instant voice message. And we would feel -- and
15 I could provide some authority if --

16 JUDGE QUINN: Well, I'm not -- I'm not -- I'm not
17 asking you to tell me whether your claims are definite or
18 not, I just want to know, for purposes of determining the
19 definition of "instant voice message", if we're saying that
20 the claims are, quote/unquote, defining the term for one
21 patent. Based on the disclosure, there should be support for
22 that. We want to understand the full scope of that term.

23 MR. MANGRUM: Right.

1 JUDGE QUINN: Are you saying the message object
2 embodiment supports that?

3 MR. MANGRUM: Well, the message object supports the
4 idea that there could be an object that contains content
5 therein that's the instant voice message.

6 But if you -- if you -- and in the record mode
7 embodiment, the instant voice message is an audio file.

8 And so when you consider the message object contains
9 an audio file, which is the instant voice message, it's the
10 content. So that -- that matches and supports the idea of a
11 content construction.

12 But when you consider the claim language then, such
13 as in the '747 patent, that says what you're doing is you're
14 attaching one or more files to the audio file -- right? --
15 what that means, therefore, is you're not -- if you attached
16 it instead to the message object and not -- not to the
17 content, you wouldn't meet the scope of that claim.

18 And so we feel that the claim language is specific,
19 certainly in the '747 patent, as to what you're attaching to.

20 When we get to the claim language where it's not
21 specifically defined in terms of the audio file, I think
22 that's where there is -- where you really have to look at the
23 claim construction issue. But we feel that the Board, in

1 this matter and other matters, has recognized, when there are
2 additional definitional statements in the claim language
3 itself concerning an audio file, that the petition is
4 deficient with respect to those definitive statements.

5 And I would also submit a word of caution in trying
6 to treat independent claims under the same type of claim
7 differentiation doctrine where you -- in the sense of a
8 dependent claim, where a dependent claim recites certain
9 limitations, the independent claim obviously covers that
10 scope, but it can't be limited to that scope, it obviously
11 covers other things, otherwise, the dependent claim is
12 superfluous.

13 That doctrine doesn't apply in the context of
14 comparing independent claims, particularly when independent
15 claims have other limitations that distinguish them.

16 And so just a word of caution is, the suggestion
17 that what we need to do is look at independent claims of
18 different patents and construe instant voice message
19 similar -- in a way that encompasses every single embodiment
20 described in each independent claims is not an exercise the
21 Federal Circuit condones.

22 And I could provide case law, but we did that in our
23 briefing.

1 So going back now to the specific claim language in
2 the '747 patent.

3 JUDGE QUINN: So are you taking the position that
4 data content, including a representation of an audio message,
5 which is what we discussed in the previous cases, would not
6 be applicable to this case, or would it be?

7 MR. MANGRUM: Not to the '747. We think it's --
8 it's not even necessary. There are instances where --

9 JUDGE QUINN: When you "say not the '747", what do
10 you mean? The '747 patent?

11 MR. MANGRUM: Yeah. The '747 patent has -- defines
12 its attaching in such a way that it's clearly distinguishable
13 from any theory set forth in the petition.

14 When -- when you define "attaching" only in terms of
15 the instant voice message, we recognize at that point you
16 have to understand what is -- is Zydney's voice container an
17 instant voice message when you eliminate the additional claim
18 requirements of an audio file.

19 So recognize the Board wants a claim construction
20 issue -- and that's where it becomes salient, when the claim
21 talks about attaching in the context of an instant voice
22 message. And --

23 JUDGE QUINN: So what is the definition of "instant

1 voice message" for the '747 patent if it has a different
2 meaning there?

3 MR. MANGRUM: Well, it says it's recorded -- the
4 instant voice message is recorded in an audio file. So we
5 would feel that's specific enough for purposes of an analysis
6 to determine whether or not there's an attaching as disclosed
7 in --

8 JUDGE QUINN: It's the claim language that's not
9 (inaudible).

10 MR. MANGRUM: (Inaudible).

11 JUDGE QUINN: Okay.

12 MR. MANGRUM: Now, I wanted to continue on the '747,
13 unless Your Honor wants to continue the discussion specific
14 to the other patents with the attaching, but I'd prefer to
15 save that where it applies. I think it just makes -- it
16 would make the presentation flow a little more smoothly.

17 Okay. So moving to Slide -- I started at Slide -- I
18 went to Slide 12, I move us now to Slide 21.

19 In Slide 21, we talk about how the Board should take
20 judicial notice of its reasoning supporting the conclusion
21 that the petition fails to establish even prima facie
22 obvious for the attaching limitations, and here's three
23 bullets why.

1 Now, these three bullets in Slide 21 is effectively
2 just a summary of the -- of the reasoning set forth in the
3 petition -- sorry -- in the Board decision. And
4 incidentally, it's been repeated in many other matters.

5 JUDGE QUINN: But what about the argument that we
6 have evidence in this proceeding that we didn't have in any
7 other proceeding concerning the nature -- the technical
8 nature--of the attachment. That it could be broad enough to -- to cover
9 whether the content is audio or buffer or message
10 object, it doesn't matter, because the attachment, the technicality
11 of it, is broad enough to where it could cover all of them?

12 MR. MANGRUM: Well, so there's two points that the
13 Petitioner made. Incidentally, this was not made in the
14 petition, this was made for the first time in the reply, and
15 then today, so we would renew our objection to presenting new
16 arguments and evidence after the petition.

17 But that being said, I'm going to address the
18 dependent claims and then what Petitioner's attempted to
19 argue with respect to the cross examination.

20 So first, the Petitioner points to certain dependent
21 claims of the '747 patent as purportedly supporting the
22 position that controlling a method of generating means
23 selecting between different nodes.

1 And we want to emphasize again, the Board's already
2 rejected the idea that controlling a method of generating
3 means selecting.

4 But Petitioner first points to Dependent Claim 4 for
5 the first time, again, in its reply, and then in here in
6 trying to advance a new claim construction argument. But we
7 actually believe Dependent Claims 4 and 5 undermine their
8 position, and here's why.

9 So the dependent claim says, "Wherein said method of
10 generating said instant voice message is selected from a
11 group comprising a record mode and an intercom mode." Now,
12 what this does not say is, 'Wherein controlling the method
13 of generating means selecting between.' It's talking about
14 just the method of generating.

15 So you're not defining what's controlling, you're
16 defining, here you can generate this way or this way, but
17 that's not -- it doesn't purport to even define -- further
18 define what's meant by "controlling".

19 JUDGE QUINN: I'm sorry. What patent are you
20 referring to?

21 MR. MANGRUM: This is Dependent Claim 4 of the '747
22 patent.

23 JUDGE QUINN: I see.

1 MR. MANGRUM: So again, this dependent claim does
2 not define the controlling requirement, but rather states
3 that the method of generating is itself selected from a group
4 comprising a record mode and intercom mode. So this is a
5 Markush group describing here's some -- here's some methods
6 of generating.

