

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

PROXENSE, LLC \*  
\* December 27, 2021  
VS. \*  
\* CIVIL ACTION NO. W-21-CV-210  
SAMSUNG ELECTRONICS CO ET AL \*

BEFORE THE HONORABLE ALAN D ALBRIGHT  
MOTION HEARING (via Zoom)

APPEARANCES:

For the Plaintiff: David L. Hecht, Esq.  
Conor McDonough, Esq.  
Maxim Price, Esq.  
Hecht Partners LLP  
125 Park Avenue, 25th Floor  
New York, NY 10017

For the Defendant: Marissa Ducca, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
1300 I Street, NW, Suite 900  
Washington, DC 20005

Sean San-Chul Pak, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
50 California St., 22nd Floor  
San Francisco, CA 94111

Victoria F. Maroulis, Esq.  
Mark Tung, Esq.  
Quinn Emanuel Urquhart & Sullivan LLP  
555 Twin Dolphin Drive, 5th Floor  
Redwood Shores, CA 94065

Court Reporter: Kristie M. Davis, CRR, RMR  
PO Box 20994  
Waco, Texas 76702-0994  
(254) 340-6114

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 (December 27, 2021, 9:02 a.m.)

2 DEPUTY CLERK: Markman hearing in Civil Action  
3 W-21-CV-210, styled Proxense LLC versus Samsung Electronics  
4 Company Limited and Samsung Electronics America, Incorporated.

5 THE COURT: If I could have announcements from counsel,  
6 please.

7 MR. HECHT: Your Honor, this is -- I'm sorry. This is  
8 David Hecht and Maxim Price from Hecht Partners for the  
9 plaintiff Proxense. Good morning, Your Honor.

10 THE COURT: Good morning to you guys. I hope you had a  
11 wonderful Christmas.

12 MR. HECHT: You too, Your Honor.

13 MR. PAK: Good morning, Your Honor. This is Sean Pak of  
14 Quinn Emanuel representing Samsung. And with me is Marissa  
15 Ducca as well as Joshua Scheufler. Merry Christmas, Your  
16 Honor.

17 THE COURT: Merry Christmas -- Mr. Pak, I don't think I've  
18 had you argue in front of me, have you?

19 MR. PAK: No. I have not, Your Honor. I've had the great  
20 fortune of joining some of your cases, but I haven't had the  
21 opportunity to share argument with Your Honor.

22 THE COURT: It's a great pleasure to have you.

23 I'm scrolling -- I'm trying to find my cheat sheet here of  
24 the -- unfortunately my phone is not catching up with where --  
25 so let me flip over here real quick. Okay.

1           The first issue that we need to take up would be  
2 "persistently storing," and goes on from there. The Court,  
3 looks like, adopted as a preliminary construction the  
4 plaintiff's construction. Therefore, I'm going to hear first  
5 from defendant with respect to what I should do with this claim  
6 term.

7           I look toward to hearing from whoever's going to argue on  
8 behalf of the defendant.

9           MS. DUCCA: Good morning, Your Honor. This is Marissa  
10 Ducca from Quinn Emanuel on behalf of Samsung.

11           And, Your Honor --

12           THE COURT: Ms Ducca, I think this is your -- I don't  
13 remember you being in front of me. I apologize if you have,  
14 but if not, welcome to my court.

15           MS. DUCCA: Oh, well, thank you. I think this is the  
16 first time I've argued in front of you.

17           THE COURT: Okay.

18           MS. DUCCA: Thank you.

19           THE COURT: I don't do so well with just people who might  
20 have been in another window. I only have five windows, but  
21 I --

22           (Laughter.)

23           THE COURT: I had a trial once that lasted three weeks in  
24 Dallas in a federal court. And about two weeks later I ran  
25 into the judge and he had no idea who I was. And that hurt my

1 feelings, so I try to do a little bit better about paying  
2 attention to who's been in my court and who hasn't. But I lost  
3 the trial, so maybe it was better that he forgot who I was too.

4 (Laughter.)

5 THE COURT: That may be a good thing too.

6 So I've interrupted you. I'm sorry. I invite you to say  
7 whatever you care to.

8 MS. DUCCA: No. That's okay. We appreciate that, Your  
9 Honor, and thank you for your courtesy. And I'll say it does  
10 make it more difficult with Zoom. This is a whole new world, I  
11 think, in the last couple years.

12 But with respect to the "persistently storing" term, I can  
13 say that in the interest of time and the interest of preserving  
14 limiting resources, we -- Samsung will accept your tentative  
15 construction of the preliminary -- of the term.

16 THE COURT: See, there you've won on your very first  
17 hearing before me.

18 MS. DUCCA: I know.

19 (Laughter.)

20 THE COURT: Well, go tell John Quinn that you won your  
21 first argument.

22 MS. DUCCA: I will tell him that, Your Honor.

23 THE COURT: Next up would be "device ID code." And I'm  
24 not sure if that's you who will argue this one or someone else  
25 on your team.

1 MS. DUCCA: This is me, Your Honor.

2 THE COURT: Okay. Very good.

3 MS. DUCCA: And I'm actually going to ask my colleague  
4 Josh Scheufler, he's going to operate the slides for me because  
5 I'll probably make lots of technical mistakes and he will not.

6 All right. So the term here that we're discussing is  
7 "device ID code." And in two of the patents, the '905 patent  
8 and the '989 patent, it's actually just "ID code."

9 I will say preliminarily the '730, '905 and '989 patents  
10 are all family members. They all share the same specification.  
11 So in some instances I may refer just to one of the  
12 specifications. However, the quotations or citations would  
13 appear in all three patents.

14 So Mr. Scheufler, if you can turn to Slide 28.

15 So for this term Samsung proposed the construction "the  
16 device specific code that identifies the device" and Proxense  
17 proposed "a unique code identifying a device." And even though  
18 it's not on the slide, Your Honor proposed as the tentative  
19 that it be "a unique code identifying device."

20 Your Honor, we don't have any issues with the term "a  
21 unique code." We accept that. We can agree to that in the  
22 construction. What I wanted to discuss today is whether this  
23 ID code has to be device-specific. So that's the first portion  
24 of our construction where it says "the device-specific code."

25 And specifically I want to talk a little bit about the

1 prosecution history. Because there was some back and forth  
2 with the examiner in the prosecution history that discussed  
3 device-specific versus user-specific.

4 So, Mr. Scheufler, if you can skip to Slide 30, please.

5 What we're showing in Slide 30 is a couple different  
6 citations from the '730 file history. But if you look at our  
7 briefing we also have some citations from the further file  
8 history in the subsequent file histories in the family.

9 Essentially what happened here is there was a rejection by  
10 the Examiner. And the rejection was based on a particular  
11 reference that involved a fob, a key fob and a private key that  
12 is used to encrypt a CRC. And that key fob was used to unlock  
13 a door. So the issue ultimately was whether the CRC is the  
14 same as -- is the ID code, and that was what the applicant was  
15 deciding.

16 So in response, you can see here on the right the  
17 applicant's response. And this is in Exhibit 4 to our  
18 briefing. It's part of the '730 patent file history at Page  
19 26. This is the applicant's argument responding to the  
20 Examiner.

21 And the applicant wanted to distinguish between two types  
22 of data. The first type the applicant described as  
23 user-specific data. And he or she identified that as names,  
24 public keys, CRCs. This is user-specific data. This is  
25 information that a user maintains, a user keeps and is attached

1 to a user.

2 And these are -- they may be used with other devices. So  
3 they may be used with the key fob to unlock the door. They may  
4 be used with other devices as well, perhaps other key fobs,  
5 other doors.

6 What the Examiner did here, though, is specifically made  
7 clear that the door, which is the device, needs to maintain  
8 device-specific data as the ID code. And so you can see the  
9 last sentence that's highlighted on the right side, it says,  
10 "no device-specific data is maintained by the door, much less  
11 'a list of codes identifying legitimate integrated devices' as  
12 claimed."

13 So he's specifically saying that ID code is a  
14 device-specific data. And that's where the device-specific  
15 portion of our construction came from. It came right here from  
16 the file history. So that is exactly what the applicant  
17 intended the ID code to be, that it had be device-specific as  
18 opposed to a code tied to the user.

19 And that is what we submit, Your Honor, as far as the  
20 issue that has to be decided with respect to this term. Very  
21 specific in whether or not the ID code has to be user-specific  
22 or it has to be device-specific. And we would submit that it  
23 needs to be device-specific based on the file history, as  
24 demonstrated here.

25 THE COURT: Give me just one second.

1 (Pause in proceedings.)

2 THE COURT: Do you happen to have the -- a claim that has  
3 the -- the entire claim that has the claim term in it?

4 MS. DUCCA: Absolutely, Your Honor.

5 Mr. Scheufler, if you would turn to Page 29.

6 THE COURT: He's quicker than you are.

7 MS. DUCCA: He is. And that's why he's helping out.

8 THE COURT: Okay. Give me just one second, and let me go  
9 back over this.

10 I think you were done with your argument. If you're not,  
11 I'm happy to hear anything else.

12 MS. DUCCA: I was, Your Honor. I'm sorry, Your Honor.

13 THE COURT: No, no, no.

14 MS. DUCCA: I was finished unless you have any questions  
15 for me right now.

16 THE COURT: Okay. Okay.

17 I'll hear a response, please.

18 MR. PRICE: Your Honor, this is Maxim Price for the  
19 plaintiff. I'll be arguing this term.

20 You know, Your Honor, I'm not clear how defendants'  
21 construction, proposed construction, achieves what they say it  
22 achieves. The term "device-specific" standing alone doesn't  
23 seem to me all that different from "unique code that identifies  
24 the device."

25 But I'm able to glean from their briefing that the

1 construction is meant to exclude any data that might identify a  
2 user, and such that the device ID code can only identify the  
3 device. And that is simply not what the claim says.

4 If I can -- I'll pull up the claim for you again on our  
5 PowerPoint.

6 I'm not sure if ours is being shown.

7 THE COURT: It is.

8 MR. PRICE: So let me just go back to the --

9 THE COURT: Okay. Go ahead, please. I've got it now.

10 MR. PRICE: Yeah. So it is "a plurality of codes and  
11 other data values that comprise a device ID...[that uniquely  
12 identifies] the integrated device." And so there's nothing in  
13 the claim language that so limits it, other than that it must  
14 uniquely identify the device, which we don't argue it doesn't,  
15 but can have other data values.

16 Now, the defendants, they hang their hat on the  
17 prosecution history, but that's not -- there's no clear  
18 disclaimer the way that they are framing it. What the prior  
19 art had was a CRC code which was a code that was the result of  
20 cryptography which, because of the way cryptography works, more  
21 likely than not every such code that was generated by this  
22 device would have been unique because it was the result of it  
23 being encrypted.

24 But there was no disclosure there of something  
25 specifically designed to be unique to the device such that it

1 identified the device. So they were not saying device-specific  
2 to the exclusion of user data. They were merely pointing out  
3 the prior art did not have both user data and something that  
4 was device-specific.

5 And so the examiner came in and said there is something  
6 device-specific here. And for there to be a prosecution  
7 history disclaimer, they would have had to come back and say,  
8 yes, there's something-device specific but there's also user  
9 data, and so therefore it doesn't disclose.

10 But what they said was, no, there isn't anything  
11 device-specific. This happens to be unique most of the time  
12 because of the cryptography.

13 But because there is -- but in reality all it is is  
14 user-specific. Because it is encrypted user-specific data.  
15 And so it does not disclose something that has both a  
16 device-specific ID and user-specific data.

17 And so the prosecution history does not evidence the  
18 prosecution history disclaimer of the claim language the way  
19 that they claim that it does.

20 And that's the argument, Your Honor.

21 THE COURT: Got it.

22 Any response or rebuttal?

23 MS. DUCCA: Yes, Your Honor. I'd actually like to address  
24 Mr. Price's initial note about where he thinks that we want to  
25 exclude any data that identifies a user. That's not true.

1 What we want to do is specifically give the correct  
2 construction that the applicant argued in the prosecution  
3 history.

4 And with regard to that, he was excluding -- the applicant  
5 was excluding identifying information that is specific to the  
6 user. I mean, this is exactly what we're trying to do. You  
7 know, the CRC is unique but it's not device-specific. It's  
8 specific to the user. The user can use the CRC whether he's at  
9 a computer, whether he's on a phone, whether he's on something  
10 else.

11 However, what needs to be the ID code needs to identify  
12 the device itself. So for example, let's say something that  
13 isn't in the prior art, an e-mail address. I use an e-mail on  
14 my phone. I use an e-mail address on my computer. It  
15 identifies me, but it also, you know, theoretically could  
16 identify the device if you want to go that broad.

