

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

IPR2019-00702
Patent 7,969,925 B2

Record of Oral Hearing
Held: May 21, 2020

Before SALLY C. MEDLEY, JEFFREY S. SMITH, and
GARTH D. BAER, *Administrative Patent Judges*.

APPEARANCES (ONLINE):

ON BEHALF OF THE PETITIONER:

James Heintz, Esquire
Brian Erickson, Esquire
Jeff Cole, Esquire
DLA Piper LLP (US)

Marc Breverman, Esquire
Apple, Inc.

ON BEHALF OF PATENT OWNER:

Brett Mangrum, Esquire
Etheridge Law Group

The above-entitled matter came on for hearing on Thursday, May 21, 2020, commencing at 3:00 p.m., by video/by telephone.

1 PROCEEDINGS

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3 JUDGE MEDLEY: Yes. On the record, please. Good afternoon.
4 This is the hearing for IPR2019-00702 involving U.S. Patent No. 7,969,925.
5 At this time, we'd like the parties to please introduce counsel for the record
6 beginning with the Petitioner.

7 MR. HEINTZ: Thank you, Your Honor. This is Jim Heintz from
8 DLA Piper on behalf of Petitioner Apple. With me is Brian Erickson, and
9 by telephone Marc Breverman and Jeff Cole. Marc Breverman is from
10 Apple. Jeff Cole is from DLA Piper.

11 JUDGE MEDLEY: Okay. And Mr. Heintz, will you be presenting
12 today?

13 MR. HEINTZ: Yes, Your Honor, I will.

14 JUDGE MEDLEY: Okay. Thank you. All right. And for Patent
15 Owner?

16 MR. MANGRUM: Yes. Good afternoon, Your Honor. This is Brett
17 Mangrum with the Etheridge Law Group representing the Uniloc Patent
18 Owner.

19 JUDGE MEDLEY: Okay. Thank you.

20 MR. MANGRUM: And I will be speaking on behalf of Patent Owner.

21 JUDGE MEDLEY: Okay. Thank you. Each party will have 45
22 minutes total time to present arguments. Petitioner will proceed first and
23 may reserve some of its argument time to respond to arguments presented by
24 Patent Owner. Thereafter, Patent Owner will respond to Petitioner's
25 presentation and may reserve argument time for surrebuttal. Mr. Heintz, you

1 may proceed. Do you wish to reserve some of your time to respond?

2 MR. HEINTZ: Yes, Your Honor. I'd like to reserve 20 minutes.

3 JUDGE MEDLEY: Okay. And please keep abreast of your own time.

4 I might not stop you.

5 MR. HEINTZ: I will do that, Your Honor. Thank you.

6 JUDGE MEDLEY: Okay.

7 MR. HEINTZ: Your Honor, may it please the Board, I'd like to start
8 my discussion today by reviewing a few background facts about the '925
9 Patent at issue in this IPR. And then I'll discuss claim construction which
10 largely will resolve the issues raised by Patent Owner. And I'll finish up by
11 discussing a few issues raised by Patent Owner with respect to Ground 1.

12 So if the Board would, please turn to Slide 3 of Petitioner's
13 demonstrative. On Slide 3, we've reproduced Figure 1 of the '925 Patent.
14 And the point I want to make to the Board here is that there are two mobile
15 phones, that's 105 and 110, and those are colored in yellow. And those
16 phones can communicate with other devices using two paths. The first path
17 to the voice communication Path F-170, and that's highlighted in green on
18 the left-hand side of the figure. And that path is used by using the other
19 device's telephone number. Of course, we're talking about things like voice
20 communications and SMS communications. The second path is through the
21 IP network 165 that's shown in blue on the slide. Mobile phones 105 and
22 110 can communicate with other devices on the internet via the second path,
23 and they can also communicate with each other if they know each other's IP
24 address. And the '925 Patent discusses a technique for allowing that to
25 happen.

26 Now, on Slide 4, Your Honor, we show that the '925 Patent is directed

1 toward peer-to-peer mobile data transfers. Peer-to-peer means the devices
2 are able to communicate with each other. And there are two aspects about
3 this technique that's disclosed in the '925 that I want to highlight for the
4 Board. In the first highlighted passage, the peer-to-peer technique means the
5 data can be exchanged directly between the phones, that's 105 and 110, via
6 the internet path without the need for an intermediate server to store any
7 data. And then the second aspect I want to highlight for the Board's
8 attention is addressed in the second passage on Slide 4. And in that passage,
9 the point that's being made is this technique that the '925 discloses does not
10 require the mobile devices to know each other's IP addresses prior to a
11 method performed according to those IP's being started. And that's
12 important because unlike a phone number, the mobile devices often don't
13 know each other's IP addresses on the IP network.

14 Now, I'd like to move to Slide 5, Your Honor. And I'll briefly review
15 how the '925 Patent discloses its method being performed. This is Figure 2
16 of the '925 Patent. And we're going to focus like we did on the earlier -- in
17 the earlier proceeding on the steps that are being performed by the initiating
18 mobile device. This is the device that wants to start a data transfer section.
19 It's what's called a target mobile device.

20 So on Figure 2, the first step, which is 210 and which we've annotated
21 as Step 1.a, the initiating mobile device opens a TCP port. And that's -- and
22 in particular, it opens a listening port. And that limitation that we'll see in a
23 few minutes in the claim that is directed toward this step is really the subject
24 of almost the entire dispute between the parties. After the TCP port is
25 opened, listening TCP port, in Steps 1.b, or 210 in the original figure, the
26 device -- the initiating mobile device transmits an SMS invitation message to

1 the target mobile device. Again, this method is transmitted using target
2 mobile device's phone number. And included in this invitation message is
3 the initiating device's IP address. And that's, again, Your Honor, of course
4 because these mobile devices don't have each other's IP addresses.

5 Now, the third step for the method is at 1.c, or Step 270. Here, the
6 target device receives -- the target device has sent and the initiating device
7 received a TCP IP response to this invitation. This response is sent by the
8 target device over using a TCP IP connection because now, through the SMS
9 invitation message, the target device knows the initiating device's IP address.
10 And because IP messages always come with both source and destination
11 addresses, it's also the case that the initiating mobile device knows the target
12 device's IP address. So at this point at Step 1.c, the devices, the target
13 device and the initiating device, have now exchanged IP addresses. And that
14 enables the last step, Step 1.b, or Step 280, to be performed. And there, a
15 TCP IP connection is opened in the conventional way between the two
16 mobile phones.

17 I'd ask the Board to turn to Slide 6 now. Here on Slide 6, we've
18 reproduced Claim 1 of the '925 Patent. And the point I want to draw the
19 Board's attention to here is that the only dispute on Claim 1 raised by Patent
20 Owner concerns the highlighted language that raised opening a listening
21 software port. There are two other independent claims in the '925 Patent,
22 Claims 8 and 15, and this same issue is raised for both of those claims.
23 Other words, the issues are identical for Claims 1, 8 and 15.

24 I'll ask the Board to turn now to Slide 7. And here, I reproduced
25 Claim 2 of the '925 Patent. This comes from Claim 1. And the highlighted
26 limitation, opening a second listening software port, is once again the only

1 limitation in Claim 2 that's disputed by Patent Owner. Claim 2 has
2 corresponding dependent claims in Claims 9 and 16. And the same issues
3 are raised with respect to those claims. The other point I want to make is of
4 all the dependent claims in the '925 Patent, Patent Owner only raises
5 separate issues with respect to Claims 2, 9, and 16.