7 Now, when -- when Uniloc's expert on cross was asked
8 questions outside his direct and asked about whether or not
9 the -- if you -- if you select between either of those two
10 nodes, you're covered by Claim 4, that's true, but what he
11 didn't say is 'and that necessarily means that by selecting
12 one of those that are defined in the Markush group, you've
13 controlled the method of generating.' All he said was, "The
14 claim says here's a Markush group, and if you do one of those
15 you've satisfied the Markush group." But there is no tie-in
16 to the language of the controlling in the independent claim.

17 Now, Dependent Claims 5 and 6 is the same issue.
18 Both depend from Claim 4 -- again, we're talking about the
19 '747 patent -- and they do not expressly define any aspect of
20 the controlling requirement of Claim 3. Rather, with
21 reference to Claim 4, those dependent claims simply require
22 that a respective mode is "selected as a default when at
23 least one recipient is unavailable."

1 Now, Petitioner has suggested that you -- the spec
2 has no -- like, you always have to go to intercom mode if
3 someone is unavailable. Or in other words, it's preset. The
4 availability determines which of the modes you do.

5 But that's actually not true. I think it's -- if
6 you look at -- so there's an example in the '747 patent,
7 starting at Column 13, line 5, where it says, "A user
8 determines one or more IVM recipients are available, and then
9 initiates creation of an instant voice message using a
10 particular method for generating according to the record
11 mode. This includes recording the IVM to an audio file,
12 adjusting for gain," et cetera, et cetera.

13 So there's a specific process set forth, according
14 to the record mode, after a determination that someone's
15 available.

16 So to suggest that the patent only talks about,
17 here's two trees. You make a decision. If they're
18 available, you have to go down this mode, and if they're
19 unavailable, you have to go down this mode. It's just not
20 correct.

21 And then also to suggest that once you make a
22 determination, you only have one way you can do it is also
23 incorrect. But --

1 JUDGE BISK: So how do you -- how do you do intercom
2 mode if the recipient is not available?

3 MR. MANGRUM: Well, my only point is that -- which
4 that -- by the way, that's a new argument presented today.
5 But what I am prepared to talk about today is, when you
6 determine someone's available, it doesn't have to be intercom
7 mode. And even when you do it in record mode, there's
8 different ways to do record mode.

9 So the idea that the specification says that the
10 dependent claims are somehow definitive to all embodiments,
11 and that when you say you're generating a mode, you have to
12 do it the way the dependent claim says, not only violates
13 Canons of Claim Construction, but it's not consistent with
14 the specification. That's the point I'm trying to make.

15 JUDGE BOUDREAU: So the record mode and the
16 intercom mode -- do those require different methods of
17 generation?

18 MR. MANGRUM: Yes. And we think that's undisputed.
19 And we didn't hear a dispute on that today, so I won't waste
20 time on it.

21 JUDGE BOUDREAU: Well, one thing that's always
22 bothered me about Claim 3, and maybe you can help shed some
23 light on this. Claim says, "Generating an instant voice

1 message" and then "controlling a method of generating the instant
2 voice message based upon a connectivity status for each
3 recipient."

4 How do you control a method of generating after
5 you've already generated the instant voice message?

6 MR. MANGRUM: Well, first of all, claims don't
7 necessarily have to be executed in order. And so this -- the
8 idea that you are both generating and that there's a
9 controlling could go as a further descriptor of how it's
10 generating. That's one --

11 JUDGE BOUDREAU: Okay. So you agree that those
12 steps don't need to be performed in that order.

13 MR. MANGRUM: Yes, Your Honor.

14 JUDGE BOUDREAU: Thank you.

15 MR. MANGRUM: And we don't think that there's been
16 an order discussion in any of the papers.

17 JUDGE BOUDREAU: Thank you.

18 MR. MANGRUM: Now, I want to point out something,
19 also. The petition said -- they seem to suggest in Zydney,
20 you have a voice container for the various modes that they've
21 identified, and that somehow there's a different way of
22 generating when you're talking about whether or not it's -- I
23 can't remember the modes. It's the intercom mode and some

1 other mode. I'm going to call it Mode 1 and 2, just for the
2 sake of argument -- for efficiency.

3 And so -- but according to them, what happens is, if
4 you -- if you generate the containers the same, but the
5 content's different, I think that's interesting because what
6 you heard today is a vacillation from identifying the
7 container -- the entirety of the container is instant voice
8 message, to instead the content being the instant voice
9 message.

10 Well, that, of course, is consistent with our
11 construction, which is that when you talk about the instant
12 voice message, you're not talking about a container, you're
13 not talking about the message object in the patent, you're
14 talking about content.

15 What you heard them today say is, well, there's a
16 different way to generate the content, which is the instant
17 voice message, when you're in Mode 1 versus Mode 2.

18 If that's true then what they've effectively
19 admitted is, you have to show attachment to the content, and
20 that's not what Zydney discloses, Zydney discloses attachment
21 to the container.

22 Now, I want to point out some -- the Board has
23 already considered this argument as to whether or not Zydney

1 has two different types of methods of generating with respect
2 to its two modes, and the Board's rejected that. And that
3 was in the IPR2017-2085, Paper 9 at pages 27 to 28.

4 And I want to quote just one sentence from that.
5 And it says, "By the same token, to the extent an entire
6 instant voice message might be recorded prior to
7 transmission in the pack-and-send mode, that will not
8 preclude transmitting portions of message before the entire
9 conversation has been completed. Indeed, Figure 7 of Zydney
10 suggests that messages may be partitioned into smaller
11 containers for transmission in respect of the selected
12 mode."

13 There are citations and internal quotations.

14 But my point is, the Board's already considered the
15 argument as to whether or not there's two different modes
16 and has rejected it.

17 And also, I would submit, again, that if the
18 Petitioner has to adjust or modify the theory, such now, in
19 order to bring this new theory in, the instant voice message
20 is now the content, well, that's what we've been saying all
21 along, you can't show attachment to a container and then say
22 it's attachment to --

23 JUDGE QUINN: Well, what about the -- the disclosure

1 in Zydney, page 12. They've cited that disclosure there
2 where the voice container is defined as either voice data or
3 voice data plus voice properties.

4 So there are two -- two different ways to look at
5 the voice container. In one instance, it is the only the,
6 quote/unquote, content audio, and in the other instance is
7 the content plus all of the other stuff that goes with the --
8 with the properties, like the fields and all of that.

9 MR. MANGRUM: I think you have to take that
10 unexplained line in context with the entire disclosure.

11 The whole point of Zydney was to have a ubiquitous
12 container. A container that looks the same regardless of how
13 you're transmitting. So it was almost like inventing --
14 because it wasn't using HTTP protocol call, it was inventing
15 essentially its own protocol to transfer information.

16 And so regardless of what's inside, the container
17 looks the same and can be unpacked once it's received.

18 And so that's the point of Zydney. So we would
19 submit that, yes, the container is used in every embodiment.
20 By design, it's always the same. The method of generating is
21 the same. Whether or not certain contents different because
22 of what the container's intending to accomplish is --

23 JUDGE QUINN: That may be no different than saying,

1 you know, in a voice over IP network, you have an audio file, and
2 you're just going to packetize it in your particularly
3 proprietary way, and you've essentially put a container
4 around your audio file. Is it not similar?