17 But that was exactly what the applicant in the prosecution  
18 history was doing to be able to distinguish the prior art. And  
19 he was talking about the ID code being device-specific as  
20 opposed to just user-specific.

21 THE COURT: Got it.

22 Anything else? Anything else from the plaintiff?

23 MR. PRICE: There's just -- I would just refer Your Honor  
24 to the briefing where they specifically are arguing that user  
25 data can't be included.

1 THE COURT: I'm sorry. I couldn't hear what you said.  
2 That user data is what?

3 MR. PRICE: Specifically that the user data is excluded  
4 from their construction. That would be on Pages 5 and 6 of  
5 their opening brief.

6 THE COURT: Okay. Very good. I'll be back in a second.  
7 (Pause in proceedings.)

8 THE COURT: If we can go back on the record.

9 The Court is going to maintain its claim construction.  
10 The claim -- final claim construction will be "a unique code  
11 identifying a device."

12 The next claim term to take up is "access message." And I  
13 will hear from -- I'll start with the defendant.

14 MS. DUCCA: Your Honor, this is me again, Marissa Ducca.

15 So if Mr. Scheufler -- there you go. You're already  
16 there -- to Slide 32.

17 We're going to talk about the term "access message."

18 THE COURT: I'm starting to feel really badly now that we  
19 set this like the day after Christmas. I feel like I ruined  
20 several Christmases here. And I -- and I want you to know I'm  
21 going to completely throw my clerks on the fire here, because I  
22 have nothing to do with the scheduling. And if I -- if it were  
23 up to me, I think maybe I would have this for tomorrow and not  
24 today. So I'll have to pay a little more careful attention. I  
25 just realized you're on your third claim term the Monday after

1 Christmas. That can't have been right. So I apologize for  
2 that. But we'll -- I'll try and do better next year.

3 MS. DUCCA: Well, Your Honor, thank you. And it's fine.  
4 We're all ready to go. So who doesn't want to argue claim  
5 terms the day after Christmas? Two days after Christmas. We  
6 did have a break.

7 THE COURT: Well, I think this is -- Josh told me this and  
8 I'm not sure if it's right. But this will be the 106th Markman  
9 of the year for me.

10 MS. DUCCA: Oh, wow.

11 THE COURT: And I have another one this afternoon. And  
12 then I think I'm done. I think that'll be enough Markmans for  
13 a year. So...

14 MS. DUCCA: Three more and you can hit 110.

15 THE COURT: Yeah. And believe me, there were clerks who  
16 thought that was an admirable thing to try to achieve. So...

17 (Laughter.)

18 THE COURT: Let's have that goal for 2022. Let's save  
19 that.

20 MS. DUCCA: That's a lot of Markman hearings. That's more  
21 Markman hearings than I've had in my career.

22 THE COURT: Well, I hope you have that many in your  
23 career. That would be a great career.

24 MS. DUCCA: That's a lot of Markmans.

25 Thank you, Your Honor.

1           So turning to the term "access message." And if you take  
2 a look at our briefing, you'll see that Samsung actually  
3 proposed a bigger phrase. But I think for purposes of the  
4 issue that we'd like to discuss, it's easier to just address  
5 the term "access message."

6           So the term "access message" only appears -- the actual  
7 term only appears in two of the family members, the '730 patent  
8 and the '905 patent.

9           So, Mr. Scheufler, if you can go on to the next slide.

10          So Samsung's proposed construction for this term was  
11 "receiving a signal from the agent permitting a user to access  
12 an application" and "receiving a signal from the agent  
13 permitting a user to access."

14          And Proxense's proposed construction was "a signal or  
15 notification permitting or announcing access."

16          We obviously -- and this was also the Court's tentative  
17 construction. We obviously agree with the signal permitting  
18 access. You know, it -- permitting or enabling anything like  
19 that, we agree with.

20          What we don't agree with is the notification part. And  
21 the reason we don't agree with that is we think that the  
22 notification, as disclosed in the specification, is separate  
23 from the access message.

24          So the issue that we're going to decide today is does the  
25 access message need to enable or permit access? And the answer

1 to that is yes. It needs to permit or enable access. It does  
2 not have to notify or announce.

3 So, Mr. Scheufler, if we go to Slide 34.

4 What I have here is an example of Claim 1 from all three  
5 patents. And I think the '989 patent Claim 1 is informative as  
6 well, even though the term "access message" does not appear  
7 here.

8 And of course claim construction starts with the language  
9 of the claims. And there's two things that we need to take  
10 away from the claim language. The first thing is that the  
11 access message always comes from this third-party trusted  
12 agent, a third-party trusted authority or agent. So that's  
13 who's sending the access message.

14 The second item to take away from the claims is that the  
15 access message always enables or permits access to the  
16 application or the functionality of the transaction.

17 So if we take a look at Claim 1 in the '730 patent, you  
18 can see it highlighted there. You see "receiving an access  
19 message from the agent." And if you look above, the agent is  
20 this third-party trusted authority. So it's not the device.  
21 It's not the device that's actually being used by the user.  
22 It's coming from this third party. They're the ones that  
23 actually determine whether or not that user can access the  
24 application or access the transaction.

25 Looking at the '905 patent, it's the same -- it's exactly

1 the same. "Responsive to receiving an access message from the  
2 third-party trusted authority."

3 And then I also included the '989 patent Claim 1, because  
4 that is also informative. Although it doesn't use the term  
5 "access message," it describes what's happening. It says "a  
6 transaction being completed responsive to the third-party  
7 trusted authority successfully authenticating the ID code."

8 So the third-party trusted authority performs the  
9 authentication and then sends this access message back to  
10 the -- I'll say smartphone, but any device that's being used.  
11 I believe smartphone is only in the '989 patent.

12 And then, of course, as I mentioned, the second item  
13 that -- takeaway from the claims is that the access message is  
14 always providing access. So looking at the '730 patent, it  
15 says that it allows the user access to the application. So  
16 that's what's letting the user access the application.

17 Same with the '905 patent. It's allowing the user to  
18 complete a financial transaction.

19 And finally, with the '989 it still says a transaction  
20 being completed responsive to that message from the third-party  
21 trusted authority.

22 You think about using a smartphone and using -- doing  
23 something on a smartphone. You know, you might have -- try to  
24 access an app or try to perform a financial application, you  
25 need to get access to that. But the access in this claim is

1 coming not from the phone itself, it's coming from this  
2 third-party trusted authority. And the third-party trusted  
3 authority has to somehow let the phone know that the user can  
4 actually access it. It has to provide the access. And that's  
5 what that access message is. And that's what's being provided  
6 to -- in the claim.

7 Now, what Proxense does is, they're citing to some  
8 different parts of the specification. And I'm going to show  
9 that next. They're talking about this notification that's  
10 discussed in the specification. But that's another -- that's  
11 another step. That's another message actually generated by the  
12 phone itself.

13 So, Mr. Scheufler, if you can go on to Slide 35.

14 What I've done here is I've taken two portions of the  
15 specification. I've -- on the top this is where the  
16 specification describes the access message.

17 And, Your Honor, I'd actually say that except for the  
18 claims, this is the only citation within the specification that  
19 actually discusses the access message. And it says  
20 specifically, "If authentication is successful, the trusted key  
21 authority sends an access message." So, again, it's that  
22 third-party trusted authority sending the access message to the  
23 application to allow user access. It's saying, hey,  
24 application on the phone, the user's allowed to access this.

25 Let's talk about the citations that the -- that Proxense

1 submits for the notification portion of their construction. So  
2 here is an example of that. This is actually showing a  
3 separate notification that occurs after access has already been  
4 allowed by the access message.

5 So it says, "Responsive to successful authentication of  
6 the key, access is allowed to the application." Period. Okay?

7 And then they give an example. In the slot machine  
8 example now a pop-up window's going to be spawned. But that's  
9 separate from the access message.

10 If we could go to the next slide.

11 And these are just a couple more examples that were cited  
12 in Proxense's briefing. You can see "In one embodiment LED 130  
13 can also confirm user verification and/or authentication has  
14 completed." Has completed means that the access message has  
15 already come in, it's already authenticated, access is already  
16 granted. The LED 130, that is a user -- that's a user  
17 interface on the device, on the smartphone. It's not coming  
18 from the third-party trusted authority.

19 And these next two examples that were cited are actually  
20 the same language, even though in different portions of the  
21 specification. That shows that the first thing that happens is  
22 that access is allowed, period. And then a user interface from  
23 the phone will pop up and say, hey, you've got access now.  
24 That's the difference between the messages.

25 So we would submit that the access message itself needs to

1 have -- needs to permit access. It's something that comes from  
2 a third party, it gives access. And then later, of course,  
3 there can be a pop up, a notification that gives notice.

4 One other thing that I will note, the words "notification"  
5 and "announcement" in the construction, those words appear  
6 nowhere in the specification at all. They're not part of the  
7 intrinsic record at all.

8 And that is my complete argument, unless Your Honor has  
9 any questions.

10 THE COURT: I got it.

11 A response?

12 MR. PRICE: Let me just replace the -- when they stop  
13 sharing. There you go.

14 So as my counterpart mentioned, the argument is whether or  
15 not an access message can also include a notification. It can  
16 also be a notification rather than just permitting access.

17 And we can see in the claim language itself the act of  
18 allowing access is done in response and separately from  
19 receiving an access message from the agent. You see that in  
20 Claim 12 of the '730 as well as Claim 1 of the '905 patent.

21 And so the access message is important in this patent. It  
22 has been discussed consistently as a separate thing from the  
23 act of permitting access.

24 The access message can, in some circumstances, merely  
25 announce that access was permitted or it can be permitted. And

1 we know that because, first of all, there are several examples  
2 in the specification where the only message that's being  
3 discussed is a message informing or notifying that there's  
4 access.

5 They say that there's no -- the word "notification"  
6 doesn't appear in the specification. But there's several  
7 examples of notification where the order of events is access is  
8 allowed. The only message being sent, for instance here, is  
9 the LED that confirms that the user has been given access.

10 Access can be allowed, for instance, as we'll learn in a  
11 later slide, that -- by the local application on the phone  
12 itself. Access can be allowed by a remote application such  
13 that the only notification that needs to be sent to the phone  
14 is the access -- that access has been allowed, informing the  
15 phone that access is allowed.

16 The same thing with the pop-up window in the slot machine.  
17 Access is allowed. There is no access message in any of the  
18 steps before here. The only message is the pop-up. And that's  
19 what's discussed in the specification.

20 And the reason we know that this -- the claim anticipates  
21 two different types of access messages is that the claims give  
22 two different types of resources. Some resources can be  
23 external, like a casino machine or ATM machine or a garage door  
24 opener, that need an access message sent to them that says it  
25 is okay to give access.

1           But some resources are internal, like a file or computer  
2 software. And computer software can be both, but that's an  
3 example of something that can be internal to the phone. The  
4 phone will permit access upon receiving notification that  
5 access is permissible.

6           And that's important because the specification shows that  
7 other steps might be necessary in granting access. And this  
8 was clearly in the conjunctive in the very slide that was shown  
9 by -- to Your Honor by opposing counsel. It says "and/or  
10 provide additional information from the profile."

11           This is showing that sometimes there's an extra step.  
12 Once you receive an access message, you have to verify that the  
13 user's old enough to use that particular machine. And so the  
14 permission of access still needs another step. So it cannot be  
15 that the access message is that last step that permits access.

16           The access message is one of the steps in this example,  
17 and another step is the verification of the age and then access  
18 will be granted. And so an access message must have both the  
19 possibility of being something that permits access or notifies  
20 a device that access is permissible.

21           Thank you, Your Honor.

22           THE COURT: A response?

23           MS. DUCCA: Yes, Your Honor.

24           And, Mr. Price, if you would put up -- can you keep your  
25 slides up for me for a second?

1 MR. PRICE: One moment.

2 MS. DUCCA: Thank you. I appreciate that.

3 And if you could go to the first slide that you had. It  
4 had an example of Claim 12, I believe. Yes. Thank you.

5 Your Honor, what I would submit is we have to look at the  
6 claim language and we have to look at the specification. And  
7 what's important is that the claim language makes clear in each  
8 of these examples the access is being given by the third-party  
9 trusted authority. And that is exactly what's being shown in  
10 Claim 12 that Mr. Price has up here.

11 If you look at the claim language, it says, "receiving an  
12 access message from the agent and [then] in response to a  
13 positive access message..." Positive access message means that  
14 that message coming from the agent approved authorization.

15 And then it proceeds to describe that access message. The  
16 access message is "allowing the biometrically verified user  
17 access to an application..." That's what the positive access  
18 message does.

19 The fact is that every place that we've looked at in the  
20 specification when the access message is discussed, it is  
21 allowing or permitting access. And then every time where there  
22 is this other pop-up or this other information being provided,  
23 it is being described more just separate from that access  
24 message, separate from access, after access.