6 The other point I want to note at the outset is other than these two
7 claim construction issues for Claims 1 and 2, the Patent Owner raises no
8 other arguments with respect to Grounds 5 and 6. And, therefore, if these
9 claim construction disputes are resolved in favor of Petitioner Apple, Patent
10 Owner has put forth no argument as to why Claims 5 and 6 don't render all
11 challenge claims unpatentable. All right. I'm going to ask the Board to go
12 to Slide --

13 JUDGE MEDLEY: I have a question.

14 MR. HEINTZ: -- 9 now.

15 JUDGE MEDLEY: Can I ask you a question? You said that Patent
16 Owner disputes some of the dependent claims. I'm looking at page 21 of
17 their -- of their Patent Owner response. Doesn't seem to me that they're
18 individually addressing any dependent claims. Where is it that they argue?

19 MR. HEINTZ: Yes, Your Honor. It's the discussion of Claim 2, and I
20 think that's at page -- one moment here. It's on page 10 of the Patent Owner
21 response, Your Honor.

22 JUDGE MEDLEY: Is that -- isn't that with respect to claim
23 construction?

24 MR. HEINTZ: Yes. That's my point. The only argument that pertains
25 to any dependent claim is the claim construction argument about what
26 second means and whether second implies some kind of order in Claim 2

1 and the other two claims that are like Claim 2 (indiscernible).

2 JUDGE MEDLEY: So why would we need to construe the order,
3 what the scope of the claims, the order of the steps? In other words --

4 MR. HEINTZ: So --

5 JUDGE MEDLEY: -- is that in dispute? We don't generally construe
6 things that aren't in dispute.

7 MR. HEINTZ: Yes, Your Honor. So the petition states that there is
8 no implied order between the steps of Claim 1 and the steps of Claim 2.
9 And, in particular, the fact that Claim 2 recites opening a second listening
10 software port doesn't mean that the second listening software port can only
11 be opened after the first listening software port is opened. So that is the
12 theory in the petition. Patent Owner says that the petition fails with respect
13 to Claim 2 because there is, in fact, an order. And so for that reason, I think
14 there is a dispute that needs the Board's resolution.

15 JUDGE MEDLEY: Okay. But they didn't raise it with respect to the
16 grounds. It's just sort of nested into this argument regarding claim
17 construction.

18 MR. HEINTZ: Yeah. I do believe that's correct, Your Honor. You're
19 right.

20 JUDGE MEDLEY: Thank you for clarifying that.

21 MR. HEINTZ: Certainly, Your Honor. All right. I'd like to go to
22 Slide 9 now. So, here, I'll address the first listening port limitation.
23 Petitioner's construction is associating a port identifier with a process.
24 Before I get into explaining why that construction is correct, I should point
25 out to the Board that although Patent Owner takes issue with the associating
26 part of that construction, Patent Owner never explains why construing the

1 term to be associating a port identifier with a process leads to any mistake,
2 leads to any problem. In other words, Patent Owner disagrees with the
3 construction but doesn't explain why adopting that construction or not
4 adopting that construction would lead to the theories in the petition failing
5 and not demonstrating unpatentability. So although the Petitioner's
6 construction is correct, as I'll demonstrate, the only point that really needs
7 resolution in this proceeding is whether Patent Owner's construction that
8 requires a listening port to be opened for a specific target mobile device is
9 correct. And we'll also show that it is not.

10 So I'd like to turn to Slide 10. Here, Your Honor, we just demonstrate
11 that when we replaced the words of the claim with Petitioner's construction,
12 the construction is linguistically correct, and it makes sense in the context of
13 the surrounding claim language. And on Slide 11, I also note, again, that
14 Petitioner's construction is supported by the expert testimony of Dr. Houh.
15 That's in sharp contrast to all of Patent Owner's unsupported attorney
16 argument that they rely on and rely on solely for their construction.

17 JUDGE MEDLEY: I have a question about --

18 MR. HEINTZ: And I'll --

19 JUDGE MEDLEY: Can I just point out on that paragraph 51?

20 MR. HEINTZ: Yes, Your Honor.

21 JUDGE MEDLEY: It seems like that there have been -- what you
22 have highlighted there at the very last is also part of the meaning of that. In
23 other words, in order to -- if you open a listening port, you need to open a
24 listening port to enable a device to receive messages at that port.

25 MR. HEINTZ: Yeah. And to be perfectly precise here, Your Honor,
26 it's not so much that it enables the device to receive messages at that port,

1 and in particular, it's the device can receive the messages and then route
2 them to the particular process that the port is associated with. So as
3 discussed in the previous proceeding, there are many possible ports that
4 could be used by a process for communicating. The real question is, and
5 we're talking about a software port now, how is that used? Well, the device
6 can receive a message from another device. But the question is how does
7 the operating system on that device know which process to send the data
8 from the message to? And it knows this because when you open a port, you
9 just create an association. Port 369 is this particular process we're talking
10 about for allowing this peer-to-peer communication.

11 So you can see in Dr. Houh's testimony here that this is all about --
12 these ports are all about routing. It's almost like a channel number in a
13 multi-plex if we were talking about a hardware device. But, again, this is all
14 software. So it's a simple association.

15 JUDGE MEDLEY: Okay. Thank you.

16 MR. HEINTZ: Does that answer your question, Your Honor?

17 JUDGE MEDLEY: Yes, sir. Thank you.

18 MR. HEINTZ: I'll turn now to Slide 12, Your Honor. And we can see
19 that not only is Dr. Houh's testimony in accord with Petitioner's
20 construction, so, too, is the documentary evidence. And, here, we show part
21 of RFC 793 which is the specification for TCP. And you can see that what's
22 going on here is a port serves the function of specifying which logical input,
23 again, it's a logical input if they're talking about a software port, is associated
24 with a particular process on the device. And that's all this port number is.
25 It's just simply an identifier. And the identifier is used so when the
26 incoming communication is received at a device, the device knows which

1 process that's running on that device gets that communication.

2 Your Honor, I'll also point out that when Patent Owner gives its
3 presentation, on Slide 6, you will see that it looks to the identical language
4 about associating processes with port numbers that they quote. And, again,
5 that's on their Slide 6. So I'll ask the Board to pay particular attention when
6 that slide as shown up.

7 So I'm going to ask, now, the Board to turn to Slide 16. So, again, as I
8 mentioned earlier, while Petitioner believes that its construction is fully
9 correct, the Board doesn't actually need to decide that in order to resolve this
10 dispute. What the Board needs to decide is whether or not Patent Owner's
11 construction that requires some sort of specificity in the way that this port is
12 opened is correct.

13 So on Slide 16, we show another instance, and this is from our reply,
14 too, where we attempted to specify what Patent Owner's construction is.
15 Just like Alicate (phonetic) in the previous proceeding, here, the Patent
16 Owner never really specified what exactly the correct construction of Claim
17 1 is supposed to be. And so we're stuck making a guess. We think it's
18 something like what's on Slide 16. It may also be what's on Slide 9. But the
19 particular point that's relevant here is that one way or another, what Patent
20 Owner's construction is doing is reading words from the specification into
21 the claim rather than actually construing the claim itself. When the Board
22 looks at the language of the claim and then looks into the spirit of Patent
23 Owner's construction, there's no word in the claim that Patent Owner
24 contends means for a specific target mobile device. This is just a wholesale
25 importation of the limitation that Patent Owner believes, incorrectly, I might
26 add, is in the specification. And so because it's not a construction, in other

1 words, an interpretation of a word that's actually in the claim, it's wrong for
2 at least that reason. I'd ask the Board now to turn to Slide 17. And here,
3 again, I'm just making the point on the slide --

4 JUDGE SMITH: Can I ask you -- can I ask you a question before we
5 go to Slide 17? Can I ask you a question --

6 MR. HEINTZ: Yes.

7 JUDGE SMITH: -- about Slide 16? So when you say it's being
8 imported from the specification, does the specification disclose any kind of
9 technical difference between a port that's opened to receive messages
10 generally and a port that is opened that will only receive messages from a
11 specific target device? Is that technology disclosed in this -- well, when you
12 say it's imported, is that disclosed in the specification?