5 MR. MANGRUM: Well, no. In the sense that what you
6 have to show with Zydney -- since Zydney is relied upon for
7 all the attaching, what you have to show is attaching a --
8 one or more files to what you've defined as the instant voice
9 message.

10 And we've shown -- and we believe -- that the --
11 we've rebutted their theory by showing that what you consider
12 the analogue and the patent of a message object, the instant
13 voice message is not the message object, it's the audio file
14 within the message object.

15 And so when you read the claims literally, as you
16 must, you have to understand what the claim specifically
17 says; you're attaching one or more files to the -- in one
18 instance to an audio file, and in another instance to the
19 instant voice message.

20 JUDGE QUINN: So let me ask you. Because we've seen
21 your expert's testimony on cross regarding the nature of
22 attaching, and it didn't seem to me that he was reading
23 "attaching" as meaning something that has to be conjoined

1 with or directly appended to such that you have the audio
2 file and something stuck to it that is the additional file.
3 It was something more loose than that.

4 MR. MANGRUM: Well, you have to understand that the
5 portion that they're quoting from, the associating, you have
6 to read the whole -- the whole -- the whole section in
7 context.

8 Of course, over objection, it's outside scope,
9 because the idea of how you attach wasn't even relevant in
10 the petition, which is why we didn't address it, we had
11 talked about what was being attached.

12 But setting that aside, the -- there was only one
13 question about the -- using the word "association". All the
14 questions leading up to that were talking about the
15 linkages -- or linkage concept in the patent.

16 So you're using a completely different word, and
17 then apparently reading from an outline, the questioner said,
18 "So, is this associating", without defining even what
19 "associating" meant. And we don't know. We don't know
20 what -- in the context of that question, we don't even know
21 what "associating" means.

22 So if you -- if you're -- to understand that in the
23 context of what it was testified, it was simply, there's a

1 discussion of linkages in the patent, a specific discussion
2 about how linkages occur, and the -- the expert did not, and
3 in fact could not, expand the scope of the patent by offering
4 extraneous testimony as to what else could be done.

5 But it's described in the patent. It's described
6 as -- as example, by linkages. And again, there's no
7 definition, there's no context as to what was meant by
8 "associating" or "association" in that question, so I don't
9 think it advances their case.

10 JUDGE QUINN: So you said something about
11 objections to this testimony. Did you actually object to
12 that?

13 MR. MANGRUM: There were a number of objections
14 leading up to that. I can't remember that specific question,
15 but that whole line of questioning was being objected to. In
16 fact, at one point, there was a concern about needing to
17 involve the Board because 30 minutes --

18 JUDGE QUINN: I've read that, and I have to say, I
19 was concerned about the lack of decorum that was on both sides
20 there.

21 But -- but more importantly, it's the problem that I
22 think you're taking a very narrow view of what is "outside
23 of scope" or what is "new" argument. And you're holding that

1 belief so -- so strongly that you think that you need to do
2 something about it immediately, and I have to say that, by
3 arguing that "attachment" means something more, very specific,
4 you may have opened the door to what "attachment" means.

5 MR. MANGRUM: Well, "attaching" can't be assoc -- my
6 only point, first of all, is to preserve the objection, in
7 answer to Your Honor's question. I wasn't at the hearing.
8 It was -- I had cocounsel there. But I'm speaking --

9 JUDGE QUINN: You mean deposition?

10 MR. MANGRUM: Sorry, the deposition.

11 But speaking from -- as you are, from -- after
12 reading it, that was my take from the deposition.

13 I want to point out, though, that, again, there's
14 nothing in that single sentence taken out of context that
15 redefines the claim term.

16 And I also want to point out that in the '723
17 patent, at Claims 1 and 2 -- so Claim 1 being independent,
18 Claim 2 being independent -- there is an attaching
19 limitation, and right after that in the next claim there's an
20 associating limitation.

21 And so the patent knew how to differentiate the
22 concepts of "attaching" and "associating". Those two terms
23 are expressly differentiated in the dependent claim, which

1 incorporates the limitations of the independent claim.

2 And so to now say that because of some statement
3 taken out of context on cross, we should interpret the
4 "attaching" to refer to "any association" would not be
5 consistent either with the intrinsic evidence, which is
6 controlling here, or with the other claim language that makes
7 that express --

8 JUDGE QUINN: Let me ask you. Do you have any
9 claims that refer to "attaching" as "linking"?

10 MR. MANGRUM: I can't recall offhand. I think there
11 might be some dependent claims, but as Your Honor is aware,
12 there's thousands of pages of record here and I just --

13 JUDGE QUINN: Well, let me point you to patent
14 number -- the '433 patent, Claim 14. The system, according
15 to Claim 9, "Wherein the instant voice messaging application
16 invocation a document handler to create a link between the
17 instant voice message in the one or more files." And the one
18 or more files are the ones that, under Claim 9, are attached
19 to the instant voice message.

20 So it seems to me that the attaching at least must
21 involve creating a link.

22 MR. MANGRUM: For that dependent claim, correct.
23 That's -- we would stand by the language of the dependent

1 claim.

2 JUDGE QUINN: Well, so how can the independent claim
3 be narrower?

4 MR. MANGRUM: We're not saying it's narrower, we're
5 saying a link is more specific than broadly saying any
6 association, even if it's not between -- I mean, they're --
7 the theory I heard today was, even if we agree that the
8 instant voice message is content, and it's content within a
9 container, if you make an association between one or more
10 files and the container, that's enough.

11 And we would submit that what you just read, the
12 linkages, would defeat that argument because it's specific
13 still about something done -- attaching done a certain way,
14 but also, it doesn't change what's being attached. You still
15 have to have an attachment, two links, like in a chain, that
16 are connected a certain way. It's not two remote links in a
17 chain, it's two things that are linked together directly.
18 That's our position, and we feel that's supported in the
19 claim language.

20 JUDGE BOUDREAU: If we could go back to the '747
21 patent for a minute, because that has the claim language
22 "attaching one or more files to the audio file".

23 Is there anything that you can point to in the

1 specification of the '747 patent that describes "attaching
2 one or more files specifically to the audio file"?

3 MR. MANGRUM: Yeah, I think there's --

4 JUDGE BOUDREAU: I'll just say that I find in
5 Column 13, starting at line 23, and going down to
6 approximately line 33, there's a discussion there of
7 "invoking the document handler to make the appropriate
8 linkages to the one or more files and flags the messaging
9 system 320 that the instant voice message also has the
10 attached one or more files."

11 But I read that to mean that files are being
12 attached to the instant voice message, and I'm wondering if
13 there's any other disclosure anywhere that would describe
14 attachment directly to the audio files?

15 MR. MANGRUM: I'm not aware of any, but I have --
16 (inaudible) as being an embodiment of attaching, and I would
17 also point out that this is the embodiment that I -- I
18 referred to earlier when there was a determination that
19 somebody's available, and you use the record mode. So this
20 is an embodiment describing in the record mode, and then an
21 attachment to an audio file through -- through, in this case,
22 the invoking the linkage, that claim language.