25 And that is precisely our point, is that it -- the access

1 message comes from the third-party trusted authority. That's  
2 what provides access. And then if the phone itself or the  
3 mobile device, whatever's being used, wants to pop up and  
4 provide additional information other than the access message,  
5 then it can do that as well.

6 THE COURT: A response?

7 MR. PRICE: Yeah. I guess we are reading these claims  
8 differently. My reading is a positive access message being  
9 received is a separate step from allowing the user access is  
10 what's being claimed.

11 And that's even clearer in the claim right below it where  
12 you see that, again, responsive to an access message, not  
13 (audio distortion) from a third party, indicating that  
14 somebody's been authenticated, the method allows access. So  
15 these are separate steps and there's no indication that the  
16 access message is what's doing the allowing.

17 THE COURT: Anything else?

18 MS. DUCCA: I would just submit that, again, you know, if  
19 you look at that cite that Mr. Price just looked at, it's  
20 saying it's receiving an access message from, again, a  
21 third-party trusted authority. And that access message  
22 indicates that it successfully authenticated the ID code. That  
23 access message has to authenticate the access. There is no  
24 place where the access message just provides a notification.

25 THE COURT: Any response to that?

1 MR. PRICE: No response other than the word "indicating"  
2 there, meaning exactly that.

3 THE COURT: Okay. I'll be back in a second.

4 (Pause in proceedings.)

5 THE COURT: We'll go back on the record.

6 I chatted with my law clerk about this. I think that the  
7 defendant is -- counsel is trying to make this a little more  
8 restrictive than I think is -- what is correct. I'm going to  
9 maintain the construction for access message of "a signal or  
10 notification enabling or announcing access."

11 The next one is "wherein the biometric data and the scan  
12 data are..." and goes on from there. I won't read the whole  
13 thing. I'm happy to hear from defense counsel as to why they  
14 believe this is invalid.

15 MS. DUCCA: Yes, Your Honor. This is me again. Marissa  
16 Ducca for Quinn Emanuel. And then I'll be turning it over to  
17 my partner, Sean Pak.

18 What we're talking about here is actually all of Claim 5.  
19 Claim 5 is a dependent claim on Claim 1. And it's "wherein the  
20 biometric data and the scan data are both based on a  
21 fingerprint scan by the user."

22 And if Mr. Scheufler will go on to Slide 38.

23 As you just mentioned, yes, we believe that this claim,  
24 Claim 5, is invalid under Section 112, Paragraph 4. And then  
25 Proxense's proposed construction and Your Honor's tentative

1 construction was no construction needed.

2 And one thing that I want to note from the outset is --  
3 because I think there was some confusion in the plaintiff's  
4 surreply, this -- we are not arguing that this term is  
5 indefinite. Invalidity under Section 112, Paragraph 4 states  
6 that a dependent claim cannot broaden an independent claim. It  
7 has to narrow the dependent claim. And that's our contention  
8 here.

9 And, Mr. Scheufler, if you'd go on to the next slide.

10 What I've reproduced here is the relevant portion of  
11 Claim 1 of the '730 patent as well as Dependent Claim 5. And  
12 what we're talking about here is this, what's called a Markush  
13 group. And a Markush group simply lists a number of  
14 alternatives or options that someone who wants to practice the  
15 claim can choose from.

16 And you can see here it says, "wherein the biometric data  
17 is selected from a group consisting of..." And that's kind of  
18 blackletter patent law. "Consisting of" is a closed group,  
19 "comprising" is open. And it lists a number of items. That's  
20 the Markush group.

21 And the number of items are palmprint, retinal scan, iris  
22 scan, hand geometry, facial recognition, signature recognition  
23 and a voice recognition. Those are the items that you can  
24 choose from. That's the closed group.

25 Ultimately, though, when we go on down to Claim 5, we

1 again talk about the biometric data. And it specifically says  
2 that the biometric data can be a fingerprint scan. Of course a  
3 fingerprint scan is not identified in that Markush group that  
4 we looked at in Claim 1.

5 So it's essentially adding an additional item that could  
6 be part of that biometric data. It can't be part of Claim 1,  
7 but now it's part of -- because it's consisting of. It's a  
8 closed group. But now it's part of Claim 5. So it's  
9 essentially broadening that Markush group.

10 One thing I want to mention before I go on to the next  
11 slide, there was a new argument that the plaintiff made in the  
12 surreply. And they essentially argued that this Markush group  
13 was added during prosecution as an examiner's amendment. And  
14 they cited a case on indefiniteness arguing that there's a  
15 presumption that it's valid. Because the -- there we go. We  
16 have a slide here.

17 There's a presumption that it's valid because an examiner  
18 added an indefinite term into there. This is just the  
19 presumption of validity that comes out of patent prosecution  
20 that applies to any claim as presumptively valid.

21 Of course we know that examiners make mistakes. They make  
22 mistakes all the time and that's why defendants have the  
23 ability to make invalidity arguments in court. We don't look  
24 at the Examiner's meaning or what the Examiner meant to do when  
25 they did or didn't allow a claim or added certain language. We

1 look at one of ordinary skill in the art and how they interpret  
2 the claims after the claim is issued.

3 So this isn't anything special, it's just the presumption  
4 of validity. But I wanted to address that initially since we  
5 didn't get a chance to address it in our briefing, since it was  
6 only in the surreply.

7 So, Mr. Scheufler, if you go on to -- if you would turn to  
8 Slide 41, please. So just one up.

9 Ultimately what we need to decide in the one argument that  
10 the plaintiff makes with respect to this term is that whether  
11 the fingerprint is encompassed in that Markush group.

12 Now, you saw the words "fingerprint" are not in the  
13 Markush group. So what the plaintiff argues is that  
14 "fingerprint" is encompassed within "palmprint." So, you know,  
15 I think -- I'm going to show you my hand.

16 You know, I think everybody thinks of this as their  
17 palmprint. The fingerprint is separate. The fingerprint is,  
18 of course, at the top of the fingers, but the palm is the kind  
19 of main part of the hand.

20 But what's more critical to look at is the specification  
21 and see how the applicant foresaw a fingerprint versus a  
22 palmprint. And in the specification the applicant clearly  
23 distinguished a fingerprint from a palmprint.

24 And you can see this in the '730 patent at Column 3, Lines  
25 4 to 11. You can see that "Although the embodiments below are

1 described using the example of biometric verification using a  
2 fingerprint," -- okay, so that's how they talk about  
3 examples -- "other embodiments" can be used. So "other types  
4 of biometric data. For example, the biometric data can  
5 include..." and then they go on to show those other  
6 embodiments.

7 The palmprint is separate from the fingerprint. It's  
8 identified as a separate type of biometric information. So  
9 fingerprint is separate from palmprint.

10 And if we return back to Slide 39.

11 So, again, we can take a look at it. The "consisting of,"  
12 the Markush group does not include fingerprint. Claim 5 does  
13 include fingerprint. Therefore, Claim 5 is broadening that  
14 Markush group. And for that reason we submit that Claim 5 is  
15 invalid under Section 112, Paragraph 4.

16 THE COURT: Finally, after 106 Markmans there's an  
17 argument I understand.

18 (Laughter.)

19 MS. DUCCA: I'm glad, Your Honor.

20 THE COURT: I knew it'd happen if I did enough of them.  
21 I'm happy to hear a response.

22 MR. PRICE: If I could get control of the screen there.

23 There is no surprise that this patent about biometric  
24 validation includes fingerprints. I mean, that's just all over  
25 the patent. And for the prosecution history to have excluded

1 fingerprint entirely from these claims, the Examiner or the  
2 applicant or both would have evinced a very specific intent to  
3 do that. There was nothing in the prosecution history like  
4 that. There's just an amendment by the Examiner that creates  
5 this Markush group.

6 If the understanding of the applicant or the Examiner was  
7 that a palmprint -- and we saw that, you know, when Ms. Ducca  
8 held up her hand, you can clearly see palmprint includes  
9 several fingerprints. That's just the general understanding of  
10 an entire palm.

11 And so when the specification discussed the difference  
12 between a fingerprint and a palmprint, they're discussing the  
13 difference between the entire thing and all of the fingers, as  
14 opposed to a single fingerprint being the identifying factor.

15 So when the Markush group said palmprint and the  
16 outstanding claim, which was Claim 7 at the time, limited that  
17 to just a fingerprint, it was no surprise to either the  
18 applicant or the Examiner that these two claims remain  
19 consistent and readable to anyone reading the patent to  
20 understand that fingerprint is part of palmprint. And a single  
21 fingerprint is claimed in the dependent claim.

22 To claim otherwise is to find prosecution history  
23 disclaimer that just didn't happen. There was no reason for it  
24 to exist.

25 And so I submit that there's -- you know, that finding --

1 that writing out fingerprint from a biometric patent needs more  
2 reason than someplace where you can easily find that palmprint,  
3 handprint, means multiple fingerprints and the palm, and single  
4 fingerprint is claimed in the dependent claim. There's just no  
5 reason to do that.

6 Thank you, Your Honor.

7 THE COURT: Yes, ma'am. A response?

8 MS. DUCCA: Your Honor, I observed that Mr. Price didn't  
9 cite anything in the specification. And that's because the  
10 specification does clearly distinguish between a palmprint and  
11 a fingerprint.

12 Mr. Price talked about something being consistent and  
13 readable. Remember, this is for one of ordinary skill in the  
14 art, and if you wanted to be consistent and readable, the  
15 applicant would have made sure that fingerprint was part of the  
16 biometric data that's selected from the group, the Markush  
17 group, the "consisting of" Markush group.

18 If it was a mistake on behalf of the Examiner, then they  
19 had an ability to go back and tell the Examiner, well, wait.  
20 You don't have fingerprint scan in there. They didn't do it.  
21 They could have filed a correction, a notice of correction.  
22 They didn't do that.

23 The fact is that one of ordinary skill in the art would  
24 read this Markush group, see palmprint and see fingerprint scan  
25 in Claim 5, recognize that those were different. To the extent

1 they had any question, they'd go back to the specification and  
2 see that those two were distinguished there as well.

3 Applicants all the time have the ability to claim certain  
4 embodiments within certain claims and other embodiments in  
5 other claims. Other claims within this family claim a  
6 fingerprint scan. Claim 1 does not. And that is -- that's how  
7 it was drafted.

8 MR. PRICE: And so I disagree that I didn't mention  
9 anything from the specification. I responded to counsel's cite  
10 to the specification where it distinguished between a  
11 fingerprint scan and a palmprint, as opposed to multiple  
12 fingerprint scans and a palmprint.

13 And so, is there still -- it would be clear -- if there  
14 was a clear error that the applicant had to change, such that  
15 palmprint could not mean multiple fingerprints, that would be  
16 one thing. But there is no such clear error. There's no  
17 reason for the applicant to go back and say, oh, by the way, we  
18 should put fingerprint in there. Because it was clear to  
19 everybody, including the applicant and the Examiner, that  
20 palmprint is multiple fingerprints and a fingerprint is  
21 distinguishable.

22 Thank you.

23 MS. DUCCA: Your Honor, if it was clear, then they would  
24 have included fingerprint scan in the Markush group. It's not  
25 included.

1 THE COURT: I got it. Okay. I'll be back in a second.

2 (Pause in proceedings.)

3 THE COURT: Okay. If we could go back on the record.

4 The Court is going to find that the claim is not  
5 indefinite, and it's going to find that no construction is  
6 necessary.

7 The next claim term up is "hybrid device," which the  
8 defendant also maintains is indefinite.

9 I'm happy to hear from counsel for defendant.

10 MR. PAK: Good morning, Your Honor. This is Sean Pak for  
11 Samsung.

12 And with respect to the hybrid device family, Your Honor,  
13 I intend to spend most of my time talking about the "hybrid  
14 device" term. I think it's a critical issue in the case with  
15 respect to this family.

16 So, Your Honor, if we could turn, Mr. Scheufler to Slide 3  
17 in the presentation.

18 I wanted to just note, Your Honor, how important the term  
19 "hybrid device" is, separate from the other claim elements, the  
20 PDK, personal digital key, as well as the receiver-decoder  
21 circuit. All three terms are used throughout the patent,  
22 including the title. And none of these are contended as having  
23 ordinary and a customary meaning in the art.

24 So what we're looking for, Your Honor, is going into the  
25 intrinsic record to make sure that we have a clear

1 understanding of each of these claim elements which we contend  
2 are separate elements of the claims.

3 And so if we turn to the next slide, Mr. Scheufler.

4 '700 has the title "Hybrid device" and claims priority  
5 back to the same provisional application. And the  
6 specifications are largely the same.