13 MR. HEINTZ: It is not, Your Honor. What the specification discloses
14 is that the port is open to receive messages from a target mobile device. It
15 says nothing in particular about how the port is opened. And, in fact, what
16 we believe is the case is that when the specification says the port is open to
17 receive messages from a target mobile device, all that means is the purpose
18 that the port is being opened, not the manner in which it's being opened.

19 So you can imagine, Your Honor, if you were to say, I'm going to turn
20 on my cell phone because I want to receive -- I'm expecting to receive a call
21 from my daughter, let's say. That doesn't mean that I have done something
22 to my phone that restricts calls to only from my daughter. All that's saying
23 is the reason I'm opening my phone up, I'm turning my phone on, is so I can
24 receive a call. There is no description in the patent specification of exactly
25 how one of these software ports is opened. And so it's been clear to us that
26 they're relying on what's known in the industry such as RFC 793, which is

1 the specification for the TCP port. So just to be clear, the answer to your
2 question is there are no technical details in the specification about just how
3 this listening port is actually open.

4 JUDGE SMITH: Thank you.

5 MR. HEINTZ: Certainly, Your Honor. On Slides 17 and 18, we just
6 make the point, again, that all of the arguments you see in Patent Owner's
7 briefing is attorney argument. There is no support from any expert. And
8 this is despite the warning in your institution decision at page 18 that
9 attorney argument cannot take the place of records and evidence. Here, the
10 Patent Owner has decided to ignore that and continue on its path of
11 supporting its argument -- supporting its position with simple attorney
12 argument.

13 I'll ask the Board to turn now to Slide 19. So another interesting issue
14 that's arisen is it appears, and, again, I have to say appears because Patent
15 Owner is not being specific in its briefing, that their position has shifted on
16 exactly what their construction is, what exactly it needs to open a port for a
17 specific target mobile device. So on Slide 19, I show a portion of Patent
18 Owner's response at 7. And, here, they seem to be saying that the support --
19 that the support has got to be opened in a way that only messages from the
20 target mobile device and no other device are going to be received via that
21 port and sent to the process.

22 And, again, as the Board may recall in our petition, our theory is that
23 when a person of ordinary skill in the art sees that limitation opening
24 listening software ports, that person of ordinary skill would understand that
25 that's going to be accomplished by making an open call to the TCP process.
26 And that open call is going to have an unspecified foreign socket. The

1 foreign socket here means the combination of the target mobile device's IP
2 address and the port number of the port that's on the target mobile device.
3 What we said is an unspecified foreign socket, which means a foreign socket
4 with all zeros for the IP address and the port means that the listening port, a
5 passively opened port, is going to accept communications or messages from
6 any foreign device and forward those messages onto the process on the local
7 device, on the initiating device, with which that port is associated. So it's
8 going to be up to the process on the initiating device to decide what to do
9 with those messages.

10 And so on 19, it appears that Patent Owner is taking issue with that
11 argument or that theory in the petition. And we can see this even more
12 clearly on Slide 20. Here, again, this is in Patent Owner's response at 12,
13 they are making reference to the position in the petition that we would --
14 what one of ordinary skill in the art would understand is that we're going to
15 have a passively opened TCP port, passively opened means it's open in the
16 listening state, with an unspecified foreign host. Again, all zeros for the
17 foreign socket. That's the foreign socket IP address. Sorry, the foreign
18 device's IP address and the foreign device's port number.

19 Now, on Slide 21, in our reply we respond to that argument as
20 follows. First, Dr. Houh explained that if you're going to open a port using
21 TCP and that port is going to be restricted to a particular foreign device, then
22 you have to specify the foreign socket. You have to specify what the foreign
23 IP address is going to be and the port for that process that's running on that
24 foreign device being that's the target mobile device. There is simply no
25 other way to do it. And that's, again, uncontroverted testimony from Dr.
26 Houh as you see on Slide 21.

1 Now, on Slide 22, Dr. Houh then explained that in the '925 Patent, we
2 are talking about a situation where the initiating mobile device does not
3 know the target device's IP address. And when the Board thinks about it for
4 a moment, that makes perfect sense. This is the very reason why the
5 claimed method in the '925 Patent, the techniques, start by sending an SMS
6 message because the initiating mobile device knows the target mobile
7 device's telephone number, but it doesn't know the IP address.

8 Now, Your Honors, with respect to the Slide 23, Dr. Houh then
9 explained that because the initiating mobile device doesn't know the target
10 mobile device's IP address, it is impossible, simply not possible, for the
11 initiating mobile device to open a port that's specific to the target mobile
12 device. And, again, that's simply because in order to do that, the initiating
13 device would have to know the target device's IP address. And that's simply
14 not known when the TCP listening port is being open.

15 Now, on Slide 24, after seeing that demonstration by Dr. Houh, it
16 appears that Patent Owner has now shifted its position. In its surreply, what
17 Patent Owner seems to indicate is that when they say that the listening port
18 has got to be open for a specific target mobile device, what they really mean
19 is that it's open for a specific target device because only the target device and
20 no other devices know what the port number is on the initiating device,
21 right? In other words, when the initiating mobile device sends its invitation
22 message and tells the target mobile device its IP address and what port
23 number on the initiating device to use because only one other device is
24 receiving that message, then the only -- that other device knows what the
25 right port number and IP address is. And so in that sense, the port has been
26 opened in a way that's specific for a target mobile device.

1 But the point that should be recognized here is that's only relevant --
2 the knowledge of what this port and IP address is on the initiating device is
3 only relevant if the port were opened in such a way as described in the
4 petition. In other words, if the port were opened in such a way, then
5 communications from any device could be received, right? In other words,
6 exactly as we said that in the petition, we did a passive open with an
7 unspecified foreign socket. Because if that were not the case, if we had
8 somehow been able to open the device that was particular to a specific target
9 device, then only that target device could get through anyway. And that's
10 because when a port is opened with a specified foreign socket, and messages
11 that come from some other device are simply going to be ignored and not
12 passed on to the application on the initiating device with the port.

13 That's incredibly significant because what that means is the chief
14 criticism that we saw in Patent Owner's response that the petition was all
15 wrong when it says we would do a passive open for a TCP port with an
16 unspecified -- I'm sorry. With an unspecified foreign host is wrong, and
17 now they appear to abandon that position. That means that the theory in the
18 petition now stands uncontroverted by Patent Owner.

19 Now, the other possibility is -- and, again, the briefing is not clear
20 here at all. But the other possibility is that in the surreply what Patent
21 Owner meant to say was that they were sticking with their position that the
22 listening port -- the first listening port must be opened in a way that is
23 specific to the target mobile device. And in that case, that construction is
24 clearly wrong because it's just not possible to do it using TCP IP under the
25 condition that is specified in the '925 Patent. Now --

26 JUDGE MEDLEY: What's in that caption -- in that caption by their

1 next sentence following your highlighted sentence?

2 MR. HEINTZ: All that says, Your Honor, is the first device opens a --
3 this is talking about telnet here. They say it's a passive open call, but then
4 they say, "for a specific target device." Now, it's possible to open a passive
5 port with a specified foreign host. With a -- sorry. Specified foreign port.
6 So I can passively open a port, and that port is dedicated to a particular
7 foreign device, a particular target device. Now, again, when they say, "for a
8 specific target device," do they just mean that nobody else knows about this
9 port or, you know, in other words, we have a passively opened port with an
10 unspecified foreign host, or do they mean, no, I've done a passive open and
11 I've given a IP address and the port number for which I want to receive
12 communication? It's just not clear from that passage.