23 JUDGE BOUDREAU: So you can't point to any other

1 description in this patent at this time that would describe
2 attachment directly to an audio file?

3 MR. MANGRUM: We would submit that that is enough --
4 I can't -- as I sit here today, I can't recall, but we would
5 say that patent speaks for itself to the extent there are
6 other instances.

7 JUDGE BOUDREAU: And I think that you said earlier
8 that claim differentiation shouldn't be applied where we're
9 talking about different independent claims. So should we
10 understand that to mean that attachment to the instant voice
11 message and the audio file are really claiming the same
12 attachment?

13 MR. MANGRUM: Well, we heard from Petitioner the
14 answer to that question was yes, that those should be
15 considered on the same level. They're two different ways of
16 describing the same thing.

17 We've heard in other cases that they're not. That
18 there's a difference because, in one instance, the claim
19 language -- when I say "we've heard", we've heard from other
20 petitioners -- that there is an express difference between
21 attaching to one other more files, you're calling out
22 specifically what you're attaching to, and then attaching to
23 the instant voice message, not necessarily one or more files.

1 And so --

2 JUDGE QUINN: Well, let me ask you. Because
3 Petitioner here is relying on Griffin primarily for this
4 attachment limitation, as we heard in their case in chief
5 today.

6 Basically, you have the outbound message 400 in
7 Figure 4, and it clearly has a field, an attachments field
8 and message field.

9 So if they are in the same message, the content is
10 there and the attachment is there, how are the -- how is this
11 not an attachment?

12 MR. MANGRUM: Well, I would just submit that, using
13 the Petitioner's own words, 1799 petition, page 26, I'm
14 quoting, "Griffin does not explicitly describe attaching one
15 or more files to the audio file in a speech chat message."

16 And so when you are considering the specific claim
17 language of the '747 patent, which again calls out a specific
18 kind of attachment in terms of what is being attached, there
19 actually is no dispute that Griffin is deficient.

20 JUDGE QUINN: But that sentence is qualifying the
21 disclosure of the embodiment in outbound message 400 is a
22 text message, so that sentence said "in a speech chat
23 message". So that's why I asked them today, are you

1 contending that the outgoing outbound message 400 also
2 applies to speech messages? And if that's a "yes", then that
3 message content in there is audio. So what do you say about
4 that?

5 MR. MANGRUM: I would -- I would direct the Board's
6 attention to a couple graphics that I think will be helpful
7 to describe the position.

8 JUDGE QUINN: Okay.

9 MR. MANGRUM: So if I could turn Your Honors'
10 attention to Slide 5. I'm sorry, let's go to -- it would be
11 better in Slide 7.

12 So it's -- it's not clear if this was the theory in
13 the petition. If what they're arguing today is that you
14 have a chat message, and then inside -- so the chat message
15 has a specific number. It's like number 400 or something.
16 But then inside the chat message is speech content. There
17 is no -- first of all, the speech content in Griffin is not
18 defined as an audio file. But also, the -- to the extent
19 there's a chat content distinguishable from a container chat
20 message, there is no description in Griffin of attaching one
21 or more files to the chat message as opposed -- sorry -- to
22 the speech content, some type of content within the chat
23 message. That's our point.

1 So Griffin describes in general terms very similar
2 to Zydney. To the extent there's any chat at all -- or
3 sorry -- attachment at all, it's to the underlying overall
4 structure. The chat message. There is no attaching in
5 Griffin or in Zydney to the content.

6 And when we -- so that's why, in the context, not in
7 the '747 patent but in the '433 patent, or in other patents,
8 where the attachments just describe in the claim as to the
9 instant voice message, that's where the dispute over content
10 versus structure is important.

11 And we would submit that they haven't proven that
12 the attaching to a structure that contains a distinct
13 content, such as a speech content within a chat message, if
14 you attach to the chat message, you're not attaching to
15 content, the speech content. They haven't proven that. And
16 so -- and it's almost as if they haven't even advanced that
17 theory now when they say that --

18 JUDGE QUINN: But in Griffin the attachment is not
19 to the chat message, the attachment is part of the message
20 itself and is described as an attachment.

21 It's a question for us to decide whether it's an --
22 what is it an attachment to? And it seems like it's part of.
23 If you look at Figure 4 --

1 MR. MANGRUM: Well, being part of --

2 JUDGE QUINN: -- the attachment is in there.

3 MR. MANGRUM: Yeah. Being part of a chat message
4 doesn't mean things are attached together, right?

5 So in other words -- and I think we used this in
6 other proceedings -- if you have a box of pens. Right? Just
7 because the box contains pens doesn't mean the pens are
8 attached to one another.

9 And so when we're talking about the content of the
10 box -- what they are -- what's their burden to prove is that
11 they have a specific attachment between two things
12 specifically expressed in the claim language. And that is
13 not achieved just by saying, 'We have a box and things inside
14 the box.'

15 And again, to the extent they're trying to broaden
16 attaching -- if there's any association, they're associating
17 because they're all in the same box, the "attaching" doesn't
18 mean "associating", and we've -- we've already set forth our
19 arguments why that is the case.

20 All right. So I'm going address now -- so again,
21 attaching really comes up in -- in the context of whether or
22 not it's to one or more files. We feel like the Board
23 should take judicial notice of its earlier findings. In the

1 context of the '433 patent, maybe -- maybe I'll make certain
2 I've touched on all the points I wanted to touch on before
3 the '433 patent.

4 (Pause in the proceedings)

5 MR. MANGRUM: I haven't. And so I want to address a
6 few points about claim construction in terms of the attaching
7 of the '433 patent.

8 So the specification in the '433 patent consistently
9 explicitly identifies the instant voice message as being "the
10 content". That's in Column 11, lines 41 through 45;
11 Column 14, line 39 to 42; Column 21, lines 13 to 21.

12 JUDGE QUINN: I'm sorry. What are these cites to?

13 MR. MANGRUM: These are cites to the '433 patent
14 where it expressly defines the instant voice message as being
15 "the content".

16 And in describing the record mode embodiment, the
17 specification repeatedly uses "i.e." over a dozen times to
18 define the instant voice message as being the audio file
19 itself.

20 Then, in describing the message embodiment, the
21 instant -- the patent states that, "The instant voice message
22 is "the content of the object field"."

23 And to be clear, the specification distinguishes the

1 message object from the IVM audio file at least in that the
2 message object merely carries the IVM as distinct content in
3 order to facilitate communicating with the server. In the
4 absence of any further definition of the claim language
5 itself, it would be there to expand the meaning of IVM, or
6 instant voice message, to encompass the message object in its
7 entirety. So it would be inconsistent with the explicit
8 descriptions set forth in the specification.

9 Okay. And then finally, so in the intercom mode,
10 the specification repeatedly uses "i.e." to define the
11 instant voice message as, "voice data content generated as
12 "input audio of a predetermined size that is written to the
13 buffer"." And this is in the '433 patent Column 11 line 38
14 to 60, and Column 21, lines 8 to 47.