7 And if we turn to the abstract on Slide 5 of the '188  
8 patent.

9 There'll be a number of things to note here in the  
10 abstract. It talks about a hybrid device again. And not only  
11 does it talk about PDK and RDC components, but it also talks  
12 about a hybrid device operating in one of several modes,  
13 including PDK only, RDC only or PDK and RDC. And specifically  
14 the abstract states that this allows a variety of system  
15 configurations for a mix of operations.

16 THE COURT: Can I interrupt you here?

17 MR. PAK: Sure.

18 THE COURT: Okay. So let me tell you what my problem is.  
19 Generally -- which is a -- this is a global-level problem that  
20 you've got to overcome with me for the misfortune of you being  
21 in my court on a particular argument like this. But it  
22 would -- it'll redound to your benefit for those cases where if  
23 you're on the plaintiff's side.

24 So I have an abstract here that -- I have a patent where  
25 someone invented something. They go to a patent lawyer, a

1 lawyer -- which is not me. I was not -- I'm not a patent  
2 lawyer. And they go and they draft a patent which starts off  
3 "a hybrid device includes..." goes on there. Throughout the  
4 entire thing this is -- they are telling the Patent Office, we  
5 are going -- we are claiming a hybrid device. And it ends with  
6 "and use of the hybrid device for authorization inheritance."

7 They take it to the Patent Office where they get a patent  
8 examiner who is someone who is in this technology area. That's  
9 the way the system works. I don't know how much negotiation  
10 went on back and forth here. But the entire purpose of this --  
11 the entire purpose of this is to get a patent on this.

12 This is -- I'm going to ask you a theoretical question.  
13 How does the system work if I find that -- how does the system  
14 work if I find that this is indefinite?

15 MR. PAK: Yes, Your Honor. I think --

16 THE COURT: I mean, that's my problem here, is I'm  
17 supposed to come in now and sort of overrule the patent  
18 examiner on -- and we'll even leave aside the presumption.

19 But this is -- someone in the system found that a hybrid  
20 device -- that this was sufficiently definite, that it was --  
21 it was okay. That's my problem, is -- with these types of  
22 arguments.

23 And I have -- as you know, it may have been in cases  
24 you've had, I have found claim terms indefinite. I get -- I'm  
25 not anti-indefinite at all. But this is one where I have a

1 really tough time.

2 MR. PAK: Thank you, Your Honor.

3 So I am on those cases, Your Honor, so that was the Google  
4 case, the WSOU, as well as the recent case that we had before  
5 you in the Ocean Semi versus NVIDIA.

6 THE COURT: I want to make it clear that, you know --  
7 because I get a little press, and I want to make it clear that  
8 I am not an anti -- if I think something is invalid, I will --  
9 I'm going to -- I'm going to do that. I'm here to do what's  
10 right.

11 But I have a particularly hard time with an argument like  
12 this one. And I just wanted to give you fair warning of that.

13 MR. PAK: Thank you, Your Honor. So let me jump into  
14 that.

15 And if we turn to Slide 13, Your Honor, because this is  
16 really, as Your Honor knows, what the Nautilus case was all  
17 about from the Federal Circuit. And if Your Honor remembers,  
18 there was a claim term that talked about steel baffles. That  
19 was a term in that case. And so following Your Honor's  
20 questioning, the Examiner went back and forth with the patentee  
21 about the claim language and issued those claims over  
22 objections that were being raised.

23 And so the question isn't whether we defer to the Patent  
24 Office, because the Patent Office had a chance to examine  
25 certain words in the context of the prior art. The question

1 is, does -- in that case, steel baffles. Did that have  
2 definiteness concerns about that?

3 And in this case, Your Honor, I want to just jump to the  
4 argument here which I think it really boils down to one  
5 critical issue.

6 And this is Slide 9.

7 What Proxense is doing -- and, Your Honor, on the  
8 left-hand side is the proposed construction. And you can see  
9 it literally is reading out -- their proposed construction is  
10 literally reading out the word "hybrid," which, as Your Honor  
11 noted, was the key point of the claimed invention.

12 If you look at -- if you compare the proposed construction  
13 to the left, it says "a device comprising an integrated  
14 personal digital key (PDK) and an integrated receiver-decoder  
15 circuit." And you look at the claim language, the claim  
16 language doesn't say "a device comprising an integrated  
17 personal digital key and an integrated RDC," it says "a hybrid  
18 device."

19 And every party in this case right now agrees that hybrid  
20 device is a limitation that needs to be construed. And we see  
21 that in the dependent claims, for example.

22 Mr. Scheufler, if you go to the next slide. Actually,  
23 Slide 12, Mr. Scheufler.

24 We know that in Claim 3 and Claim 2, Your Honor, that  
25 there's an antecedent basis for "the hybrid device." So Claim

1 3 talks about "the application, function and service are  
2 enabled at least in part on a device [that's] external to the  
3 hybrid device." And Claim 2 talks about "a hybrid  
4 device...wherein at least one of the one or more of the  
5 application, function...service are" on the hybrid device.

6 So we all agree that the term "hybrid device" needs to be  
7 construed. And the problem we're having with their  
8 construction is it reads out the word "hybrid" altogether.

9 Their construction's merely citing all the other claim  
10 elements that are already built into the claim language without  
11 the word "hybrid." And we all know from cases such as Phillips  
12 versus AWH, that we are not looking to eliminate claim terms.

13 So baffles -- sorry. I apologize. I was talking about  
14 Nautilus. But I was talking about the Phillips versus AWH case  
15 in Claim 11 --

16 Or Slide 11, Mr. Scheufler.

17 And what the Court found in Phillips versus AWH was that  
18 you can't take the word "steel baffles" and ignore the word  
19 "steel." Because we strongly -- to take a simple example, the  
20 claim in this case refers to steel baffles, which strongly  
21 implies that the term "baffles" does not inherently mean  
22 objects made of steel.

23 So we're looking at every single word and making sure that  
24 every single word is given meaning. And the real issue here is  
25 the Proxense construction gives no meaning to the word

1 "hybrid." And this goes to Your Honor's question, well, what  
2 does the word "hybrid" mean in the context of the prosecution  
3 history as well as the patent specification?

4 And if you turn to Slide 16, Mr. Scheufler.

5 This is a key point. If you look at the description of  
6 the word "hybrid," setting aside the other claim elements of  
7 RDC and PDK, on the left-hand side, Your Honor, on Page -- or  
8 Column 15, Line 64 to Column 16, Line 1 through 2 of the 188  
9 patent, it specifically states that "The hybrid device allows  
10 mixed operations including: RDC/PDK, RDC/RDC or PDK/PDK  
11 combinations."

12 Yet on the right-hand side in the same patent at Column  
13 14, Line 20 to 23, it describes that same hybrid device 1102 as  
14 including only the RDC.

15 And so we know that a hybrid device has to mean something  
16 other than just a device. And what does the specification tell  
17 us about the word "hybrid"? It provides an internal  
18 contradiction. On the one hand it says that a hybrid device  
19 must allow mixed operations including RDC PDK and these various  
20 permutations that have PDK functionality in it. Yet in the  
21 same patent the hybrid device includes only the RDC and does  
22 not have any PDK functionality.

23 And as Your Honor well knows, if you have internal  
24 contradictions, that under *Nautilus* does not provide reasonable  
25 certainty, then you have every authority under the Federal

1 Circuit to invalidate claims for being indefinite.

2 And there was a recent case Your Honor may know about, the  
3 TVNGO case versus LG Electronics, June 28, 2021 Federal Circuit  
4 case, where specifically the Federal Circuit found intra-patent  
5 inconsistencies as a basis for rendering claims indefinite.

6 So this goes to Your Honor's question of what are you  
7 supposed to do when you have a claim that has been issued, yet  
8 we're finding internal inconsistencies in the patent itself,  
9 both in terms of the claim language as well as the  
10 specification descriptions. And the Federal Circuit guidance  
11 is very clear what you do in that situation, is that you hold  
12 the claims indefinite because there is no reasonable certainty.

13 What does the word "hybrid" mean, if on the one hand it  
14 has to allow mixed operations involving both PDK and RDC  
15 functionality, yet in the same patent a hybrid device only  
16 includes RDC functionality?

17 And that's the crux of the argument, Your Honor, that  
18 there is -- there must be meaning given to the word "hybrid"  
19 separate from "device." And we know that their construction of  
20 a hybrid device is inconsistent and wrong, given the disclosure  
21 in the specification, because the hybrid device is described in  
22 the patent as having only RDC functionality.

23 And so looking at "hybrid" as a term, when we go to the  
24 intrinsic record, we find internal inconsistencies that under  
25 Nautilus as well as the TVNGO case render the claims

1 indefinite.

2       And that's what we believe, Your Honor, is the crux of the  
3 issue here, is that you have indefiniteness both in the claim  
4 language as well as in the specification.

5       Just to pre-rebut one thing that we saw in the arguments,  
6 Your Honor, they made the argument that there could be  
7 unclaimed elements or embodiments in the specification, that  
8 not every embodiment has to be covered. While that may be  
9 true, you still have to give meaning to the word "hybrid." And  
10 here, when you go to the word "hybrid," you see this internal  
11 inconsistency that cannot be reconciled.

12       And so we do believe that the word "hybrid device" should  
13 be given meaning separate from PDK and RDC. And the  
14 contradiction just renders this term indefinite.

15       So with that, Your Honor, I'll reserve further comments or  
16 answer any questions you might have.

17       THE COURT: Very good. Thank you, sir. And I'm not -- I  
18 wasn't picking on you. I just --

19       MR. PAK: I understand that.

20       THE COURT: I just -- I feel like you all who do such a  
21 great job deserve an explanation from me about any, I guess,  
22 biases I might have about how I view the world in terms of --  
23 at least in terms of construction as opposed to once we get  
24 further down the road and I'm looking at summary judgments on  
25 infringement and stuff like that.

1 Happy to hear a response.

2 MR. HECHT: Thank you so much, Your Honor. This is David  
3 Hecht. I'm going to ask my colleague, Conor McDonough, to  
4 share the -- share his screen starting with Slide 29.

5 So this is just a summary of the various constructions.  
6 Obviously Samsung is claiming indefiniteness here.

7 The next slide shows Claim 1 of the '188 patent, for  
8 example. So there is meaning of hybrid device here. The  
9 meaning of hybrid is two separate components. A hybrid of a  
10 PDK and an RDC. This is an apparatus claim.

11 So we believe -- we would contend there absolutely is  
12 meaning. And the applicant could have chosen another word  
13 instead of hybrid. It could have chosen physical or  
14 communication. There's various ways to describe the device.  
15 Here it's hybrid because of the nature of those two things that  
16 we'll talking about later, the personal digital key and the  
17 integrated RDC. And so that's what I would contend is the  
18 meaning of hybrid.

19 Now, since this is an apparatus claim, looking at various  
20 specification detail about functionality just cannot win the  
21 day as to indefiniteness. Because you can have a device that  
22 has multiple functions or is capable of multiple functions  
23 because of its hardware, and only uses half the hardware at any  
24 given time and another half another time. And that's all  
25 completely consistent.

1           So the next slide shows exactly what Your Honor had  
2 alluded to, which is the U.S. PTO prosecution, you know, was  
3 based on this term. But more than that, Dr. Nielson, who's  
4 Samsung's expert, didn't have a problem with hybrid device,  
5 could actually understand what it meant, and excluded the  
6 various embodiments that didn't quite jibe with what Samsung's  
7 construction was.

8           The only inconsistency that we found is that Samsung, in  
9 their IPR petitions, has actually said that no construction of  
10 any terms is necessary. But I will glean over that.

11           The next slide is specifically on Dr. Nielson. So he said  
12 there's no express definition of the hybrid device, even though  
13 it's described in various ways throughout the specification.  
14 And, again, we looked at Claim No. 1 that shows the PDK and the  
15 RDC, and there's also a figure, and there's multiple figures  
16 that show the hybrid device consisting of PDK and the RDC. So  
17 there is absolutely structure, and so that's not the crux of  
18 the argument. But there definitely is that element.

19           And so we can go to the next slide which is part of the  
20 Nielson declaration, their expert. And I'm going to just whiz  
21 past this stuff.

22           But the next slide, on Slide 33, that shows that the  
23 hybrid device has a PDK. So it's at -- the PDK is consistently  
24 described used for storing information. So that's directly  
25 from the expert -- or Samsung's expert, Dr. Nielson.

1           And, finally, if you look at the next claim -- I'm  
2 sorry -- the next slide. It says that the -- this is, again,  
3 the Nielson declaration, "While the claimed hybrid device is  
4 required to have both [a] PDK and RDC," we agree with that.  
5 Absolutely. That's the whole construction that we are putting  
6 up.