13 JUDGE MEDLEY: Okay. Thank you.

14 MR. HEINTZ: Certainly, Your Honor. I'll now go to Slide 26. Now,
15 we come to the second claim --

16 JUDGE MEDLEY: You have approximately 15 minutes, is what I
17 have. Is that what you have?

18 MR. HEINTZ: Thank you, Your Honor.

19 JUDGE MEDLEY: Yeah.

20 MR. HEINTZ: Yeah, it is. And I'll go quickly here now. So on Slide
21 26, we talk about the second claim construction issue. That's the second
22 listening port. And the issue here is pretty -- Petitioner's position is that
23 there is no order required by the word second. And Patent Owner says the
24 opposite, that when you see the second port, you must understand that the
25 second port should only be (indiscernible) the first port.

26 I'll turn to Slide 27, now, Your Honor. Here, again, we have solely

1 attorney argument that supports their position. They don't make any attempt
2 to support that position that second means second in time with any expert
3 testimony, no citations to the specification, nothing else. And as you see on
4 Slide 27, we have cited case law in the petition. That's the 3M Innovative
5 Properties case. We've also cited case law in the reply. And that position,
6 the primary problem with it is that position ignores the basic principle that's
7 well known in patent law that first and second is basically just a convention
8 under which we use those terms to differentiate between instances of an
9 element. So we have a first listening port. We have a second listening port.
10 And the absence of anything in the specification that says there is something
11 important about the order in which those ports are open, and then the
12 absence of something in the claim language other than the words first and
13 second that imply some kind of order, the courts will not imply an order and
14 the order should be implied.

15 And given that we're short on time here, Your Honor, I'm going to go
16 very quickly now. Those two claim construction issues almost entirely
17 resolve this dispute. I'm going to ask the Board to go to Slide 34 now. On
18 Ground 1 -- and this is not true for Grounds 5 and 6. But on Ground 1,
19 Patent Owner raises three arguments. The first argument as shown on Slide
20 34 is based on the incorrect construction of the opening -- the first software
21 listening port limitation. So that argument fails for that reason.

22 On Slide 35, there is an argument they make that there's some
23 problem in the petition's theory that relies on well-known ports. The Board
24 rejected that theory in its institution decision on page 18. But I'll note the
25 following two things. Here on Slide 36, the first flaw on this position is the
26 petition doesn't just rely on well-known ports. It also relies on ports that are

1 not known in advance, meaning that they're not well-known ports. And you
2 can see that on Slide 36 where we show citations in the petition at 29 and 32
3 and 33. So even if Patent Owner were right that well-known ports wouldn't
4 work, it fails because we also rely in the petition on an unfortunate amount
5 of well-known.

6 And then very quickly, Your Honor, on Slide 37, the other problem
7 with their argument is their own appeal brief in their parent application
8 contradicts it. What their appeal brief says is that on mobile devices, which
9 are unlike servers, these well-known ports are not open a priori. And so in
10 that case, if you're on a mobile device, which is what's at issue here in the
11 Alos reference which we're relying on in Ground 1, there is no opening well-
12 known port. And then that means, of course, that the port must be open.

13 And once again, on Slide 37, we also rely on Dr. Houh's uncontested
14 testimony that any TCP port has to be opened before it can be used. It's just
15 that simple. The fact that there may be some association a priori doesn't
16 mean that port doesn't have to be open regardless of where you are. And
17 again, that testimony is uncontroverted. The only thing Patent Owner offers
18 in response is attorney argument.

19 JUDGE MEDLEY: Okay. Thank you.

20 MR. HEINTZ: Finally --

21 JUDGE MEDLEY: I just want to pause right here. I don't see the
22 court reporter's video up. I just want to make sure she's still --

23 THE REPORTER: I'm here. I'm here. I do not. It says to me, "The
24 host" --

25 JUDGE MEDLEY: Oh, there you are. Okay.

26 THE REPORTER: -- "(indiscernible) remove you from the meeting."

1 So I don't know what that means. But I can still hear everything.

2 JUDGE MEDLEY: Okay, great. I just wanted to make sure. Thank
3 you. All right. Go ahead.

4 MR. HEINTZ: Thank you, Your Honor. So the final issue being
5 raised on Ground 1 is an issue about Alos, and in particular lines 13 and 23
6 being switched telephone network lines. So I'll ask the Board to flip back
7 very quickly to Slide 29 where we show one of the figures from Alos. As
8 you can see in this figure on Slide 29, there is a connection between phone 1
9 and line to the Internet, number 3, via line 13 and a separate connection 23
10 between the phone 2 and the Internet 3. And the position taken in Patent
11 Owner's response is that Alos discloses that those are switched telephone
12 network lines and, therefore, they're circuit switched and not packet
13 switched.

14 Returning -- I'm sorry. Going forward to Slide 39, this argument fails
15 because Patent Owner failed to recognize that what the petition relies on is a
16 different embodiment of Alos in which lines 13 and 23 are replaced by
17 wireless connections. That's discussed in the petition at column -- sorry. On
18 pages 23 and 30. That disclosure is in Alos at paragraph 15. And the
19 uncontroverted testimony from Dr. Houh is that those wireless lines are
20 going to conform to the Internet protocol, and, therefore, that's indisputably
21 a packet switch network.

22 And that last argument on Ground 1 fails in its entirety. And,
23 therefore, all of the arguments on Ground 1 that Petitioner has raised failed.
24 And with that, Your Honor, I'll rest if there are no further questions.

25 JUDGE MEDLEY: Okay. Thank you. So I have you with
26 approximately eight and a half minutes left.

1 MR. HEINTZ: Thank you, Your Honor.

2 JUDGE MEDLEY: Okay. And just one minute. Reset this. Okay.

3 Mr. Mangrum, when you're ready.

4 MR. MANGRUM: Yes. Can you hear me okay?

5 JUDGE MEDLEY: Yes.

6 THE REPORTER: Yes.

7 JUDGE MEDLEY: Somebody is beeping.

8 THE REPORTER: Yes. I wondered --

9 JUDGE MEDLEY: Does anybody hear that beeping?

10 THE REPORTER: -- about that.

11 JUDGE MEDLEY: Okay. I was just going to suggest you could
12 mute.

13 THE REPORTER: Sorry. Please continue.

14 JUDGE MEDLEY: No worries. Okay. Thank you. Mr. Mangrum,
15 when you're ready.

16 MR. MANGRUM: Okay. And I think I would like to reserve just five
17 minutes for the time being. I think that to avoid having the situation, you'll
18 have to remind me my time's almost up. I don't know if I'll take up that
19 time, but that's what I'd like reserved for timing. Okay.

20 And so it is correct that this petition injects a number of claim
21 construction issues that we addressed in our briefing. And I think the rubber
22 hits the road, really, where you heard the concession at the end of this
23 presentation from Petitioner that the construction applied in the petition was
24 set up to have the opening limitation encompassed within its scope, well-
25 known ports. And the reason why it would encompass is the way it
26 described interpreted the word associated. And so we obviously took issue

1 with that. We pointed out intrinsic evidence of why this would be wrong.
2 And the Board has offered that position, but it doesn't change the fact that
3 Petitioner's construction where they attempt to redraft opening to the
4 associating is still (indiscernible) the theory in the petition that because the
5 petition is key to an incorrect construction that admittedly would encompass
6 well-known ports is an incorrect construction that can't be used to establish
7 obviousness.