15 And so, to be clear, the specification does not
16 describe the buffer as a data structure that is transmitted
17 along with the content, and indeed, the data structure
18 appears nowhere in the specification, rather, the buffer is
19 simply a memory location used to temporally write successive
20 portions of the instant voice message to facilitate
21 transmitting only the content, which is the instant voice
22 message.

23 JUDGE QUINN: Okay. Let's say we go with you and

1 say, yes, the instant voice message is the content. What do
2 we do about the fight we have here about "instant"?

3 MR. MANGRUM: Well, I'm not certain that that's the
4 salient point. I think Your Honors identified the issue, and
5 I think it's addressed in the briefing.

6 The issue really is, based off the intrinsic
7 evidence and some expert testimony, does -- does it -- is
8 it -- there's -- there need to be an expectation of the
9 possibility, at least, of the recipient being available. So
10 a delivery, not just a transmission.

11 And one of the reasons why is when you look at the
12 patent, there's a distinction in the background section
13 between like leaving a voice message -- you call somebody,
14 they're not there, there's no expectation they're going to
15 pick up, so you leave a voice message -- that's not an
16 instant voice message.

17 And so recognizing that even Petitioner's own
18 expert, which cited to his cross examination testimony,
19 recognized there's a difference between like an email or
20 dropping off a letter in a box, that this idea that, even
21 though you can transmit it now, there has to be an
22 expectation of reception on the other end. That's one of the
23 differentiations between like text messaging and email, or

1 instant voice messaging and just voice mail.

2 And so we would submit that, to the extent that
3 gives rise to certain deficiencies in the petition, we've
4 spelled that out in our briefing.

5 JUDGE QUINN: But it seems to me, though, that you
6 don't dispute that in the -- in Griffin, when you're in the
7 chat history box, that you are going to get a speech chat
8 message immediately.

9 MR. MANGRUM: Well, it's not necessary that it's
10 immediate. But I can't remember in all context where we've
11 brought it up, because there's a lot of overlapping issues in
12 these patents, but I would say for the -- the instant aspect
13 of instant voice message, we would stand on our briefing.

14 JUDGE QUINN: Okay.

15 MR. MANGRUM: Okay. That brings me to -- I want to
16 talk about now the controlling limitations. If I could have
17 the Board turn with me to Slide 24.

18 And in its original Institution decision, the Board
19 correctly found the petition fails to establish -- okay, so
20 let me give you some context.

21 Slide 24, we're going back to the 1799 patent --
22 sorry -- the 1799 matter, and the '747 patent.

23 So if everyone's with me on Slide 24, we're going to

1 continue the discussion with the controlling limitations.

2 And so the claim language, as recited in the '747
3 patent in Claim 3, is, "Controlling a method of generating
4 based upon the connectivity status of each recipient."

5 And I think I've touched on this a little bit, but
6 turning to Slide 25, we emphasized the findings of the Board
7 in its original Institution decision in two points. "The
8 petition does not prove that either of pack-and-send mode or
9 the intercom mode of operations control over any matter by
10 connectivity status of recipient," and two, "The ability to
11 select a different mode of delivery is distinguishable from
12 controlling the method of generating an instant voice
13 message. And in other words, whether the pack-and-send mode
14 is mandatory or simply optional may determine whether or not
15 the pack-and-send mode is used, but this determination does
16 not change how the instant voice message is generated in the
17 pack-and-send mode."

18 And again, I'd emphasize the point that it's
19 undisputed that in the -- in the common specifications of
20 these matters, there is a difference in the way the instant
21 voice message is generated if you use, for example, the
22 intercom mode versus the record mode.

23 JUDGE QUINN: Well, it is possible that we reach a

1 different conclusion based on the evidence gathered thus far,
2 and I think you already told us what you think about the
3 controlling limitation vis-à-vis the different voice
4 container contents.

5 Do you have anything else to add on that?

6 MR. MANGRUM: No. I think I want to move on.

7 JUDGE QUINN: Okay.

8 MR. MANGRUM: All right. I'm going to move on to
9 Slide 28.

10 There is a dispute with respect to "node". And this
11 appears in the context of a list of nodes -- this is recited
12 in Claim 2 -- and whether or not it refers to multiple
13 devices within a network, not people, as Petitioner argues.

14 And so what you have is, in the footnote, and
15 without supportive argument or evidence, Petitioner asks the
16 Board to construe "node" as a "potential recipient".

17 The petition does not specify whether "potential
18 recipient" refers to a device or person. And the Petitioner
19 first maps Griffin's mobile terminal onto the node term and
20 then it inconsistently arrives, instead, again on a human
21 user of mobile terminal 100 for the node term. And the
22 recited node is not -- it cannot refer to both.

23 So this kind of goes to a number of instances where

1 Petitioner tries to have one reference cure the deficiency of
2 another, and you have to understand how Griffin and Zydney
3 are distinguishable. They have two different designs that
4 are actually not compatible.

5 JUDGE QUINN: Well, I don't understand these
6 arguments, to be honest with you, because it seems to me that
7 Griffin is not referring solely to a recipient as a person.
8 I mean, we're talking about things connected, mobile devices,
9 terminals communicating in a network, and IDs that represent
10 those users, but they're not people within a computer
11 like the Matrix. Do you understand?

12 MR. MANGRUM: I do. And I think the important thing
13 is to understand the context where these claim limitations
14 appear, and it's talking about availability.

15 And so the availability of a person is different,
16 it's a different concept than an availability of a device in
17 terms of whether or not it's connected -- whether or not it's
18 online.

19 And so their theory is you can take -- what they say
20 is Zydney's teaching of conveying a status of whether or not
21 the device -- a device is online and modify Griffin --

22 JUDGE QUINN: But isn't Griffin even more precise?
23 Because Griffin is telling the system that the person

1 interested in receiving the message is available, and the
2 only way the user could be potentially available is if the
3 device is actually also connected. So what's the difference?

4 MR. MANGRUM: Well, the difference is, under the
5 proposed modification, you would say "available" because the
6 device is connected. So you're -- when you say that -- but
7 the user might not be available.

8 For example, there might be an instance where the
9 user is at church and does not want to have -- just because
10 the screen's open, have an instant voice message immediately
11 appear just because their screen happens to be open. So they
12 set their -- even though they're connected, they set their
13 availability status to "not available".

14 And so if you modify by Griffin and say I'm going to
15 change the status so it's the status of the device, that's a
16 problem. It takes away the intended operation of Griffin,
17 the feature of Griffin that they consider to be beneficial,
18 and we would submit that there's a lot of case law that says
19 when you render -- a modification renders a primary reference
20 inoperable for its intended purpose, there's no motivation to
21 combine.

22 JUDGE QUINN: Why is it inoperable?

23 MR. MANGRUM: Because you would -- you can create a

1 situation where you say we're going to modify the status so
2 that it conveys not the availability of a user, but instead
3 the connectivity of a device. If you make that modification,
4 then you could have the situation where the user does not
5 want to be available, but the device is connected.

6 And so if that's what the availability means is
7 whether or not you're connected, you could have a scenario
8 that would be considered undesirable conditions under the
9 teachings of Griffin.