7           And the real issue that the -- that Dr. Nielson had seems  
8 to be this unclaimed embodiment. And, you know, as we  
9 discussed, and Mr. Pak admitted, you don't need to have -- the  
10 claims do not need to reflect every single embodiment that's  
11 described in the specification.

12           So with that, I have nothing more.

13           THE COURT: Any rebuttal?

14           MR. PAK: Yes, Your Honor. So I think Mr. Hecht just  
15 proved my point, which is --

16           If you go to Slide 9, Mr. Scheufler. Slide 9, please.

17           Your Honor, take a look again at the construction to the  
18 left. It says, "A device comprising an integrated personal  
19 digital key and an integrated receiver-decoder circuit." To  
20 the right is the actual claim language. And you can see that  
21 what they're proposing is a construction that takes out the  
22 word "hybrid" completely.

23           Mr. Hecht talked about, well, hybrid can maybe have a  
24 meaning of having two or more components. But, again, that is  
25 not their construction. Their construction is a device

1 comprising an integrated PDK and an integrated RDC, which is  
2 merely mimicking the rest of the claim elements and giving no  
3 meaning to the word "hybrid."

4 And this takes us to Slide 16.

5 Even under Mr. Hecht's construction or notion of what  
6 hybrid means, which is two or more components, we have that  
7 internal inconsistency on the right. So this isn't just an  
8 issue of whether it's a disclosed embodiment that's not claimed  
9 or not. This is what does the patent teach us about the usage  
10 of the word "hybrid device" which everyone agrees is not a term  
11 of art?

12 On the right-hand side it says, "in another embodiment the  
13 hybrid device includes only the RDC." Only the RDC. Which  
14 means if Mr. David -- Mr. Hecht is right, that normally the  
15 word "hybrid" includes two or more, what we find in the patent  
16 specification is a contradiction. It's a contradiction because  
17 the hybrid device in these embodiments do not have two or more  
18 components. It only has the RDC component.

19 And that's the crux of the argument. When you have these  
20 internal inconsistencies under the TVNGO case as well as under  
21 Nautilus, you have the inability by those skilled in the art to  
22 be able to assess the scope of the patent claims with  
23 reasonable certainty.

24 And we're not looking for insolubly ambiguous. What we're  
25 looking for is whether there's reasonable certainty given to

1 those skilled in the art. And when you have disclosure on the  
2 one hand that says a hybrid device can be only the RDC, one  
3 component, and then you have a notion out there that a hybrid  
4 device has to be two or more, what we find is a contradiction.

5 And so this is the rare case, Your Honor, that we submit  
6 where the patent itself provides the contradiction which the  
7 Federal Circuit says is a basis for invalidating these claims.

8 And we do think this rises above the typical  
9 indefiniteness arguments that Your Honor may have heard over  
10 and over again, where the word "hybrid" is not being given any  
11 meaning by the plaintiff. And when we look in the patent  
12 specification, we find contradictions left and right.

13 So with that, Your Honor, we submit that this claim should  
14 be rendered indefinite and therefore invalid.

15 MR. HECHT: Your Honor.

16 THE COURT: Sure.

17 MR. HECHT: So just to respond to that, every construction  
18 need not use every claim of every word of the claim term. So  
19 here there is a way, if we really wanted to shoehorn the hybrid  
20 word into our construction, we could do it. You know, you  
21 could have a device comprising a hybrid of a PDK and then an  
22 RDC. That doesn't make it, you know, a proper definition. And  
23 that is not a tentative claim construction that you need to use  
24 every term or repeat every term. So, you know, we could have  
25 even gone with plain and ordinary meaning. But here I think

1 that we wanted to latch on to what the claimed limitation is.

2 And here the other thing that's very clear in the slide  
3 that Mr. Pak put forward, there's one embodiment that, yes, it  
4 says that an RDC is the component, essentially, of the hybrid  
5 device. But I believe that was talking about the cell phone  
6 with the RDC. So it's a hybrid in that way of looking at it.  
7 A cell phone with an RDC is also another way of kind of looking  
8 at a hybrid.

9 So I would argue there is absolutely meaning to the term  
10 "hybrid device." It's the basis of the entire patent, as  
11 you've said.

12 And so I don't have anything more, unless you have any  
13 questions.

14 THE COURT: Anything else?

15 MR. PAK: Your Honor, just, again, we heard Mr. Hecht  
16 giving another interpretation of the word "hybrid." And that  
17 just underscores the ambiguous nature of what we're dealing  
18 with and the contradictions that are found in the patent.

19 There is no definition that is clear in the claim language  
20 or in the patent specification for the word "hybrid." We have  
21 to give that meaning. And when we look for that meaning in the  
22 patent specification, we find internal contradictions.

23 Thank you, Your Honor.

24 THE COURT: Anything else?

25 MR. HECHT: That's all, Your Honor.

1 THE COURT: I'll be back in a second.

2 (Pause in proceedings.)

3 THE COURT: If we could go back on the record.

4 The Court is going to find that it is not indefinite. And  
5 something counsel for plaintiff said which was that they might  
6 have just --

7 MR. PRICE: Your Honor, sorry to interrupt. I actually  
8 don't remember hearing the court reporter say that she was  
9 back.

10 THE REPORTER: I am back.

11 THE COURT: She told me.

12 MR. PRICE: Oh. Sorry about that.

13 THE COURT: No, no, no. That's fine. No, no. Which she  
14 let me know. Listen, thank you very much. We need to have her  
15 on the record. And so -- but I have done this before too.

16 So the Court is going to -- you know, I don't know that I  
17 wouldn't have given this plain and ordinary meaning. I guess I  
18 see it at a much -- even differently than you all, which is,  
19 you know, this is -- I'm not even sure how you construe, in  
20 this claim, "hybrid device," given that that's kind of what --  
21 I mean, it's what the invention -- they are claiming a hybrid  
22 device and then go on to explain what -- the entire patent is  
23 about defining what a hybrid device is. It's almost like I  
24 could give the entire patent specification to do it.

25 But -- and so I don't know why -- I'm not even sure why

1 plain and ordinary meaning might not be the best thing. But I  
2 am going to maintain the Court's preliminary construction for  
3 hybrid device.

4 We'll move on next to "personal digital key." And I'll  
5 hear from the defendant on this.

6 MR. PAK: Thank you, Your Honor.

7 So, Mr. Scheufler, if we can turn to Slide 19.

8 THE COURT: And, again, I don't want anything I say on the  
9 record to sound like I'm critical of anyone. I mean, I'm  
10 blessed by -- in these cases, patent cases, by having really  
11 great lawyers who make it really tough for me by making really  
12 good arguments. I just -- I feel it's best for you all to have  
13 on the record why I'm doing what I'm doing in the event that  
14 you need to have someone to grade my papers, and have them --  
15 if they want to know why I did what I did.

16 And so I'm not in any way being critical. I certainly  
17 understand Samsung's argument and why you're making it. And  
18 I'm not in any way criticizing the argument. I'm just trying  
19 to explain why I don't agree with it.

20 MR. PAK: Thank you, Your Honor. Appreciate that very  
21 much.

22 MR. HECHT: Thank you, Your Honor. And, you know, this is  
23 the rare instance, I think, where we actually have the other  
24 side -- I very much respect Sean and his colleagues because  
25 I've worked with them before. And Sean and I have been to an

1 ITC trial together, so we definitely do not disparage the other  
2 side, and we respect them very much.

3 MR. PAK: Likewise, Mr. Hecht.

4 THE COURT: When I write my book on how to be a lawyer, I  
5 think that would probably be the most golden rule. It gets  
6 neither side very far to not be gracious to the other side, at  
7 least with me. I don't know how other judges are, but it does  
8 little for you to do that.

9 MR. PAK: I agree.

10 MR. HECHT: Thank you, Your Honor.

11 MR. PAK: Thank you, Mr. Hecht. I appreciate that very  
12 much as well.

13 So, Your Honor, turning to the next term which is  
14 "personal digital key," I think it really comes down to the  
15 following issue, which is if you look at Proxense's proposed  
16 construction, we see the phrase "an operably connected  
17 collection of elements."

18 And as Your Honor just dealt with in the WSOU case with  
19 Google as well as in the Ocean Semiconductor, what we know from  
20 the Federal Circuit under Citrix Williamson case -- line of  
21 cases, is that we're not looking to claim just functions when  
22 it comes to words like "personal digital key."

23 And what we see here is a proposed construction that is  
24 purely functional in nature. This is functional claiming at  
25 its clearest example. Any "operably connected collection of

1 elements including an antenna and a transceiver for  
2 communicating with an RDC and a controller and memory for  
3 storing information particular to a user."

4       Whereas what we have on the Samsung side is instead of  
5 having an operably connected collection of elements, we have a  
6 device. And that provides a structure that we're looking for  
7 in terms of what is the boundary of this personal digital key  
8 according to the intrinsic record. And in every instance that  
9 the word "personal digital key" used in the specification, we  
10 find that it is connected to a device.

11       So if you turn to the next slide, Mr. Scheufler.

12       And, again, these are illustrative figures, Figure 1 from  
13 the '188 patent, we see the PDK is a separate device that has  
14 these elements, including an antenna, which are then provided  
15 as part of a larger system. But, again, in Figure 1 we see  
16 that PDK is a discrete and separate entity from the sensor 108,  
17 as well as the applications 120A, B and C.

18       If you go to the next slide, Slide 21.

19       We have a similar disclosure, again, in Figure 13 where  
20 the PDK has its own antenna which is separate from the RDC  
21 inside the hybrid device. As well as, Your Honor, to the left  
22 we see an external PDK device with its own antenna as well.

23       And under the Proxense construction there's no boundary.  
24 It could be my type of collection of elements that are operably  
25 connected which doesn't require a direct connection. So in

1 that instance you could have PDK 102B consisting of a variety  
2 of different components inside and outside the hybrid device.  
3 And that's clearly not what's being shown here. We have  
4 separate PDK entities, PDK 102A as a device that is part of the  
5 hybrid device, and a separate 102B that is external to the  
6 hybrid device, again, as a discrete and separate entity.

7 So if you go to the next slide.

8 And here we have a good example of the claim usage of the  
9 word "PDK," Your Honor. This is a hybrid device comprising an  
10 integrated RDC. And that integrated RDC communicates with at  
11 least one external PDK, as well as having an integrated PDK as  
12 part of the hybrid device.

13 So, again, to give structure and understanding to the word  
14 "PDK" when we talk about external versus integrated, we're  
15 looking at the device as the basis for that understanding.  
16 We're talking about a PDK device that could either be external  
17 to the hybrid device or it could be integrated into the hybrid  
18 device.

19 Go to the next slide.

20 And, again, there's nothing in any of the passages relied  
21 on by Proxense where the functionality of the PDK is somehow  
22 distributed throughout the cell phone where you can just grab  
23 different elements of this entire cell phone and call it some  
24 type of PDK device.

25 Instead, what we're seeing is consistent disclosure of

1 each PDK device having its own antenna and constituent parts.  
2 So you could even have it as an external component with a SIM  
3 card as shown in Figure 12, or it could be integrated into the  
4 cell phone PDK. But, again, this is not an exercise where  
5 you're looking at some unconnected set of components to come up  
6 with a functional description.

7 Go to the next.

8 And, again, we see that the PDK actually exists prior to  
9 being inserted into the cell phone in Figure 12.

10 Next slide.

11 Similarly there's nothing in the passages relied on by  
12 Proxense that describes distributing the functionality of the  
13 PDK throughout the cell phone. For example, there's no support  
14 in the intrinsic record that the transceiver and the antenna of  
15 the PDK is provided by the cell phone. Only battery power is  
16 being provided by the cell phone. Instead, PDK and RDC are  
17 consistently described as separate devices with its own antenna  
18 and constituent parts.

19 For those reasons, Your Honor, we believe that it would be  
20 incorrect to adopt the Proxense construction that eliminates  
21 any boundary. And it would encompass any arbitrary collection  
22 of components, including using the transceiver antenna of the  
23 cell phone rather than having a PDK that is a separate device  
24 that could either be part of the hybrid device or be external  
25 to the hybrid device.

1           And for that reason, Your Honor, we submitted that our  
2 proposed construction is the correct one.

3           THE COURT: Got it. Thank you, sir.

4           A response?

5           MR. HECHT: Thanks, Your Honor.

6           Mr. McDonough, can you please put on Slide 35 and share  
7 your screen? Thank you.

8           So here, again, are the breakdowns of the constructions  
9 for personal digital key, the proposed constructions. I will  
10 note at the outset that means-plus-function was not raised by  
11 Samsung previously, to my knowledge, in the briefing. And to  
12 say that our construction here is functional is not quite  
13 accurate, I would argue.

14           If you read what we're -- what the construction is, it  
15 says "an operably connected collection of elements including  
16 antenna" -- well, that's not functional -- "a transceiver" is a  
17 type of hardware "and a controller and memory" also hardware.