8 I would also want to point out in essence, we take some exception to
9 the suggestion that the Board should adopt Petitioner's position with respect
10 to claim construction because it submitted an expert report and that that was
11 (indiscernible). As the Board's well aware, intrinsic evidence is the most
12 reliable source for claim construction issues. And Patent Owner has
13 promised a claim construction in its rebuttal to Petitioner based off intrinsic
14 evidence. This is more reliable than the extrinsic evidence which is
15 (indiscernible). And so, you know, that certainly is also in favor of
16 accepting opening means what it says. And --

17 JUDGE MEDLEY: Mr. Mangrum, can we -- can I just interrupt you
18 really quick? What exactly is your construction? So we heard from Mr.
19 Heintz that it seemed like you shifted positions in your surrepley. So if we
20 could get on the record exactly what is your construction. Is it what is --

21 MR. MANGRUM: It's opening.

22 JUDGE MEDLEY: Right. But is it opening specifically to receive
23 messages from only a specific device?

24 MR. MANGRUM: So it's similar as to how the issue was
25 characterized in the last 700 and 701 proceeding. It is opening with a
26 purpose. And how do we know that? We know that from the intrinsic

1 evidence and statements made by the applicant over the course of
2 prosecution. So I'm going to get into that in a second.

3 But more importantly, opening is open. Opening is a term of art. It's
4 a word that is used several times in the claim language. And so as a result of
5 the opening, you have something prior to the opening wasn't opened. And
6 by virtue of the opening, it is now opened. So -- and that's the problem with
7 their theory that an (indiscernible) port such as a well-known socket that's
8 always open and is dedicated to a particular purpose, it's well known the
9 devices don't have to guess as to the purpose of that particular socket or its
10 existence. That's the definition of what is meant by well-known. It's a
11 technical phrase. To suggest opening should encompass that fails to
12 recognize that you have to open in the (indiscernible). There has to be an
13 opening step. It's not something that's already in existence. And so opening
14 certainly means something previously wasn't opened, and then -- and now,
15 by virtually opening, it opened. At a minimum, that's what it means.

16 And our point, also, is not that we have to somehow come up with a
17 substitute word for opening in order to defend the patent. It's Petitioner's
18 burden to prove obviousness. It attempted to do so for a redrafting with
19 associating, and it's technically fine for us as defending the patent against
20 Petitioner's burden that --

21 JUDGE MEDLEY: So the RFC --

22 MR. MANGRUM: -- they're wrong.

23 JUDGE MEDLEY: So the RFC document talks about opening and
24 listening. And it seems like it's right on target. And then you come in with
25 your Patent Owner response that says the opening requirement must be
26 directed to a specific target mobile device. So it seems like you're saying

1 that it has to be that you're opening and you're listening only to receive
2 communication from a targeted device and nothing else. And that I'm just
3 trying to pin down --

4 MR. MANGRUM: Well --

5 JUDGE MEDLEY: -- is your proposed claim construction. That's on
6 page 8 of your Patent Owner response if you'd like to look at that.

7 MR. MANGRUM: Yeah. Let me provide some context for those
8 statements. And so there's a couple -- if you want to categorize the intrinsic
9 evidence we identified in support of that interpretation, it falls largely into
10 three categories. One is the surrounding context of the claim language itself.
11 Another is the specification and how it discusses -- uses the word opening,
12 usually. And then, finally, there's some statements in the prosecution history
13 directed specifically to the claim language at issue talking about what it
14 meant to open in this context. And so I want to address all three of these.

15 And so both of these should not be understood in the abstract, but
16 rather understood in view of, again, the surrounding claim language,
17 instances where it's described in the specification. Finally, and perhaps most
18 importantly, helpful explanatory statements made by the applicant during the
19 prosecution in addressing this exact same language. So starting with the
20 context, the opening that's described was referenced -- (indiscernible)
21 preamble. And so the -- was there a question?

22 So the preamble introduces as Claim 1 with the term, "a data packet-
23 based communication service" between mobile devices. So this provides the
24 (indiscernible) basis for, quote, "opening a listening software port on an
25 initiating mobile device to receive communications through the data packet-
26 based communication service." So we know the opening is -- first of all,

1 how can you add an initiating mobile device? It's not an opening that occurs
2 in a server. The location of the opening is a point of distinction that we raise
3 between the theories in the petition, but also, that it is to receive
4 communications in the data packet-based communication service. That
5 particular requirement of the opening and is (indiscernible) to the purpose of
6 to receive communications through. And I'll get to it in a minute, and it is
7 stated in our briefing, that is also one distinction of opening in the abstract.

8 I want to also point out that Claim 1 further ties the opening step to
9 the receiving communication step, and (indiscernible) receiving
10 communication through the data packet-based communication service. So
11 faulty opening or receiving steps derive basis from the packet-based
12 communication service introduced in the preamble. So in other words, the
13 service that is the object and point of the opening recited in the body of the
14 claim.

15 And so as we explained in our briefing, this is -- and one of the -- as
16 the applicant stated during the prosecution, this is the single (indiscernible)
17 from any associating (indiscernible) identifier with an unspecified process.
18 It's not associating with the process. It is -- and under Petitioner's own
19 admission, such an interpretation was necessarily (indiscernible) the various
20 types of openings -- sorry. The various types of -- (indiscernible) sockets,
21 such as a well-known socket that was distinguished successful during
22 prosecution. So Petitioner (indiscernible) any disclosure about what the
23 correct process would be much less in the context of the purpose set forth in
24 (indiscernible).

25 You know, another point I want to make out as I emphasize certain
26 things specifically recited is when you look at Claim 1, the word associated

1 is recited in Claim 1. It appears, also, in some of the dependant claims.
2 Associated is (indiscernible) has opening in a specific context and associated
3 is another, and it uses those two different terms (indiscernible) had the patent
4 intended associating only. The signal was in the language itself. It shows
5 the Patent Owner would have used the word associating. Instead, the word
6 opening, which is a term of art, associated with ports -- it's a term of art used
7 in connection with an action performed on ports, is what I meant to say.
8 You open the port. And prior to opening it, the port is not open. That's the
9 point, that it's open in this instance for a specific purpose, to receive
10 communications through the data package communication service
11 introduced in the preamble. Okay. So that's the focus on the intrinsic
12 evidence as far as the claim language itself is concerned.

13 JUDGE SMITH: Can you tell me --

14 MR. MANGRUM: Actually --

15 JUDGE SMITH: Can you tell me the difference between opening a
16 port just for the specific purpose of listening to -- listening for a target
17 device, the difference between that and just opening the port. Like, in terms
18 of technology, technically, what has this patent described as the technical
19 difference between opening to be able to listen and then opening to be able
20 to listen specifically only for one device? In terms of technology, what is
21 that difference? And where is it in the patent?

22 MR. MANGRUM: Thank you, Judge Smith. Let me get there now.
23 Let me get some disclosure within the '925 Patent directly to the opening.
24 And the first point I want to emphasize, this is in our briefing, is from
25 (indiscernible) 4:38-40. And in the context of opening a TCP port in
26 particular, the '925 Patent offers the description, "The initiating mobile

1 device opens a TCP port to listen for communications from the target mobile
2 device 210." That's the point of the opening. That's the purpose of the
3 opening. And it doesn't say the port has previously existed for that purpose.
4 It had already been open. Instead, the initial -- initiating mobile device
5 opens one of its own ports, and that port is opened to listen to
6 communications from the target mobile device, a specific mobile device.