10 JUDGE QUINN: You're saying Griffin is inoperable,
11 or are you saying Zydney is inoperable?

12 MR. MANGRUM: No. Griffin, as modified, as
13 proposed, would render certain aspects considered beneficial
14 and technologically advantageous in Griffin inoperable. And
15 that would be an example.

16 It's actually an example spelled out quite in detail
17 in our briefing and in the attached declaration.

18 I -- I think it's important to recognize that
19 Griffin expressly differentiates -- this is Slide 29 now --
20 its recipient's current status with the terminal's address.
21 Okay?

22 And so Griffin recognize -- so I'm reading Slide 29.
23 What we have here is a snippet from Column 5, lines 11

1 through 15.

2 So Griffin recognizes there could be a recipient
3 current status, and then not -- not the terminal status, but
4 the terminal's address.

5 Incidentally, elsewhere, the terminal address can
6 change. So Griffin recognizes that there's not like a
7 one-to-one association between a device and a user. A user
8 could be a different -- it could use different devices, could
9 be at different addresses.

10 When you talked about a person's status -- right? --
11 that doesn't necessarily mean that's the connectivity status
12 of the device. They're ind -- they could be completely
13 independent.

14 JUDGE QUINN: I thought Griffin did an association
15 between the user's ID and the terminal address, and in that
16 sense then, the status is of both.

17 MR. MANGRUM: But the point is, the status is
18 never -- is never defined in terms of the terminal. The fact
19 that you could have at one point in time a mapping does not
20 necessarily mean, when you say unavailable, it doesn't mean
21 the terminal's unavailable, it means the person's
22 unavailable.

23 And we have -- if you look at Slide 30, there's a

1 number of instances where it's very clear that -- that
2 Griffin repeatedly and consistently ties its present status
3 to a user, i.e. to a person, as opposed to connect --
4 connectivity status of the node.

5 And just to read into the record the citations.
6 It's Column 2, line 26; Column 7, lines 39 to 49; Column 8,
7 22; Column 5, lines 11 to 13; Column 6, line 31; Column 5
8 line 25; and Column 8, lines 50 to 51.

9 And it's -- throughout the disclosure, it's replete
10 and very clear that when they're talking about present
11 status, it's the present status of a user. And you need to
12 know that it's of the user because the user could define
13 their own status.

14 I want to --

15 JUDGE QUINN: Well, doesn't the patent describe that
16 the user can change status, as well?

17 MR. MANGRUM: The patent or Griffin?

18 JUDGE QUINN: The patent.

19 MR. MANGRUM: I can't recall offhand. I'm not here
20 to talk about the deficiencies in Griffin. I can't recall
21 exactly what happens with the -- the present status, but I
22 know it talks about the connectivity status of a node. So
23 what we have here is a description of nodes within the

1 network. And so we've talked about in our brief that we feel
2 that the node term is specific to a device. And so when you
3 talk about the connect it status of the node, you're talking
4 about connectivity status of the device. We think that's
5 what the claim requires by the express language of the claim.

6 JUDGE QUINN: But if the patent describes that you
7 can change -- that a user can change the connectivity status,
8 then what's the difference?

9 MR. MANGRUM: Well, if a user turns off a device or
10 puts it in airplane mode and somehow changes their
11 connectivity status, it's still referring to the connectivity
12 status of the device. The device -- the node is not
13 connected. So we would -- the system is looking at what is
14 the status of the node, not what is the status of the user.

15 Okay. There's another important point to point out.
16 These are some statements made by Petitioner's declarant
17 that further emphasizes that the -- what we're talking about
18 in Griffin is the status controlled by -- that pertains to a
19 user.

20 So turning now to Slide 33. This is, again,
21 addressing the list of nodes limitations in Claim 2 of the
22 1799 matter, addressing the '747 patent.

23 So Dr. Haas conceded that Griffin fails to expressly

1 or (inaudible) disclose that its so-called status indicates
2 whether or not a terminal is connected.

3 And with your permission, I'd like to continue at
4 this point.

5 JUDGE QUINN: Sure.

6 MR. MANGRUM: So here, he gives some examples of
7 where the person might be unavailable, but their terminal
8 might be connected, and he recognizes that's what Zydney's
9 disclosing. That it doesn't talk about the terminal, it's
10 talking about the person.

11 And I want to also point out, Petitioner and its
12 declarant have repeatedly conceded in these related matters
13 that Griffin discloses a receiving user sets their own
14 availability status based on whether or not she makes her
15 chat history display available or visible.

16 So in other words, it's not based on the
17 connectivity status of a node, it's based on whether or not
18 the person makes their -- their chat history display visible.
19 So you can see this on the Petitioner Paper 1 in the petition
20 itself at page 37.

21 This is also shown in the petition in the '890
22 patent for 1802 matter, pages 24 through 25.

23 And Petitioner says, "Griffin explains that if a

1 speech message arrives while a chat history display is not
2 available to the user, the user is not available to receive
3 the message, and therefore, the message is queued."

4 And Dr. Haas repeats the same understanding verbatim
5 in his declaration.

6 So this amounts to a repeated party admission that
7 Griffin purposely designed the system such that its
8 availability status pertains, not only to a user, but what a
9 user happens to be doing at the time.

10 If the user doesn't have the -- the chat history
11 display visible, the -- this system recognizes that that
12 means they're not available. Even if their device is
13 connected, ready to receive, that's the basis Griffin uses
14 by its design. And so when you modify that and change that,
15 what you're doing is changing the way Griffin operates. It
16 would result in situations where Griffin would not operate
17 as intended, and we submit that that would undermine the
18 motivation to combine.

19 And with that, I will save my remaining time for
20 rebuttal.

21 JUDGE QUINN: Okay. You've used up two minutes.

22 MR. MANGRUM: Thank you, Your Honor.

23 MR. CITROEN: If Your Honors are ready, I'll

1 continue.

2 JUDGE QUINN: You're ready? Okay.

3 MR. CITROEN: Ready if you are.

4 One second. Let me -- yeah, sorry. Let me test
5 the --

6 (Pause in the proceedings)

7 MR. CITROEN: Okay. I believe I have about seven
8 minutes left, so I'm just going to try to address a few
9 issues that came up quickly.

10 So one of the things we heard today in Patent
11 Owner's presentation again dealt with what is the
12 understanding of the instant voice message limitation.

13 There was some reference to the use of "i.e." in the
14 specification.

15 First, I want to just indicate that "i.e." is used
16 primarily to indicate that, in the record mode, the speech
17 content of the instant voice message is the audio file. And
18 that's an important distinction what we think the "i.e." is
19 actually used for here in the specification, because in
20 contrast, in intercom mode, the speech content there is the
21 buffer data.

22 So when you see in the specification where it says,
23 "Audio file, i.e. instant voice message," the way to read

1 that portion of the specification in the full context of the
2 disclosure is that it's trying to make this distinction
3 about what is the speech content of the instant voice
4 message.

5 Now, also, I just want to indicate -- and I know
6 Your Honors are familiar with the law -- "i.e." is not
7 necessarily definitional. You have to look at the entire
8 context. And we described in our opening presentation that
9 the entire context shows that the "i.e." here is not actually
10 definitional, it's used internally inconsistently to --
11 excuse me -- the IVM term is used inconsistently throughout
12 the specification and in the claims.