18           And so, yes, there is description of what those things do.  
19 The transceiver communicates with an RDC, and memory, we all  
20 know, stores information here. It's information particular to  
21 a user which we all agree on.

22           But to kind of classify it as functional description alone  
23 is not accurate, because what really matters here --

24           THE COURT: May I interrupt you?

25           MR. HECHT: Sure.

1 THE COURT: So two differences here between y'all's  
2 proposals. One is the defendants want me to say it's a device.  
3 You say "an operably connected collection of elements," you  
4 know, maybe -- I don't know that experts might not be able to  
5 deal with that and say it's a device or not, what "device"  
6 means. In fact, maybe if I say it's a device, then the  
7 plaintiff will say, well, now we need you to construe what is  
8 meant by device. So I deal with that too.

9 But I'm not entirely certain why the plaintiff asked me to  
10 use -- what is meant -- and why would I include "an operably  
11 connected collection"? And let me tell you what I'm thinking  
12 here is, again, just trying to get it right. For example, if  
13 instead of saying that, I said "a device that includes" and  
14 then used the plaintiff's construction, what would make that  
15 incorrect?

16 MR. HECHT: So I think we want to skip to the -- let's  
17 skip to Slide 38.

18 So there is an embodiment that contemplates that, at the  
19 bottom, the PDK may be inserted in the place of a conventional  
20 SIM card to provide functionality. In that embodiment, at  
21 least the battery, and we would argue the antennas of a cell  
22 phone, are used.

23 So the reason for the -- I think Samsung's argument is a  
24 noninfringement position, you could guess. But the reason we  
25 are shying away from "device" is because there is this

1 embodiment. There's this -- the thought had occurred to the  
2 plaintiff during prosecution that you could kind of swap  
3 modules and, you know, add to an existing device. And that's  
4 important because, you know, that's the way that our system  
5 works.

6 And so that's what I would argue. I think Samsung is  
7 trying to limit this unnecessarily because nothing in the  
8 specification or the claims requires that there is just a  
9 single monolithic device.

10 And as you probably know from seeing lots of these types  
11 of cases, there's lots of technology that can be, you know,  
12 implemented in software or has, you know, various components,  
13 as I said, that could be mixed and matched. And that's why we  
14 were very careful with our construction about "operably  
15 connected" because we don't want to be in argument, as you're  
16 contemplating where, what is the meaning of a device?

17 Operably connection just means that they work together.  
18 And we agree on all the components, you know, as far as the  
19 construction goes.

20 THE COURT: Yeah. And I see where we're heading here.  
21 Maybe I'll bounce back -- I'm catching up now a little -- maybe  
22 I'm a little behind.

23 Let me go back, if I could, swap back over to Mr. Pak and  
24 ask him to respond to that. And if we can focus on -- I really  
25 am concerned that we get into a fight between the experts about

1 whether something is or isn't a device. And so it's not -- it  
2 doesn't help you all or me to construe a claim term and then  
3 have a fight over what is the construction of the claim term.

4 And so help me out here on why I need -- I should use the  
5 word "device."

6 MR. PAK: Yes, Your Honor.

7 So two things. One is we've already seen other claim  
8 elements that we just dealt with, Your Honor, "hybrid device"  
9 where Your Honor has adopted the word "device." And I think  
10 the word "device" does have plain and ordinary meaning. I  
11 think experts can provide opinions on that. I think that's a  
12 question of fact. This is not a situation where we're dealing  
13 with lexicography.

14 THE COURT: Well, you think -- wait a second. Wait a  
15 second. Do you think -- okay. I don't want to get you on the  
16 record here because it could be used against you down the road.  
17 But so for this word it could be a question of fact. But other  
18 words are going to be a matter of law. I mean, it seems to me  
19 that the other side could equally argue that it -- that they  
20 don't --

21 Look, I'm with you. I mean, I've had people ask me to  
22 construe the word "pipe" in an oil and gas case. I mean, so,  
23 you know, which I think a good jury could figure out whether  
24 something is pipe or not. And so I'm on the side of allowing  
25 juries to hear the experts argue whether it's a device or not

1 and knowing -- being able to answer that. I just want to make  
2 sure that we're all on the same page here.

3 MR. PAK: Yes, Your Honor. And I think Your Honor already  
4 incorporated the word "device" into the construction of "hybrid  
5 device." And we're not trying to further construe that beyond  
6 preserving our indefiniteness argument.

7 So coming back to this, Your Honor, the issue really is  
8 there is no meaning to the words that are given by Proxense,  
9 "an operably connected collection of elements." What does that  
10 mean? It could be the entire Internet.

11 You know, you could take any element of the entire global  
12 internet and say those are operably connected by the TCP/IP  
13 protocol. So me sitting here in San Francisco talking to your  
14 iPad is an operably connected collection of events -- of  
15 elements. No one would say that is a device.

16 And then now you get into the question of what is internal  
17 or what is extrinsic? You know, we saw the claim language I  
18 showed Your Honor where you have to figure out whether the  
19 PDK's external or internal to the hybrid device.

20 So how do we even get to those questions in the case if we  
21 adopt something like an operably connected collection of  
22 elements that could literally mean anything in the world that  
23 has some kind of connection to it? And that's the reason why,  
24 Your Honor, we don't think Your Honor needs to do anything more  
25 than take the word "device" -- everybody understands at a high

1 level what that means.

2 And there could be a factual dispute about infringement or  
3 prior art later in the case where two experts could say this is  
4 a device or not a device. That issue could be presented to the  
5 jury for them to resolve based on expert analysis and  
6 presentation of evidence.

7 But I think to go down this path of using words like  
8 "operably connected collection of elements" is actually  
9 creating more of an issue for us, Your Honor, where we're going  
10 to have to deal with exactly what does that mean if it has any  
11 meaning. How do you even figure out what's external or  
12 internal when it could literally be anything that is connected  
13 in the world through some type of tenuous connection?

14 And that's the reason why we would strongly suggest, Your  
15 Honor, that we go with "device" and the language that they have  
16 after "operably connected collection of elements" doesn't  
17 concern us. You know, it could be a device including an  
18 antenna and transceiver for communicating with an RDC and a  
19 controller and memory for storing information particular to a  
20 user. So we would be fine with that compromise.

21 THE COURT: A response?

22 MR. HECHT: Your Honor, I was just looking back at the  
23 specification. And in the '188 patent at Column 4, Lines 24 to  
24 30, the hybrid device is referred to as "collectively formed of  
25 the various components." So the collective set of components

1 forms a device. And that is very clear in terms of the  
2 embodiment that is the little SIM PDK functionality aspect  
3 that's plugged into a cell phone as described in the patent.

4 We're not arguing for an expansive concept. We're just  
5 saying that these various components that are part of the PDK  
6 are connected in a way that is not necessarily in monolithic  
7 device. And I think that's really important, because it does  
8 avoid the fight that may come later as you've alluded to.

9 And I think that when you take kind of, you know, the  
10 specification as a whole looking at what this is supposed to  
11 accomplish, it's very clear that the plaintiff had tried to  
12 claim flexible component-based devices here.

13 THE COURT: Anything else, Mr. Pak?

14 MR. PAK: No, Your Honor. I mean, clearly what's shown  
15 here and depicted in every embodiment are devices. And I think  
16 we are trying to go away from the teachings of the patent when  
17 we try to use words like "operably connected collection of  
18 elements" which is just going to invite even more problems down  
19 the road.

20 THE COURT: Yeah. Let me hear a response to -- is the  
21 plaintiff arguing that something that is not a device could be  
22 infringing?

23 MR. HECHT: Well, I would say that in terms of the PDK  
24 aspect of -- yeah. That's what we're saying, that it doesn't  
25 necessarily have to be a monolithic, you know, some thing that

1 you hold right in your hand.

2 And this is kind of like with RAM and a computer.  
3 Theoretically you could have a laptop that's a device, you  
4 could have a phone. But you could also have a computer that  
5 just has a really long bus line and takes up two rooms. It's  
6 still -- that's operably connected in our view. But Samsung  
7 may argue if we were, you know, looking at that, that that's  
8 not a device and that's a noninfringement type of argument.

9 So we're trying to just avoid that and get -- you know,  
10 rather than getting into, you know, what the device is and what  
11 it is not, given the modular aspect to the PDK. Specifically  
12 because when we're talking about the hybrid device, it says  
13 it's a device. So, you know, Mr. Pak is right. That is  
14 something different than the PDK component.

15 THE COURT: Response?

16 MR. PAK: Your Honor, I think Mr. Hecht just underscored  
17 the point, which is we have, in the claim language Claim 1,  
18 external PDK, integrated PDK. If all of a sudden Proxense's  
19 construction allows for various components in different rooms  
20 connected by network connections, that's clearly not what is  
21 intended by the specification or the claim language.

22 We would submit, Your Honor, that the best approach to  
23 this is to use the word "device" which has been used in other  
24 constructions and has a meaning to those skilled in the art.

25 MR. HECHT: But the claim language still says "internal"

1 and "external," so there is some -- maybe it's a jumble of  
2 wires or maybe it's a wireless connection, whatever it is.  
3 But, you know, we're saying it's an operable connection but  
4 there can still be internal to that and external to that, you  
5 know, operable connection of components.

6 So I don't think we get into the issue that Mr. Pak is  
7 describing.

8 THE COURT: Anything else, Mr. Pak?

9 MR. PAK: Your Honor, there's -- nowhere do we see the  
10 word "operably connected" anywhere in the specification. We  
11 think we go with the word "device," Your Honor.

12 Thank you.

13 THE COURT: I have -- one of the things I do because I  
14 have no life, is I listen to Supreme Court arguments every  
15 year. Several years ago there was a phenomenally good one  
16 where they were trying to decide whether or not companies like  
17 Amazon should be taxed when they ship things to states. And  
18 it's truly one of the best arguments. I recommend it to  
19 everyone.

20 And halfway through it, because every time you heard  
21 something, you're like, God, that's a great argument. And  
22 Justice Breyer literally with one of them, one of the lawyers,  
23 says, the problem I have is that I listen to you and I think  
24 you're absolutely right. And then I listen to the other side  
25 and I think you're absolutely right. And it doesn't do me much

1 good to have two people who I think are both right.

2 So those were very good arguments. I'll be back in just a  
3 second.

4 (Pause in proceedings.)

5 THE COURT: Let's go back on the record.

6 We're going to do something a little out of the ordinary  
7 here. I'm going to go ahead and before I rule on this we're  
8 going to jump down to the claim term "receiver-decoder circuit"  
9 which may have essentially the same -- my same concerns.

10 Let me go ahead and hear -- I'll go ahead and start  
11 with -- Mr. Pak, is this you as well?

12 MR. PAK: Yes, Your Honor.

13 THE COURT: If you'll go ahead and argue this, why don't  
14 we take these two claim terms? They're not -- they're not  
15 necessarily together, but I think we're encountering the  
16 same -- I'm encountering the same issues trying to get right.

17 MR. PAK: That's right, Your Honor. We agree with Your  
18 Honor's assessment that there is a significant overlap in the  
19 issues for this term as well as the PDK term.

20 Mr. Scheufler, if we can turn to Slide 28.

21 And I think the concerns are even more pronounced here in  
22 terms of Proxense's proposed construction. Your Honor, if you  
23 look at their construction, you see that other than "a  
24 component or collection of components," the rest of that  
25 language is pure functional, "capable of wirelessly receiving

1 data in an encrypted format and decoding the encrypted data for  
2 processing."

3 This is just functional claiming which we know is not  
4 permitted for terms like "receiver-decoder circuit." And it's  
5 going to take us, again, into the world of Citrix versus  
6 Williamson when you have words like "circuit" and all you're  
7 doing is providing functional claiming without giving any  
8 structure.

9 Samsung's proposed construction relies, again, on the  
10 well-utilized term "device" to ground this construction,  
11 "receiver-decoder circuit." And they provide structure as well  
12 as functionality.

13 And if you turn to, again, the next slide, Slide 29.

14 As we saw, Your Honor, with PDK, we have RDC being  
15 consistently described in figures like this, Figure 13, as a  
16 discrete and separate entity with its own antenna that could be  
17 either internal to the hybrid device or external. But in each  
18 instance you have RDC being described as a device with discrete  
19 and separate functionality.