7 JUDGE SMITH: But I mean in terms --

8 MR. MANGRUM: And so ours is --

9 JUDGE SMITH: In terms of technology, like, what technical
10 difference is there between just opening -- I mean, I understand the purpose
11 is to listen for a specific target device. But Petitioner -- as I asked Petitioner,
12 if you just open -- you can open for the specific purpose of listening for one
13 device, but that doesn't exclude other communications also being received
14 by the port. I'm just asking you in terms of technology, is there any
15 technical distinction or any technical difference between just opening
16 generally even if that general opening is for a specific purpose as opposed to
17 just opening and only being able to listen for one device in terms of
18 technology (indiscernible) purpose?

19 MR. MANGRUM: I think that also -- I think that kind of segways
20 well into some of the points we made from the prosecution history. I think
21 that was addressed by the patentee in talking about opening in general versus
22 the type of opening explained. During the prosecution, the examiner insisted
23 on the argument that, well, doesn't a -- just to receive communications, don't
24 you have to open a port every time at a mobile device? And isn't that just
25 stating the obvious if you receive communication after you've opened a
26 port? And how is that distinguished from what you're claiming here?

1 And the applicant responded. And our briefing addressed -- this is
2 addressed in pages 316 and 317 of Exhibit 1004. But to summarize, the
3 points that were made, the applicant distinguished the claim language at
4 issue. This opening step only issued what the claim language is being
5 addressed here. And it says one point of distinction that opening a port
6 indiscriminately "serves any and all mobile terminals that desire setting up a
7 connection." So -- and then, also, it was distinguished from, quote, "leaving
8 open one known connection to allow any number of devices to communicate
9 with it." So the patentee recognized this form of opening and the manner in
10 which it's claimed is distinguishable from both those two points. And it
11 firmly stated as much that this -- the claim language is not intended to
12 encompass either scenario where you serve any and all multiple terminals
13 with a (indiscernible) connection and the scenario where leaving open one
14 connection to allow any number of devices to communicate.

15 Now, elsewhere in the prosecution, one of the points raised was you
16 had a situation where -- part of the discussion, actually, in the prosecution
17 history about what's called well-known sockets. And we've addressed this in
18 our briefing, as well. And one of the problems with the well-known socket
19 is they're just -- they're always open, right? I mean, there is no opening act.
20 They exist for a -- and they're known sockets that anyone could be
21 connected for any purpose. Setting aside whether or not it's for any purpose,
22 is that anyone could connect to, and they're known to the world in general as
23 a server.

24 So the problem with well-known sockets was they weren't open in the
25 manner claimed. They weren't opened for a targeted mobile device. They
26 weren't open necessarily for packet-switch communications. Their opened

1 allow any number of devices to communicate with it. That's their purpose.
2 And so the patent specifically explained and differentiated opening in that
3 type of context from the context that was intended in the language that was
4 heading at the time and the language that is ultimately at issue.

5 So the Patent Owner response at page 7, we also address -- and the
6 Petitioner didn't bring it up. But in their briefing, they kind of took issue
7 with the word communications and suggested at least that the position Patent
8 Owner's taking with it, once a communication section is established, every
9 kind of data is transmitted over that communication section, that there must
10 be some reopening of the port. That's certainly not the -- wasn't our intent to
11 suggest that any type of communication over a communication session
12 involving the port that's open requires reopening the port every instance, but
13 rather for purposes of that communication session between the mobile
14 devices where that port has been open specific to that purpose, once opened
15 it serves that purpose until it's closed.

16 But the fact that the claim requires the target mobile device -- and this
17 is an affirmative requirement that the target mobile device opens for that
18 purpose. In the absence of showing an opening for that purpose, you
19 (indiscernible). And that's part of the problem that they ran into, for
20 example, with well-known sockets. They couldn't show an opening that
21 satisfied the claim. And keep in mind the well-known sockets that they were
22 pointing to were all located at servers anyway. So it's a completely different
23 process at a completely different device for a completely different purpose.
24 And --

25 JUDGE SMITH: I guess if I could ask you what -- I guess what I'm
26 struggling with really in your argument, if you have prior art that's

1 transmitting an invitation message to a target mobile device and then
2 presumably that device is going to wait for a response from the target
3 device, it would -- in order to receive that device, it would have to open a
4 listening port to receive communications. And it just seems like the
5 reference that Petitioner relies on to teach the opening kind of makes that
6 explicit that people can open. And I'm struggling with why isn't that enough
7 given your disclosure in the specification in terms of just the objective of
8 why it's being opened without really, as far as I can see, no technical
9 difference between opening generally or opening for a specific purpose?
10 Why -- I'm struggling with why isn't that enough?

11 MR. MANGRUM: It's just that I think your question is the same
12 question that the examiner had. And I'm glad you asked because I'd like to
13 point you to that portion of prosecution history where the examiner
14 essentially was -- had the same concern. And the applicant addressed --
15 you're not alone in your concern. But I would want to draw Your Honor's
16 attention to, really, the sequence of pages that, I think, earlier we were -- at
17 least up to page 413. But when you get to the next sequence of pages in
18 briefing before the -- I think (indiscernible) at that point. This is page 414 to
19 416 in Exhibit 1004.

20 The examiner essentially said, well, doesn't opening a listening
21 software port, isn't that implicit? In the slide of our -- and then any mobile
22 device necessarily has to open a listening software port just to operate and
23 communicate with other devices. And the applicant again emphasized these
24 same points of distinction over the art that it had raised and that I had
25 emphasized earlier, again, pointing from the same disclosure and using the
26 same arguments twofold, first, of the Claim 1 specification of opening a

1 listening software port on (indiscernible) has two specific limiting
2 requirements. One, it is open for the target mobile device, and two, it is
3 open to refuse communication through the data packet-based communication
4 service and to not just any port for any purpose and any port that receives
5 any type of communication.

6 And the -- it's also important that -- and talking about what it requires,
7 but it also says what it cannot require, what is expressly exclusive of two
8 points. And, again, if you change pages, I think you start from 414
9 according to my notes at Exhibit 1004. One, a well-known (indiscernible)
10 listening software port that is generally open and susceptible to any and all
11 devices is not opening a port as claimed. And two, a port open receives
12 communication through services that are not data packet-based is not what is
13 (indiscernible) the way in which opening is defined in the claim language
14 itself.

15 I should also point out as you track the arguments in the briefing that
16 was successfully raised, applicant argued the (indiscernible) ports of the time
17 were open on servers not on the mobile devices. And another point of
18 distinction were opening (indiscernible) ports in general focused on the
19 specific type of port open -- I kind of made that point, was there was a
20 packet-based port. So keep in mind a lot of the -- I think this bears out in
21 some of the arguments Petitioner's making when you see the process in
22 which the references are talking about opening, it's consistent in the
23 perspective of servers and servers acting as intermediaries to relay
24 information. But this novel approach was used to open ports at
25 (indiscernible) that were then -- in a manner that enabled communication
26 with specific target mobile devices.

1 And I think if you want to -- maybe, Judge Smith, to further address
2 the technical nature of your question, the -- let me perhaps talk a little bit
3 about the nature of ethemeral ports that can be opened as a target mobile
4 device. So if you -- and we talked a little bit about this in Patent Owner's
5 briefing at page 3 where -- so Claim 1 does encompass a scenario where the
6 initiating mobile device opens the listening software port with something
7 such as an ethemeral method, E-T-H-E-M-E-R-A-L, ethemeral port number.
8 And then it listens for the connection of the target mobile device.