13 And the existence of these different alternative
14 meanings -- which isn't really a dispute between the
15 parties, everyone seems to agree that IVM is used in
16 different ways -- the fact that there are these different
17 meanings, that means that this term is not defined in any
18 specific portions of the specification or claims.

19 And again, I know you know the law. For
20 lexicography to exist, you have to have reasonable clarity,
21 deliberateness, and precision so that a person of ordinary
22 skill in the art is on notice. And that standard is clearly
23 not met here. That's just evidenced by the sheer fact that

1 this is such a hotly disputed issue in these proceedings, as
2 well as other proceedings.

3 Another point I want to make is that the fact that
4 there are so many varied uses of "IVM" in these patents
5 shows the breadth of these terms, and there's case law to
6 support that understanding.

7 When a term is used in various different ways in the
8 same context, that term cannot be limited to any specific
9 type of meaning or narrow meaning like Patent Owner is
10 attempting to do here. It means that the term should be
11 construed broadly, and especially under the BRI standard,
12 which is applicable in these cases.

13 One other final point I want to make. There was
14 some discussion that the term "IVM" is essentially redefined
15 in just the claims that don't help the Patent Owner. I want
16 to just point out that there is a strong principle that the
17 same term in different claims of the same patent should be
18 construed consistently. That's a strong presumption that
19 has to be overcome by clear evidence that doesn't exist
20 here.

21 That principle also applies across patents in the
22 same family. And here, they're not only in the same family,
23 they have the exact same specification. They're

1 continuations of each other. That term appears in multiple
2 claims, but they should be construed consistently.

3 Now, one other point I want to make, again, is that
4 the construction of "IVM", the whole reason this is a
5 dispute is because it affects the attaching limitation. I
6 just want to make clear, again, that I believe we've
7 presented in our opening that, regardless of how this term
8 is construed, we still believe that those limitations are
9 satisfied. We have declaration -- or we have deposition
10 testimony from their expert explaining just how broad that
11 term "attaching", in the context of the specification,
12 actually is. The Patent Owner invited you to read the
13 transcript to get the full context of that --

14 JUDGE QUINN: What about the argument we heard from
15 Mr. Mangrum that one of those arguments that you've presented
16 today on "attachment" are new, they just came out in the reply.

17 MR. CITROEN: We have maintained the exact same
18 position that we maintained in our petition, which is that
19 attaching to the message includes or means in the prior art
20 that you're also attaching to the speech content in that
21 message. That is not a new position.

22 We were strictly responding to their specific points
23 that they raised in their responses. It was entirely

1 rebuttal. There's nothing inconsistent or new with what we
2 raised in our petition from the beginning.

3 JUDGE QUINN: Did you submit new testimonial
4 evidence in your reply?

5 MR. CITROEN: The only additional evidence that was
6 submitted was the testimony of Patent Owner's expert that we
7 received during the deposition, we did not submit additional
8 testimony from our own expert.

9 JUDGE BISK: I think their argument was that --
10 that -- their expert didn't testify about attaching, and so
11 the questions were outside the scope of his testimony. Do
12 you have a response to that?

13 MR. CITROEN: So the -- Yes, Your Honor.

14 So the questions were directly in the context of the
15 specification. In fact -- and I think and the Patent Owner
16 was trying to make the point that it had to do with the
17 linkages. We were talking about the specific portion -- I
18 think Judge Boudreau, you brought this up -- the portion of
19 the specification that talks about attaching. It says,
20 "Attaching implements linkages."

21 JUDGE BISK: I'm sorry. I was asking about their
22 expert's testimony, not the specification.

23 MR. CITROEN: Right. So that is what we were

1 discussing during the deposition. So that testimony is about
2 that portion of the specification, so it is in context.

3 JUDGE BISK: (Inaudible).

4 MR. CITROEN: Yeah.

5 JUDGE BISK: Okay.

6 MR. CITROEN: Okay. So the -- the point the Patent
7 Owner was trying to make is that linkages is what he was
8 talking about. But if you look at the portion of the
9 specification that we discussed, or that was discussed and
10 pointed out by Judge Boudreau, the linkages is how we
11 described attaching.

12 And so we asked the expert for Patent Owner, "Well,
13 what does that mean?" That's where we discussed
14 "associating". That's where he said that the system
15 understands that they're associated -- the two documents are
16 associated, they would be attached, and that if the system
17 knows that they go together, that they would be attached.
18 Nothing about this conversation was outside the scope.

19 And I'll just point out, they had the opportunity to
20 redirect their expert to clarify any of these issues; there
21 was no redirect. They could have -- they could have -- they
22 had the opportunity to try and clarify things if they
23 believed things were outside the scope, but that never

1 occurred

2 JUDGE QUINN: So your position is that whatever
3 questions you asked on "associations", "linkages", and the
4 like, were within a proper scope examination?

5 MR. CITROEN: Absolutely, Your Honor.

6 JUDGE QUINN: There's a motion to exclude filed in
7 these cases based on all sorts of hypotheticals that were
8 asked during the deposition, and at least for this particular
9 issue, you've relied on it.

10 MR. CITROEN: Absolutely, Your Honor. These are
11 terms that appear in the claims, and they've taken positions
12 that these terms mean certain things, so we asked questions
13 specific to those terms to understand what the expert's
14 opinions actually were with respect to those terms.

15 And as the transcript reveals, his interpretation of
16 those terms during the deposition in the context of the
17 patents were very different than his interpretation of those
18 terms in his declarations. They were entirely within scope.

19 The fact that we raised hypotheticals doesn't mean
20 that the discussion isn't within the scope of the -- of our
21 petition and the response that the Patent Owner has filed.

22 Now I want to move on quickly to controlling. There
23 was a few points made -- and I just want to go through this

1 quickly. Patent Owner stated that nothing supports
2 selecting between intercom and record mode in the
3 controlling limitations.

4 May I continue, Your Honor?

5 JUDGE QUINN: You can finish your sentence.

6 MR. CITROEN: Okay. I just want to point out that
7 they said that there is no support for selecting between
8 intercom and record mode in those claims.

9 The fact is the -- what we pointed to is the only
10 support for the interpretation of those claims, which is the
11 interpretation we propose.

12 What we didn't hear Patent Owner say is what those
13 terms -- or what that claim actually means and where the
14 support for their interpretation is. We didn't hear that
15 today from the Patent Owner.

16 So I did want to try to address some of the points
17 on the node, but, of course, I know I'm out of time so --

18 JUDGE QUINN: You are out of time.

19 MR. CITROEN: Okay.

20 JUDGE QUINN: Thank you.

21 MR. CITROEN: Thank you, Your Honors.

22 JUDGE BOUDREAU: I do have another question though
23 about the controlling step there.

1 I asked Mr. Mangrum if there's any significance to
2 the fact that, in Claim 3 of the '747 patent, the claim
3 recites, "Generating an instant voice message" and "controlling
4 a method of generating the instant voice message," whether
5 there's any significance to that order of steps.