20 And if you turn to Slide 30.

21 It talks about "The RDC provides the wireless interface to  
22 the PDK 102." And specifically, on Slide 31, the specification  
23 talks about a direct coupling between the PDK and the RDC. So  
24 this is talking about how the PDK device can directly couple to  
25 the RDC device in this particular embodiment, Figure 11, at

1 Column 13, Line 25 through 29.

2 And on Slide 32, Your Honor, this is just a demonstrative  
3 that we put together, but it just illustrates the issues that  
4 we talked about before with the PDK. When you allow words like  
5 "operably connected collection of elements" or a collection of  
6 elements with no structure, no boundary, you get infinite  
7 permutations of how different elements could be grouped  
8 together, including elements that are far attenuated from one  
9 another and can be operably connected, in the sense that  
10 they're just communicating to each other through an Internet  
11 protocol or some type of wireless technologies.

12 And that's clearly not what's being described in the  
13 patent as an RDC, particularly when you think about direct  
14 coupling of an RDC component to a PDK. As we saw with the use  
15 of "integrated" and "external," you have to have some notion of  
16 boundary. What is -- where does the PDK end and start and  
17 where does the RDC end and stop?

18 And there's no guidance given in Proxense's construction  
19 for that. In fact, it would allow for overlapping and  
20 convoluted combinations with these different elements, which we  
21 don't believe is the intrinsic record or what the claim  
22 language is written to cover.

23 And, again, as we saw with the -- turning to the next  
24 slide, Slide 33, we see that the hybrid device including the  
25 RDC exists prior to being inserted into the phone. So this,

1 again, this example underscores the fact that this is a  
2 separate device that could be inserted into the cell phone.  
3 And that is different than the construction that Proxense is  
4 offering which could be some unspecified collection of elements  
5 that are somehow connected without any guidance given other  
6 than just a functional description of the purpose of these  
7 elements.

8 And then if you turn to the last slide, 34, Mr. Scheufler.

9 This isn't just functional in Figure 13. What we see is  
10 structured. We see that every device that's identified here,  
11 PDK, RDC and their internal versions of it, external versions  
12 of it, all have separate antennas, Your Honor, which means that  
13 we're talking about devices and not just a random collection of  
14 events -- of elements.

15 So, again, we think that the same concerns Your Honor  
16 identified for PDK exists with RDC. We don't see any reason to  
17 depart from using the word "device" which could be an issue  
18 that could be presented to the jury through expert evidence.  
19 And we would submit that Proxense's construction for RDC, as  
20 well as PDK, would just invite ambiguity, functional claiming  
21 and provide no helpful guidance to the jury.

22 Thank you.

23 THE COURT: Why don't you leave -- could you go back one  
24 slide?

25 MR. PAK: Yes, Your Honor.

1 THE COURT: That wasn't the one I wanted. Go, maybe --  
2 there. That was the one I wanted. Thank you very much.

3 If I could hear -- plaintiff's counsel can argue whatever  
4 they want, but I would like to hear a response to this slide as  
5 well.

6 MR. HECHT: Your Honor, actually, with respect to this  
7 slide, I cannot for the life of me figure out what it is that  
8 they're trying to convey here. Because I see that there are  
9 multiple RDCs and PDKs. I don't quite understand it.

10 And I also note that it's in two dimensions. So in three  
11 dimensions you could have a different result. But I really  
12 can't make heads or tails of this.

13 THE COURT: Okay. Well, then you go on and I'll have  
14 Mr. Pak address that when he gets back on.

15 MR. HECHT: Sure.

16 Mr. McDonough, can you please put on Slide 51 from our  
17 deck?

18 So Mr. Pak, I think, showed his hand when he was -- as to  
19 what Samsung really wants here when he said each of the RDC and  
20 PDK has their own antenna. That's what this is really about.  
21 The question is, if you integrate these modules into a device  
22 like a cell phone, what antenna is used by what? You know, can  
23 a cell phone more generally provide antenna functionality?

24 That's going to be their infringement argument, and that's  
25 why they really want to mate the very specific language that

1 they've put out here --

2 And actually, let's go back to Slide 50, the previous  
3 slide.

4 Where they propose a device that provides a wireless  
5 interface to the PDK, which is also captured in our  
6 construction. It's the wireless receiving data in encrypted  
7 format and decoding the encrypted data.

8 So if you look at the next slide, Figure 3, the RDC and  
9 the PDK here are shown with these back-and-forth arrows with  
10 kind of -- yeah, we -- you'll see it there. PDK 102, RDC 304.  
11 If you kind of have an imaginary box around those two, those  
12 are what we're calling the hybrid device, what the patent  
13 claims is the hybrid device. And so that is very much a  
14 functional relationship, but it's also meant to show that it's  
15 not -- you know, these are specific components.

16 The next slide shows something that, actually, Samsung put  
17 on the screen, shows a portion of the '188 patent from the  
18 shared specification. So Samsung highlighted the first line.  
19 They said the RDC provides the wireless interface.

20 We're highlighting the second point, and that's where our  
21 construction comes in. We say the RDC wirelessly receives data  
22 from the PDK in an encrypted format and decodes the encrypted  
23 data.

24 So we're looking essentially at the same section. But we  
25 think that Samsung's construction is too narrow, because the

1 wireless interface is not necessarily required.

2 If you look at the next -- sorry -- next slide.

3 We have Figure 13. And this shows that in Figure 11 the  
4 PDK's coupled by a signal line. Now, here you can see that  
5 signal line's 1104. But, again, that doesn't necessarily need  
6 to be what Samsung is limiting it to, a direct coupling. That  
7 could be other types of signals. So just want to make sure  
8 that this direct coupling aspect is just one embodiment, and  
9 the claim really should not be so limited into what Samsung is  
10 suggesting here.

11 And that's really all I have on this. I think the bigger  
12 argument, again, is really about this comes down to can these  
13 components be integrated? Proxense argues absolutely, that's  
14 what they claim. That's what the whole embodiment of the SIM  
15 card component is supposed to do. The SIM card itself is not  
16 going to have an antenna. That would not make any sense. You  
17 plug it into a phone and of course you're going to get battery  
18 power and the antenna functionality of the phone. And that's  
19 very, very important.

20 THE COURT: A response?

21 MR. PAK: Yes, Your Honor. So couple points.

22 One is, again, we're not talking about infringement of  
23 prior art today. What we're looking at is the intrinsic  
24 record. And even in the SIM card example, that's a device.

25 And so what Mr. -- we're not trying to incorporate

1 extraneous limitations for the RDC components such as an  
2 antenna. What we're trying to do is give it structure.

3 And going back to the proposed construction from  
4 Proxense --

5 And, Mr. Scheufler, if you could go back to the slide that  
6 has the construction from Proxense. Couple of slides before  
7 that, I believe. Yes.

8 So, Your Honor, this is critical. If you look at the  
9 construction from Proxense -- and I didn't hear any argument  
10 from Mr. Hecht on this. It doesn't say anything. It's just a  
11 nonce word, "a component or collection of components." And  
12 then it just says "capable of wirelessly receiving data from an  
13 encrypted format and decoding the encrypted data for  
14 processing."

15 This is the problem. The construction doesn't provide  
16 anything other than functional claiming, which is not  
17 permitted. Even the boxes that Mr. Hecht pointed to doesn't  
18 provide any structure.

19 The only construction on the table that actually provides  
20 some meaning and guidance to those skilled in the art is the  
21 term "device" that we're proposing. And we think that's  
22 consistent with every embodiment.

23 And just to answer Your Honor's point, our question about  
24 the figure --

25 If you turn back, Mr. Scheufler, to the figure with the

1 different -- here we go.

2 This is on Figure 2, Slide 32 of our presentation, what  
3 we're pointing out, Your Honor, is that if you allow any  
4 arbitrary collection of elements to be called an RDC or a PDK  
5 without giving it the boundary of a device, what you end up is  
6 a very complicated and confusing picture, where it would be  
7 impossible for those skilled in the art to figure out where --  
8 what is internal, what is external, how do you achieve direct  
9 coupling?

10 For example, if PDK 1 is connecting to RDC 2, it is no  
11 longer being directly connected. Yet you would be able to  
12 provide some definition of RDC 1 under their construction, or  
13 identification of RDC 1 that would include elements from RDC 2.

14 And again, this is again why it's so important to give it  
15 some boundary and not just rely on nonce words like "a  
16 collection of elements" or "an operably connected collection of  
17 elements."

18 So I think those are the two key points, Your Honor. We  
19 need to give it some structure. The word "device" is a  
20 well-known term. Your Honor has already adopted it for other  
21 constructions. We think it gives it the structure it needs.

22 And then we can get into a later dispute based on  
23 extrinsic evidence and expert analysis on whether a piece of  
24 prior art or the accused devices have a device or not. But we  
25 think the process in this construction only invites additional

1 confusion and provides no construction to the jury.

2 Thank you, Your Honor.

3 MR. HECHT: Your Honor?

4 THE COURT: Yes, sir.

5 MR. HECHT: Thank you.

6 I would note, again, that the means-plus-function  
7 argument -- this was, I think, argued for the first time at the  
8 hearing, just like with the PDK. If we're talking about, you  
9 know, labeling things as nonce words, device, you know, doesn't  
10 really tell you anything. I would argue it's basically the  
11 same as a component.

12 So I don't really understand how Mr. Pak is arguing that  
13 Samsung's construction gives any more meaningful structure than  
14 we've provided. In fact, you know, we've described more as far  
15 as, you know, how -- as far as what the device is capable of.

16 But as far as boundaries, setting boundaries, we are  
17 talking still about the hybrid device as encompassing both the  
18 PDK and the RDC, right? So the boundary is if something's  
19 internal to that device, then it's internal. If something's  
20 external, then it's external to the device. That device in  
21 this case will likely be the phone.

22 THE COURT: Okay.

23 MR. HECHT: So that's really all I have.

24 THE COURT: I'll be back in a few seconds.

25 MR. HECHT: Thank you, Your Honor.

1 (Pause in proceedings.)

2 THE COURT: Okay. If we can go back on the record.

3 The Court for -- let me make sure I have it right.

4 "Personal digital key" and also "receiver-decoder circuit," the  
5 Court is going to go with the constructions that it had  
6 proffered and make those its permanent or final constructions.

7 The next claim term -- but maybe we can take up more than  
8 one at one time -- I'll hear, if the defendant thinks we can --  
9 well, I guess we shouldn't.

10 We'll do "biometric information" and then we'll do  
11 "financial information." And I'll hear from the defendant  
12 starting with "biometric information."

13 MR. PAK: Thank you, Your Honor.

14 If we turn to Slide 47.

15 So, Your Honor, we do believe that the term "biometric  
16 information" is important to this case. And what we're  
17 offering here is taken directly out of the patent specification  
18 and would provide guidance to the jury as to what constitutes  
19 biometric information versus other types of information.

20 And specifically we're including fingerprint, palmprint,  
21 retinal scan, iris scan, photograph, signature, voice sample or  
22 DNA/RNA information that uniquely identifies an individual.

23 And we think that this type of guidance is helpful to the  
24 jury. Not everyone on the jury is going to be familiar with  
25 the contours of what is biometric information and what is not.

1 And clearly this type of guidance is exactly the type of  
2 guidance that courts have given in the past.

3 So, Mr. Scheufler, I'm not seeing the slides anymore. But  
4 if you can turn to -- can put that back on.

5 And, Your Honor, I'm going to jump to Column 4, Line 10  
6 through 14 of the '188 patent while we bring up the slides  
7 again.

8 And specifically that specification disclosure states that  
9 the biometric input can include a fingerprint, palmprint,  
10 retinal scan, iris scan, photograph, signature, voice sample or  
11 any other biometric information such as DNA or RNA or their  
12 derivatives that can uniquely identify the individual.

13 So, again, we think that's clear support in the intrinsic  
14 record for the proposed construction from Samsung.

15 And what Proxense does is points to other disclosures.  
16 And this is in the '188 patent. So just going back to 49.

17 Mr. Scheufler, Slide 49.

18 So this was a disclosure that I just discussed on the  
19 record, Your Honor, from Column 4.

20 And then if you turn to Column 50 -- or Slide 50.

21 What we have here is the disclosure pointed to by  
22 Proxense. And this is important because in the these other  
23 sections, Column 6 and Column 4, we have different usage of  
24 "biometric profile" and "biometric input." And, again, we  
25 think that's different than talking about biometric

1 information.

2 And then if you go to the next term there. So just go  
3 back before, Mr. Scheufler.

4 So, again, we think that biometric information such as DNA  
5 or RNA or their derivatives is exactly the type of disclosure  
6 that we should be providing to the jury. And, again, you know,  
7 biometric information does have technical meaning. It's  
8 provided in the patent specification. We think there's  
9 adequate support for Samsung's construction. Whereas Proxense  
10 is providing no guidance to the jury with their ordinary and  
11 plain meaning.

12 Thank you.

13 THE COURT: Thank you very much. I'll be back in just a  
14 second.

15 MR. PAK: Thank you.

16 (Pause in proceedings.)