9 So the ethemeral port number is transmitted to the target mobile
10 device invitation message so that only the initiating mobile device and the
11 target mobile device know what the ethemeral port number is. The target
12 mobile device, knowing the ethemeral port number and its combination with
13 that specific IP address, could then transmit a response with the listening
14 software port to establish a data transfer with the open ethemeral listening
15 software port. And then only for the temporary nature of ethemeral port-
16 based session, it is highly unlikely that an arbitrary third party device could
17 accidentally or even purposefully maliciously identify what the port number
18 is, much less identify an IP address that is associated with the ethemeral port
19 number during the relatively short time that the open port may be active.
20 Rather, only the target device would know what the ethemeral port number
21 is, and, therefore, only the second device can access the newly opened port
22 of the first device. So I'm (indiscernible) and then directing to what we have
23 on our briefing to explain how the nature of the opening, the novel nature
24 discussed in the patent, involves using a certain technique of opening
25 (indiscernible) device that would enable communication for a specific target
26 mobile device.

1 I want to just point out the Petitioner asked Your Honors to look at
2 Slide 6 and then compare it with one of their slides. I believe it was Slide
3 12. We encourage you to do so as well. I mean, this only underscores the
4 problem with their construction. The word associating in this context, which
5 would map under their construction, is clearly outside the scope of the claim.
6 And that's a problem. That's a problem of applying an overbribed
7 construction.

8 So this Slide 6 actually has the screenshot taken from Exhibit 1010.
9 This is -- and it's highlighted and underscored in the manner that Uniloc had
10 put in its briefing. So that's the annotation to be provided earlier in our
11 papers. And the problem that Petitioner has is that the description of well-
12 known socket -- "mechanism for a priori associating a socket address with
13 the standard service." So it's done a priori. You don't open a socket. The
14 socket's already associated. There's a socket address already associated with
15 the standard service.

16 And then we're saying -- and that's fine. Under our construction, that's
17 enough. And the patent user in prosecution specifically addressed well-
18 known sockets and said, outside the scope of the claim, and here's why. It's
19 not opening. And so, again, when we take issue with the stance and view
20 they have -- and keep in mind it's their burden to prove their construction not
21 our burden to disprove it or to come up with a competing construction. We
22 just need to show -- Patent Owner doesn't need to show anything to
23 disprove. But we've absolutely shown flaws in their theory because it's key
24 to an incorrect construction. That alone -- even in the absence of a
25 competing construction showing flaws in their construction alone as
26 sufficient defined that Patent Owner -- or sorry. The Petitioner -- its burden.

1 And, again, the thing that we put in our papers is that a part that is
2 permanently aside and made available a priori to all devices in general is not
3 one that is made available even for opening as claimed. So it's not even a
4 port that's available for opening because it's already associated with a
5 standard service.

6 Slide 7 talks about additional examples of deficiencies of well-known
7 socket mapping, which Petitioner acknowledges was all within the scope of
8 its broadened redrafting of the claim language. And one of the points that
9 was mentioned in prosecution was that well-known ports are not opened for
10 specific target mobile devices as was required by Claim 1. Rather, a well-
11 known port is only made available a priori for any remote computer to
12 access. So, again, I'm just summarizing claims successfully raised during
13 prosecution that amount to this claim. If the patent (indiscernible) say the
14 opening does not encompass these things. And these are not encompassed
15 (indiscernible).

16 Moving on to Slide 8, we now start addressing -- and, again, I'm just
17 summarizing some points from the briefing. Slide 8 has a couple bullet
18 points underneath the heading. The Petitioner's reliance on TCP and the
19 RFC 793 reference essentially rehashes the same argument persuasively
20 addressed in the appeal brief of a parent application. Again, they were
21 saying, look, as long as any port is made available and is associated with any
22 service -- well, they just said process. They didn't say what process. Then
23 that's enough to meet the claim language. And we submit that's wrong. And
24 it's wrong for the reasons stated in prosecution history.

25 Slide 9 actually provides a screenshot of annotations to reference the
26 patent he made during prosecution emphasizing the importance of not every

1 instance of opening a port, even if a port's open, would not follow the claim
2 language because the port's open for specific purpose as opening the specific
3 (indiscernible) only, packet-switching. And so these are the annotations to
4 the patent he made to say that, look, packet switching contrasts circuit
5 switching. And so, you know, when you have a reference that focuses on a
6 port or some way of receiving communication, circuit switch, that's different
7 than what the claim language requires.

8 Moving on to Slide 10, I didn't -- it looks like I didn't start my time.
9 So Your Honors, please, I apologize for that.

10 JUDGE MEDLEY: Yes.

11 MR. MANGRUM: Let me know how much time I have left.

12 JUDGE MEDLEY: You have 16 minutes left.

13 MR. MANGRUM: Thank you. Okay. So Slide 10 just goes to the --
14 what does the reference state? It's not what the reference could state or what
15 could've been disclosed other than what has been disclosed. But it says that
16 the station 1 communicates over a switch telephone network. It uses the
17 acronym STN, which is not an application communication service. And it
18 uses that in order to establish a connection with something that's apparently
19 outside of it which is that Network 3. And through the STN it
20 communicates so that it has -- let me just read from page 6 of Alos. This is
21 Exhibit 1005. "Station is in fact connected by a connector to a line 13 that
22 the switch telephone network, STN, with which it can reach an Internet 3
23 access service provider, 31." So the device is not even connected directly to
24 the Internet. It requires this STN in order to have access to a Internet service
25 provider. And so to suggest now that you can redraft that and make --
26 there's simply no disclosure that there is a package which communication

1 from the -- that ever arrives, much less one that's over line 13. So we
2 suggest the reference speaks for itself on this point. And it's definitely in our
3 briefing on that.

4 With respect to Cordenier -- again, I would just draw Your Honors'
5 attention on Slide 11 to the points raised in our briefing. This is nothing --
6 Slide 11 does nothing more than paraphrase the distinctions we made in our
7 briefing. And, in a nutshell, the Petitioner relies on communications
8 between what's shown on Slide 11 as boxes 1 and 2, mobile phone 1 and 2.
9 And the problem with -- and then they basically follow the communication
10 path involving what's identified in Slide 11 as 8 and 11 and 9, if you follow
11 along those lines with me.

12 And, specifically, they run into the same fundamental problem which
13 is the Communication Path 8 and the Communication Path 9, those that are
14 connected to the mobile devices. Those are not described as being packet
15 slips. And so we would just submit that the (indiscernible) was successfully
16 distinguished during prosecution that said, look, opening and the context of
17 the claim requires a packet-switch communication. That's the way it's
18 opened. It's with the purpose of (indiscernible). And that is distinguishable
19 from circuit-switch communications, things that aren't packet-switched.

20 But we would submit that the problem we've run into with Cordenier
21 is just that. Cordenier for its own specific purposes uses communication
22 paths connected to Mobile Devices 1 and 2 that are not packet-switched.
23 And with that, it's down in our briefing. And I'll reserve time for rebuttal
24 once Your Honors have any questions.

25 JUDGE MEDLEY: Okay. Nothing for me. You have approximately
26 12-and-a-half minutes.

1 MR. MANGRUM: Thank you for that.

2 JUDGE MEDLEY: Okay. Mr. Heintz, you have eight-and -a-half
3 minutes. And we're ready when you are.

4 MR. HEINTZ: Thank you, Your Honor. I note that Mr. Mangrum
5 began his presentation. And soon after, you asked him the simple question,
6 what does opening mean? And I still don't have the answer to that question.
7 Maybe Your Honor was able to pick it up. I could not. I heard opening
8 meant opening with a purpose, or opening is opening. None of that tells me
9 what opening means. And I still don't know whether Patent Owner's current
10 position is that if you do a passive open using an open call with TCP that
11 does not specify a foreign device, does that mean that the claim is satisfied
12 or not? Mr. Mangrum spoke for half an hour and managed to avoid
13 answering what I thought was a pretty simple question from Your Honor.