6 Recognizing that there's significant case law saying
7 that, in general, the order of steps isn't limiting
8 unless the claim explicitly says that it is, I also note in
9 this claim, however, the claim language says, "Controlling a
10 method of generating the instant voice message," which seems
11 to take its antecedent (inaudible) from the (inaudible).
12 And so I'm just wondering whether Petitioner has any
13 additional argument to make with respect to the order of
14 steps there?

15 MR. CITROEN: I don't think it affects our opinion,
16 Your Honor. I believe, given the context, the dependent
17 claims in the specification, the testimony from Mr. Easttom,
18 that our interpretation is the correct interpretation.

19 You have -- the methods of generating are explicitly
20 defined. You control those methods of generating based on
21 the availability of the recipient.

22 I think that's -- that's really the critical point
23 here. And I don't believe any -- any arguments with respect

1 to order of the steps (inaudible) would affect that argument
2 at all.

3 JUDGE BOUDREAU: All right. Thank you for
4 clarifying that.

5 MR. CITROEN: Sure, Your Honor.

6 Unless there's any other questions, I will sit down.

7 JUDGE QUINN: No other questions. Thank you.

8 MR. CITROEN: Thank you, Your Honors.

9 JUDGE QUINN: You have eight minutes.

10 MR. MANGRUM: I don't think I'll even need that much
11 time. But I want to just touch on a few points that were
12 submitted in this rebuttal.

13 First of all, there was a discussion of the use of
14 "i.e." in the embodiments in the common specification.

15 And that I want to make it clear. There was a
16 suggestion that in the record mode embodiment, the "i.e."
17 is -- makes reference to the speech content of IVM; that's
18 not correct.

19 In over a dozen times, what you have is a reference
20 to the audio file 210, a reference number, and then in
21 parenthesis, "i.e. the instant voice message." So there's no
22 question that that's actually a misstatement of what's on the
23 record. There's no question that in that embodiment, what's

1 being described is the audio file -- or I'm sorry -- is the
2 instant voice message is the audio file, it's not speech
3 content of something else.

4 When you look at the use of "i.e." in the intercom
5 mode embodiment, it's the same thing. It's also referring to
6 content. You're talking about content being loaded to
7 buffers, and then content being transmitted.

8 Now, the process of generating is different and, in
9 fact, it's expressly distinguished between those two modes.
10 And I've also provided examples where, within a given mode,
11 there might be a different process given the availability of
12 the status. But the -- the idea that "i.e." somehow is used
13 inconsistently throughout the specification is not correct.

14 Second point. That the Petitioner has now argued
15 that Griffin -- notwithstanding the admission that Griffin
16 doesn't show at least attaching one or more files to an
17 audio file in the petition, echoed in the declaration, that
18 Griffin somehow now discloses that limitation by attaching a
19 message -- attaching message to the chat message as a whole.
20 So to the envelope, the whole thing, it's attaching a
21 message to speech content in the message. That's their
22 theory today.

23 I draw your -- the Board's attention to Slide 20,

1 which has a quotation to the original Institution decision,
2 Paper 9, where the Board said --

3 JUDGE QUINN: I'm sorry. Slide 20 of which
4 presentation?

5 MR. MANGRUM: They're all numbered --

6 JUDGE QUINN: Of yours?

7 MR. MANGRUM: Of mine, sorry. yes.

8 JUDGE QUINN: Okay.

9 MR. MANGRUM: And I could give the citation, but
10 reading from the Institution decision, as Patent Owner points
11 out, there's a citation, "Attaching a file to a message is
12 not the same as attaching a file to an audio file included in
13 that message. And the portions of Griffin relied upon by
14 Petitioner is allegedly teaching this limitation disclosed,
15 including files within Griffin's speech chat message 400, but
16 do not teach or suggest attaching files to an audio file."

17 We would submit that we provided evidence and
18 argument to support that conclusion, and that the Board's
19 conclusion on that point was correct.

20 Finally, on the last point, there was -- again, we
21 stand on our objections to the scope of cross examination.
22 But I want to point out, Dr. Easttom did not testify on direct
23 about the process of attaching. How do you attach. That

1 was not necessary. And the reason why it wasn't necessary
2 was because he looked at the elements of attaching -- not
3 the process but the elements the Petitioner identified and
4 said, "That does not meet the claim language. Attaching
5 this to this does not meet attaching in the context of the
6 elements specifically set forth in the claim."

7 And so what they're trying to do now is open up a
8 new theory that, well, okay, maybe Zid -- almost abandoning
9 Zydney, let's go back to Griffin, because of what they're
10 saying is an expansion of scope based off a single sentence
11 in his cross examination testimony.

12 We would submit he can't and has not expanded the
13 scope of the claim, and that he did not, again, opine on how
14 do you do attaching. He didn't offer any testimony on that
15 because he didn't need to. And the reason being, again,
16 because there was -- the claim language attaches specific
17 elements, and there has been no proof of obviousness with
18 respect to those specific elements, regardless of how
19 attaching is performed.

20 And in the interest of only sticking to rebuttal
21 testimony, those are the points I wanted to make, unless
22 Your Honor has other questions.

23 JUDGE QUINN: Let me check.

1 MR. MANGRUM: Sorry. I meant -- rebuttal argument
2 is what I meant.

3 JUDGE QUINN: Yes, I understand.

4 MR. MANGRUM: Okay.

5 JUDGE QUINN: I'm good.

6 Do any of you have questions?

7 JUDGE BOUDREAU: Nothing further from me, either.
8 Thank you.

9 JUDGE QUINN: Okay.

10 JUDGE BISK: Nothing further.

11 JUDGE QUINN: All right.

12 (Inaudible).

13 JUDGE QUINN: What do you need?

14 COURT REPORTER: Do you want to go off record now?

15 JUDGE QUINN: No.

16 COURT REPORTER: Okay. I'm sorry. I apologize.

17 JUDGE QUINN: Okay. All right. We -- so we have
18 concluded the hearing on these -- on these cases.

19 I do want to ask a question that's just basically
20 for us to know where we stand. I believe this is the last
21 wave of hearings on these related patents; is that correct,
22 Mr. Mangrum?

23 MR. MANGRUM: Yes, Your Honor. That is our

1 understanding.

2 JUDGE QUINN: Okay. Do you all have any updates for
3 us on any talks about settlement, Mr. Mangrum?

4 MR. MANGRUM: Oh, you're addressing me? You mean
5 settlement with respect to Petitioner Samsung only?

6 JUDGE QUINN: Mm-hmm.

7 MR. MANGRUM: No update for settlement discussions
8 with Samsung, Your Honor.

9 JUDGE QUINN: Okay. Thank you.

10 All right. Let me wrap up my computer, and we are
11 adjourned. We'll consider the matter submitted for issuance
12 of the final written decision.

13 Thank you everybody for your excellent arguments
14 today.

15 MR. CITROEN: Thank you, Your Honor.

16 MR. MODI: Thank you, Your Honor.

17 JUDGE QUINN: And we are adjourned.

18 Okay, now we can go off the record.

19 COURT REPORTER: We are off record. End of hearing.

20 (Proceedings conclude at 1:16 p.m.)

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