17 THE COURT: The Court is going to maintain its  
18 construction of no construction necessary.

19 The next claim term is "financial information." I'll hear  
20 from defendant.

21 MR. PAK: Thank you, Your Honor.

22 So with respect to financial information, we have, again,  
23 the same examples that are taken directly out of the patent  
24 specification.

25 So this is on Slide 52.

1           "Purchasing account numbers, such as debit card, ATM card  
2 or bank account numbers" are precisely the examples that are  
3 given in the patent specification itself.

4           And what we find on the other side from Proxense is "no  
5 construction necessary." And, again, we do think it's  
6 important to give some guidance here. We're going to have  
7 disputes down the road about what is -- what they have accused  
8 as constituting financial information or not. And having a  
9 construction utilizing the examples that are given in the  
10 patent, we think it would be helpful to the jury to make their  
11 findings.

12           And so, again, if we turn to Slide 53.

13           We see that "financial information" is described in  
14 various ways throughout the claims that are completely  
15 consistent with the examples that have been provided as part of  
16 Samsung's construction.

17           And then if you turn to Slide 54.

18           And we have the example that's given at Column 5, Line 2  
19 through 5 "a different database may be used to validate  
20 different types of purchasing means such as a debit card, ATM  
21 card or bank account number."

22           And turning to Slide 55.

23           The problem with providing no construction is that it  
24 really doesn't allow the jury to draw boundaries between  
25 transactional information or transactional data such as time or

1 date versus financial information.

2 And, again, Proxense's construction that references  
3 ordinary -- plain and ordinary meaning but then talks about  
4 transactions is different, we believe, than financial  
5 information. And, again, this really underscores the need to  
6 provide guidance to the Court -- to the jury on what is  
7 financial information versus other types of information such as  
8 transactional information.

9 So, again, we've just given some examples of dates and  
10 time of transactions. That's clearly transaction-specific but  
11 doesn't denote financial information.

12 So with that, I will turn it over to Your Honor for any  
13 questions on this argument.

14 THE COURT: I don't have any. I think a jury can  
15 understand this one. I'll go with plain and ordinary meaning.

16 And then the final one I have is "inheritance  
17 information." And I have a note here that it's in claims that  
18 are not asserted.

19 So let me ask the plaintiff. Is the plaintiff intending  
20 to assert Claims 9 or 18?

21 MR. HECHT: I don't believe so at this time. I'm just  
22 going to defer to Mr. Price and Mr. McDonough real quick.

23 Max, we can't hear you. Still can't hear you. No. Thank  
24 you. All right.

25 THE COURT: So, Mr. Pak, if they are not asserting these

1 claim terms, is there a reason we need to have these -- this  
2 claim term -- if they're not asserting these -- try one more  
3 time. If they're not asserting these claims, is there a need  
4 for me to construe this claim term?

5 MR. PAK: I don't believe so.

6 But, Ms. Ducca, is there a reason if they are not  
7 asserting --

8 And just to be clear on the record, Your Honor, I have  
9 Claims 9, 18 from the '188 and Claims 9 and 19 from the '700.  
10 If the plaintiff is not asserting those claims any longer, then  
11 I don't believe we need to construe the term.

12 But, Ms. Ducca, is that consistent with your  
13 understanding?

14 MS. DUCCA: That -- this is news that they're not  
15 asserting these claims. But we would, of course, welcome that  
16 information. And if that's true, then I don't think we need to  
17 construe this term right now.

18 THE COURT: Okay. So on that basis, if that changes for  
19 some reason and the plaintiff decides -- I'm not dismissing the  
20 claims in any way. I may have put the plaintiff on the spot.  
21 I just don't need to -- I think it's more of an advisory  
22 opinion if the claims aren't being asserted.

23 If the plaintiff decides to assert those claims, then  
24 Samsung's proposed construction is -- been briefed, and I can  
25 take it up in a very short order if you all will just let me

1 know it needs to be construed.

2 Is there anything else that we need to take up?

3 MR. HECHT: Your Honor, I'm so sorry, but it seems that  
4 they were -- at least Claim 9 was in our preliminary  
5 infringement contentions.

6 THE COURT: If you're asserting it, I'll take it up. I'm  
7 fine taking it up.

8 MR. HECHT: We might as well, just in case. Because it  
9 appears there might have been some confusion. I don't know why  
10 your clerk might have thought -- maybe it was in the complaint.  
11 There might be something that's off somewhere, but probably --

12 THE COURT: That's fine with me. So I'll hear from  
13 counsel for defendant. And I may have raised a kerfuffle that  
14 didn't need to be raised. So I'll hear from defendant with  
15 respect to the claim term "inheritance information."

16 MR. PAK: Thank you, Your Honor.

17 So if you turn to Slide 36.

18 We have Samsung's proposed construction, the "information  
19 that is received from a predecessor device." And that's really  
20 the key issue, is whether the word "inheritance" has a notion  
21 of a predecessor or a parent where attributes are being passed  
22 on from a predecessor device to a successor where those  
23 attributes are then being adopted by the successor.

24 And we see that in Proxense's proposed construction.

25 There is no sense or any meaning given to the idea of

1 inheriting something. Instead, what they've done is replaced  
2 the concept of inheritance with just merely transfer  
3 information passing from a device -- one device to another.

4 And we can see a clear example of why this construction  
5 would be flawed.

6 And that's on Slide 38, Mr. Scheufler.

7 So if you take Proxense's proposed construction, the  
8 "information passed from a first device to a second device for  
9 use by the second device," that would capture all kinds of  
10 information and transmissions such as e-mails, text messages,  
11 website communications that have nothing to do with the type of  
12 inheritance information that's being claimed.

13 For example, an e-mail is information. It's being passed  
14 from a device to another device, and it's used by the second  
15 device. But nothing -- but no one skilled in the art and  
16 nothing in the patent specification would consider a regular  
17 e-mail to be inheritance information.

18 Instead, what we see is, on Slide 37, we have  
19 authorization inheritance is when the first device selects --  
20 passes the selected information to a second device. And then  
21 the second device then inherits that information for use. And  
22 we can see what the patent is talking about in terms of  
23 inheritance which is in alignment with how we typically use the  
24 word "inherit."

25 And on Slide 39 there are three types of inheritance

1 information, service, feature and personality inheritance. And  
2 in each of these examples of inheritance that are given in the  
3 intrinsic record, the second device adopts or takes the  
4 features or the attributes of the predecessor device and acts  
5 as -- in place of that predecessor device.

6       So here, for example, feature inheritance is to be able to  
7 pass on features from the parent device to a second device.  
8 Another example that's given in the patent specification is  
9 Figure 16 where the second user is inheriting WiFi access  
10 credentials from the first user. And so that's another example  
11 of inheritance, where the WiFi credentials and access  
12 permissions are adopted or taken by the second user. So that  
13 goes beyond just transferring.

14       And then the third example is transferring of account  
15 information and dollar limits from a parent to a child. And  
16 that's on Figure 16. Again, the child basically assumes the  
17 role of the parent in terms of adopting the account information  
18 and the dollar limits.

19       And so we think that Proxense's construction that only  
20 talks about transfer without capturing the notion of  
21 inheritance is too broad and is not rooted in the intrinsic  
22 record, nor does it reflect the plain and ordinary meaning of  
23 the word "inheritance."

24       And then if we turn to the last example that's given,  
25 Slide 43, very similar example, Column 20 talking about Figure

1 16 of the '188 patent where you are exchanging video game  
2 preferences.

3 And then lastly, Your Honor, on Slide 44, we've given some  
4 guidance to you in the briefing of inheritance as used in  
5 different dictionaries. For example, in the Bloomsbury English  
6 Dictionary in 2004, inheritance that's been "money, property or  
7 title that has been inherited or is to be inherited."

8 And then in the Dictionary of Science and Technology,  
9 Second Edition 2007, genetics or "transfer of  
10 genetically-controlled characteristics from a parent to an  
11 offspring."

12 So our construction, Your Honor, properly assumes and  
13 adopts the notion of a predecessor entity which builds into it  
14 this notion of inheritance, where the successor's entity would  
15 take as its own the values that are being transmitted to the  
16 successor.

17 So that's really the issue with this one, Your Honor, is  
18 the inclusion of the concept of predecessor in our  
19 construction, whereas Proxense does not have one.

20 THE COURT: Okay. A response?

21 MR. HECHT: Thanks, Your Honor.

22 And by the way, we did kind of track down where this might  
23 have come from. It was an error, I think, in the claim  
24 construction brief.

25 I'll ask Mr. -- the joint claim construction brief.

1           Mr. McDonough, can you please put on -- let's look at  
2 Slide 57, please.

3           I'll go through very quick, Your Honor. Sorry. This one  
4 is animated, but we're not going to use this. Mr. Pak already  
5 showed this -- showed the various information passing from the  
6 PDK to the hybrid device.

7           So in the specification -- and this is where we lifted the  
8 language for our proposed construction -- says when a first  
9 device -- "Authorization inheritance," to read the full  
10 sentence, "is when a first device passes selected information  
11 to a second device and the second device then 'inherits' that  
12 information for use."

13           So I think that Samsung's construction is just too narrow,  
14 because it really wants this concept of inheriting from almost  
15 a prior user, you know, in the case of inheriting the, you  
16 know, the commonly-used definition of inheriting something from  
17 a will or something in that vein. That's not how this was  
18 defined in the specification. And there is quotations around  
19 "inherits."

20           And so there's no limitation that Samsung is suggesting  
21 here as to kind of this predecessor. It's a -- and we would  
22 have a separate argument over what "predecessor" means if their  
23 construction stands. So we think it's fairly obvious in light  
24 of how it's being defined in the patent. So we need not even  
25 look at any definitions.

1           If you look at the next slide, Samsung in their briefing  
2 has said that our definition captures the aspect of information  
3 transfer from one device to the other. It's consistent with  
4 the idea of inheriting information. We're looking to the same  
5 portion of the spec which we just looked at.

6           So we would argue that the Court's construction should  
7 stand. Thank you very much.

8           THE COURT: You're very welcome.

9           A response?

10          MR. PAK: Just a quick one, Your Honor.

11          Again, just going back to that Column 17, 46 through 49  
12 from the '188 patent, the disclosure makes clear that  
13 authorization inheritance is when a first device passes  
14 selected information and the second device inherits that  
15 information for use. And so what's being left out in  
16 Proxense's construction is the -- really the critical piece,  
17 the inheritance piece.

18          There's nothing in that construction from Proxense that  
19 talks about inheritance whatsoever. It talks about use. And,  
20 again, Mr. Hecht didn't address a point that we made, which is  
21 that "use" can mean anything. It could mean, for example,  
22 receiving an e-mail and looking at an e-mail, receiving a  
23 website page and displaying it. None of those things would be  
24 inheriting any type of information.

25          And so, again, we think that the word "inherit" has

1 meaning. It's given meaning in the specification that's  
2 consistent with the plain and ordinary meaning of inherit.  
3 Proxense's construction really eliminates any notion of  
4 inheritance.

5 And that's the reason why we ask Your Honor to adopt the  
6 predecessor construction.

7 THE COURT: Anything else?

8 MR. HECHT: I would just note that the predecessor -- if  
9 we're to call anything a predecessor device, we have a first  
10 device that is passing the information to the second device.  
11 So if you want to call that predecessor, that exists in our  
12 construction. So the concept of inheriting from one to the  
13 other is, in fact, there in our construction.

14 THE COURT: Anything else?

15 MR. PAK: No, Your Honor.

16 THE COURT: Okay. I'll be back in a few seconds.

17 (Pause in proceedings.)

18 THE COURT: If we can go back on the record.

19 The Court is going to maintain its preliminary  
20 construction.

21 And I think that's all the claim terms I have, but I'll  
22 ask Mr. Pak, who's in my screen, along with a beautiful shot of  
23 Colorado or somewhere that's on my screen.

24 Is there anything else we need to take up today?

25 MR. PAK: No, Your Honor. I think that covers all the

1 claim terms for today. Thank you, Your Honor.

2 THE COURT: Okay. I wish you all a very Happy New Year,  
3 and I hope you don't have much more to do this week. Or I hope  
4 you have a lot to do this week. What the heck? You all make a  
5 living doing this stuff. So I hope you have a lot to do this  
6 week, and have a great weekend.

7 (Hearing adjourned at 11:34 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )

3

4 I, Kristie M. Davis, Official Court Reporter for the  
5 United States District Court, Western District of Texas, do  
6 certify that the foregoing is a correct transcript from the  
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with  
9 those prescribed by the Court and Judicial Conference of the  
10 United States.

11 Certified to by me this 26th day of January 2022.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

/s/ Kristie M. Davis  
KRISTIE M. DAVIS  
Official Court Reporter  
800 Franklin Avenue  
Waco, Texas 76701  
(254) 340-6114  
kmdaviscsr@yahoo.com