14 I also note that at least five times, I heard that the patent needs have
15 successfully distinguished the claim language at issue here from the prior
16 art. Your Honor, nothing could be further from the truth. I'll direct Your
17 Honors' attention to page 5 of Petitioner's reply. And there we see that
18 instead of successfully distinguishing the prior art, what actually happened
19 was that the Patentee's -- and, again, the prosecution history Mr. Mangrum is
20 talking about is not this application. It's the parent application. And what
21 you will see on page 5 is in order to get this application allowed, they had to
22 amend the claim. And they had to specifically add the words "for the target
23 mobile device" and "from the target mobile device" into the claim in order to
24 get it allowed. So there was no successful distinguishing in the parent
25 application. In fact, they had to add the very words explicitly into the claim
26 that they're now trying to import to re-guide the claim construction. Again,

1 that's page 5 of Petitioner's reply.

2 The other thing I never heard Mr. Mangrum explain is assuming that
3 he is saying that a port must be opened with a specified foreign host. And
4 how you're going to do that when you -- when the initiating device does not
5 know the target device's IP address? I still don't understand how that is even
6 possible using TCP. And I've never heard any explanation that calls it out.

7 And I'll end, Your Honor, with the discussion of Alos. Now, this is
8 brought out in our slides, and in particular, Slide 36. As I explained, the
9 petition relies on an embodiment of Alos in which the lines 13 and 23, and
10 those are the lines that connect the wireless devices to the Internet, are not
11 switched telephone network lines. They are, in fact, wireless connections.
12 And I'll direct the Board's attention in the Alos reference. And I'm not
13 talking about Exhibit 1005. And I'll use the native -- the paragraph numbers.
14 This is in paragraph 15 which is on native 3 of the Alos reference, the
15 translation of the Alos reference.

16 If you look at 15 about two-thirds of the way down, there's a sentence
17 that begins, "And likewise, the element 1," that's the mobile telephone,
18 "could be connected by the radio to the Provider 31," that's the internet
19 service provider that's part of the Internet 3, "preferably here by GSN
20 network then replacing line 13." So what we have in Alos is a description
21 where there is no switch telephone network line that connects the mobile to
22 the Internet. It is a GSN line. And as we discussed on page 36, we have Dr.
23 Houh's testimony -- I'm sorry. Slide 36. I'm sorry. I've given you the wrong
24 slide number. Forgive me.

25 We have undefeated testimony from Dr. Houh that that line is going
26 to be -- I'm sorry. This is Slide 38, and more particularly Slide 39, Your

1 Honor. I apologize for that. We have Dr. Houh explaining that when we
2 have these Wireless Connections 13 and 23, not the STN, those conform to
3 the internet protocol which is indisputably a packet-switch protocol. So
4 Alos does disclose and embody, which is the embodiment relied on in the
5 petition that uses packet-switch connection to connect mobile phones to the
6 network. So everything you heard about circuit switching and packet
7 switching being different, and somehow that's not applicable to the ground
8 on Alos, is categorically and clearly wrong. With that, Your Honor, if there
9 are any -- with no further questions, I'll rest.

10 JUDGE MEDLEY: Okay. Nothing further from me. Anything?
11 Okay. All right. So Mr. Mangrum, you have eight -- I'm sorry. You have
12 12 and a half minutes. And you can begin when you would like.

13 MR. MANGRUM: Can you hear me just fine?

14 JUDGE MEDLEY: Yes.

15 MR. MANGRUM: Just out of concern, you can all hear me?

16 JUDGE MEDLEY: Yes.

17 MR. MANGRUM: Okay. Great. Let's go to the prosecution history.
18 I want to take Your Honors directly to the source since we were falsely
19 accused of fabricating a false narrative. Nothing can be further from the
20 truth. And we'll show you. So rather than taking -- paraphrasing words
21 from them, let's just go to the source.

22 If you go -- this was filed as Exhibit 1004, page 316. And if you look
23 at the bottom, this is page 8 of applicant's remarks. But the exhibit is labeled
24 as page 316 at the bottom right-hand side if you can see that. What claim
25 language is being called out here? These are (indiscernible), quote,
26 "opening a listening software port on an initiating mobile device." Okay.

1 And what's being emphasized is opening. The emphasis is added. And this
2 -- this is the claim language that's issued in this patent. So there was the
3 successful distinguishment of prior art over this claim language. And why?
4 When you get a couple of lines down in page 8 of the remark, or page 316 of
5 the exhibit, applicant's invention requires "opening a listening software port
6 on an initiating mobile device every time the initiating mobile device desires
7 to establish communications with the particular target mobile device." The
8 reference teaches (indiscernible) server that serves any and all mobile
9 (indiscernible) that desire setting up a connection with the terminal. And
10 then it goes on.

11 We have already emphasized the argument for Your Honors, but I
12 wanted to point out the source. And the suggestion that this was somehow
13 the addressing different claim language is clearly demonstratively false,
14 irresponsibly so. And if you just scroll down with me to the -- sorry. The
15 prosecution history, you get an interview summary, and then you get
16 response to arguments. And then -- so on page 327, can you follow me
17 down there? Applicant's arguments have been considered but are moved in
18 view of new grounds of objection. So our -- the point we made with respect
19 to the same verbatim language that's ultimately at issue is valid. Applicant
20 described that language as having certain requirements and being
21 distinguishable from some of the arguments that the examiner raised don't
22 necessarily apply here. There's case law on that.

23 And we would submit that we stand by what we said with respect to
24 the prosecution history. We think it's dispositive here on the issues of claim
25 construction, and that the petition should be denied as being admittedly key
26 to a claim construction that was (indiscernible) what the applicant had

1 expressly disclaimed. And so it's different from the claim construction. And
2 with that, we'll rest if there's no further arguments from Your Honor.

3 JUDGE MEDLEY: Jeff --

4 JUDGE SMITH: Oh, I'm sorry about that. I do have one question. I
5 think, you know, to the extent I understand the Petitioner's point, what
6 Petitioner was saying was that the patent itself doesn't really disclose any
7 difference in technology between opening the port generally or opening it
8 for a specific -- for specific target devices. So to that extent -- you know, to
9 the extent I understand Petitioner's argument, you would be asking us for a
10 claim construction that really encompasses an embodiment that doesn't have
11 either written description support or is not enabled or otherwise not
12 disclosed by the patent itself. Can you speak to that?

13 MR. MANGRUM: Okay. Sorry. I couldn't tell if it was a question or
14 just a comment. But yeah. We would submit that the -- first of all, 112 is
15 outside the purview of this (indiscernible). But we would stand on our
16 papers with respect to claim construction and say that the claim language
17 speaks for itself. And we don't need to look at the extrinsic evidence when
18 the intrinsic evidence already defines (indiscernible) the claim. To the
19 extent that claim construction would somehow not be supported is not
20 something that either party briefed and would be outside the purview. And
21 we're certainly not (indiscernible) that the point that the applicant took
22 during prosecution, those claim construction positions are not -- we would
23 submit that they are supported, and the applicant was just feeding what the
24 claim language itself meant as originally drafted and as amended over the
25 course of prosecution. And keep in mind, as stated at the outset of the
26 opposing counsel's presentation, this is an expensive patent family. And

1 there are a number of patent applications filed, each one of which has its
2 own original claims as part of the original disclosure.

3 JUDGE MEDLEY: Okay. Thank you.

4 MR. MANGRUM: And --

5 JUDGE MEDLEY: Is there any other question?

6 MR. MANGRUM: -- thank you.

7 JUDGE MEDLEY: Okay. Thank you. We appreciate your
8 presentations today. And we will take it under advisement and issue a final
9 written decision in due course. We are adjourned. Thank you.

10 THE REPORTER: Off the record.

11 JUDGE MEDLEY: Bye.

12 (Whereupon, the proceedings at 4:17 p.m. were concluded.)

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